

CERTIFICATION OF TRUST

I, the undersigned Trustee under a trust agreement dated _____, 20____ and known as the _____ Trust, in accordance with IC 30-4-4-5, do hereby affirm under penalties of perjury:

1. That the above referenced trust is in existence and that the trust instrument was executed on the _____ day of _____, _____.
2. The settler/grantor of the trust is/was:
3. That the name and address of the current acting trustee(s) is(are) as follows:
4. That the land held by the trust includes the land described on Exhibit A attached;
5. The common address of the land is the following:
6. Title to the trust property was conveyed to the trust by Warranty Deed dated and recorded as Document No. _____, in the Office of the Recorder of _____ County, Indiana.
7. The powers granted to the trustee by the trust instrument (copies of excerpts from the original trust instrument and any amendment thereto are attached hereto) are as follows:
8. The trust is revocable (irrevocable). The name of the person holding a power to revoke the trust is:
9. All (less than all) co-trustees are required in order to sign or otherwise authenticate and exercise the powers of the trustee.
10. The trust's taxpayer identification number is _____
11. The trust has not been revoked, modified, or amended in any manner that would cause the representations contained herein to be incorrect.

I, the undersigned, affirm under the penalties of perjury, that the foregoing declarations are true.
Dated this _____ day of _____, _____

_____, Affiant
(Typed Name)

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me the undersigned, a Notary Public, in and for said County and State, personally appeared _____, and he/she being first duly sworn by me upon his/her oath, says that the facts alleged in the foregoing instrument are true.
Signed and sealed this _____ day of _____, _____.

Signature _____

Printed My County of Residence: _____ My Commission Expires: _____

This instrument prepared by: (Name and Address of Preparer)

(a) Any person may petition the court for disclosure of information concerning beneficiaries or the trust estate. The court may order the disclosure of all or any part of the information requested in the petition only after the petitioner has shown both a reasonable need for it and that the trustee has either refused or neglected to provide the information on written request delivered to the trustee.

(b) The court shall, upon petition, order the disclosure of the identity of the beneficiaries or their agents, if any, and any other information concerning the trust, in any case in which:

(1) in a trust of real estate, there is a violation of a state law or an ordinance or resolution of a political subdivision relating to the structure or condition of buildings, or the health and safety of occupants of or visitors to buildings; or

(2) there has been or may be a deed, sale, lease, purchase, mortgage, assignment or similar transfer of any interest in trust property to or from any unit of state or local government or agency or official thereof; and the trustee has refused to disclose the identities of the beneficiaries within a reasonable time after written demand.

(Formerly: Acts 1971, PL.416, SEC5.)

IC 30-4-4-5

Certification of trust; contents; liability of person relying on certification of trust

Sec. 5. (a) A trustee may furnish to a person other than a beneficiary a certification of trust instead of a copy of the trust instrument. The certification of trust must contain the following information:

(1) That the trust exists and the date the trust instrument was executed.

(2) The identity of the settlor.

(3) The identity and address of the currently acting trustee.

(4) The powers of the trustee.

(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.

(6) The authority of co-trustees to sign or otherwise authenticate and whether all or less than all the cotrustees are required in order to exercise the powers of the trustee.

(7) The trust's taxpayer identification number.

(8) The manner of taking title to trust property.

(b) A certification of trust may be signed or authenticated by any trustee.

(c) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(d) A certification of trust may contain the dispositive terms of a trust.

(e) A recipient of a certification of trust may require the trustee to furnish copies of excerpts from the original trust instrument and later amendments that:

(1) designate the trustee; and

(2) confer on the trustee the power to act in a pending transaction in which the recipient has an interest.

(f) A person who acts in reliance on a certification of trust without knowledge that the representations contained in the certification of trust are incorrect:

(1) is not liable to any person for acting in reliance on the certification of trust; and

(2) may assume without inquiry the existence of the facts contained in the certification of trust. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying on the certification.

(g) A person who in good faith enters into a transaction in reliance on a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts from the original trust instrument is liable for damages if the court determines that a person did not act in good faith in demanding the trust instrument.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

As added by P.L.238-2005, SEC41.

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IC 30-4-4

Chapter 4. Rules Governing the Rights of Third Parties

IC 30-4-4-1

Presumption of trustee's authority Sec. J. (Presumption of Trustee's Authority)

(a) Except as provided in subsection (b) of this section, any third person dealing with the trustee or assisting him in conducting a transaction:

(1) may assume without inquiry that the trustee has the powers he purports to exercise and has exercised them properly; and

(2) shall not be responsible for the application of money or property paid or delivered to the trustee.

