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(Business Entity Name)

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**CT CORPORATION**

January 27, 2005

Department of State, Florida  
409 East Gaines Street  
Tallahassee FL 32399

RECEIVED  
JAN 27 PM 4:43  
STATE OF FLORIDA  
DEPARTMENT OF STATE

Re: Order #: 6285849 SO  
Customer Reference 1:  
Customer Reference 2:

*Resubmit*

Dear Department of State, Florida:

Please obtain the following:

Cobalt Industrial REIT (TX)  
Misc - Foreign Corporate Filing - Declaration of Trust  
Florida

Enclosed please find a check for the requisite fees. Please return document(s) to the attention of the undersigned.

If for any reason the enclosed cannot be processed upon receipt, please contact the undersigned immediately at (850) 222-1092. Thank you very much for your help.

Sincerely,

Stephanie Sanders  
Fulfillment Specialist  
Stephanie\_Sanders@cch-lis.com

660 East Jefferson Street  
Tallahassee, FL 32301  
Tel. 850 222 1092  
Fax 850 222 7615



FLORIDA DEPARTMENT OF STATE  
Glenda E. Hood  
Secretary of State

January 25, 2005

CT CORPORATION

SUBJECT: COBALT INDUSTRIAL REIT  
Ref. Number: W05000003893

We have received your document for COBALT INDUSTRIAL REIT and your check(s) totaling \$350.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

You failed to enclose a copy of the trust with the attachment. At least two Trustees must be listed on the affidavit.

Please return the original and one copy of your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6972.

Doris Brown  
Document Specialist  
New Filings Section

Letter Number: 405A00005029

*Please  
backdate  
to 1/24/05*

**AFFIDAVIT TO THE FLORIDA SECRETARY OF STATE  
TO FILE OR QUALIFY**

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATE  
REGISTRATION  
05 JAN 24 PM 1:38

COBALT INDUSTRIAL REIT

**A** TEXAS REAL ESTATE INVESTMENT **TRUST**

In accordance with Section 609.02 of the Florida Statutes, pertaining to  
Common Law Declarations of Trust, the undersigned, the Chairman of the  
Board of Trustees of COBALT INDUSTRIAL REIT, a

(Name of Trust)

Texas

(State)

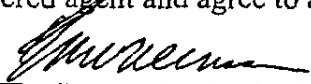
Trust hereby affirms in order to file or qualify

COBALT INDUSTRIAL REIT

(Name of Trust)

, in the State of Florida.

1. Two or more persons are named in the Trust.
2. The principal address is c/o USAA Real Estate Company, 9830 Colonnade  
Boulevard, Suite 600, San Antonio, Texas 78230.
3. The registered agent and street address in the State of Florida is:  
CT Corporation, 1200 South Pine Island Road, Plantation, Florida  
33324.
4. Acceptance by the registered agent: Having been named as registered  
agent to accept service of process for the above named Declaration of Trust  
at the place designated in this affidavit, I hereby accept the appointment as  
registered agent and agree to act in this capacity.




**E. A. Wallace**  
Assistant Secretary

(Signature of Registered Agent)

5. I certify that the attached is a true and correct copy of the Declaration of  
Trust under which the association proposes to conduct its business in  
Florida.

NOTARY

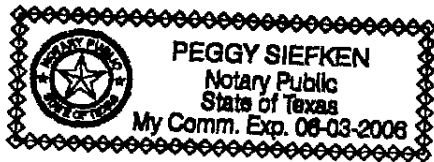
  
Name: **T. Patrick Duncan**  
Chairman of the Board of Trustees

Filing Fee: \$350.00  
Certified Copy: \$ 8.75 (optional)

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on January 21, 2005, by T. Patrick Duncan, Chairman of the Board of Trustees of the Cobalt Industrial REIT, a Texas real estate investment trust, on its behalf.



*Peggy Siefken*  
\_\_\_\_\_  
Notary Public, State of Texas

FILED  
SECRETARY  
DIVISION  
05 JAN 24 PM 1:38

SCANNED

Doc 20040143033

## DECLARATION OF TRUST COBALT INDUSTRIAL REIT

The undersigned, acting as the Trust Managers of a real estate investment trust under the Texas Real Estate Investment Trust Act, as amended (the "Texas REIT Act"), hereby adopt the following Declaration of Trust (this "Declaration of Trust").

### ARTICLE I

The name of the trust (the "Trust") is "Cobalt Industrial REIT." An assumed name certificate setting forth such name has been filed in the manner prescribed by law.

### ARTICLE II

The Trust is formed pursuant to the Texas REIT Act and has the following as its purpose and powers:

To purchase, hold, lease, manage, sell, exchange, enhance, subdivide and improve real property and interests in real property (including ownership interests in one or more business entities that own real property or interests in real property), and in general, to carry on any other business and do any other acts in connection with the foregoing and to have and exercise all powers conferred by the laws of the State of Texas upon real estate investment trusts formed under the Texas REIT Act, and to do any or all of the things hereafter set forth to the same extent as natural persons might or could do. The term "real property" and the term "interests in real property" for the purposes stated herein shall not include severed mineral, oil or gas royalty interests. The Trust shall have all of the powers granted to real estate investment trusts by the Texas REIT Act (including, without limitation, the power to lend money for its trust purposes, invest and reinvest its funds, and to take and hold real and personal property as security for the payment of funds so loaned or invested) and all other powers necessary or appropriate to promote, effect and attain the purposes for which the Trust is organized.

### ARTICLE III

The post office address of the Trust's initial principal office and place of business is 9830 Colonnade Boulevard, Suite 600, San Antonio, Texas 78230-2239. The address of the Trust's registered office is 9830 Colonnade Boulevard, Suite 600, San Antonio, Texas 78230-2239 and the name of its registered agent at that address is Randal R. Seewald. The Trust's address for notices is 9830 Colonnade Boulevard, Suite 600, San Antonio, Texas 78230-2239 with a copy to Cobalt Capital Partners, L.P., 5605 North MacArthur Boulevard, Suite 350, Irving, Texas 75038.

Book 10021 Page 2004

#### ARTICLE IV

The name and business mailing address of the initial Trust Managers who shall serve until the first annual meeting of shareholders and until their successors are duly elected and qualified are as follows:

Name	Mailing Address
Stanley R. Alterman	9830 Colonnade Boulevard, Suite 600 San Antonio, Texas 78230-2239
T. Patrick Duncan	9830 Colonnade Boulevard, Suite 600 San Antonio, Texas 78230-2239
Lewis D. Friedland	5605 North MacArthur Boulevard Suite 350 Irving, Texas 75038

#### ARTICLE V

The period of the Trust's duration is perpetual. The Trust may be sooner terminated by the vote of the holders of at least eighty percent (80%) of the voting power of the outstanding Shares.

#### ARTICLE VI

The Trust Managers shall manage the money or property received for the issuance of Shares for the benefit of the shareholders of the Trust.

Subject to any express limitations contained in the Texas REIT Act, this Declaration of Trust, the Bylaws of the Trust (the "Bylaws") or the Shareholders' Agreement (hereinafter defined), (a) the business and affairs of the Trust shall be managed under the direction of the Board of Trust Managers, consisting of all the Trust Managers then in office (the "Board") and (b) the Board shall have full, exclusive and absolute power, control and authority over any and all property of the Trust. The Board may take any action as in its sole judgment and discretion is necessary or appropriate to conduct the business and affairs of the Trust. This Declaration of Trust shall be construed with the presumption in favor of the grant of power and authority to the Board. Subject to any express limitations contained in the Texas REIT Act, this Declaration of Trust or in the Bylaws of the Trust, any construction of this Declaration of Trust or determination made in good faith by the Board concerning its powers and authority hereunder shall be conclusive. The enumeration and definition of particular powers of the Trust Managers included in this Declaration of Trust or in the Bylaws shall in no way be limited or restricted by reference to or inference from the terms of this or any other provision of this Declaration of Trust or the Bylaws or construed or deemed by inference or otherwise in any manner to exclude or limit the powers conferred upon the Board or the Trust Managers under the general laws of the State of Texas or any other applicable laws.

