

From: [Frank Hill](#)
To: [Melissa Anderson](#); [Steve Brainerd](#); [Darla Daniel](#); [Connie Eyster](#); [Corina Gerety](#); [Lisa Hardin](#); [Richard Hess](#); [Stan Kent](#); [Alison Leary](#); [Marianne Luu-Chen](#); [Julie McVey](#); [Kevin Millard](#); [Carl Stevens](#); [Jacob Tonda](#); [Tony Vaida](#); [Kirsten Waldrip](#); [Sonny Wiegand](#); [Carolyn Wiley](#); [Gene Zuspenn](#)
Cc: [Hayley Lambourn](#); [Dave Kirch](#)
Subject: OBF CUTC Revisions Subcomm Mtg (Virtual) Wed 2/3/21 10:00-11:30am
Date: Monday, February 1, 2021 11:18:00 AM
Attachments: [Legal Editing Demystified.pdf](#)
[\[Extract\] 0350-Rev Mar Ded Tst \(2021-02-01\).pdf](#)
[\[Extract\] 0361-Mar Ded Will \(2021-02-01\).pdf](#)
[Summary Version Notice & Reports.pdf](#)
[Detailed Version Notice & Reports \(Annotated\).pdf](#)

Dear Colleagues:

This is my Status Report regarding the mission and actions of the subcommittee through our last meeting on 1/6/2021. We resume on Zoom tomorrow morning supported by the CBA:

Online: <https://cba-cle.zoom.us/j/92173214603>
Meeting ID: 921 7321 4603
Passcode: 731923

Call-in: 1 (301) 715 8592
Meeting ID: 921 7321 4603
Find your local number: <https://cba-cle.zoom.us/u/abYHgMJhf>

Attached please find [Legal Editing Demystified.pdf](#), [\[Extract\] 0350-Rev Mar Ded Tst \(2021-02-01\).pdf](#), [\[Extract\] 0361-Mar Ded Will \(2021-02-01\).pdf](#), [Summary Version Notice & Reports.pdf](#), and [Detailed Version Notice & Reports \(Annotated\).pdf](#) on which I comment briefly below. You should use a color printer to print them out.

I've attached Ginette Chapman's new *Colorado Lawyer* article, "Legal Editing Demystified." Among other points she succinctly reminds us that we should be striving to write in plain English rather than legalese, use active voice rather than passive and favor present tense where possible. Most of the OBF drew their drafting style from documents that had their origin in the early to mid-twentieth century. We are blessed to have our legal writing grammar and style hawks, Kevin Millard and Marianne Luu-Chen, among our number to help us keep our work product more readable and modern.

Most of our work was (and still is) in the two extracts. When parallel paragraph reference numbers are given below, the first one will be to the rev tst [Form 350] extract and the second one will be to the will [Form 361] extract. Within the two extracts,

BLACK typeface = **original boilerplate** as it currently exists in the Orange Book Forms,
RED typeface = **changes previously made** to that existing boilerplate by this subcommittee,
and
GREEN typeface = the **latest changes** suggested to be made to these documents.

DESIGNATION OF ADDITIONAL TRUSTEE 14.3 & 8.2: We reviewed the 1/5/21 drafts of these paragraphs and generally approved them, including Darla's proffered redo of the last sentence. However, Kevin suggested that the cross-reference to the "Resignation" paragraph wasn't needed. If they want to resign, they'll look at the resignation provision whether we provide the cross-reference or not. After a discussion about "indefinite" or "limited" term of appointment, Darla offered to revise her last sentence.

DESIGNATION OF ADDITIONAL TRUSTEE 14.3 & 8.2 [Darla's Note on Use]: Although we generally approved the substance of her proffered Note on Use, she decided to retrieve it based upon the discussion about "indefinite" and "limited" appointments, and to restructure it so that its main point (allocation of duty to inform and report) would be more prominent.

And it being the consensus of the members in attendance that they were generally satisfied with the current approach taken in ¶¶ 14.3 & 8.2, they declined Corina's invitation to revisit the whole issue suggested in her 1/4/21 email.

DESIGNATION OF ADDITIONAL TRUSTEE 14.2 & 8.3 [KEVIN'S NOTE ON USE]: We had approved Kevin's Note on Use during our 12/2/20 mtg. However, now that these paragraphs no longer include any references to "cotrustees," it was decided to link it to ¶¶ 14.4 & 8.3 "Cotrustees" instead.

ACCEPTING OR DECLINING TRUSTEESHIP 14.2 & 8.1: During our review of these paragraphs during our 12/2/20 mtg, Corina suggested that we should include notice to the legal representative of an incapacitated or deceased settlor. She also offered to insert some subdivision lettering which should make the subdivisions within the paragraphs more readable. Even though their insertion may have resulted in some minor substantive revisions, we approved Corina's tweakings in the extracts attached to my 1/5/21 status report. See the final versions of ¶¶ 14.2 & 8.1 in the rev tst and will extracts, attached.

RESIGNATION 14.7 & 8.6: After approving Corina's suggestions for ¶¶ 14.2 & 8.1 of including the legal representative of an incapacitated or deceased settlor, and her subdivision letterings, I suggested that for consistency, the same approach could be taken to the *Resignation* paragraphs. See the suggested revisions to ¶¶ 14.7 & 8.6 in the rev tst and will extracts, attached.

COTRUSTEES 14.4 & 8.3: ¶ 14.4 *Cotrustees* in Form 350 was approved by this subcommittee during our 12/4/19 mtg in the form presented in the Form 350 rev tst extract attached to my 1/5/21 Status Report. ¶ 8.3 *Cofiduciaries* presented in the Form 361 will extract attached to my 1/5/21 Status Report was my attempt to bring that concept into our testamentary will forms and apply it to both cotrustees and co-PRs. When we reviewed ¶ 14.4 in the rev tst, Kevin suggested that with minor tweaking, we could eliminate layperson-unfriendly cross-reference (with the same edit could be made to the version in the will form).

When we started to review my suggested language for ¶ 8.3 *Cofiduciaries*, I was sitting there all fat and happy like a Cheshire cat feeling so cool about having astutely "converted" Form 350's ¶ 14.4 *Cotrustees* into a Form 361 Will version, snappily entitled, "*Cofiduciaries*." That was, however, till

Darla asked, “What’s that paragraph doing in an article entitled, “Trusteeship?” I was just knocked for a loop `cause it had never occurred to me that, with the advent of CUTC, and its imposition of new rules for trustees with which we’ve never had to deal before, **trustees and personal corepresentatives probably now need to be dealt with separately in the Form 361 will** (as well as with all of our other wills that contain trusts).

So, during the last few weeks, Darla and Corina have shared their wisdom with me and we’ve come up with a more appropriate approach, and some alternatives to consider:

- The “Cotrustees” paragraph in the rev tst form should be cloned into the will form replacing the awkward and inappropriate “Cofiduciaries” paragraph. This makes our treatment of cotrustees under a testamentary instrument consistent with our treatment of cotrustees under the rev tst forms (and doesn’t muddy the water by trying to bring co-PRs into the same CUTC-governed paragraph).
- Our treatment of co-PRs should be parallel (not identical) to that of cotrustees in the will form. So, under the Administrative Provisions article we could insert a *Personal Corepresentatives* paragraph which could be composed based upon C.R.S. § 15-12-717, or track the text of subparagraphs (a), (b), and (c) the *Cotrustees* paragraph, or perhaps upon the text in the former *Majority Control* paragraph, **depending upon which approach the subcommittee feels the OBF should adopt as the current “best practice.”** See Corina’s suggestion for a new ¶ 9.X *Personal Corepresentatives* and my offering for an alternative ¶ 9.Y *Personal Corepresentatives* inserted on page 14 right before the old ¶ 9.10 *Majority Control* in the extract of the will form, attached.
- Our discussion of appropriate treatment of cotrustees and co-PRs then focused on the *Delegation* paragraph, discussed separately, below.