(b) If the third person has actual knowledge that the trustee is exceeding his powers or is improperly exercising them, that person will not be protected under subsection (a) of this section.

(c) If a trust which includes real estate is a public record in the county in which the real estate is situated, a third person dealing with the trustee with respect to that real estate shall be deemed to have actual notice of the terms of the trust.

(Formerly: Acts 1971, P.L.416, SEe5.)

IC 30-4-4-2

Transfers by the trustee to third persons

Sec. 2. (Transfers by the Trustee to Third Persons)

(a) If, in transferring an interest in trust property to a third party, the trustee is not committing a breach of trust, the transferee holds the interest free of the trust and incurs no liability to the beneficiary.

(b) A third person, to whom an interest in trust property is transferred by the trustee in breach of trust, takes his interest free of the trust if he:

(1) takes for value and without notice of the breach of trust; and

(2) is not taking part in what he knows to be an illegal transaction.

(Formerly: Acts 1971, P.L.416, SEC5.)

IC 30-4-4-3 Judgment lien against the trustee or beneficiary

Sec. 3. (Judgment Lien against the Trustee or Beneficiary)

(a) A judgment against a person individually who may also be a trustee shall not be a lien against the trust estate.

(b) When trust property is properly sold or disposed of by the trustee to a third person, the liens against a beneficiary's interest in the trust estate, if any, will be divested from that property and will attach to the interest of that beneficiary in the proceeds from its sale or other disposition.

(Formerly: Acts 1971, PL.416, SEC5.)

IC 30-4-4-4 Disclosure of information concerning beneficiaries

Sec. 4. (Disclosure of Information Concerning Beneficiaries)

(c) With respect to a foreign business trust, withdrawal under this section shall not affect its written consent to be sued in the courts of this state, or the jurisdiction over public foreign business trusts of the courts of this state, with respect to any cause of action which arose prior to the effective date of its withdrawal. *(Formerly: Acts 1963, c.353, s.ll.) As amended by P.L.34-1987, SEC. 331.*

IC 23-5 ARTICLE 5. OTHER BUSINESS ASSOCIATIONS

IC 23-5-1

Chapter 1. Indiana Business Trust Act

IC 23-5-1-1 Short title

23-5-1-1 Sec. 1. This chapter may be cited as the Indiana Business Trust Act of 1963.
(Formerly: Acts 1963, c.353, s.1.) As amended by P.L.34-1987, SEC 324.

IC 23-5-1-2 Definitions

23-5-1-2 Sec. 2. For the purpose of this chapter:

- (a) A "business trust" is an unincorporated business association which is created by a trust instrument, pursuant to common law or enabling legislation, under which property is held, managed, administered, controlled, invested, reinvested, or operated, or business or professional activities for profit are carried on, by a trustee or trustees for the benefit and profit of such person or persons as are or may become the holders of transferable certificates, issued pursuant to the provisions of the trust instrument, which have either restricted or unrestricted transferability, evidencing beneficial interests in the trust estate, including but not limited to a trust of the type known at common law as a business trust, or Massachusetts trust, or a trust qualifying as a real estate investment trust under Section 856 of the Internal Revenue Code or under any similar statute. Such business trust may provide that the holders of such certificates are entitled to the same limitation of personal liability extended to stockholders of private corporations for profit. A business trust shall not be construed to include, and this chapter shall not apply to, the form of trust known as a land trust, under which a trustee or trustees holds the legal or equitable title to real estate, which does not issue transferable certificates of beneficial interest and which has less than one hundred beneficiaries. Nothing in the specific exclusion shall be construed to enlarge the operation or application of this chapter.
- (b) A "domestic business trust" is one created under the laws of this state.
- (c) A "foreign business trust" is one created under the laws of a territory or state other than Indiana.
- (d) The "corpus" of any business trust shall consist of its net worth and shall be equivalent to the capital, paid-in surplus, and accumulated earnings or earned surplus of a corporation.
(Formerly: Acts 1963, c.353, s.2.) As amended by P.L.2-1987, SEC33.

IC 23-5-1-3 Business trust created prior to chapter

23-5-1-3 Sec. 3. A business trust is hereby declared to be a permitted form of association for the conduct of business in this state, provided the provisions of this chapter are complied with, except that nothing contained in this chapter shall be construed to limit, prohibit, or invalidate the existence, acts, or obligations to the state or to any person, of any business trust created or doing business in this state prior to August 12, 1963.
(Formerly: Acts 1963, c.353, s.3.) As amended by P.L.34-1987, SEC 325.

