

**ARTICLES OF INCORPORATION**  
**OF**  
**BOISE EASTGATE, INC.**  
**(an Idaho corporation)**

SEP 9 3 35 PM '97

SECRETARY OF STATE  
IDAHO

THE UNDERSIGNED, acting as incorporator of a corporation under the Idaho Business Corporation Act, adopts the following Articles of Incorporation for such corporation:

**FIRST**

The name of the corporation is <sup>BOISE</sup>EASTGATE, INC.

**SECOND**

The period of its duration is perpetual.

**THIRD**

The purpose for which the corporation is organized is to engage in the following activities:

1. To acquire a partnership interest in Eastgate, L.L.P. an Idaho limited liability partnership (the "Property").
2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge, and otherwise deal with the Property.
3. To exercise all powers enumerated in the Idaho Business Corporation Act necessary or convenient to the conduct, promotion, or attainment of the business or purposes otherwise set forth herein.

**FOURTH**

The aggregate number of shares which the corporation shall have authority to issue is 100 shares all of which shall be common voting stock.

**FIFTH**

Shareholders shall have a preemptive right to acquire unissued or treasury shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares, except as provided in the Idaho Business Corporation Act.

IDAHO SECRETARY OF STATE

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### **SIXTH**

The location of the initial registered office of the corporation is 499 Main Street, Boise, Idaho and the name of its initial registered agent at such address is Douglas Tamura.

### **SEVENTH**

The number of directors constituting the initial Board of Directors is two; and the names and addresses of the persons who are to serve until the first annual meeting of the shareholders and until their successors are elected and qualified are:

<b><u>NAME</u></b>	<b><u>ADDRESS</u></b>
Douglas W. Tamura	499 Main Street, Boise, ID 83701
Thomas P. Zeigler	P.O. Box 41, Ketchum, ID 83340

### **EIGHTH**

The name and address of the incorporator is as follows:

Steven E. Alkire  
P.O. Box 1368  
300 N. Sixth Street  
Boise, ID 83701

### **NINTH**

The corporation shall only incur indebtedness in an amount necessary to acquire, operate, and maintain the Property. For so long as any mortgage lien in favor of First Union National Bank, its successors or assigns (the "First Mortgage") exists on any portion of the Property, the corporation shall not incur, assume, or guaranty any other indebtedness. For son long as the First Mortgage exists on any portion of the Property, the corporation shall not dissolve or liquidate, or consolidate or merge with or into any other entity, or convey or transfer its properties and assets substantially as an entirety or transfer any of its shares of stock to any entity. For so long as the First Mortgage exists on any portion of the Property, the corporation will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the board of directors.

### **TENTH**

For so long as the First Mortgage exists on any portion of the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in these articles of incorporation, the corporation shall conduct its affairs

in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.
2. It shall maintain corporate records and books of account separate from those of its parent and any affiliate.
3. Its board of directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions.
4. It shall observe all corporate formalities.
5. It shall not commingle assets with those of its parent and any affiliate.
6. It shall conduct its own business in its own name.
7. It shall maintain financial statements separate from its parent and any affiliate.
8. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.
9. It shall maintain an arms length relationship with its parent and any affiliate.
10. It shall not guarantee or become obligated for the debts of any other entity, including its parent or any affiliate, or hold out its credit as being available to satisfy the obligations of others.
11. It shall use stationery, invoices, and checks separate from its parent and any affiliate.
12. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate.
13. It shall hold itself out as an entity separate from its parent and any affiliate.

For purpose of this Article Tenth, the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage, or otherwise with any director, officer or employee of the corporation, its parent, or any affiliate thereof, and (ii) any person which receives compensation for administrative, legal or accounting services from this corporation, its parent or any affiliate.

For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company trust (including any beneficiary thereof), unincorporated organization or government or any agency or political subdivision thereof.

#### ELEVENTH

The corporation reserves the right to amend, alter, change or repeal any provisions contained in its Articles of Incorporation in any manner now or hereafter prescribed or permitted by statute provided, however, that as long as the First Mortgage exists on any portion of the Property, no material amendment to its Articles of Incorporation may be made without first obtaining approval of the mortgagee holding the First Mortgage on any portion of the Property. All rights of stockholders of the corporation are granted subject to this reservation.

The Board of Directors is expressly authorized to alter, amend, or repeal the Bylaws of the corporation and to adopt new Bylaws, subject to repeal or change by vote of holders of a majority of shares of the corporation's Common Stock provided, however, that as long as the First Mortgage exists on any portion of the Property, no material amendment to the Bylaws may be made without first obtaining approval of the mortgage on any portion of the Property.


#### TWELFTH

Except as otherwise provided in the Article Twelfth, at each election of directors, every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, one vote for each share owned by him. Shareholders have no right to vote their shares cumulatively in the election of directors. No shares in the name of this corporation or a corporation where the majority of its shares entitled to vote for directors is held by this corporation (except to the extent the shares are held by any such corporation in a fiduciary capacity) are entitled to a vote on any matter. Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holder the redemption price on surrender of the shares.

### THIRTEENTH

A director of this corporation shall not be personally liable to this corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty of this corporation or its shareholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 30-1-48, Idaho Code, or (d) for any transaction from which the director derived an improper personal benefit. If the Idaho Business Corporation Act is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of this corporation shall be eliminated or limited to the fullest extent permitted by the Idaho Business Corporation Act, as so amended. Any repeal or modification of this Article Eleventh by the shareholders of the corporation shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification. The corporation shall indemnify the directors and officers of the corporation to the fullest extent under permitted by law or as may be expanded by succeeding law. Any indemnification of the corporation's directors and officers shall be fully subordinated to any obligations respecting the Property (including, without limitation, the First Mortgage) and such indemnification shall not constitute a claim against the corporation in the event that cash flow in excess of amounts necessary to pay holders of such obligations is insufficient to pay such obligations.

DATED this 9 day of Sept, 1997.

  
Steven E. Alkire