DELEGATION 15.8 & 9.10: We first reviewed and tweaked this provision during our 11/4/20 mtg and approved the result during our 12/2/20 mtg. This provision incorporates almost all of the prior OBF text. In the rev tst version, we picked up the additional delegation provisions of CUTC § 703. In the will version, we kept the dual application concept by retaining the term “cofiduciaries” of the prior provision, and then included the delegation provisions of CUTC § 703. Corina wonders whether we want to impose that on corepresentatives, or just limit it to cotrustees acting under the will. Query: If we are including separate *Cotrustees* and *Personal Corepresentatives* provisions in our will forms, should we continue to include *Delegation* and *Release of Powers* provisions which are written to have dual application to both cotrustees and co-PRs, or should we redraft them separately for each type of fiduciary acting under the will?

FOLLOWING CUTC’S LEAD: MODERN DRAFTING STYLE; RETIRING SUPERFLUOUS ADJECTIVES:

During our 12/2/20 mtg, I suggested that OBF having been conceived decades before CUTC, the OBF had to decide on generally using the term “serving” or “acting” when referring to the status of

a fiduciary. I reported that I had made a quick review of CUTC and found that there is a consistent preference for “act” over “serve” (which only occurs once referring to a conservator). So, I suggested that we change “serve” and “serving” to “act” and “acting” in OBF to bring us consistent with Uniform Acts drafting style.

But more importantly, I discovered that CUTC does not use “current”, “then-acting,” “so serving,” “acting as” and other such references when talking about those who are **IN OFFICE** as trustee. As you read through CUTC, you clearly see that giving notice to “**the trustee**” or to “**any cotrustee**” IS giving notice to the “then-acting,” “current,” trustee and/or cotrustee. In other words, the CUTC approach is that **if they are in office, they are the trustee and/or a cotrustee** and adding archaic adjectives emphasizing that status is simply unnecessary.

The only exception I can think that might still justify retaining a status adjective might be the personal representative, so that a provision directing notice be given to “my personal representative” not be interpreted to require re-opening an estate to secure the appointment of a PR just for the purpose of complying with a notice provision in a document.

¶ 9.13 – Notice and ¶ 9.? – Reports (Lisa): During our 2/5/20 mtg, we first looked at Lisa’s offering [LH Notice & Reports Handout \(11.06.2019\).pdf](#) which had been attached to my 2/3/20 Status Report. Upon discussion, we determined that the comment about notices and reports going to “the guardians of any minor beneficiaries” could be deleted as already having been addressed in ¶¶ 15.7 & 9.9, *Representative of Beneficiary*. Additionally, we concluded that the comment about notices and reports going to all qualified beneficiaries (QBs) “including those under the age of twenty-five” could be deleted because (i) QBs under the age of 25 were already included within the scope of ¶¶ 16.12 & 11.10, our new definition of “Qualified Beneficiary,” (ii) CUTC requires them to be included in the initial notice upon a trust becoming irrevocable and a trustee accepting the trusteeship, and (iii) we had previously decided early-on that all of our provisions would be drafted to apply to *all* QBs, and that we would leave it to the Note on Use of these provisions to discuss the drafting attorney’s options in dealing with QBs under the age of 25.

Since once again we found ourselves running out of time, we took a quick look at another approach inspired by Lisa’s offering and an understanding of the difficulties encountered by anyone when dealing with the labyrinth inherent in CUTC §§ 105, 813(2), and 813(1) in coming up with such an offering in the first place. So, we just had a minute to look at ¶¶ 9.14 & 9.15 in [\[Extract\] 0361-Mar Ded Will \(02.02.2020\).pdf](#) which had been attached to my 2/3/20 Status Report.

Accordingly, we will take up once again Lisa’s offering (as revised during our 2/5/20 mtg) now attached as [Summary Version Notice & Reports.pdf](#), and the previously proffered ¶¶ 9.14 & 9.15 [now ¶¶ 15.11 & 15.12 in the rev tst and ¶¶ 9.13 & 9.14 in the will], in the two attached extracts. Also attached please see [Detailed Version Notice & Reports \(Annotated\).pdf](#) in which the statutory source of each provision of the will version is annotated in **black** typeface; mandatory provisions are annotated in **green** typeface.

OTHER DEFINITIONS 16.10 & 11.9 (Carl?): During our October 2019 meeting, we had reviewed the language of this paragraph and concluded that some carve-out (from the overall generic reference

to the CPC for other definitions) should be included for the CUTC, similar to that now recently included for the Colorado Uniform Powers of Appointment Act. We look forward to an offering on this in the near future after his having graciously volunteered to take a crack at drafting a revised ¶¶ 16.10 & 11.9 *Other Definitions*, (and perhaps, the related ¶¶ 16.2 & 11.2 *Applicable Law* while he is at it, hopefully).

EXONERATION OF TRUSTEE 14.5 & 8.4 (Darla): Also, during our October 2019 meeting, we had concurred with Darla's caveat that while it was appropriate to focus our immediate attention on addressing the mandatory notice and reporting issues discussed in CUTC §§ 105 and 813, we do really need to address **the impact of CUTC §§ 1008, 1009 and 1010** on our will and trust provisions addressing **trustee exoneration, beneficiary releases, and trustee liability**. In view of the weightiness of those areas of concern, and Darla's then unavailability, we decided to postpone consideration of ¶¶ 14.5 & 8.4 *Exoneration of Trustee* and its related provisions until Darla would be able to be present and lead us through that thicket.

Respectfully submitted.

Frank Hill

Frank T. Hill

170 N. Oak Street, Apt 223

Gilbert, AZ 85233-5449

Phone: 303.517.8447

fhill.com@outlook.com



Legal Editing Demystified

A Process for Polishing Your Prose

BY GINETTE CHAPMAN

You've written a brief, client memo, or other work product. What's the best strategy for ensuring the piece sparkles? This article sets forth a recommended process for editing—defined broadly to encompass both honing your writing and correcting errors. Adopting such a process will guarantee high-quality work products that powerfully advance your arguments and build your credibility and reputation. In addition to a recommended editing process, this article includes (1) a concrete example of how a disciplined editing process can improve everything you write and (2) a sample checklist for document cleanups.

The Disciplined Approach

We've all run across legal documents that are embarrassingly muddled and mistake ridden. Most lawyers learn basic principles of legal writing in law school or perhaps as entry-level attorneys. So the problem usually isn't that lawyers don't know how to write, but rather that lawyers don't adopt a systematic approach to refining their writing and eliminating errors.

Whether you're writing for a judge, a savvy client, your boss, or another audience, a careful

edit of your document is an essential—but often neglected—step. Part of being an effective advocate is ensuring that nothing detracts from the persuasiveness of your legal analysis. Your work product will be less credible if it's beset by poor grammar, typos, and the like. Worse still, writing that is convoluted, disorganized, or sloppy can obscure your message altogether.

I urge lawyers to follow a formal, multilayered editing process. By adopting a disciplined approach to editing, lawyers can hone their writing, make efficient use of time, and ensure their final work product is consistently professional and persuasive.

A Recommended Editing Process

Time is an indispensable element of the rewriting and editing process. Lawyers are notorious for cobbling together documents mere minutes before a deadline. But to craft a compelling written product, you'll need to reserve a significant block of time for multiple reads. At least once, you should review a hard copy rather than relying solely on a screen.