IC 23-5-1-4

Required filings; recordation

23-5-1-4 Sec. 4. (a) Any business trust, whether domestic or foreign, desiring to transact business in this state, shall file the following documents and information in the office of the secretary of state, on such forms, if any, as such secretary may prescribe:

- (1) An executed copy of the trust instrument by which the trust was created and of all amendments thereto or a true and correct copy thereof certified to be such by a trustee thereof before an official authorized to administer oaths or by a public official of another state, territory, or country in whose office an executed copy thereof is on file.
 - (2) A verified list of the names and addresses of its trustees.
 - (3) A balance sheet, certified by an independent certified or public accountant or firm of accountants as of the date no earlier than sixty (60) days prior to such date of filing, fairly and truly reflecting its assets and liabilities and specifically setting out its corpus and showing a net worth of not less than one thousand dollars (\$1,000). A foreign business trust shall also file a statement showing the same information required of a foreign corporation under IC 23-1.
 - (4) The location of its registered office in this state and the name of its resident agent in charge of such registered office.
- (b) A foreign business trust shall comply with and be subject to all the provisions of IC 23-1 as though it were a foreign corporation. Before commencement of business in Indiana every trust, domestic or foreign, shall record in the office of the county recorder of the county in which the principal office of said business trust in this state is located a copy of the trust instrument duly bearing the file mark of the secretary of state. (Formerly: Acts 1963, c.353, s.4.) As amended by P.L.149-1986, SEC 48; P.L.34-1997, SEC 13.

IC 23-5-1-5 Application and filing fees

23-5-1-5 Sec. 5. Contemporaneously with the filing in the office of the secretary of state of the instruments required by section 4 of this chapter, domestic and foreign business trusts shall pay to the secretary of state an application fee of twenty dollars (\$20). (Formerly: Acts 1963, c.353, s.5.) As amended by P.L.34-1987, SEC326; P.L.34-1997, SEC 14.

IC 23-5-1-6 Condition precedent to beginning business; liability for violations

23-5-1-6 Sec. 6. No business trust shall transact any business in this state, except such as may be incident to its organization, until it has fully complied with sections 4 and 5 of this chapter, and in event of any violation of this

section, all trustees of such business trust, except those who filed their written dissent in the office of the secretary of state before such business was transacted, shall be jointly and severally liable for all debts and obligations of the business trust arising from the business so transacted in this state prior to compliance with sections 4 and 5 of this chapter. (Formerly: Acts 1963, c.353, s.6.) As amended by P.L.34-1987, SEC 327.

IC 23-5-1-7

Amendments to trust instruments; filing; fees; recordation

23-5-1-7 Sec. 7. The trust instrument by which any business trust was created may be amended in the manner specified therein or in such manner as is valid under the common or statutory law applicable to such business trust; provided, that no such amendment adopted subsequent to the preliminary filings required by section 4 of this chapter shall be legally effective in this state until an executed copy thereof has been filed in the office of the secretary of state accompanied by a fee of thirteen dollars (\$13) and a file-marked copy thereof recorded in the office of the county recorder of the county in which the principal office of said business trust in this state is located. (Formerly : Acts 1963, c.353, s.7.) As amended by P.L.34-1987, SEC 328.

IC 23-5-1-8

Powers; construction of instruments; terms and conditions; binding effect

23-5-1-8 Sec. 8. The power and authority of any business trust authorized under this chapter to transact business in this state shall be as specified in the instrument by which it was created as amended, including but not limited to general grants of power to act and limitations upon individual liability of stockholders, which instrument shall be construed and interpreted in accordance with the common and statutory law applicable to business trusts. Any such trust shall have the right to sue and be sued and if incidental to its purposes the right in its own name, or in the name of the person or persons or corporation or corporations who are from time to time its trustee or trustees, to acquire, hold title to, mortgage, sell, convey, lease, operate, invest in, lend on the security of, and otherwise deal in or with real and personal property; provided, that no business trust shall engage in the business of operating a savings association or credit union or have the power or authority to conduct a banking, railroad, insurance, surety, safe deposit, mortgage guaranty, or building and loan business, or in the business of mining or manufacturing, or in any business regulated under the utility regulatory commission, or take any action which is in violation of this chapter. Subject to the limitations in this section on power and authority, any person dealing with a business trust authorized under this chapter to transact business in this state shall be bound by the tenor and conditions of the instrument by which the trust was created and by any amendments thereto which have been filed and recorded in compliance with section 7 of this chapter. (Formerly: Acts 1963, c.353, s.8.) As amended by P.L.34-1987, SEC329; P.L.23-1988, SEC 112, P.L. 79-1998, SEC 23.