Declaration of Trust  
Cobalt Industrial REIT

The Board, without any action by the shareholders of the Trust, shall have and may exercise, on behalf of the Trust, the power to adopt, amend and repeal Bylaws; to elect officers in the manner prescribed in the Bylaws; to solicit proxies from holders of Shares (hereinafter defined); and to do any other acts and deliver any other documents necessary or appropriate to the foregoing powers.

The number of Trust Managers initially shall be three (3) which number may be increased or decreased pursuant to the Bylaws. Subject to the Shareholders' Agreement, the Trust Managers may increase the number of Trust Managers on the Board and fill any vacancy, whether resulting from an increase in the number of Trust Managers, resignation, removal, incapacity, death or otherwise in the manner provided in the Bylaws.

Subject to the terms of the Shareholders' Agreement, Trust Managers shall be elected at the annual meeting of the shareholders by the affirmative vote of the holders of two-thirds (2/3) of the Shares outstanding and entitled to vote for the election of Trust Managers. Subject to the Bylaws and the Shareholders' Agreement, a Trust Manager may be removed by the vote of the holders of two thirds (2/3) of the outstanding Shares entitled to vote at a special meeting of the shareholders called for such purpose or as otherwise provided in the Bylaws. Cumulative voting for the election of Trust Managers is prohibited.

Each Trust Manager shall serve until his successor is elected and qualified or until his death, retirement, resignation or removal. In the event of any increase or decrease in the authorized number of Trust Managers, each Trust Manager then serving as such shall nevertheless continue as a Trust Manager until the expiration of his current term, or his prior death, retirement, resignation or removal. Any Trust Manager may resign by written notice to the Board, effective upon execution and delivery to the Trust of such written notice or upon any future date specified in the notice. Subject to the rights of certain holders to elect one (1) or more Trust Managers as set forth in the Bylaws and the Shareholders' Agreement, a Trust Manager may be removed at any time with or without cause at a meeting of the shareholders, by the affirmative vote of the holders of not less than two thirds (2/3) of the Shares then outstanding and entitled to vote generally in the election of Trust Managers.

## ARTICLE VII

The aggregate number of Shares of beneficial interest which the Trust shall have authority to issue is One Million (1,000,000) common shares, par value \$.01 per share (the "Common Shares") and Five Hundred (500) preferred shares ("Preferred Shares"). Except as otherwise provided in this Declaration of Trust, all of the Common Shares shall be equal in all respects to every other such Common Share, and shall have no preference, conversion, exchange or preemptive rights.

The Trust may issue one (1) or more series of Preferred Shares, each such series to consist of such number of Shares as shall be determined by resolution of the Trust Managers creating such series. The Preferred Shares of each such series shall have such designations, preferences, conversion, exchange or other rights, participations, voting powers, options, restrictions, limitations, special rights or relations, limitations as to dividends, qualifications or



terms, or conditions of redemption thereof, as shall be stated and expressed by the Trust Managers in the resolution or resolutions providing for the issuance of such series of Preferred Shares pursuant to the authority to do so which is hereby expressly vested in the Trust Managers.

Except as otherwise specifically provided in any resolution or resolutions of the Trust Managers providing for the issuance of any particular series of Preferred Shares, the number of Shares of any such series so set forth in such resolution or resolutions may be increased or decreased (but not below the number of Shares of such series then outstanding) by a resolution or resolutions likewise adopted by the Trust Managers.

Except as otherwise specifically provided in any resolution or resolutions of the Trust Managers providing for the issuance of any particular series of Preferred Shares, Preferred Shares redeemed or otherwise acquired by the Trust shall assume the status of authorized but unissued Preferred Shares and shall be unclassified as to series and may thereafter, subject to the provisions of this Article VII and to any restrictions contained in any resolution or resolutions of the Trust Managers providing for the issuance of any such series of Preferred Shares, be reissued in the same manner as other authorized but unissued Preferred Shares. Except as otherwise specifically provided in any resolution or resolutions of the Trust Managers providing for the issuance of any particular series of Preferred Shares, holders of Preferred Shares shall have no preemptive rights.

Except as otherwise specifically required by law or this Declaration of Trust or as specifically provided in any resolution or resolutions of the Trust Managers providing for the issuance of any particular series of Preferred Shares, the exclusive voting power of the Trust shall be vested in the Common Shares. Each Common Share entitles the holder thereof to one vote at all meetings of the shareholders of the Trust.

#### ARTICLE VIII

The Trust shall issue Shares only for a tangible or intangible benefit to the Trust, including cash, promissory notes, property, services performed, contracts for services to be performed or other securities of the Trust.

#### ARTICLE IX

The Trust will not commence business until it has received for the issuance of Shares consideration of at least \$1,000 value, consisting of any tangible or intangible benefit to the Trust, including cash, promissory notes, property, services performed, contracts for services to be performed or other securities of the Trust.

#### ARTICLE X

The Trust shall not engage in any activities beyond the scope of the purpose of a REIT formed pursuant to the Texas REIT Act, as such purpose is set forth in Article II hereof and in the Texas REIT Act.

## ARTICLE XI

[RESERVED]

## ARTICLE XII

The Board may authorize the issuance from time to time of Shares of any class or series, whether now or hereafter authorized, or securities or rights convertible into Shares of any class or series, whether now or hereafter authorized, for consideration consisting of any tangible or intangible benefit to the Trust (including, without limitation, cash, promissory notes, property, services performed, contracts for services to be performed or other securities of the Trust) as the Board may deem advisable (or without consideration in the case of a Share split or Share dividend), subject to such restrictions or limitations and exceptions, if any, as may be set forth in this Declaration of Trust, the Bylaws or the Texas REIT Act and provided that any such issuance will not cause the Trust to fail to qualify as a REIT or a "domestically controlled" REIT within the meaning of Section 897(h)(4)(B) of the Code.

The Board may from time to time authorize and declare to shareholders such dividends or distributions, in cash or other assets of the Trust or in securities of the Trust or from any other source as the Board in its discretion shall determine. The Board shall endeavor to authorize and declare such dividends and distributions as shall be necessary for the Trust to qualify as a real estate investment trust under the Code; however, shareholders shall have no right to any dividend or distribution unless and until authorized and declared by the Board. The exercise of the powers and rights of the Board pursuant to this Article XII shall be subject to the provisions of any class or series of Shares at the time outstanding. Notwithstanding any other provision in this Declaration of Trust, no determination shall be made by the Board nor shall any transaction be entered into by the Trust which would cause any Shares or other beneficial interest in the Trust not to constitute "transferable shares" or "transferable certificates of beneficial interest" under Section 856(a)(2) of the Code or which would cause any distribution to constitute a preferential dividend as described in Section 562(c) of the Code.

The Trust Managers may from time to time authorize, and the Trust may make, distributions on its outstanding Shares in cash, in property or in its Shares, except that no distribution shall be made if (i) after giving effect to the distribution, the Trust would be insolvent or (ii) the distribution exceeds the surplus of the Trust, except as set forth in the Texas REIT Act.

