DUTIES AND LIABILITIES
OF THE SUCCESSOR TRUSTEE UPON DEATH OF SETTLOR

1. YOUR TITLE:

Upon your acceptance of nomination of appointment as successor Trustee, your title will be: "_____, as successor Trustee of ______________, dated ____________." This is the name you should use on all documents relating to the Trust.

2. EVIDENCE OF APPOINTMENT:

Financial institutions and parties in custody of trust assets may require a signed copy of an Acceptance of Nomination as Successor Trustee as an indication that the person nominated as successor Trustee has accepted the duties and responsibilities as successor Trustee of the Trust. An attorney can prepare the Acceptance document and record the Acceptance if necessary.

3. YOUR POWERS:

Unless otherwise limited by the trust document, as successor Trustee (hereinafter referred to as "Trustee"), you have control over the trust property just as an individual would have over his or her own property. More specifically, your rights include, but are not limited to the following: the right to retain trust assets, receive trust assets, sell or exchange property, invest and reinvest trust assets, lease, manage, repair improve, subdivide, develop and dedicate real estate for public use, retain attorneys, accountants and other agents, borrow funds with or without security, allocate items of income and expense between the income and principal accounts, satisfy and settle claims, negotiate, prosecute, or defend claims, pay taxes, assessments, and other administration expenses, make distributions to beneficiaries in cash or kind, continue any business or venture, vote stocks and other securities in person or by proxy, insure assets against damage, loss or liability.

The Acceptance of Nomination as Successor Trustee document is proof of your powers.

In exercising your authority, always keep in mind that you are a fiduciary. This is a special relationship under the law. You owe a duty to the beneficiaries of the trust and to creditors and the government to exercise care in what you do. Under the current court rules, if you do anything illegal that threatens the security of the trust assets or the interests of the beneficiaries, your attorney must notify the beneficiaries of your illegal conduct. In addition, if you do not perform your job on a timely basis, your attorney may also have to inform the court.

Set forth below is a list of some of the duties of a Trustee:

<u>First</u>, a Trustee is held to a high standard of care and a Trustee's conduct must be consistent with fiduciary standards and duties owed to the beneficiaries under the trust instrument and the law. A Trustee must exercise the same skill and care as an individual would exercise in dealing with his or her own property.

Second, a Trustee has a duty of absolute loyalty to the trust beneficiaries. The law is clear that the Trustee must act in a manner that benefits the beneficiaries and not the Trustee's own self-interest. This duty also results in a prohibition against self-dealing. For example, a Trustee cannot buy any asset belonging to the trust or sell any of the Trustee's own assets to the trust without obtaining court approval even if the transaction is for fair and adequate consideration.

Third, a Trustee has a duty to personally administer the trust. Under the common law, this principle was adhered to in a strict manner. However, current statutes permit that a Trustee may delegate certain actions to agents and a trust instrument may further address the issue of delegation. Even if a Trustee is permitted to delegate certain duties to agents, a Trustee has the responsibility to ensure that such duties are properly completed. In addition, a Trustee must delegate only with care and diligence. It is important that the Trustee not simply rely upon the advisor's recommendations, but exercise independent consideration and due diligence.

Fourth, a Trustee has a duty to secure and safeguard the trust estate. This duty includes the duty to safeguard and preserve the trust estate and to defend the trust from attack. Depending on the assets in the trust, the implementation of this duty may include many actions, including obtaining insurance on trust assets. A Trustee should not simply rely upon the actions of the predecessor Trustee, but should independently verify that the trust assets are properly secured.

Fifth, a Trustee has a duty to segregate and identify the trust assets. The Trustee must keep the trust assets separate from the Trustee's individual assets and from assets of any other trust that the Trustee might be administering. If a Trustee is administering several different trusts, the Trustee must be careful to keep the assets of each trust separate.

Sixth, a Trustee has a duty to account. One of the primary duties of a Trustee is the duty to keep the beneficiaries of the trust informed and to render clear and accurate accounts with respect to the administration of the trust. It is important to review the trust instrument to determine if the Trustee is directed to account on a particular basis (i.e., monthly or quarterly) and the identity of the parties entitled to receive accounts (i.e., all beneficiaries or only current income beneficiaries). For corporate Trustees, providing regular account statements may be routine. However, accurate and timely accounting is a duty that many individual trustees have found to be very difficult to perform. Most individual trustees are not accustomed to keeping detailed records and preparing and providing regular account statements. Further, most individual trustees are not familiar with the principles of principal and income and have difficulty providing an accounting in a manner that properly distinguishes between principal and income transactions.

Seventh, the Trustee has a duty to invest and make the trust property productive. A Trustee must use reasonable care and skill to provide income from trust assets and to dispose of nonproductive or underproductive trust assets. In exercising this duty, a Trustee should be aware of the "prudent investor rule." As discussed above, it may not be enough for a Trustee to simply hire an investment advisor and to rely upon the investment advisor's recommendations.