The editing process has several key steps: considering big-picture issues, boosting readability, improving style, ensuring consistency

(including formatting), and checking grammar and legal citations. The order in which you tackle these items is up to you, but it's most efficient to finalize organization and sentence structure before turning to formatting and grammar. Final steps often should include peer review, consulting a cleanup checklist, and reading the document aloud.

1. Big-Picture Issues

The natural first step in the editing process is to ensure your writing is organized and logical. Consider the following big-picture elements:

- **Organization:** Address the most important points first, maintain chronological order where possible, eliminate redundancies, and break up big blocks of text with headings.
- **Substantive issues:** Assess whether the document accurately characterizes the law and is clear, logical, persuasive, and internally consistent.
- **Completeness:** Make sure you've hit all the relevant questions or issues.
- **Tone:** Ensure the tone is confident, respectful, appropriately formal, and never belittling.

2. Readability

Once you've put all the pieces of your document in place, turn to improving readability:

- Give the reader a roadmap at the outset by outlining the organization of the document.
- Provide topic sentences and conclusions, as well as transitional phrases when switching gears ("Here, the facts show...").
- Break up overly long sentences and paragraphs.
- Consider using bullet points.
- Change legalese to plain English ("until now," not "heretofore").
- Remove double negatives.
- Use tense consistently, favoring present tense when in doubt ("the opinion states," not "the opinion stated"; "next, we address," not "next, we will be addressing").
- Use emphasis sparingly, and choose bold rather than underline, italics, or (horror of horrors) ALL CAPS.

- Cut unnecessary instances of *that*, but don't shrink from using *that* where it clarifies your meaning.
- Avoid alphabet soup—only use acronyms and initialisms for terms that appear often.

3. Style

Closely related to boosting readability is enlivening your writing. Strategies to apply include:

- Make passive voice active (“the court decided,” not “it was decided by the court”).
- Eliminate wordiness (“to,” not “in order to,” and “during,” not “in the course of”).
- Use varied sentence structures.
- Avoid “throat-clearing” phrases that don't add real information (“Colorado law recognizes,” not “it is well established that Colorado law recognizes”).
- Change lengthy conjunctive adverbs (*consequently, furthermore, subsequently*) to shorter conjunctive adverbs (*still, thus*) or to conjunctions (*so, but, yet, and*). And don't be afraid to start a sentence with a conjunction.
- Avoid clunky nominalizations (turning an adjective or verb into a noun) (instead of “reached a decision,” say “decided”).
- Try to avoid beginning sentences with “There are” or “It is.”
- Don't tell your reader that something is “clear” or “obvious.”

4. Consistency

Here are four ways to ensure your document is consistent:

- Refer to people, places, documents, and courts consistently (it's usually fine to use a shortened form after the first use).
- Use defined terms correctly (define a term on first reference, and then stick to using the defined term).
- Be consistent in using hyphens (and err on the side of omitting hyphens after routine prefixes, e.g., *pretrial, nonstatutory*).
- Review formatting for consistent font, line spacing, headings, indentations, and margins; remove extra spaces and paragraph breaks; and follow any applicable formatting rules or standards.

5. Grammar and Typos

Checking for grammar, typos, spelling, syntax, and punctuation is critical. Microsoft Word's spelling and grammar tool is helpful, though not entirely reliable. For example, it won't catch uses of “statue” when you mean “statute.” Some lawyers use editing software such as Grammarly or PerfectIt. Ultimately, it's important to use your own brain as part of a grammar check, referring as needed to a dictionary and a style book such as *The Redbook: A Manual on Legal Style*.

6. Legal Citations

Legal citations must appear wherever needed, must correctly represent legal authority, and must conform to *The Bluebook: A Uniform System of Citation* or other applicable manuals.

7. Peer Review

After following these steps, you should have a near-final product. This is a great time to ask an eagle-eyed colleague or a legal editor to review your work. We all have personal writing foibles, and we can become blind to deficiencies when we're immersed in a project, so a second pair of eyes is invaluable.

8. Cleanup Checklist

Once you've incorporated a peer's suggestions, it's time to consult a cleanup checklist, such as the one provided on the following page. You can tailor this checklist to your own needs. For example, if you work in environmental law, you could include a reminder about properly referring to species names. Using a cleanup checklist works best when reviewing a hard copy.

9. Read Aloud

Last but far from least, you should read the document aloud—yes, really read it out loud! When I clerked at the Colorado Supreme Court, it was standard practice for each justice's team of clerks to read aloud the justice's draft opinions before release—right down to the punctuation marks. Lawyers who have not tried this tool will be floored by how many errors they catch.

A Final Note

Congratulations! Your document should now meet the highest standards of professionalism.

EDITING SAMPLE

Original

A plea of guilty was entered by the Defendant to the aforementioned charges on May 20th, 2019 and the court reserved restitution for a period of ninety one days. Subsequently, the People filed a Motion seeking entry of an order for restitution within the statutorily-mandated period requesting that the court enter resitution of \$102,010.00 which represented the legal fees that the victim previously tendered to a law firm.

Edits

~~A plea of guilty was entered by the Defendant~~ pleaded guilty to the aforementioned charges on May 20th, 2019, and the court reserved restitution for ~~a period of ninety-one days~~. ~~Subsequently,~~ ~~the People filed a Motion~~ ~~seeking entry of an order~~ ~~then moved for a restitution order~~ within the statutorily-mandated period. ~~The People~~ requested that the court enter restitution of \$102,010.00, which represented the legal fees that the victim ~~previously tendered~~ paid to a law firm.

Final

Defendant pleaded guilty to the charges on May 20, 2019, and the court reserved restitution for ninety-one days. The People then moved for a restitution order within the statutorily mandated period. The People requested restitution of \$102,010, which represented the legal fees that the victim paid to a law firm.


CLEANUP CHECKLIST

- Formatting consistency and precision
 - Font—type, size, color
 - Line spacing
 - Margins, indentations, and justification
 - Headings—font, size, emphasis style, indenting, numbering scheme, capitalization
 - Bullets/numbering—bullet shape/numbering style, indenting, capitalization, punctuation
 - No widows/orphans (dangling lines or headings at the top or bottom of a page)
 - No extra breaks after paragraphs or headings
 - No awkward line breaks, such as within a date (to fix, create a non-breaking space)
 - Only one space after a period and between words (perform search for double spaces)
 - Latin terms (italicize only those terms that are italicized in *Black's*)
 - Footnotes (footnote content should be correctly formatted, and footnote numbers should be properly sized and placed outside punctuation marks)
 - Page numbers (correct numbering; appropriate font and size)
- Proper punctuation
 - No double or missing periods
 - Correct use of commas, including the Oxford comma (“apples, oranges, and bananas”)
- Commas appear after full dates
- Commas and periods are inside quotation marks; colons and semicolons are outside
- Proper use of *that* and *which* (use *that* in essential clauses without a comma; use *which* in nonessential clauses with a comma)
- Em dashes (—) are used for breaks in sentence structure, and en dashes (–) are used for number and date ranges
- Hyphens appear in phrases that modify and precede a noun (“two-year term”)
- Proper integration of quotations
- Accuracy
 - Dates
 - Figures
 - Names of people, entities, documents, etc. (and consistency in how names are used)
- Terminology sensitive to gender, race, ethnicity, etc.
- No confidential information disclosed
- Proper use of defined terms
- Numbers (e.g., spell out numbers less than 100 except for dates, money, and preceding “percent”; no ordinals for dates (“July 1,” not “July 1st”))
- No over-use of capitalized terms such as in “the Federal rules” or “the Motion”
- Complete, properly formatted legal citations
- Spelling and grammar check
- Global review for formatting slip-ups such as widows/orphans and missing material

Here are a few additional writing practices that can simplify the final editing process:

- Work from a template with set styles to improve formatting consistency.
- Configure Word to show formatting marks as you’re writing to reveal issues like extra spaces.
- Double-check each legal citation as you write it.
- Maintain (and frequently consult) a list of defined terms for your document.
- Consult readability statistics in Word periodically.
- Highlight any problematic wording as a reminder to return to it.
- Keep useful references like *The Bluebook*, *The Redbook*, *Black’s Law Dictionary*, and a thesaurus within easy reach, and use them often.