All Shares shall be personal property entitling the shareholders only to those rights provided in this Declaration of Trust. The shareholders shall have no interest in the property of the Trust and shall have no right to compel any partition, dividend or distribution. The Trust is entitled to treat as shareholders only those Persons in whose names Shares are registered as holders of Shares on the beneficial interest ledger of the Trust.

The Trust may, without the consent or approval of any shareholder, issue fractional Shares, eliminate a fraction of a Share by rounding up or down to a full Share, arrange for the

disposition of a fraction of a Share by the Person entitled to it, or pay cash for the fair value of a fraction of a Share.

#### ARTICLE XIII

A holder of Shares, an owner of any beneficial interest in Shares, or a subscriber for Shares whose subscription has been accepted is not under an obligation to the Trust or to its obligees, with respect to the Shares, other than the obligation to pay to the Trust the full amount of the consideration for which the Shares were or are to be issued; with respect to any contractual obligation of the Trust, on the basis that the Beneficial Owner, owner, or subscriber is or was the alter ego of the Trust, or otherwise or on the basis of actual fraud or constructive fraud, a sham to perpetrate a fraud, or other similar theory, unless the obligee demonstrates that the Beneficial Owner, owner or subscriber caused the Trust to be used for the purpose of perpetrating and did perpetrate an actual fraud on the obligee primarily for the direct personal benefit of the Beneficial owner, owner or subscriber; or, with respect to any obligation of the Trust, on the basis of the failure of the Trust to observe any formality, including the failure to comply with any requirement of the Texas REIT Act, this Declaration of Trust or the Bylaws or to observe any requirement prescribed by the Texas REIT Act, this Declaration of Trust or the Bylaws for acts taken by the Trust, its Trust Managers or its shareholders.

#### ARTICLE XIV

(a) The Trust shall indemnify every Indemnitee (hereinafter defined) against all judgments, penalties (including excise and similar taxes), fines, amounts paid in settlement and reasonable expenses actually incurred by the Indemnitee in connection with any Proceeding (hereinafter defined) in which he was, is or is threatened to be named defendant or respondent, or in which he was or is a witness without being named a defendant or respondent, by reason, in whole or in part, of his serving or having served, or having been nominated or designated to serve, in any of the capacities that qualify the named defendant or respondent as an Indemnitee, to the fullest extent that indemnification is permitted by Texas law in accordance with the Bylaws. An Indemnitee shall be deemed to have been found liable in respect of any claim, issue or matter only after the Indemnitee shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom. Reasonable expenses shall include, without limitation, all court costs and all fees and disbursements of attorneys for the Indemnitee.

(b) The indemnification provided by this Article XIV shall (i) not be deemed exclusive of, or to preclude, any other rights to which those seeking indemnification may at any time be entitled under the Bylaws, any law, agreement or vote of shareholders or disinterested Trust Managers, or otherwise, or under any policy or policies of insurance purchased and maintained by the Trust on behalf of any Indemnitee, both as to action in his Official Capacity and as to action in any other capacity, (ii) continue as to a Person who has ceased to be in the capacity by reason of which he was an Indemnitee with respect to matters arising during the period he was in such capacity and (iii) inure to the benefit of the heirs, executors and administrators of such a Person. Notwithstanding anything to the contrary otherwise contained herein, or in the Bylaws, the Trust shall not indemnify any Person for any act, omission, loss, damage or expense arising from the performance of his duty to the Trust to the extent such loss,

damage or expense was proximately caused by the gross negligence, willful misconduct or fraud on the part of such Person.

(c) The provisions of this Article XIV (i) are for the benefit of, and may be enforced by, each Indemnitee of the Trust, the same as if set forth in their entirety in a written instrument duly executed and delivered by the Trust and such Indemnitee and (ii) constitute a continuing offer to all present and future Indemnities. The Trust, by its adoption of this Declaration of Trust, (i) acknowledges and agrees that each Indemnitee has relied upon and will continue to rely upon the provisions of this Article XIV in becoming, and serving in any of the capacities that qualify the named defendant or respondent as an Indemnitee, (ii) waives reliance upon, and all notices of acceptance of, such provisions by such Indemnities and (iii) acknowledges and agrees that no present or future Indemnitee shall be prejudiced in his right to enforce the provisions of this Article XIV in accordance with their terms by any act or failure to act on the part of the Trust.

(d) No amendment, modification or repeal of this Article XIV or any provision of this Article XIV shall in any manner terminate, reduce or impair the right of any past, present or future Indemnities to be indemnified by the Trust, nor the obligation of the Trust to indemnify any such Indemnities, under and in accordance with the provisions of this Article XIV as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may be asserted.

(e) If the indemnification provided in this Article XIV is either (i) insufficient to cover all costs and expenses incurred by any Indemnitee as a result of such Indemnitee being made or threatened to be made a defendant or respondent in a Proceeding by reason of his holding or having held a position that qualifies the named defendant or respondent as an Indemnitee or (ii) not permitted by Texas law, the Trust shall indemnify, to the fullest extent that indemnification is permitted by Texas law, every Indemnitee with respect to all costs and expenses incurred by such Indemnitee as a result of such Indemnitee being made or threatened to be made a defendant or respondent in a Proceeding by reason of his holding or having held a position that qualifies the defendant as an Indemnitee.

#### ARTICLE XV

Except as otherwise provided in the Texas REIT Act or other applicable laws, no Trust Manager or officer of the Trust shall be liable to the Trust for any act, omission, loss, damage or expense arising from the performance of his duty under the Trust save only for his own willful misfeasance, willful malfeasance or gross negligence. In discharging their duties to the Trust, Trust Managers and officers of the Trust shall be entitled to rely upon experts and other matters as provided in the Texas REIT Act.

## ARTICLE XVI

(a) (i) No Person, other than an Excepted Holder (hereinafter defined), shall Beneficially (hereinafter defined) or Constructively Own (hereinafter defined) Shares in excess of the Aggregate Share Ownership Limit (hereinafter defined), no Person, other than an Excepted Holder, shall Beneficially or Constructively Own Common Shares in excess of the Common Share Ownership Limit (hereinafter defined) and no Excepted Holder shall Beneficially or Constructively Own Shares in excess of the Excepted Holder Limit for such Excepted Holder.

(ii) No Person shall Beneficially or Constructively Own Shares to the extent that such Beneficial or Constructive Ownership of Shares would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or otherwise failing to qualify as a REIT (including, but not limited to, Beneficial or Constructive Ownership that would result in the Trust owning (actually or Constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the Trust from such tenant would cause the Trust to fail to satisfy any of the gross income requirements of Section 856(c) of the Code). No Person shall Beneficially or Constructively Own Shares or change the jurisdiction of its residence to the extent that such Beneficial or Constructive Ownership of Shares or change of residence would result in the Trust failing to be a "domestically controlled" REIT within the meaning of Section 897(h)(4)(B) of the Code.

(iii) Notwithstanding any other provisions contained herein, any Transfer (hereinafter defined) of Shares (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE or any other national securities exchange or automated inter dealer quotation system) that, if effective, would result in Shares being Beneficially owned by less than one hundred (100) Persons (determined under the principles of Section 856(a)(5) of the Code) or would result in a termination of the status of the Trust as a REIT shall be void ab initio and the intended transferee shall acquire no rights in such Shares.