IC 23-5-1-9

Applicability of general corporate laws

23-5-1-9 Sec. 9. Business trusts and certificates of beneficial interests in business trusts are subject to all applicable provisions of law, relating to domestic and foreign corporations, respectively, with regard to the issuance and transfer of securities, merger into a domestic corporation, and the filing of required statements, reports and service of process. (Formerly: Acts 1963, c.353, s.9.) As amended by P.L.34-1987, SEC.330; P.L.80-1989, SEC 16, P.L.226-1989, SEC 4.

IC 23-5-1-9.1

Adoption of provisions of general corporate law

23-5-1-9.1 Sec. 9.1. (a) A business trust, by resolution of the trustees, may adopt a provision of law related to domestic and foreign corporations not listed under section 9 of this chapter.

(b) If a business trust adopts a provision of law under subsection (a), the business trust shall:

- (1) file notice of the adoption in the office of the secretary of state; and
- (2) record notice of the adoption in the office of the county recorder of the county in which the principal office of the business trust is located.

As added by P.L.226-1989, SEC 5.

IC23-5-1-10

Repealed

(Repealed by P.L.34-1997, SEC.28.)

IC 23-5-1-10.1

Biennial report; fee

23-5-1-10.1 Sec. 10.1. (a) As used in this section, "trust" means a:

- (1) domestic business trust; or
- (2) foreign business trust; as defined in section 2 of this chapter.

(b) Each trust authorized to transact business in Indiana shall deliver a biennial report to the secretary of state for filing that sets forth the following:

- (1) The name of the trust and the state or country under whose law the trust is created.
- (2) The address of the trust's registered office and the name of its registered agent at that office in Indiana.
- (3) The address of the trust's principal office.

(c) When a biennial report is filed, it must be accompanied by the following:

- (1) A verified list of the names and addresses of the trustees of the business trust.

- (2) Executed copies of all amendments to:
 - (A) the original trust instrument; and
 - (B) amendments to the trust instrument that:
 - (i) were adopted not later than December 31 of the preceding year; and
 - (ii) have not been filed under section 7 of this chapter.
- (3) A fee of fifteen dollars (\$15) per year to be paid biennially.
- (d) Information in the biennial report must be current as of the date the biennial report is executed on behalf of the trust.
- (e) The first biennial report must be delivered to the secretary of state in the second year following the calendar year in which a domestic business trust was created or a foreign business trust was authorized to transact business. The biennial report is due during the same month as the month in which the trust was created or authorized to transact business.
- (f) Subsequent biennial reports must be delivered to the secretary of state every second year following the year in which the last biennial report was filed. The secretary of state may accept reports during the two (2) months before the month that they are due.
- (g) If a biennial report does not contain the information required by this section, the secretary of state shall promptly notify the reporting trust in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty (30) days after the effective date of notice, it is considered to be timely filed.

As added by P.L.34-1997, SEC.15.

IC 23-5-1-11

Surrender of authority to transact business; closing out business; effect of withdrawal

23-5 -1-11 Sec. II.

- (a) Any business trust, domestic or foreign, which has obtained authority under this chapter to transact business in Indiana may surrender its said authority at any time by:
 - (1) filing in the office of the secretary of state a file-marked copy of a resolution duly adopted by its trustees declaring its intention to withdraw, accompanied by a withdrawal fee of thirteen dollars (\$13);
 - (2) recording a copy thereof in the office of the county recorder of the county in which the principal office of said business trust in this state is located; and
 - (3) filing all annual reports and paying all annual fees required by section 10 of this chapter and not theretofore filed and paid.
- (b) During a period of five (5) years following the effective date of such withdrawal, the business trust shall nevertheless be entitled to convey and dispose of its property and assets in this state, settle and close out its business in this state, and perform any other act or acts pertinent to the liquidation of its business, property, and assets in this state, and to prosecute and defend all suits filed prior to the expiration of said five (5) year period involving causes of action prior to the effective date of such withdrawal or arising out of any action or transactions occurring during said five (5) year period in the course of the liquidation of its business, property, or assets. The withdrawal of a business trust as provided in this section shall have no effect upon any suit filed by or against it prior to the expiration of said five (5) year period until such suit has been finally determined or otherwise finally concluded and all judgments, orders, and decrees entered therein have been fully executed, even though such final determination, conclusion, or execution occurs after the expiration of said five (5) year period.