Conclusion

The recommendations here don’t exhaustively cover best practices for editing, and what works for one lawyer may not work for another. The key point is that a thoughtful approach to editing is essential for important written products—and even for informal writing, like emails to clients. Adopting a standard process will remove distracting blemishes and inconsistencies from your written product so your work can shine. 



Ginette Chapman is a legal editor offering services to lawyers through her website, www.legaledits.com. In her 14 years as a Colorado attorney, she has worked for the federal government, a law firm, and the courts, including as clerk to Justice Gregory J. Hobbs Jr. Most recently, she served the restaurant industry as in-house counsel—ginette.chapman@gmail.com, (303) 330-9251.

Coordinating Editor: John Campbell, jcampbell@law.du.edu

settle, or contest claims. They may employ attorneys, accountants, investment advisors, custodians of trust property, and other agents or assistants as deemed advisable to act with or without discretionary powers and compensate them and pay their expenses from income or principal or both.

7.2 FIDUCIARIES' POWERS ACT: In addition to all of the above powers, my fiduciaries may exercise those powers set forth in the Colorado Fiduciaries' Powers Act as amended after the date of this instrument. I incorporate such Act as it exists today by reference and make it a part of this instrument.

ARTICLE 8 – TRUSTEESHIP

See Appx A Note on Use A

8.1 ACCEPTING OR DECLINING TRUSTEESHIP:

- a) Except as otherwise provided in **paragraph 8.1(c)** of this article, a person designated as trustee accepts the trusteeship by:
 - i) Delivering written consent to (A) my personal representative, if acting, (B) the qualified beneficiaries, if my personal representative is no longer acting, and (C) all other acting trustees; or
 - ii) Accepting delivery of trust property, exercising powers or performing duties as a trustee, or otherwise indicating acceptance of the trusteeship.
- b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A person designated as trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.
- c) A person designated as trustee, without accepting the trusteeship, may:
 - i) Act to preserve trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to (A) my personal representative, if acting, (B) a qualified beneficiary, if my personal representative is no longer acting, and (C) any acting trustee; and
 - ii) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

8.2 DESIGNATION OF ADDITIONAL TRUSTEE: If for any reason my trustee is unwilling or unable to act as to any property of any trust hereunder, or with respect to any provision of my will, my trustee may designate in writing an individual or bank or trust company to serve as additional trustee as to such property or with respect to such provision, and may revoke any such designation at will. Each additional trustee so serving shall exercise all fiduciary powers granted by my will unless expressly limited by my trustee in the instrument designating such additional trustee. Unless otherwise provided in the designating instrument, any additional trustee so designated may resign at any time ~~by giving written notice to my trustee in accordance with the provisions of paragraph 8.6 (Resignation) of this article.~~

8.3 COTRUSTEES:

- a) Cotrustees who are unable to reach a unanimous decision may act by majority decision.
- b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.
- c) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or avoid injury to trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.
- d) ~~Except as otherwise provided in paragraph 14.3(e) of this article,~~ A trustee who does not join in an action of another trustee is not liable for the action, ~~except that each trustee must exercise reasonable care:~~
 - i) To prevent a cotrustee from committing a serious breach of trust, and
 - ii) To pursue a remedy, at trust expense, for a cotrustee's serious breach of trust.
- e) (Relocated as an extension of subparagraph (d) above.)
- e) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

8.4 EXONERATION OF TRUSTEE: No trustee shall be obligated to examine the accounts, records, or acts, or in any way or manner be responsible for any act or omission to act on the part of any previous trustee or of the personal representative of my estate. No trustee shall be liable to my personal representative or to any beneficiary for the consequences of any action taken by such trustee which would, but for the prior removal of such trustee, have been a proper exercise by such trustee of the authority granted to trustee under my will, until actual receipt by such trustee of notice of such removal. Any trustee may acquire from the beneficiaries, or from their guardians or conservators, instruments in writing releasing such trustee from liability which may have arisen from the acts or omissions to act of such trustee, and indemnifying such trustee from liability therefor. Such instruments, if acquired from all then-living beneficiaries, or from their guardians or conservators, shall be conclusive and binding upon all parties, born or unborn, who may have, or may in the future acquire, an interest in the trust.

8.5 RIGHTS OF SUCCESSOR TRUSTEE: Any successor trustee at any time serving hereunder, whether corporate or individual, shall have all the title, rights, powers and privileges, and be subject to all of the obligations and duties, both discretionary and ministerial, ***

See Appx A Note on Use 22A

8.6 RESIGNATION: Any trustee may resign:

- a) By giving at least thirty days' written notice to (i) my personal representative, if acting, (ii) the qualified beneficiaries, and (iii) all other acting trustees, effective upon acceptance of appointment by a successor trustee if this instrument requires a successor trustee; or
- b) With the approval of the court.

See Appx A Note on Use.22

8.7 REMOVAL OF TRUSTEE: Any trustee may be removed, without cause, by my spouse, or if my spouse is deceased or incapacitated, by a majority of the qualified beneficiaries by giving written notice to such trustee and to any other trustee then serving, effective in accordance with the provisions of the notice.

8.8 REPLACEMENT OF TRUSTEE: If any trustee fails or ceases to ~~serve~~ act and no designated successor trustee serves, my spouse, or if my spouse is deceased or incapacitated, a majority of the qualified beneficiaries may designate a successor trustee. If any vacancy is not filled within thirty days after the vacancy arises, then any qualified beneficiary or the resigning trustee may petition a court of competent jurisdiction to designate a successor trustee to fill such vacancy. By making such designation, such court shall not thereby acquire any jurisdiction over the trust, except to the extent necessary for making such designation. Any successor trustee designated hereunder may be an individual or may be a bank or trust company authorized to serve in such capacity under applicable federal or state law.

ARTICLE 9 – ADMINISTRATIVE PROVISIONS

9.1 COURT PROCEEDINGS: Any trust established under this instrument shall be administered in a timely and efficient manner consistent with its terms, free of active judicial intervention and without order, approval, or other action by any court. It shall be subject only to the jurisdiction of a court being invoked by the trustees or other interested parties or as otherwise provided by law.

See Appx A Note on Use 17A

9.2 NO BOND: I direct that no fiduciary shall be required to give any bond in any jurisdiction, and if, notwithstanding this direction, any bond is required by any law, statute, or rule of court, no sureties be required.

See Appx A Note on Use 3A

9.3 COMPENSATION: Any fiduciary under this instrument shall be entitled to reasonable compensation commensurate with services actually performed and to be reimbursed for expenses properly incurred.

9.9 REPRESENTATIVE OF BENEFICIARY: The conservator of the estate or, if none, the guardian of the person of a beneficiary may act for such beneficiary for all purposes under my will or may receive information on behalf of such beneficiary.

9.X PERSONAL COREPRESENTATIVES [based upon C.R.S. § 15-12-717]

- a) If two or more persona are acting as corepresentatives, the concurrence of all is required for acts connected with the administration and distribution of my estate, except:
 - i) When any corepresentative receives and receipts for property due the estate;
 - ii) When the concurrence of all corepresentatives cannot be readily obtained in the time reasonably available for emergency action necessary to preserve my estate; or
 - iii) When a corepresentative has been delegated to act for the others.