(iv) No holder of any Shares may transfer any Share unless, at least 20 days prior to the proposed transfer, such holder shall notify the Trust, in writing, of the proposed transfer; such notification shall include the name of the proposed transferee of the Shares (the "Proposed Transferee") and the date of the proposed transfer; whenever it is deemed advisable by the Trust Managers in order to protect the status of the Trust as a REIT, the Trust Managers may require a statement or affidavit from each Proposed Transferee setting forth the number of Shares already owned by the Proposed Transferee and any Related Person and such other information as the Trust Managers may deem relevant to the determination of whether the proposed Transfer would adversely affect the qualification of the Trust as a REIT and, in connection therewith, if the proposed Transfer could, in the opinion of the Trust Managers, create a risk that the Trust would lose its status as a REIT, or as a "domestically controlled" REIT within the meaning of Section 897(h)(4)(B) of the Code, the Trust may prohibit such proposed Transfer of the Shares; the Trust Managers may take such action as they deem advisable to prevent or refuse to give effect to such a Transfer including, without limitation,

refusing to give effect to the Transfer upon its books of any Shares acquired in connection with any such Transfer.

(b) If any Transfer of Shares (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE or any other national securities exchange or automated inter-dealer quotation system) occurs which, if effective, would result in any Person Beneficially or Constructively Owning Shares in violation of paragraphs (a)(i) or (ii) of this Article XVI,

(i) then that number of Shares the Beneficial or Constructive Ownership of which otherwise would cause such Person to violate paragraphs (a)(i) or (ii) of this Article XVI, (rounded to the nearest whole Share) shall be automatically, without any further action on the part of any Person, deemed to be Transferred to a Charitable Trust (hereinafter defined) for the benefit of a Charitable Beneficiary (hereinafter defined), effective as of the close of business on the Business Day prior to the date of such Transfer, and such Person shall acquire no rights in such Shares; or

(ii) if the Transfer to the Charitable Trust described in paragraph (b)(i) of this Article XVI, would not be effective for any reason to prevent the violation of paragraphs (a)(i) or (a)(ii) of this Article XVI, then the Transfer of that number of Shares that otherwise would cause any Person to violate paragraphs (a)(i) or (ii) of this Article XVI, shall be void ab initio, and the intended transferee shall acquire no rights in such Shares.

(c) If the Board or any duly authorized committee thereof shall at any time determine in good faith that a Transfer or other event has taken place that results in a violation of paragraph (a) of this Article XVI, or that a Person intends to acquire or has attempted to acquire Beneficial or Constructive Ownership of any Shares in violation of paragraph (a) of this Article XVI (whether or not such violation is intended), the Board or a committee thereof shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including, without limitation, causing the Trust to redeem Shares, refusing to give effect to such Transfer on the books of the Trust or instituting Proceedings to enjoin such Transfer or other event; provided, however that any Transfer or attempted Transfer or other event in violation of paragraph (a) of this Article XVI shall automatically result in the Transfer to the Charitable Trust described above, and, where applicable, such Transfer (or other event) shall be void ab initio as provided above irrespective of any action (or non action) by the Board or a committee thereof.

(d) Any Person who acquires or attempts or intends to acquire Beneficial or Constructive Ownership of Shares that will or may violate paragraph (a) of this Article XVI or any Person who would have owned Shares that resulted in a Transfer to the Charitable Trust pursuant to the provisions of paragraph (b) of this Article XVI, shall immediately give written notice to the Trust of such event, or in the case of such a proposed or attempted transaction, give at least fifteen (15) days' prior written notice, and shall provide to the Trust such other information as the Trust may request in order to determine the effect, if any, of such Transfer on the Trust's status as a REIT.

(e) (i) Upon written request of the Trust, every Beneficial or Constructive Owner of more than 5% (or such lower percentage as required by the Code or the Treasury Regulations promulgated thereunder) of the outstanding Shares, within thirty (30) days after the end of each taxable year, shall give written notice to the Trust stating the name and address of such owner, the number of Shares and other Shares Beneficially or Constructively Owned and a description of the manner in which such Shares are held. Each such owner shall also give thirty (30) days' prior written notice to the Trust of any proposed change of residence to the extent any such change of residence would involve moving to a jurisdiction outside of the United States. Each such owner shall provide to the Trust such additional information as the Trust may request in order to determine the effect, if any, of such Beneficial or Constructive ownership on the Trust's status as a REIT and to ensure compliance with the Aggregate Share Ownership Limit; and

(ii) each Person who is a Beneficial or Constructive Owner of Shares and each Person (including the shareholder of record) who is holding Shares for a Beneficial or Constructive Owner shall provide to the Trust such information as the Trust may request, in good faith, in order to determine the Trust's status as a REIT and as a "domestically controlled" REIT within the meaning of Section 897(h)(4)(B) of the Code and to comply with requirements of any taxing authority or governmental authority or to determine such compliance.

(f) Subject to paragraph (k) of this Article XVI, nothing contained in this Article XVI or Article XVII shall limit the authority of the Board to take such other action as it deems necessary or advisable to protect the Trust and the interests of its shareholders in preserving the Trust's status as a REIT.

(g) In the case of an ambiguity in the application of any of the provisions of this Article XVI or Article XVII, the Board shall have the power to determine the application of the provisions of this Article XVI or Article XVII with respect to any situation based on the facts known to it. In the event this Article XVI or Article XVII requires an action by the Board and this Declaration of Trust fails to provide specific guidance with respect to such action, the Board shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of this Article XVI or Article XVII.

(h) (A) Subject to paragraph (a)(ii) of this Article XVI, the Board in its sole discretion, may exempt a Person from the Aggregate Share Ownership Limit and the Common Share Ownership Limit, as the case may be, and may establish or increase an Excepted Holder Limit for such Person if:

(i) the Board obtains such representations and undertakings from such Person as are reasonably necessary to ascertain that no individual's Beneficial or Constructive Ownership of such Shares will violate paragraph (a)(ii) of this Article XVI;

(ii) such Person does not and represents that it will not own, actually or Constructively, an interest in a tenant of the Trust (or a tenant of any entity owned or controlled by the Trust) that would cause the Trust to own, actually or Constructively, more than a 9.8% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant and the Board obtains such representations and undertakings from such Person as are reasonably necessary to ascertain

this fact (for this purpose, a tenant from whom the Trust (or an entity owned or controlled by the Trust) derives (and is expected to continue to derive) a sufficiently small amount of revenue such that, in the opinion of the Board, rent from such tenant would not adversely affect the Trust's ability to qualify as a REIT, shall not be treated as a tenant of the Trust); and

(iii) such Person agrees that any violation or attempted violation of such representations or undertakings (or other action which is contrary to the restrictions contained in this Article XVI) will result in such Shares being automatically Transferred to a Charitable Trust in accordance with this Article XVI or Article XVII.

(B) Prior to granting any exception pursuant to paragraph (h)(A) of this Article XVI, the Board may require a ruling from the Internal Revenue Service, or an opinion of counsel, in either case in form and substance satisfactory to the Board in its sole discretion, as it may deem necessary or advisable in order to determine or ensure the Trust's status as a REIT. Notwithstanding the receipt of any ruling or opinion, the Board may impose such conditions or restrictions as it deems appropriate in connection with granting such exception.

(C) Subject to paragraph (a)(ii) of this Article XVI, an underwriter which participates in a public offering or a private placement of Shares (or securities convertible into or exchangeable for Shares) may Beneficially or Constructively Own Shares (or securities convertible into or exchangeable for Shares) in excess of the Aggregate Share Ownership Limit, the Common Share Ownership Limit or both such limits, but only to the extent necessary to facilitate such public offering or private placement.