Eighth, the Trustee has a duty of impartiality and must deal with all similarly situated beneficiaries fairly. If for example, according to the trust instrument, all beneficiaries are entitled to an equal share of the trust assets, if a distribution is made to one beneficiary, an equal distribution should be made to all similarly-situated beneficiaries.

Ninth, the Trustee has a duty to comply with the terms of the Trust in the manner prescribed by the trust instrument.

Tenth, the Trustee has a duty to defend and enforce claims on behalf of the Trust. It is possible that third parties may bring an action against a Trustee, requiring the Trustee to defend against such claims. Likewise, the Trustee must enforce claims held by the trust.

In the event a Trustee breaches any of the duties and responsibilities, the Trustee may be held personally liable to the trust beneficiaries for the damages suffered (see section on Liabilities below).

Although a Trustee can undertake most actions without prior approval, it is also a good idea to check with the beneficiaries of the trust prior to undertaking any major change in trust assets.

Act prudently. Deal with the assets as most business people would deal with their own: conservatively. If in doubt, check with an attorney.

4. ATTORNEY:

As your attorney, it is our job to handle the legal aspects of the trust administration, while you handle the administrative aspects of the trust administration.

5. ADVISORS:

In your capacity as Trustee, you have the authority to hire advisors to assist you with administering the Trust. You can retain stock brokers, investment counselors, tax preparers, accountants and other advisors, the cost of which is a charge against the Trust's assets.

Advisors should be picked carefully. Be sure they are qualified in their fields, that they work efficiently, that they account to you regularly for their actions, and that they discuss their fees with you in advance. Advisors can be of great help to you in the administration of the Trust; however, be aware that you, as the Trustee, are ultimately responsible if anything goes wrong.

6. COMPENSATION:

As your attorneys, we are entitled to reasonable compensation for services we provide to the trust, which we will bill on an hourly basis, as described in our engagement letter.

Unless otherwise stated in the trust instrument, as Trustee, you are entitled to reasonable compensation for your services to the Trust. The fees are taxable income to you for income tax purposes, and are also subject to the Hawaii general excise tax. You should keep an accurate record of your services to the Trust, including the date the service is performed, the amount of time spent, and a detailed description of the service performed. You may also choose to waive all or part of the fees to which you are entitled as Trustee. Trustee's fees and attorneys' fees in connection with the trust administration will not be subject to Court review, unless an interested person requests such review. In order to avoid possible disputes with interested persons over the fees, it is advisable to secure their consent to the fee arrangements near the beginning of the trust administration.

7. TAXES:

As Trustee, you are responsible for the following tax returns, if necessary:

A. Fiduciary Income Tax Return

B. Estate Tax Return (coordinate with personal representative, if PR has been appointed)

C. Settlor's Final Income Tax Return (coordinate with personal representative, if PR has been appointed).

The filing of the Trust's income tax return will require that a taxpayer identification number for the Trust be obtained.

As Trustee, you are personally liable if any returns are not filed or are incorrect. Because the preparation and filing of the tax returns listed above is not an easy task or one to be taken lightly, the hiring of an accountant or other professional tax preparer is highly recommended.

8. INVENTORY:

One of the first duties you have as a Trustee is to locate, identify, secure and value all of the trust assets. If no personal representative has been appointed, it may also be important to prepare an inventory of all assets owned by the Settlor individually, jointly, in trust and assets subject to a contract. The assets should be valued as of the date of death and the rules for valuing property prescribed by the IRS should be followed

The inventory should identify how title to each asset is held (e.g., in the name of the Trustee, in the Settlor's individual name, as joint tenants, etc.) and, if applicable, any named beneficiaries (e.g., for life insurance, IRAs and retirement plans)

As a Trustee, you are responsible for the assets in the name of the Trust. The personal representative is responsible for the probate assets. If you have any questions about which assets are probate assets and trust assets, please contact us.

9. YOUR LIABILITIES:

Personal liability is a key concern for a Trustee, and it implies that you have to pay out of your own pocket instead of paying from the Trust assets. This will happen if you do something wrong. This will generally only arise if you waste assets or distribute them before all claims against the Trust are satisfied. Therefore, no distribution of assets to the beneficiaries prior to the close of the creditors' claims period should be made without being certain you have enough assets to pay all the claims. You will also be personally liable for filing the Trust's income tax returns and payment of taxes. Furthermore, if you enter into a contract on behalf of the Trust, you may be personally liable to perform the contract unless you identify both the name of the Trust and your capacity as Trustee on the contract. Finally, if you waste or mismanage assets, the beneficiaries could petition the Court to "surcharge" or penalize you. Again, it comes out of your pocket, so get the approval of the beneficiaries for questionable actions.