- b) Persons dealing with a personal representative, if actually unaware that one or more corepresentatives have been appointed to serve or if advised by the personal representative of their authority to act alone for one of the reasons listed above, are fully protected as if the person with whom they dealt was the sole personal representative.

9.Y PERSONAL COREPRESENTATIVES: [based upon ¶ 8.3 Cotrustees]

- a) Corepresentatives who are unable to reach a unanimous decision may act by majority decision.
- b) If a vacancy occurs in the office of corepresentative, the remaining corepresentatives may act for my estate.
- c) If a corepresentative is unavailable to perform duties because of absence, illness, disqualification, or other temporary incapacity, and prompt action is necessary to administer my estate or avoid injury to estate property, the remaining corepresentative or a majority of the remaining corepresentatives may act for my estate.

~~9.10 MAJORITY CONTROL: Except where otherwise expressly provided, in all matters pertaining to the administration of any trust under this instrument, when more than two trustees are serving, the concurrence and joinder of a majority of such trustees shall be required; ***~~

~~9.11 DELEGATION: Any fiduciary may delegate to its cofiduciary the exercise of any powers, discretionary or otherwise, and may revoke any such delegation. Such delegation and revocation shall be in writing executed by the delegating cofiduciary and delivered to such other cofiduciary. While such delegation is in effect, any of the delegated powers may be exercised or action may be taken by the cofiduciary receiving the delegation with the same force and effect as if the delegating cofiduciary had personally joined in the exercise of such power or the taking of such action. Anyone dealing with the fiduciaries may rely upon the written statement of the delegating cofiduciary relative to the fact and extent of such delegation.~~

9.10 DELEGATION:

- a) Except as otherwise provided in **paragraphs 9.10(b) and (c)**, any fiduciary may delegate to its cofiduciary the exercise of any powers, discretionary or otherwise, and may revoke any such delegation. Such delegation and revocation shall be in writing executed by the delegating fiduciary and delivered to such other cofiduciary. While such delegation is in effect, any of the delegated powers may be exercised or action may be taken by the cofiduciary receiving the delegation with the same force and effect as if the delegating fiduciary had personally joined in the exercise of such power or the taking of such action. Anyone dealing with my fiduciaries may rely upon the written statement of the delegating fiduciary relative to the fact and extent of such delegation.
- b) My fiduciaries (trustee) may not delegate to a cofiduciary (cotrustee) the performance of a function I reasonably expect my cofiduciaries (cotrustees) to perform jointly.
- c) Unless a delegation was irrevocable, the delegating fiduciary may revoke a delegation previously made.

9.11 CUSTODY: Whenever a corporate fiduciary is serving, such corporate fiduciary shall be the custodian of my estate and trust property and of the books and records of my estate or trust. It may perform all ministerial acts necessary for the acquisition and transfer of personal property and money, including the signing and endorsement of checks, receipts, stock certificates, and other instruments. No person need inquire into the propriety of any such act.

9.12 **RELEASE OF POWERS:** Any fiduciary may release in whole or in part, temporarily or permanently, any power, authority, or discretion conferred by my will or trust by a writing delivered to any cofiduciary and to each beneficiary then eligible to receive income distributions from any trust or, if none, to all ascertainable beneficiaries. Such renunciation or release shall not affect the grant of power, authority, or discretion renounced or released.

~~9.14 **REPORTS:** My trustee shall report no less frequently than annually to all adult beneficiaries and to the parents of any minor beneficiaries then eligible to receive current income, all the receipts, disbursements, and distributions during the reporting period, and property then held as the principal of the trust. The records of the trust shall be open at all reasonable times to the inspection of the beneficiaries of the trust and their representatives.~~

9.13 **[“NOTICE”] TRUSTEE’S DUTIES TO INFORM AND TO NOTIFY:**

- a) My trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests.
- b) Within sixty days after accepting the trusteeship, my trustee shall notify the qualified beneficiaries of:
 - i) My identity;
 - ii) The existence of the trust;
 - iii) My trustee’s acceptance of the trust;
 - iv) My trustee’s name, address, and telephone number;
 - v) Their right to request portions of the trust provisions of my will that describe or affect the requesting beneficiary’s interest; and
 - vi) Their right to request reports as provided in **paragraph 9.14 (Trustee’s Duties to Report and to Respond)** of this article.
- c) My trustee shall notify the qualified beneficiaries in advance of any change in the method or rate of my trustee’s compensation.

9.14 ["REPORTS"] TRUSTEE'S DUTIES TO REPORT AND TO RESPOND:

- a) At least annually and at the termination of the trust, my trustee shall send to the distributees or permissive distributees of the trust's income or principal, and to other qualified beneficiaries who request it, a report ~~which shall~~ containing:
 - i) A list of the assets comprising the property of the trust, and if feasible, their respective market values;
 - ii) The liabilities of the trust, if any;
 - iii) The trust's receipts and disbursements during the period covered by the report; and
 - iv) The amount and source of my trustee's compensation.
- b) If no cotrustee remains in office upon the occurrence of a vacancy in the trusteeship, my former trustee shall send a report as described in **paragraph 9.14(a)** of this article to the qualified beneficiaries. Should my former trustee be deceased or incapacitated, my former trustee's legal representative may send the report.
- c) Upon request of a qualified beneficiary, my trustee shall:
 - i) Respond promptly with information related to the administration of the trust, unless unreasonable under the circumstances; and
 - ii) Furnish promptly a copy of the portions of the trust provisions of my will that describe or affect the requesting beneficiary's interest.

9.15 ANCILLARY FIDUCIARY: In the event ancillary administration shall be required or desired and my domiciliary personal representative is unable or unwilling to act as an ancillary fiduciary, my domiciliary personal representative shall have the power to designate, compensate, and remove the ancillary fiduciary. The ancillary fiduciary may either be a natural person or a corporation. My domiciliary personal representative may delegate to such ancillary fiduciary such powers granted to my original personal representative as my personal representative may deem proper, including the right to serve without bond or surety on bond. The net proceeds of the ancillary estate shall be paid over to the domiciliary personal representative.

ARTICLE 11 – GENERAL PROVISIONS

11.1 **ADOPTED CHILDREN:** A child adopted by any person and the descendants by blood or adoption of such child shall be considered the descendants of such adopting person and of such person’s ancestors if the adoption is by legal proceeding while the child is under the age of 21 years.

11.2 **APPLICABLE LAW:** The validity and construction of my will shall be determined by the laws of Colorado. Questions of administration of any trust established under my will shall be determined by the laws of the situs of administration of such trust. The laws of Colorado shall govern the creation, revocation, or amendment of a power of appointment created by this trust and the exercise, release, disclaimer, or other refusal of such a power of appointment.

11.6 **FIDUCIARY:** As used in this instrument, “fiduciary” means an original, additional, or successor personal representative, conservator, agent, or trustee. [RUFADAA: C.R.S. § 15-1-1501(14)]

11.7 **HEADINGS AND TITLES:** The headings and paragraph titles are for reference only.

11.8 **I.R.C.:** I.R.C. shall refer to the Internal Revenue Code of the United States. Any reference to specific sections of the I.R.C. shall include sections of like or similar import which replace the specific sections as a result of changes to the I.R.C. made after the date of this instrument.

11.9 **OTHER DEFINITIONS:** Except as otherwise provided in this instrument, terms shall be as defined in the Colorado Probate Code, or, with regard to powers of appointment, in the Colorado Uniform Powers of Appointment Act, as either may be amended after the date of this instrument and after my death.

