

**MODIFICATION  
OF THE  
\_\_\_\_\_ TRUST BY CONSENT  
Under Minn. Stat. 501C.0411(a)**

This Agreement to terminate/modify the \_\_\_\_\_ Trust by consent (the “Agreement”) is entered into on Month1 A1, 2016 by and between Xx, Settlor and Aa, Bb and Cc, as Beneficiaries of the trust.

**RECITALS**

1. The Trust instrument consists of an agreement by and between \_\_\_\_\_, as Settlor, and \_\_\_\_\_, as Trustee dated \_\_\_\_\_ (the Trust”).
  2. Zz is the Trustee of the Trust. The Trustee’s appointment resulted from being named as Trustee in the agreement by and between the Settlor(s), and Zz, as Trustee [OR being named successor trustee by the \_\_\_\_\_].
  3. The Trustee’s appointment as Trustee has not been confirmed by a Court having jurisdiction over the Trust in the State of Minnesota and the Trust is not being supervised by any Court.
  4. The Current Beneficiary(ies) of the Trust is/are Aa, Bb, etc. The contingent/remainder beneficiaries are: \_\_\_\_\_. All named persons are jointly referred to as the “Beneficiaries.”
  5. The Trust was initially funded with \$ \_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_. Thereafter the Trust was administered by the Trustee. [Optional Addition: Copies of the Trust accountings that have not previously been provided to the Qualified Beneficiaries are included with this Agreement.]
- [Optional Addition 6. The Qualified Beneficiaries believe the value of the trust property is insufficient to justify the cost of administration. The Qualified Beneficiaries would like the trust to be terminated and the trust assets distributed to the Current Beneficiary.]
7. This Agreement is being entered into pursuant to Minnesota Statutes Section 501C.0411(a) which allows the modification or termination of a non-charitable irrevocable trust by consent of the settlor and beneficiaries, to wit:

A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

8. The Settlor is not under a conservatorship. [ALT: The Settlor is under a conservatorship with

\_\_\_\_\_ as the Court appointed Conservator][ALT: The Settlor is being represented by his/her agent under the Settlor's power of attorney which expressly authorizes the agent to consent to the termination of the Trust or is authorized under the terms of the Trust allowing the Settlor's agent under the Settlor's power of attorney to consent to the termination of the Trust.]

9. All beneficiaries are adults [Optional: except for \_\_\_\_\_, who is a minor, who is represented by his/her parent as authorized under Minnesota Statutes Section 501C.0303(a)(5). No conservator has been appointed for \_\_\_\_\_. [Alternative: \_\_\_\_\_ is represented by a court appointed conservator]. There are no conflicts of interest between \_\_\_\_\_ and his/her parent with respect to this nonjudicial settlement agreement].

[ALTERNATIVE 1: All beneficiaries are adults except for \_\_\_\_\_, who is incapacitated and is represented by his/her parent as authorized under Minnesota Statutes Section 501C.0303(a)(5) [Alternative: is represented by a court appointed conservator]. No conservator has been appointed for \_\_\_\_\_, and there is no conflict of interest between the incapacitated beneficiary and his/her parent regarding this nonjudicial settlement agreement of the Trust.

All unborn children are represented by his/her/their parent.

10. The Trustee has submitted an annual account for the Trust for the period \_\_\_\_ to \_\_\_\_ to the Beneficiaries. [ALT: No annual account has been submitted to the Beneficiaries].

11. The Trustee is willing to administer the Trust based on the Beneficiary(ies) requested modification of the Trust.

12. The Settlor and all the Beneficiaries desire to modify the Trust as follows:

[OPTIONAL: The modification of the Trust is for the following reasons: \_\_\_\_\_.

[NOTE: no reason need be given]

[Optional Addition 1: The modification of the Trust does prevent any material purpose of the Trust from being achieved.

[Option Addition 2: The modification of the Trust does not violate a material purpose of the Trust.]