10. CREDITORS' CLAIMS:

After your acceptance of nomination as successor Trustee, we can arrange for publication in the Honolulu Advertiser or Honolulu Star-Bulletin of a notice to creditors and other persons with an interest in the Trust assets. Creditors will have 4 months from the date the notice first appears in the newspaper to present you with their claims. If you choose not to publish a notice to creditors, they may present their claims anytime within 18 months of the decedent's death.

You must give written notice to each known creditor, notifying such creditor that it must present its claim within 4 months from the date of the first publication of the published notice or within 60 days after the mailing or other delivery of the notice, whichever period expires later, or its claim will be barred.

During the "creditors' claims period," you should review all claims received, determine if they are legitimate, and decide if you will pay them. Under the current law, if you do not disallow a claim within 60 days after the claim is made, you are deemed to have allowed the claim by your inaction. If you question a claim, check with us, because you must follow special procedures if you are going to reject it.

Once the creditors' claims period expires, any claims which arose prior to the decedent's death and that were not presented during this period are barred and need not be paid. If you feel that a claim should be paid, even though a creditor's claim is not submitted or is submitted late, consult with us and the beneficiaries to get approval of payment. If a secured interest claim is filed during the creditors' claims period, you may be liable if you do not take every action possible to safeguard the secured property and make sure payments are made on time.

11. BANK ACCOUNTS:

You should open bank accounts in the name of the Trust; specifically, a checking account, so you can pay Trust expenses, and a savings account, if you feel that there will be more cash available than needed for the payment of expenses. The financial institutions will need the Trust's Taxpayer I.D. number to report interest. If you do not have the Trust's Taxpayer I.D. number, let the financial institution know that you have applied for one, and that you will provide the number as soon as it is available.

Deposit all money received on behalf of the Trust into the checking account, and write all checks to pay the Trust's expenses from the account. The savings account should receive money only from the checking account, and money from the savings account should be transferred only to the checking account. This procedure will ease accounting later on, since all transactions will be reflected in the check register and bank statements.

## 12. ACCOUNTING:

Another one of your most important and time-consuming duties is to account for every transaction you make for the Trust, without exception, even if you do not plan on seeking Court approval. The benefit of seeking Court approval is an earlier termination of your continuing personal liability. When you are ready to close the Trust, you will have to list all of these transactions chronologically and present them to the beneficiaries for approval.

To simplify the accounting process, transact all financial business of the Trust through the checking account, as described above. This will create a centralized bookkeeping source. Obtain receipts for all payments made and keep copies of all claims paid. Place receipts and claims in a file in order of payment. If you cannot get a receipt, be sure you have the claim and the cancelled check. And, of course, keep all your bank statements.

Just prior to closing the Trust, you or your accountant will need to compile and send to us a list of all Trust income received and expenses paid up to that time, and an inventory of all assets still remaining under your control as Trustee (collectively referred to as the "Final Accounts"). We will prepare a distribution schedule and written approval forms for signature by the residuary beneficiaries, and ask you to obtain their signatures. If all of the beneficiaries approve of the Final Accounts and fees, the Trust can be closed without involvement of the court, saving time and cost to the Trust. After the Final Accounts are approved by the beneficiaries, you must pay all remaining claims and partially distribute the remainder of the Trust property to the beneficiaries entitled thereto, leaving a reserve to pay for Trust administration expenses. Then a "Supplemental Final Account" must be prepared and sent to the beneficiaries, which will begin with the ending balance of the Final Account, show all subsequent receipts and disbursements, and end with a "zero" balance, indicating that no property is remaining in the Trust.

## 13. DISTRIBUTIONS:

Besides paying claims, there are distributions to be made to beneficiaries. The beneficiaries of the Trust are those persons named in the Trust instrument.

If the Trust contains specific bequests (provisions giving specific gifts to specific persons), those bequests can be distributed anytime after the creditors' claims period expires (assuming that you have enough in the estate to pay all claims) and should be distributed as soon as possible. However, with respect to real property, check with us before making any distributions because a Court order may be required. Also ask us to prepare appropriate receipt forms before you distribute the specific bequests. Each beneficiary should sign a formal receipt.

The people entitled to take the remainder of the Trust assets after all else is done (called "residuary beneficiaries") will generally not get all to which they are entitled until after the Final Accounts are approved by the beneficiaries. That can be quite a long time after the death of the Settlor, so you may want to make partial distributions to the residuary beneficiaries when you know you have enough to meet all needs. Before making any partial distributions, the following things should be done: 1) check with us as there may be other restrictions affecting the planned distribution; 2) distribute to all residuary beneficiaries pro rata (do not favor one beneficiary); and 3) have us prepare formal receipts for signature by each beneficiary.