See Appx A Note on Use 20A

11.10 QUALIFIED BENEFICIARY: As used in any trust under this instrument, “qualified beneficiary” means a person who:

- a) has a present or future beneficial interest in the trust, vested or contingent, or, holds a power of appointment over property of the trust in a capacity other than that of trustee, and who;
- b) on the date the beneficiary’s qualification is determined:
 - i) is a distributee or permissible distributee of the trust’s income or principal;
 - ii) would be a distributee or permissible distributee of the trust’s income or principal if the interests of the distributees and permissible distributees of the trust’s income or principal terminated on that date without causing the trust to terminate; or
 - iii) would be a distributee or permissible distributee of the trust’s income or principal if the trust terminated on that date.

As used in this paragraph, “person” does not include an appointee under a power of appointment unless and until the power is exercised and my trustee has knowledge of the exercise and the identity of the appointee.

11.11 SURVIVORSHIP: For purposes of this will, if my spouse in fact survives me by any period of time or if the order of our deaths is not known, then my spouse shall be deemed to have survived me. Any other beneficiary shall be deemed to have predeceased me if such beneficiary dies within 30 days after the date of my death.

11.12 TRUSTEE DEFINITION: As used throughout in this instrument, the word “trustee” shall always refer to the original trustee as well as to any successor, replacement or additional person, corporation or other entity from time to time serving, whether in fact there shall be one or more trustees serving from time to time. **includes an original, additional, and successor trustee, and a cotrustee.** [CUDTA: C.R.S. § 15-16-802(10)]

11.13 SEVERABILITY: If any part of this instrument shall be adjudicated to be void or invalid, the remaining provisions not specifically so adjudicated shall remain in full force and effect.

13.2 FIDUCIARIES' POWERS ACT: In addition to all of the above powers, trustee may exercise those powers set forth in the Colorado Fiduciaries' Powers Act, as amended after the date of this agreement. Settlor incorporates such Act as it exists today by reference and makes it a part of this agreement.

ARTICLE 14 - TRUSTEESHIP

14.1 DESIGNATION OF SUCCESSOR TRUSTEE: If _____ ceases to serve as trustee, settlor appoints _____ of _____ as trustee.

See Appx A Note on Use A

14.2 ACCEPTING OR DECLINING TRUSTEESHIP:

- a) Except as otherwise provided in **paragraph 14.2(c)** of this article, a person designated as trustee accepts the trusteeship by:
 - i) Delivering written consent to (A) settlor, if living, (B) settlor's legal representative and the qualified beneficiaries, if settlor is deceased or incapacitated, and (C) all other acting trustees; or
 - ii) Accepting delivery of trust property, exercising powers or performing duties as a trustee, or otherwise indicating acceptance of the trusteeship.
- b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A person designated as trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.
- c) A person designated as trustee, without accepting the trusteeship, may:
 - i) Act to preserve trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to (A) settlor, if living, (B) settlor's legal representative and a qualified beneficiary, if settlor is deceased or incapacitated, and (C) any acting trustee; and
 - ii) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

14.3 **DESIGNATION OF ADDITIONAL TRUSTEE:** If for any reason trustee is unwilling or unable to act as to any property of the trust, or with respect to any provision of this agreement, trustee may designate in writing an individual or bank or trust company to serve as **additional** trustee as to such property or with respect to such provision, and may revoke any such designation at will. Each **additional** trustee so serving shall exercise all fiduciary powers granted by this trust unless expressly limited by trustee in the instrument designating such **additional** trustee. **Unless otherwise provided in the designating instrument, any additional trustee so designated may resign at any time by giving written notice to trustee in accordance with the provisions of paragraph 14.7 (Resignation) of this article.**

14.4 **COTRUSTEES:**

- a) **Cotrustees who are unable to reach a unanimous decision may act by majority decision.**
- b) **If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.**
- c) **If a cotrustee is unavailable to perform duties because of absence, illness, disqualification, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or avoid injury to trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.**
- d) **~~Except as otherwise provided in paragraph 14.3(e) of this article, A trustee who does not join in an action of another trustee is not liable for the action, except that each trustee must exercise reasonable care:~~**
 - i) **To prevent a cotrustee from committing a serious breach of trust, and**
 - ii) **To pursue a remedy, at trust expense, for a cotrustee's serious breach of trust.**
- e) **(Relocated as an extension of subparagraph (d) above.)**
- e) **A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.**

14.5 EXONERATION OF TRUSTEE: No trustee shall be obligated to examine the accounts, records, or acts, or in any way or manner be responsible for any act or omission to act on the part of any previous trustee or of the personal representative of settlor's probate estate. No trustee shall be liable to settlor or to any beneficiary for the consequences of any action taken by such trustee which would, but for the prior removal of such trustee or revocation of the trust created hereunder, have been a proper exercise by such trustee of the authority granted to trustee under this agreement, until actual receipt by such trustee of notice of such removal or revocation. Any trustee may acquire from the beneficiaries, or from their guardians or conservators, instruments in writing releasing such trustee from liability which may have arisen from the acts or omissions to act of such trustee, and indemnifying such trustee from liability therefor. Such instruments, if acquired from all then-living beneficiaries, or from their guardians or conservators, shall be conclusive and binding upon all parties, born or unborn, who may have, or may in the future acquire, an interest in the trust.

14.6 RIGHTS OF SUCCESSOR TRUSTEE: Any successor trustee at any time serving hereunder, whether corporate or individual, shall have all of the title, rights, powers, and privileges, and be subject to all of the obligations and duties, both discretionary and ministerial, as herein and hereby given and granted to the original trustee hereunder, and shall be subject to any restrictions herein imposed upon the original trustee. Any fiduciary succeeding to the trust business of any corporate trustee shall become the successor trustee under this agreement with like powers, duties, and obligations.

See Appx A Note on Use 22A

14.7 RESIGNATION: Any trustee may resign:

- a) By giving at least thirty days' written notice to (i) settlor, if living, or settlor's legal representative if settlor is deceased or incapacitated, (ii) the qualified beneficiaries, and (iii) all other acting trustees, effective upon acceptance of appointment by a successor trustee if this instrument requires a successor trustee; or
- b) With the approval of the court.

See Appx A Note on Use.22

14.8 REMOVAL OF TRUSTEE: Any trustee may be removed, without cause, by settlor, or if settlor is deceased or incapacitated, by settlor's spouse, or if settlor and settlor's spouse are both deceased or incapacitated, by a majority of the **qualified** beneficiaries by giving written notice to such trustee and to any other trustee then serving, effective in accordance with the provisions of the notice.

14.9 REPLACEMENT OF TRUSTEE: If any trustee fails or ceases to **serve act** and no designated successor trustee serves, settlor, or if settlor is deceased or incapacitated, settlor's spouse, or if settlor and settlor's spouse are both deceased or incapacitated, a majority of the **qualified** beneficiaries may designate a successor trustee. If any vacancy is not filled within thirty days after the vacancy arises, then any **qualified** beneficiary **or the resigning trustee** may petition a court of competent jurisdiction to designate a successor trustee to fill such vacancy. By making such designation, such court shall not thereby acquire any jurisdiction over the trust, except to the extent necessary for making such designation. Any successor trustee designated hereunder may be an individual or may be a bank or trust company authorized to serve in such capacity under applicable federal or state law.

ARTICLE 15 - ADMINISTRATIVE PROVISIONS

15.1 COURT PROCEEDINGS: The trust estate shall be administered expeditiously consistent with its provisions, free of judicial intervention, and without order, approval, or action of any court. It shall be subject only to the jurisdiction of a court being invoked by trustee or by other interested parties or as otherwise provided by law.

See Appx A Note on Use 17A

15.2 NO BOND: No trustee acting under this trust shall be required to furnish any bond for the faithful performance of such trustee's duties, but if bond is ever required by any law or court rule, no surety shall be required on such bond.