13. Attorney \_\_\_\_\_ is representing the [Beneficiaries] [Settlor] in the preparation of this Agreement. Attorney \_\_\_\_\_ represents the Trustee.

**NOW, THEREFORE**, in consideration of the Recitals and the willingness of the Current Trustee to modify the Trust, the Settlor and the Beneficiary(ies) agree as follows.

1. Modification of the Trust. The terms of the Trust shall be modified as follows: \_\_\_\_\_.]

2. Administration of the Modified Trust. The Trustee shall administer and distribute the Trust assets as modified as set forth in paragraph 1, above.]

3. Consent of Settlor(s). The Settlor(s) consent to the modification of the Trust as set forth above].
4. Counterparts. This Agreement may be executed in counterparts, and each such counterpart will be deemed to be an original instrument, but all such counterparts together will constitute but one agreement.
5. Cooperation. The interested parties agree to execute any documents and take such further action necessary to carry out the terms of this Agreement and cause it to be fully effective.
6. Severability. If any one or more of the provisions of this Agreement is held to be invalid or unenforceable, the validity and enforceability of all other provisions of this Agreement will not be affected.
7. Authority to Execute. The interested parties represent and warrant that they have authority to enter into this Agreement.
8. Representation by Counsel. The Settlor and the Beneficiaries represent that they are fully aware of the terms of this Agreement, and that they have had the opportunity and ability to have this Agreement reviewed by independent legal and tax counsel and have done so to the extent they deemed such advice warranted.
9. Voluntary Nature. This Agreement has been entered into voluntarily by each of the interested parties, free of any duress or coercion.
10. Governing Law. The laws of the state of Minnesota govern the interpretation of this Agreement, without regard to any conflict of law principles.
11. Venue. The interested parties agree that all actions or proceedings arising out of or from or related to this Agreement shall be litigated only in \_\_\_\_ County, Minnesota. Each interested party consents and submits to the jurisdiction of any local, state, or federal court located within \_\_\_\_\_ County, Minnesota and waives any rights it may have to transfer or change the venue of any such action or proceeding.

ALTERNATIVE: Dispute Resolution. In the event that a dispute shall ever arise between the parties, the parties agree to act in good faith to attempt to resolve such dispute. Any controversy or dispute between the parties to this Agreement which can not be resolved, whether between the beneficiaries or between the beneficiaries and the trustee involving (i) the interpretation of words or provisions under this Agreement or (ii) the existence of a breach or default under the Agreement shall be settled by alternative dispute resolution (ADR), including, but not limited to, arbitration, mediation (binding or non-binding), mini-trial, and so forth prior to filing an action with the court. The method of ADR shall be agreed to by the parties, or if the parties can not agree, each party shall choose a qualified neutral and the qualified neutrals shall select the ADR method to be used and the qualified neutral, arbitrator, judge, or other appropriate party to conduct the ADR. All alternative dispute resolution proceedings shall be conducted in \_\_\_\_\_ County, Minnesota.

12. Binding Effect. All the terms of this Agreement shall be binding upon and shall inure to the benefit of and shall be enforceable by the interested parties and the respective estates, heirs, beneficiaries, legatees, distributees, transferees, successors, assigns, and legal representatives of the interested parties, and for all persons claiming by, through, or under any or all of them.

The Parties have signed their names as of the date indicated by their signature.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Xx, Settlor

Dated: \_\_\_\_\_

\_\_\_\_\_  
Aa, Beneficiary

Dated: \_\_\_\_\_

\_\_\_\_\_  
Bb, Beneficiary

Dated: \_\_\_\_\_

\_\_\_\_\_  
Cc, Beneficiary

The trustees agree to administrate the Trust as modified by this Agreement.

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Trustee

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, Trustee

**DIRECTIONS:** If a beneficiary is being represented by a parent, or a settlor by an attorney in fact or conservator, so indicate in the signature block.

**NOTE:** If terminating under Minn. Stat. 501C.411(b) use form T-407.