(D) The Board may only reduce the Excepted Holder Limit for an Excepted Holder: (i) with the written consent of such Excepted Holder at any time or (ii) pursuant to the terms and conditions of the agreements and undertakings entered into with such Excepted Holder in connection with the establishment of the Excepted Holder Limit for that Excepted Holder. No Excepted Holder Limit shall be reduced to a percentage that is less than the Common Share Ownership Limit.

(i) The Board may from time to time increase the Common Share Ownership Limit and the Aggregate Share Ownership Limit; provided that any such increase will not cause the Trust to fail to be a REIT or "domestically controlled" REIT within the meaning of Section 897(h)(4)(B) of the Code.

(j) Each certificate for Shares shall bear substantially the following legend:

The Shares represented by this certificate are subject to restrictions on Beneficial and Constructive Ownership and Transfer for the purpose of the Trust's maintenance of its status as a Real Estate Investment Trust (a "REIT") under the Internal Revenue Code of 1986, as amended (the "Code"). Subject to certain further restrictions and except as expressly provided in the Trust's Declaration of Trust, (i) no Person may Beneficially or Constructively Own Shares in excess of 9.8% of the value of the total outstanding Shares, unless such Person is an Excepted Holder (in which case the Excepted Holder Limit shall be applicable); (iii) no Person may Beneficially or Constructively Own Shares that would



result in the Trust being "closely held" under Section 856(h) of the Code or otherwise cause the Trust to fail to qualify as a REIT or as a "domestically controlled" REIT within the meaning of Section 897(h)(4)(B) of the Code; and (iv) no Person may Transfer Shares if such Transfer would result in Shares being owned by fewer than one hundred (100) Persons. Any Person who Beneficially or Constructively Owns or attempts to Beneficially or Constructively Own Shares which cause or will cause a Person to Beneficially or Constructively Own Shares in excess or in violation of the above limitations must immediately notify the Trust. If any of the restrictions on Transfer or ownership are violated, the Shares represented hereby will be automatically Transferred to a Trustee of a Charitable Trust for the benefit of one (1) or more Charitable Beneficiaries. In addition, upon the occurrence of certain events, attempted Transfers in violation of the restrictions described above may be void ab initio. All capitalized terms in this legend have the meanings defined in the Trust's Declaration of Trust, as the same may be amended from time to time, a copy of which, including the restrictions on Transfer and ownership, will be furnished to each holder of Shares on request and without charge.

Each certificate shall set forth on the face or back of the certificate (i) a full statement of all the designations, preferences, limitations, and relative rights of the Shares of each class or series to the extent they have been fixed and determined and the authority of the Trust Managers to fix and determine the designations, preferences, limitations, and relative rights of subsequent series; or (ii) a statement that the information required in clause (i) of this sentence is set forth in the Declaration of Trust on file with the county clerk of Dallas County, Texas and that the Trust, on written request to the Trust at its principal place of business or registered office, will furnish a copy of the statement to the record holder of the certificate without charge. If any restriction on the Transfer or registration of the Transfer of Shares is imposed or agreed to by the Trust, as permitted by the Texas REIT Act, each certificate representing Shares restricted in this manner shall conspicuously state on the face or back of the certificate that such a restriction exists pursuant to a specified document.

(k) Nothing in this Article XVI, in Article XVII or elsewhere in this Declaration of Trust shall preclude the settlement of any transaction in securities entered into through the facilities of the NYSE or any other national securities exchange or automated inter dealer quotation system, subject to the limitations on Transfer set forth herein.

(l) Subject to the terms of the Shareholders' Agreement, the affirmative vote of the holders of not less than 80% of all outstanding Shares entitled to vote in the election of Trust Managers, considered for purposes of this Article XVI as one (1) class, shall be required to amend, alter, change, repeal or rescind any provision of this Article XVI or to adopt any provisions inconsistent with this Article XVI.

## ARTICLE XVII

(a) Upon any purported Transfer or other event described in paragraph (b) of Article XVI that would result in a Transfer of Shares to a Charitable Trust, such Shares shall be deemed to have been Transferred to the Trustee as Trustee of a Charitable Trust for the exclusive benefit

of one (1) or more Charitable Beneficiaries. Such Transfer to the Trustee shall be deemed to be effective as of the close of business on the Business Day prior to the purported Transfer or other event that results in the Transfer to the Charitable Trust pursuant to paragraph (b) of Article XVI. The Trustee shall be appointed by the Trust and shall be a Person unaffiliated with the Trust and any Prohibited Owner (hereinafter defined). Each Charitable Beneficiary shall be designated by the Trust as provided in paragraph (f) of this Article XVII.

(b) Shares held by the Trustee shall be issued and outstanding Shares of the Trust. The Prohibited Owner shall have no rights in the Shares held by the Trustee. The Prohibited Owner shall not benefit economically from ownership of any Shares held in the Charitable Trust by the Trustee, shall have no rights to dividends or other distributions and shall not possess any rights to vote or other rights attributable to the Shares held in the Charitable Trust.

(c) The Trustee shall have all voting rights and rights to dividends or other distributions to which such Shares are entitled with respect to Shares held in the Charitable Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or other distribution paid prior to the discovery by the Trust that Shares have been deemed Transferred to the Trustee shall be paid with respect to such Shares to the Trustee upon demand and any dividend or other distribution authorized but unpaid shall be paid when due to the Trustee. Any dividends or distributions so paid over to the Trustee shall be held in trust for the benefit of the Charitable Beneficiary for distribution at such times as may be determined by the Trustee. The Prohibited Owner shall have no voting rights with respect to Shares held in the Charitable Trust and, subject to Texas law, effective as of the date that Shares have been deemed Transferred to the Trustee, the Trustee shall have the authority (at the Trustee's sole discretion) (i) to rescind as void any vote cast, to the extent such Shares are entitled to vote, by a Prohibited Owner prior to the discovery by the Trust that Shares have been deemed Transferred to the Trustee and (ii) to recast such vote, to the extent such Shares are entitled to vote, in accordance with the desires of the Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Trust has already taken irreversible corporate action, then the Trustee shall not have the authority to rescind and recast such vote. Notwithstanding the provisions of this Article XVII, until the Trust has received notification that Shares have been deemed Transferred into a Charitable Trust, the Trust shall be entitled to rely on its Share Transfer and other shareholder records for purposes of preparing lists of shareholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of shareholders.

(d) Within twenty (20) days of receiving notice from the Trust that Shares have been deemed Transferred to the Charitable Trust, the Trustee of the Charitable Trust shall sell the Shares held in the Charitable Trust to a Person, designated by the Trustee, whose ownership of the Shares will not violate the ownership limitations set forth in paragraph (a) of Article XVI. Upon such sale, the interest of the Charitable Beneficiary in the Shares sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and to the Charitable Beneficiary as provided in this paragraph (d) of Article XVII. The Prohibited Owner shall receive the lesser of (i) the price paid by the Prohibited Owner for the Shares or, if the Prohibited Owner did not give value for the Shares in connection with the event causing the Shares to be held in the Charitable Trust (e.g., in the case of a gift, devise or other such transaction), the Market Price (hereinafter defined) (or, in the absence of a Market Price, the Fair

Market Value (hereinafter defined)) of the Shares on the day of the event causing the Shares to be held in the Charitable Trust and (ii) the price per Share (net of costs of sales) received by the Trustee from the sale or other disposition of the shares held in the Charitable Trust. Any net sales proceeds in excess of the amount payable to the Prohibited Owner shall be immediately paid to the Charitable Beneficiary. If, prior to the discovery by the Trust that Shares have been deemed Transferred to the Trustee, such Shares are sold by a Prohibited Owner, then (i) such Shares shall be deemed to have been sold on behalf of the Charitable Trust and (ii) to the extent that the Prohibited Owner received an amount for such Shares that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to this paragraph (d), such excess shall be paid to the Trustee upon demand.