See Appx A Note on Use 3A

15.3 COMPENSATION: Trustee shall be entitled to reasonable compensation commensurate with services actually performed and to be reimbursed for expenses properly incurred.

15.4 INALIENABILITY: No beneficiary shall have any right to anticipate, sell, assign, mortgage, pledge or otherwise dispose of or encumber all or any part of any trust estate established for his or her benefit under this agreement. No part of such trust estate, including income, shall be liable for the debts or obligations of any beneficiary or be subject to attachment, garnishment, execution, creditor's bill or other legal or equitable process.

15.5 UNDISTRIBUTED INCOME AT DEATH OF BENEFICIARY: Except as otherwise provided with respect to the Marital Trust, upon the death of any beneficiary entitled to receive income from any trust established under this agreement, all accrued or undistributed income held for the account of such beneficiary shall be treated as if it had accrued or been received immediately following the death of such beneficiary.

15.6 PROTECTION AGAINST PERPETUITIES RULE: Every trust hereunder, and every trust created by the exercise of a power of appointment hereunder, shall terminate no later than the end of the period allowed by the applicable Rule Against Perpetuities and the trust property shall be distributed to the persons then entitled to the income from the trust in the proportions in which they are entitled to such income. For this purpose only, any person eligible to receive discretionary distributions of income from a particular trust shall be treated as being entitled to receive the income. If two or more persons are so treated, they shall be treated as being entitled to receive the income by representation if they have a common ancestor, or in equal shares if they do not.

15.7 REPRESENTATIVE OF BENEFICIARY: The conservator of the estate or, if none, the guardian of the person of a beneficiary may act for such beneficiary for all purposes under this agreement or may receive information on behalf of such beneficiary.

~~15.8 MAJORITY CONTROL: Except where otherwise expressly provided, in all matters pertaining to the administration of any trust under this agreement, when more than two trustees are serving, the concurrence and joinder of a majority of such trustees shall be required; but if only two trustees are serving, the joinder of both of them shall be required. If a trustee has released or is prohibited from exercising any power under any other provision of this agreement with respect to~~

~~any action or property, then with respect to such action or property such trustee shall not be counted in the application of the preceding sentence and the other trustee or trustees then serving may exercise such power. Any trustee, however, may dissent or abstain from a decision of the majority and be absolved from personal liability by registering such dissent or abstention in the records of such trust, but such trustee shall thereafter act with the other trustees in any way necessary or appropriate to effectuate the decision of the majority.~~

~~15.9 — DELEGATION: Any trustee may delegate to any other trustee the exercise of any powers, discretionary or otherwise, and may revoke any such delegation. Such delegation and revocation shall be in writing executed by the delegating trustee and delivered to such other trustee. While such delegation is in effect, any of the delegated powers may be exercised or action may be taken by the trustee receiving the delegation with the same force and effect as if the delegating trustee had personally joined in the exercise of such power or the taking of such action. Anyone dealing with trustee may rely upon the written statement of the delegating trustee relative to the fact and extent of such delegation.~~

15.8 DELEGATION:

- a) Except as otherwise provided in **paragraphs 15.8(b) and (c)**, any trustee may delegate to any other trustee the exercise of any powers, discretionary or otherwise, and may revoke any such delegation. Such delegation and revocation shall be in writing executed by the delegating trustee and delivered to such other trustee. While such delegation is in effect, any of the delegated powers may be exercised or action may be taken by the trustee receiving the delegation with the same force and effect as if the delegating trustee had personally joined in the exercise of such power or the taking of such action. Anyone dealing with trustee may rely upon the written statement of the delegating trustee relative to the fact and extent of such delegation.
- b) Trustee may not delegate to a cotrustee the performance of a function settlor reasonably expected the trustees to perform jointly.
- c) Unless a delegation was irrevocable, trustee may revoke a delegation previously made.

15.10 RELEASE OF POWERS: Any trustee may release, in whole or in part, temporarily or permanently, any power, authority, or discretion conferred by this agreement by a writing delivered to each cotrustee and to each beneficiary then eligible to receive income distributions from any trust or, if none, to all ascertainable beneficiaries. Such renunciation or release shall not affect the grant of power, authority, or discretion renounced or released.

~~15.11 REPORTS: Trustee shall report no less frequently than annually to settlor, to all adult beneficiaries and to the parents of any minor beneficiaries then eligible to receive current income, all the receipts, disbursements, and distributions during the reporting period, and property then held as the principal of the trust. The records of the trust shall be open at all reasonable times to inspection by settlor and by the beneficiaries of the trust and their representatives.~~

15.11 [“NOTICE”] TRUSTEE’S DUTIES TO INFORM AND TO NOTIFY:

- a) After trustee acquires knowledge that the trust created under this instrument has become irrevocable, trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests.
- b) Within sixty days after the date trustee acquires knowledge that the trust created under this instrument has become irrevocable, trustee shall notify the qualified beneficiaries of:
 - i) Settlor’s identity;
 - ii) The existence of the trust;
 - iii) Trustee’s acceptance of the trust;
 - iv) Trustee’s name, address, and telephone number;
 - v) Their right to request portions of the trust instrument that describe or affect the requesting beneficiary’s interest; and
 - vi) Their right to request reports as provided in **paragraph 15.12 (Trustee’s Duties to Report and to Respond)** of this article.
- c) Trustee shall notify the qualified beneficiaries in advance of any change in the method or rate of trustee’s compensation.

15.12 [“REPORTS”] TRUSTEE’S DUTIES TO REPORT AND TO RESPOND:

- a) At least annually and at the termination of the trust, trustee shall send to the distributees or permissive distributees of the trust’s income or principal, and to other qualified beneficiaries who request it, a report ~~which shall~~ containing:
 - i) A list of the assets comprising the property of the trust, and if feasible, their respective market values;
 - ii) The liabilities of the trust, if any;
 - iii) The trust’s receipts and disbursements during the period covered by the report; and
 - iv) The amount and source of trustee’s compensation.
- b) If no cotrustee remains in office upon the occurrence of a vacancy in the trusteeship, the former trustee shall send a report as described in **paragraph 15.12(a)** of this article to the qualified beneficiaries. Should the former trustee be deceased or incapacitated, the former trustee’s legal representative may send the report.
- c) Upon request of a qualified beneficiary, trustee shall:
 - i) Respond promptly with information related to the administration of the trust, unless unreasonable under the circumstances; and
 - ii) Furnish promptly a copy of the portions of the trust instrument that describe or affect the requesting beneficiary’s interest.

15.12 LITIGATION POWERS: Trustee, in its discretion and at the expense of the trust estate, may institute, join, compromise, settle, dismiss, and defend legal proceedings regarding this trust and any property administered hereunder in any judicial or administrative forum; specifically including but not limited to proceedings or class actions brought against any public entity or government agency or brought by any such entity for attachment, recoupment, levy, invasion, reformation, or access of any kind to property of the trust. Trustee is authorized to retain such legal counsel and ancillary personnel as trustee deems appropriate in the exercise of its discretion hereunder.

15.13 POWERS OF INSURED TRUSTEE: No trustee, other than settlor, may exercise any power conferred on the owner of any policy which insures the life of such trustee and which is held as ***

ARTICLE 16 - GENERAL PROVISIONS

16.1 **ADOPTED CHILDREN:** A child adopted by any person and the descendants by blood or adoption of such child shall be considered the descendants of such adopting person and of such person's ancestors if the adoption is by legal proceeding while the child is under the age of 21 years.

16.2 **APPLICABLE LAW:** The validity and construction of this agreement shall be determined by the laws of Colorado. Questions of administration of any trust established under this agreement shall be determined by the laws of the situs of administration of such trust. The laws of Colorado shall govern the creation, revocation, or amendment of a power of appointment created by this trust and the exercise, release, disclaimer, or other refusal of such a power of appointment.