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You should direct any questions you have regarding the administration of the trust to us or your appropriate advisor.

**CHECKLIST FOR TRUST ADMINISTRATION**
**(TERMINATING TRUST)**

## GENERAL INFORMATION

**Name of Trust**: ___________________________
**Date of Trust**: ____________________________

**Beneficiaries**:

Name: ________________________________________

Address: ______________________________________

Phone No.: ____________________________________

Birthdate: _____________________________________

Name: ________________________________________

Address: ______________________________________

Phone No.: ____________________________________

Birthdate: _____________________________________

Name: ________________________________________

Address: ______________________________________

Phone No.: ____________________________________

Birthdate: _____________________________________

**Probate: Yes ____ No ____**

## GATHER IMPORTANT DOCUMENTS

Trust document and all amendments ____

Will ____

Deeds ____

Leases ____

Insurance policies ____

Contracts ____

Financial institution account statements ____

Death certificate ____

Pension, profit sharing, IRA plan documents ____

Income & gift tax return ____

**TRUST ADMINISTRATION PLAN**

Review trust documents ____

Retain attorney ____

Obtain Acceptance of Nomination as Successor Trustee ____

Retain accountant (application for EIN, filing of returns) ____

Obtain Employer Identification Number ____

Retain other advisors as needed:

- ¤ Investment advisor ____
- ¤ Realtor ____
- ¤ Other ____

Assign duties and responsibilities ____
(**between the personal representative, attorney and trustee*)

Outline key due dates ____
(**expiration of notice to creditors, estate tax return filing deadline is 9 months after DOD, and fiduciary income tax return filing deadline is 3 ½ months after end of selected tax year)*

Meet with trust beneficiaries ____
(**review trust, functions of attorneys, steps to close the trust, outline timetable for administration, notify beneficiaries regarding provisions in trust that relate to inheritance*)

Assemble trust assets ____
(**review the decedent's tax returns, checkbook, safe deposit box, mail, etc.)*

Protect trust assets ____
(*change the locks, change mailing address, collect valuables, etc.*)

Prepare Inventory of Trust Assets and Include Appraisals ____
(*list all assets, their value, and whether owned individually, jointly, or by the trust*)

Prepare listing of debts and encumbrances ____
(*debts incurred prior to death, administration expenses, taxes, etc*.)

Secure possession/control of trust assets:

Reregister bank accounts in name of trustee (need EIN) ____

Deposit all money into this new checking account ____

Collect life insurance proceeds ____

¤ Collect employee benefits payable to trust ____

¤ Notify payors to mail future payments to successor trustee ____

Manage Assets:

Invest all cash receipts in interest-bearing accounts, ____

If specific bequest is income-producing property, separate into segregated account ____

Sell only assets needed to raise cash ____

Hire a professional investment/real estate manager if necessary ____

Determine how much cash will be needed to cover trust expenses ____
(*funeral, family allowance, creditors claims, mortgages, liens, court costs, publication fees, appraisal fees, administration costs, shipping costs, cash bequests, income taxes, reserve for contingencies*)

Publish Notice to Creditors or Calendar 18 Months ____
(*in a newspaper of general circulation once a week for three weeks, and creditors must bring claim within 4 months – if choose not to publish, then unknown creditors have 18 months to bring a claim*)

Pay Creditors or Disallow and Calendar Deadline for Creditors to File ____
(*Pay claims made by the known creditors and unknown creditors which are brought within the specified time period. If you reject a claim, you must do so within 60 days or risk allowing the claim. You should notify claimant in writing and notify them of the 60 day time period within which to bring a lawsuit*)

Pay All Taxes ____
(**Consult with your Accountant*)

Prepare and Distribute a Final Accounting ____
(**see sample accountings attached*)

Prepare and Distribute a Distribution Schedule ____

Make Distributions:

Issue a receipt and release from liability with distribution ____

Obtain approval of the Final Accounts from the beneficiaries ____

Make a partial distribution ____
(**A partial/final distribution of assets should only be made after all expenses and debts have been paid. Keep a reserve in the trust account to pay trust administration expenses*)

Prepare and Distribute a Supplemental Final Account ____
(**supplemental final account should reflect a "zero" balance*)

Make a final distribution ____

Closing the Trust:

Have the debts, administration expenses and taxes been paid? ____

Have all tax returns been filed? ____

Has the early determination of the federal estate tax been received or the nine-month period for an IRS response elapsed? ____

Has the final accounting been prepared and distributed? ____

Have the assets been distributed and receipts and releases obtained from all beneficiaries? ____

Have the supplemental final accounting from the end date of the last accounting through and including the final distribution been prepared and distributed? ____

Have the final distributions been made? ____