(e) Shares deemed Transferred to the Trustee shall be deemed to have been offered for sale to the Trust or its designee, at a price per Share equal to the lesser of (i) the price per Share in the transaction that resulted in such deemed Transfer to the Charitable Trust (or, in the case of a devise or gift, the Fair Market Value (or Market Price, if applicable) at the time of such devise or gift) and (ii) the Fair Market Value (or Market Price, if applicable) on the date the Trust, or its designee, accepts such offer. The Trust shall have the right to accept such offer until the Trustee has sold the Shares held in the Charitable Trust pursuant to paragraph (d) of this Article XVII. Upon such a sale to the Trust, the interest of the Charitable Beneficiary in the Shares sold shall terminate and the Trustee shall distribute all net sales proceeds of the sale to the Prohibited Owner.

(f) By written notice to the Trustee, the Trust shall designate one (1) or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Charitable Trust such that (i) Shares held in the Charitable Trust would not violate the restrictions set forth in paragraph (a) of Article XVI in the hands of such Charitable Beneficiary and (ii) each such organization must fit within the definition of a Charitable Beneficiary set forth in paragraph (d) of Article XXV.

(g) The Trust is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of Article XVI and this Article XVII.

(h) No delay or failure on the part of the Trust or the Board in exercising any right hereunder shall operate as a waiver of any right of the Trust or the Board as the case may be, except to the extent specifically waived in writing.

#### ARTICLE XVIII

Upon resolution adopted by the Trust Managers, and to the extent permitted by the Texas REIT Act, the Trust shall be entitled to purchase, directly or indirectly, its own Shares, provided that following such repurchase the Trust would continue to be able to pay its debts as they become due in the ordinary course of its business.

## ARTICLE XIX

(a) There shall be an annual or a special meeting of the shareholders, to be held on proper notice at such time (after the delivery of the annual report) and convenient location as shall be determined by or in the manner prescribed in the Bylaws, for the election of the Trust Managers, if required, and for the transaction of any other business within the powers of the Trust. Except as otherwise provided in this Declaration of Trust, special meetings of shareholders may be called in the manner provided in the Bylaws and Texas REIT Act. If there are no Trust Managers, the officers of the Trust shall promptly call a special meeting of the shareholders entitled to vote for the election of successor Trust Managers. Any meeting may be adjourned and reconvened as the Trust Managers determine or as provided in the Bylaws.

(b) Subject to the provisions of any class or series of Shares then outstanding, the shareholders entitled to vote shall be entitled to vote only on the following matters: (i) election of Trust Managers as provided in Article VI and the removal of Trust Managers as provided in Article VI, (ii) amendment of this Declaration of Trust as provided in Article XX, (iii) termination of the Trust as provided in Article XXI, (iv) merger or consolidation of the Trust, or the sale or disposition of all or substantially all of the property of the Trust, and (v) such other matters with respect to which the Board has adopted a resolution declaring that a proposed action is advisable and directing that the matter be submitted to the shareholders for approval or ratification. Except with respect to the foregoing matters, or as otherwise provided in the Bylaws, no action taken by the shareholders at any meeting shall in any way bind the Board.

(c) Except as may be provided by the Board in setting the terms of any series of Shares pursuant to Article VII or as may be specifically set forth in the Shareholders' Agreement or otherwise be provided by contract, no holder of Shares shall, as such holder, (i) have any preemptive right to purchase or subscribe for any additional Shares of the Trust or any other security of the Trust which it may issue or sell or (ii) except as expressly required by the Texas REIT Act have any right to require the Trust to pay him the fair value of his Shares in an appraisal or similar Proceeding.

(d) [Reserved]

(e) The submission of any action to the shareholders for their consideration shall first be approved by the Board.

(f) The Bylaws may provide that any action required or permitted to be taken by the shareholders may be taken without a meeting by the written consent of all of the shareholders entitled to vote to approve the matter as required by statute, this Declaration of Trust or the Bylaws, as the case may be.

## ARTICLE XX

Subject to the terms of the Shareholders' Agreement, this Declaration of Trust may be amended from time to time by the affirmative vote of the holders of at least eighty percent (80%) of the outstanding Shares entitled to vote on the proposed amendment. All rights and powers

conferred by this Declaration of Trust on shareholders, Trust Managers and officers are granted subject to the shareholders' reserved right to amend this Declaration of Trust.

#### ARTICLE XXI

(a) Subject to the provisions of any class or series of Shares at the time outstanding, the Trust may be terminated at any meeting of shareholders, by the affirmative vote of eighty percent (80%) of all the votes entitled to be cast on the matter. Upon the termination of the Trust:

(i) The Trust shall carry on no business except for the purpose of winding up its affairs.

(ii) The Trust Managers shall proceed to wind up the affairs of the Trust and all of the powers of the Trust Managers under this Declaration of Trust shall continue, including the powers to fulfill or discharge the Trust's contracts, collect its assets, sell, convey, assign, exchange, Transfer or otherwise dispose of all or any part of the remaining property of the Trust to one (1) or more Persons at public or private sale for consideration which may consist in whole or in part of cash, securities or other property of any kind, discharge or pay its liabilities and do all other acts appropriate to liquidate its business.

(iii) After paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and agreements as the Trust Managers deem necessary for their protection, the Trust may distribute the remaining property of the Trust among the shareholders so that after payment in full or the setting apart for payment of such preferential amounts, if any, to which the holders of any Shares at the time outstanding shall be entitled (in accordance with the class of Shares held by them), the remaining property of the Trust shall, subject to any participating or similar rights of Shares at the time outstanding, be distributed ratably among the holders of Common Shares at the time outstanding.

(b) After termination of the Trust, the liquidation of its business and the distribution to the shareholders as herein provided, and the filing of articles of dissolution as required by the Texas REIT Act, a majority of the Trust managers shall execute and file with the Trust's records a document certifying that the Trust has been duly terminated, and the Trust Managers shall be discharged from all liabilities and duties hereunder, and the rights and interests of all shareholders shall cease.

#### ARTICLE XXII

If any provision of this Declaration of Trust or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction over the issue, the validity of the remaining provisions shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court. This Declaration of Trust may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be one and the same instrument.

### ARTICLE XXIII

This Declaration of Trust is executed by the undersigned Trust Managers and delivered in the State of Texas with reference to the laws thereof, and the rights of all parties and the validity, construction and effect of every provision hereof shall be subject to and construed according to the laws of the State of Texas without regard to conflicts of laws provisions thereof.

### ARTICLE XXIV

In this Declaration of Trust, unless the context otherwise requires, words used in the singular or in the plural include both the plural and singular and words denoting any gender include all genders. The title and headings of different parts are inserted for convenience and shall not affect the meaning, construction or effect of this Declaration of Trust.

The provisions of this Declaration of Trust shall be subject to all valid and applicable laws, including, without limitation, the Texas REIT Act and the Code as now or hereafter amended. Notwithstanding any other provision of this Declaration of Trust to the contrary, to the extent any provision of this Declaration of Trust is contrary to or inconsistent with the sections of the Code (or any successor statute) which relate to or govern real estate investment trusts or the regulations adopted under those sections, or requires the Trust to take (or prohibits the Trust from taking) any action required to secure or maintain its status as a real estate investment trust under such sections or regulations, the sections and regulations of the Code (or any successor statute) shall prevail over the provisions of this Declaration of Trust as to the Trust for so long as the Trust shall qualify or attempt to qualify as a REIT under such sections and regulations.