16.6 **FIDUCIARY:** As used in this agreement, "fiduciary" means an original, additional, or successor personal representative, conservator, agent, or trustee. [RUFADAA: C.R.S. § 15-1-1501(14)]

16.7 **HEADINGS AND TITLES:** The headings and paragraph titles are for reference only.

16.8 **INCAPACITY:** For the purposes of this agreement, an individual may be treated as being incapacitated if so declared or adjudicated by an appropriate court; or if a guardian, conservator, or other personal representative of such individual's person or estate or both has been appointed by an appropriate court; or if certified in writing by his or her personal physician to be unable to properly manage his or her financial affairs; or if such individual is a minor.

16.9 **I.R.C.:** I.R.C. shall refer to the Internal Revenue Code of the United States. Any reference to specific sections of the I.R.C. shall include sections of like or similar import which replace the specific sections as a result of changes to the I.R.C. made after the date of this agreement.

16.10 **OTHER DEFINITIONS:** Except as otherwise provided in this agreement, terms shall be as defined in the Colorado Probate Code, or, with regard to powers of appointment, in the Colorado Uniform Powers of Appointment Act, as either may be amended after the date of this agreement and after settlor's death.

16.11 PERSONAL REPRESENTATIVE: For the purposes of this agreement, the term “personal representative” shall include an executor, administrator, guardian, conservator, or any other form of personal representative, depending upon the context in which such term occurs.

See Appx A Note on Use 20A

16.12 QUALIFIED BENEFICIARY: As used in this agreement, “qualified beneficiary” means a person who:

- a) has a present or future beneficial interest in the trust, vested or contingent, or, holds a power of appointment over property of the trust in a capacity other than that of trustee, and who;
- b) on the date the beneficiary’s qualification is determined:
 - i) is a distributee or permissible distributee of the trust’s income or principal;
 - ii) would be a distributee or permissible distributee of the trust’s income or principal if the interests of the distributees and permissible distributees of the trust’s income or principal terminated on that date without causing the trust to terminate; or
 - iii) would be a distributee or permissible distributee of the trust’s income or principal if the trust terminated on that date.

As used in this paragraph, “person” does not include an appointee under a power of appointment unless and until the power is exercised and trustee has knowledge of the exercise and the identity of the appointee.

16.14 TRUSTEE DEFINITION: As used ~~throughout in~~ this agreement, ~~the word “trustee” shall always refer to the original trustee as well as to any successor, replacement or additional person, corporation or other entity from time to time serving, whether in fact there shall be one or more trustees serving from time to time.~~ **includes an original, additional, and successor trustee, and a cotrustee.** [CUDTA: C.R.S. § 15-16-802(10)]

16.15 COUNTERPARTS: This agreement may be executed in counterparts and each such counterpart shall constitute one and the same agreement.

Lisa Hardin 79.14 Notice Report 11.06.2019.pdf
[HANDOUT] REVISED 2/5/20

Reports: My Trustee shall report no less frequently than annually and at the termination of the trust to all qualified beneficiaries, ~~including those under the age of twenty five, and to the guardians of any minor beneficiaries,~~ all the trust property, liabilities, receipts, disbursements, including the source and amount of the trustee's compensation, during the reporting period, and a listing of the trust assets and, if feasible, their respective market value.

Notice: ~~For purposes of notice requirements under this Section, qualified beneficiaries shall also include those under the age of twenty five and the guardians of any minor qualified beneficiary.~~ Within sixty days after accepting trusteeship, my Trustee shall notify all qualified beneficiaries of the trustee's:

- (1) acceptance;
- (2) name;
- (3) address; and
- (4) telephone number.

In addition, within sixty days of my trustee's knowledge that the trust is irrevocable, my trustee shall notify all qualified beneficiaries of:

- (1) the trust's existence;
- (2) settlor's name;
- (3) the right of the beneficiary to request the portion of the trust instrument describing the beneficiary's interest; and
- (4) their right to request a report.

My trustee shall notify all qualified beneficiaries of any change in the trustee's compensation.

shall not be counted in the application of the preceding sentence and the other trustee or trustees then serving may exercise such power. Any trustee, however, may dissent or abstain from a decision of the majority and be absolved from personal liability by registering such dissent or abstention in the records of such trust, but such trustee shall thereafter act with the other trustees in any way necessary or appropriate to effectuate the decision of the majority.

~~9.14 REPORTS: My trustee shall report no less frequently than annually to all adult beneficiaries and to the parents of any minor beneficiaries then eligible to receive current income, all the receipts, disbursements, and distributions during the reporting period, and property then held as the principal of the trust. The records of the trust shall be open at all reasonable times to the inspection of the beneficiaries of the trust and their representatives.~~

9.13 ["NOTICE"] TRUSTEE'S DUTIES TO INFORM AND TO NOTIFY:

- a) My trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests [§ 813(1)].
- b) Within sixty days after accepting the trusteeship, my trustee shall notify the qualified beneficiaries of:
 - i) My identity [§ 813(2)(c)];
 - ii) The existence of the trust [§ 813(2)(c)], [§ 105(h)];
 - iii) My trustee's acceptance of the trust [§ 813(2)(b)];
 - iv) My trustee's name, address, and telephone number [§ 813(b)(2)], [§ 105(h)];
 - v) Their right to request portions of the trust provisions of my will that describe or affect the requesting beneficiary's interest [§ 813(2)(c)]; and
 - vi) Their right to request reports as provided in **paragraph 9.15 (Trustee's Duties to Report and to Respond)** of this article [§ 813(2)(c)], [§ 105(h)].
- c) My trustee shall notify the qualified beneficiaries in advance of any change in the method or rate of my trustee's compensation [§ 813(2)(d)].

9.14 ["REPORTS"] TRUSTEE'S DUTIES TO REPORT AND TO RESPOND:

- a) At least annually and at the termination of the trust, my trustee shall send to the distributees or permissive distributees of the trust's income or principal, and to other qualified beneficiaries who request it [§ 813(3)(a)], [§ 105(i)], a report ~~which shall~~ containing:
 - i) A list of the assets comprising the property of the trust, and if feasible, their respective market values [§ 813(3)(a)(I)], [§ 813(3)(a)(II)];
 - ii) The liabilities of the trust, if any [§ 813(3)(a)(I)];
 - iii) The trust's receipts and disbursements during the period covered by the report [§ 813(3)(a)(I)]; and
 - iv) The amount and source of my trustee's compensation [§ 813(3)(a)(I)].
- b) If no cotrustee remains in office upon the occurrence of a vacancy in the trusteeship, my former trustee shall send a report as described in **paragraph 9.15(a)** of this article to the qualified beneficiaries. Should my former trustee be deceased or incapacitated, my former trustee's legal representative may send the report [§ 813(3)(b)].
- c) Upon request of a qualified beneficiary, my trustee shall:
 - i) Respond promptly with information related to the administration of the trust, unless unreasonable under the circumstances [§ 813(1)], [§ 105(i)]; and
 - ii) Furnish promptly a copy of the portions of the trust provisions of my will that describe or affect the requesting beneficiary's interest [§ 813(2)(a)].

9.15 ANCILLARY FIDUCIARY: In the event ancillary administration shall be required or desired and my domiciliary personal representative is unable or unwilling to act as an ancillary fiduciary, my domiciliary personal representative shall have the power to designate, compensate, and remove the ancillary fiduciary. The ancillary fiduciary may either be a natural person or a corporation. My domiciliary personal representative may delegate to such ancillary fiduciary such powers granted to my original personal representative as my personal representative may deem proper, including the right to serve without bond or surety on bond. The net proceeds of