### ARTICLE XXV

For purposes of this Declaration of Trust, the following terms shall have the following meanings:

(a) "Aggregate Share Ownership Limit" shall mean not more than 9.8% in value of the aggregate of the outstanding Shares. The value of the outstanding Shares shall be determined by the Board in good faith, which determination shall be conclusive for all purposes.

(b) "Beneficial Ownership" shall mean ownership of Shares by a Person, whether the interest in Shares is held directly or indirectly, and shall include interests that would be treated as owned through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. The terms "Beneficial Owner," "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

(c) "Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in the State of Texas or the State of New York are authorized or required by law, regulation or executive order to close.

(d) "Charitable Beneficiary" shall mean one (1) or more beneficiaries of the Charitable Trust, provided that each such organization must be described in Section 501(c)(3) of

the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

(e) "Charitable Trust" shall mean any trust provided for in Article XVI.

(f) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

(g) "Common Share Ownership Limit" shall mean not more than 9.8% (in value or in number of Shares, whichever is more restrictive) of the aggregate of the outstanding Common Shares. The number and value of outstanding Common Shares shall be determined by the Board in good faith, which determination shall be conclusive for all purposes.

(h) "Constructive Ownership" shall mean ownership of Shares by a Person, whether the interest in Shares is held directly or indirectly, and shall include interests that would be treated as owned through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code. Constructive Ownership shall include ownership of convertible securities, which are any securities of the Trust that are convertible into Shares. The terms "Constructive Owner," "Constructively Owns" and "Constructively Owned" shall have the correlative meanings.

(i) "Declaration of Trust" shall mean this Declaration of Trust as filed of record with the County Clerk of Dallas County, Texas, and any amendments or modifications thereto.

(j) "Excepted Holder" shall mean a shareholder of the Trust for whom an Excepted Holder Limit is created by paragraph (h) of Article XVI or by the Board pursuant to paragraph (h) of Article XVI.

(k) "Excepted Holder Limit" shall mean, provided that the affected Excepted Holder agrees to comply with the requirements established by the Board pursuant to paragraph (h) of Article XVI, and subject to adjustment pursuant to paragraph (h) of Article XVI, the percentage limit established by the Board pursuant to paragraph (h) of Article XVI.

(l) "Fair Market Value" shall mean (i) in the case of securities, the Fair Market Value on the date in question of such security as reasonably determined by an independent appraiser selected by a majority of the Trust Managers in good faith; and (ii) in the case of property other than cash or securities, the Fair Market Value of such property as determined by the latest appraisal or update obtained by the Trust relating to the property in question.

(m) "Indemnitee" shall mean (i) any present or former Trust Manager or officer of the Trust, (ii) any Person who while serving in any of the capacities referred to in clause (i) hereof served at the Trust's request as a Trust Manager, director, officer, partner, manager, member, venturer, proprietor, trustee, employee, agent or similar functionary of another real estate investment trust or foreign or domestic corporation, partnership, limited liability company, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise and (iii) any Person

nominated or designated by (or pursuant to authority granted by) the Trust Managers or any committee thereof to serve in any of the capacities referred to in clauses (i) or (ii) hereof.

(n) "Initial Public Offering" shall mean the initial sale of Common Shares to the public pursuant to the Trust's first effective registration statement for such Common Shares filed under the Securities Act of 1933, as amended.

(o) "Market Price" on any day shall mean, with respect to any class or series of outstanding Shares, the closing price for such Shares on such date.

(p) "Nasdaq" shall mean the Nasdaq National Market.

(q) "NYSE" shall mean the New York Stock Exchange.

(r) "Official Capacity" shall mean (i) when used with respect to a Trust Manager, the office of Trust Manager of the Trust and (ii) when used with respect to a Person other than a Trust Manager, the elective or appointive office of the Trust held by such Person or the employment or agency relationship undertaken by such Person on behalf of the Trust, but in each case does not include service for any other real estate investment trust or foreign or domestic corporation or any partnership, limited liability company, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise.

(s) "Person" shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Sections 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity and also includes a group as that term is used for purposes of Section 13(d)(3) of the Exchange Act and a group to which an Excepted Holder Limit applies.

(t) "Proceeding" shall mean any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigative, any appeal in such an action, suit or proceeding, and any inquiry or investigation that could lead to such an action, suit or proceeding.

(u) "Prohibited Owner" shall mean, with respect to any purported Transfer, any Person who, but for the provisions of Article XVI, would Beneficially or Constructively Own Shares, and if appropriate in the context, shall also mean any Person who would have been the record owner of Shares that the Prohibited Owner would have so owned.

(v) "REIT" shall mean a real estate investment trust within the meaning of Section 856 of the Code.

(w) "Shareholders' Agreement" shall mean that certain Shareholders' Agreement among the Trust and all of the holders of the Common Shares, as the same may be amended or otherwise modified from time to time.



(x) "Shares" shall mean, shares of beneficial interest in the Trust, including, unless otherwise specified in this Declaration of Trust, the Common Shares and the Preferred Shares.

(y) "Transfer" shall mean any issuance, sale, transfer, gift, assignment, devise or other disposition, as well as any other event that causes any Person to acquire Beneficial or Constructive Ownership, or any agreement to take any such actions or cause any such events, of Shares or the right to vote or receive dividends on Shares, including (i) the granting or exercise of any option (or any disposition of any option), (ii) any disposition of any securities or rights convertible into or exchangeable for Shares or any interest in Shares or any exercise of any such conversion or exchange right and (iii) transfers of interests in other entities that result in changes in Beneficial or Constructive Ownership of Shares; in each case, whether voluntary or involuntary, whether owned of record, Constructively or Beneficially Owned and whether by operation of law or otherwise. The terms "Transferring" and "Transferred" shall have the correlative meanings.

(z) "Treasury Regulations" shall mean the Federal Income Tax Regulations, including Temporary Regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

(aa) "Trust" means Cobalt Industrial REIT, a Texas real estate investment trust, and includes any domestic or foreign predecessor of the Trust in a merger, consolidation or other transaction in which the liabilities of the predecessor are Transferred to the Trust by operation of law.

(bb) "Trust Manager" shall mean any natural Person, who need not be a resident of the State of Texas or a shareholder of the Trust, that controls, operates, disposes, invests, reinvests and manages the Trust estate and, whether included in the foregoing or not, possesses all powers necessary or appropriate to effect any or all of the purposes for which the Trust is organized.

(cc) "Trustee" shall mean the Person, unaffiliated with the Trust and a Prohibited Owner, that is appointed by the Trust to serve as Trustee of the Charitable Trust.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned Trust Managers do hereby execute this Declaration of Trust to be effective as of the 21<sup>st</sup> day of June, 2004.

  
Stanley R. Alterman

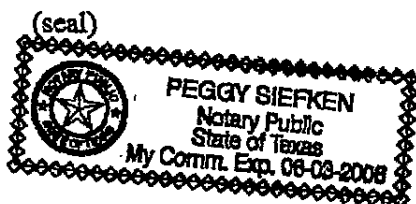
  
T. Patrick Duncan

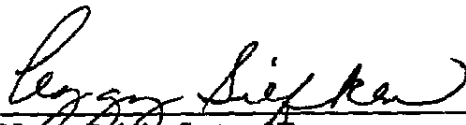
  
Lewis D. Friedland

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me this 21<sup>st</sup> day of June 2004 by Stanley R. Alterman, as Trust Manager of Cobalt Industrial REIT, a Texas real estate investment trust, on behalf of said trust.

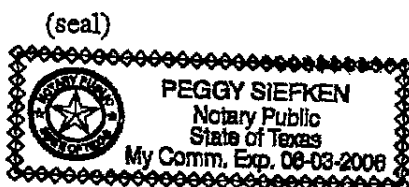


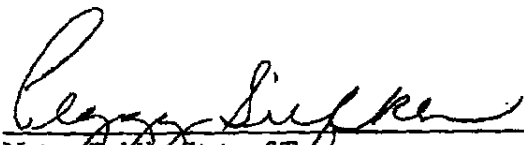
  
Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me this 23<sup>rd</sup> day of June 2004 by T. Patrick Duncan, as Trust Manager of Cobalt Industrial REIT, a Texas real estate investment trust, on behalf of said trust.



  
Notary Public, State of Texas

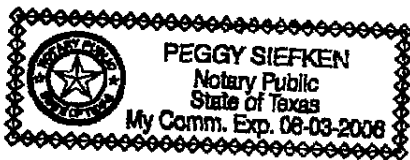
Declaration of Trust  
Cobalt Industrial REIT

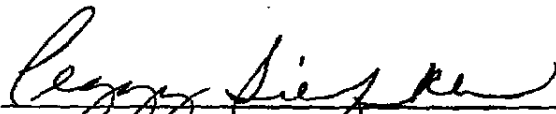
STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me this 21<sup>st</sup> day of June 2004 by Lewis D. Friedland, as Trust Manager of Cobalt Industrial REIT, a Texas real estate investment trust, on behalf of said trust.

(seal)



  
Notary Public, State of Texas

Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal law  
STATE OF TEXAS, COUNTY OF BEXAR  
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

JUN 25 2004



  
COUNTY CLERK BEXAR COUNTY, TEXAS

Doc# 20040143833  
# Pages 22  
06/25/2004 08:32:38 AM  
Filed & Recorded in  
Official Records of  
BEXAR COUNTY  
GERRY RICKHOFF  
COUNTY CLERK  
Fees \$56.00

Declaration of Trust  
Cobalt Industrial REIT

DALLAS:053050/00000:1286383v3

22 of 22

Book 10621 Page 2105



SCANNED

ARTICLES OF AMENDMENT  
TO THE  
DECLARATION OF TRUST  
OF  
COBALT INDUSTRIAL REIT

Pursuant to the provisions of Section 22.40 of the Texas Real Estate Investment Trust Act, the undersigned Texas real estate investment trust (the "Trust") adopts the following Articles of Amendment to its Declaration of Trust.

1. The name of the Trust is Cobalt Industrial REIT.
2. Article IV of the Trust's Declaration of Trust is hereby amended in its entirety to read as follows:

"ARTICLE IV

The names and mailing addresses of the Trust Managers are as follows:

<u>Name</u>	<u>Mailing Address</u>
Stanley R. Alterman	9830 Colonnade Boulevard, Suite 600 San Antonio, Texas 78230-2239
T. Patrick Duncan	9830 Colonnade Boulevard, Suite 600 San Antonio, Texas 78230-2239
Lewis D. Friedland	5605 North MacArthur Boulevard, Suite 350 Irving, Texas 75038
Joe C. McKinney	9830 Colonnade Boulevard, Suite 600 San Antonio, Texas 78230-2239"

3. Paragraph (m) of Article XXV of the Trust's Declaration of Trust is hereby amended in its entirety to read as follows:

"ARTICLE XXV

(m) "Indemnitee" shall mean (i) any present or former Trust Manager, officer, investment committee member or advisory committee member of the Trust, (ii) any Person who while serving in any of the capacities referred to in clause (i) hereof served at the Trust's request as a Trust Manager, director, officer, partner, manager, member, venturer, proprietor, trustee, employee, agent or similar functionary of another real estate investment trust or foreign or domestic corporation, partnership, limited liability company, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise and (iii) any Person nominated or designated by



(or pursuant to authority granted by) the Trust Managers or any committee thereof to serve in any of the capacities referred to in clauses (i) or (ii) hereof."

4. These Articles of Amendment may be executed in one or more counterparts each of which shall constitute an original and all of which when taken together shall constitute one and the same instrument.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned Trust Managers hereby execute these Articles of Amendment to the Declaration of Trust as of the 14th day of December, 2004.

  
Stanley R. Alterman

  
T. Patrick Duncan

\_\_\_\_\_  
Lewis D. Friedland

IN WITNESS WHEREOF, the undersigned Trust Managers hereby execute these Articles of Amendment to the Declaration of Trust as of the <sup>14<sup>th</sup></sup> day of December, 2004.

\_\_\_\_\_  
Stanley R. Alterman

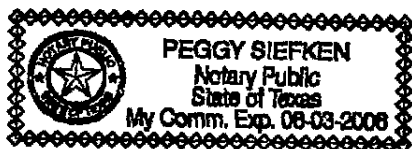
\_\_\_\_\_  
T. Patrick Duncan

  
\_\_\_\_\_  
Lewis D. Friedland

THE STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, on this 3<sup>rd</sup> day of December, 2004, the undersigned Notary Public, duly commissioned and qualified within and for the State and County aforesaid, personally came and appeared Stanley R. Alterman, in his capacity as Trust Manager, of Cobalt Industrial REIT, and acknowledged to me, Notary, that he executed the above and foregoing instrument on behalf of the said Trust Manager, as his own free and voluntary act and deed, for the uses, purposes and considerations therein expressed.



  
NOTARY PUBLIC

My commission expires:

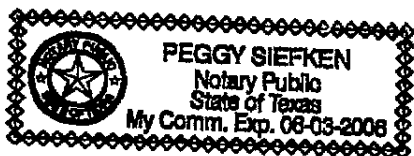
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THE STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, on this 13th day of December, 2004, the undersigned Notary Public, duly commissioned and qualified within and for the State and County aforesaid, personally came and appeared T. Patrick Duncan, in his capacity as Trust Manager, of Cobalt Industrial REIT, and acknowledged to me, Notary, that he executed the above and foregoing instrument on behalf of the said Trust Manager, as his own free and voluntary act and deed, for the uses, purposes and considerations therein expressed.



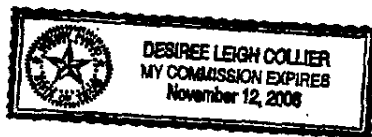
Peggy Siefken  
NOTARY PUBLIC

My commission expires:

THE STATE OF TEXAS

COUNTY OF Dallas

BEFORE ME, on this 14 day of December, 2004, the undersigned Notary Public, duly commissioned and qualified within and for the State and County aforesaid, personally came and appeared Lewis D. Friedland, in his capacity as Trust Manager, of Cobalt Industrial REIT, and acknowledged to me, Notary, that he executed the above and foregoing instrument on behalf of the said Trust Manager, as his own free and voluntary act and deed, for the uses, purposes and considerations therein expressed.



Desiree Leigh Collier  
NOTARY PUBLIC

My commission expires:  
11-12-08

Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal law  
STATE OF TEXAS, COUNTY OF BEXAR  
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Records of Real Property of Bexar County, Texas on:

DEC 15 2004



Gerry Rickhoff  
COUNTY CLERK BEXAR COUNTY, TEXAS

Doc# 20040285718 Fees: \$20.00  
12/15/2004 12:07PM # Pages 7  
Filed & Recorded in the Official Public  
Records of BEXAR COUNTY  
GERRY RICKHOFF COUNTY CLERK