NOTATIONS FOR FORM 403

This form is based upon the sample charitable remainder unitrust trust form issued by the Internal Revenue Service. For more alternate provisions, annotations and additional forms, see:

Rev. Proc. 2005-56 (testamentary CRUT providing for unitrust payments for one measuring life)

Rev. Proc. 2005-57 (testamentary CRUT providing for unitrust payments for a term of years)

Rev. Proc. 2005-58 (testamentary CRUT providing for unitrust payments payable consecutively for two measuring lives)

Rev. Proc. 2005-59 (testamentary CRUT providing for unitrust payments payable concurrently and consecutively for two measuring lives)
If the settlor or testator desires to create a charitable remainder unitrust as of his or her death, use the following form in conjunction with one of the REVOCABLE TRUST AGREEMENT or WILL forms. However, in the ADMINISTRATIVE PROVISIONS article, (i) insert “or [a] unitrust amount” after “income” in the first and second lines of the FACILITY OF PAYMENT section, (ii) add the introductory phrase “Except as otherwise provided with respect to the charitable remainder trust,” to the PRINCIPAL AND INCOME section, the TRUSTEE POWERS article, the GOVERNING LAW article and any investment restriction provision, (iii) delete any NO CONTEST section, and (iv) insert “(other than any charitable remainder trust)” after “any trust hereunder” in the SMALL TRUST TERMINATION AND PERPETUITIES SAVINGS section.

ARTICLE _______: I give, devise, and bequeath _______ [describe the property bequeathed] to my Trustee in trust to be administered under this provision. I intend this bequest to establish a charitable remainder unitrust, within the meaning of Rev. Proc. 2005-56 and section 664(d)(2) of the Internal Revenue Code (hereinafter “the Code”). The trust shall be known as the ___________ Charitable Remainder Unitrust and I hereby designate NORTHERN TRUST [insert full legal name of applicable NORTHERN TRUST bank throughout the instrument], of __________, __________, as the initial trustee (hereinafter “the Trustee”).

SECTION 1: In each taxable year of the trust during the unitrust period, the Trustee shall pay to my sister, S, (hereinafter “the Recipient”) a unitrust amount equal to ________ [a number no less than 5 and no more than 50] percent of the net fair market value of the assets of the trust valued as of the first business day of each taxable year of the trust (hereinafter “the valuation date”). The first day of the unitrust period shall be the date of my death and the last day of the unitrust period shall be the date of the Recipient’s death. The unitrust amount shall be paid in equal quarterly installments at the end of each calendar quarter from income and, to the extent income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the unitrust amount shall be added to principal. If, for any year, the net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the correct value is finally determined, the Trustee shall pay to the Recipient (in the case of an undervaluation) or receive from the Recipient (in the case of an overvaluation) an amount equal to the difference between the unitrust amount(s) properly payable and the unitrust amount(s) actually paid.
SECTION 2: The obligation to pay the unitrust amount shall commence with the date of my death, but payment of the unitrust amount may be deferred from this date until the end of the taxable year in which the trust is completely funded. Within a reasonable time after the end of the taxable year in which the trust is completely funded, the Trustee must pay to the Recipient (in the case of an underpayment) or receive from the Recipient (in the case of an overpayment) the difference between any unitrust amounts actually paid, plus interest, and the unitrust amounts payable, plus interest. The interest shall be computed for any period at the rate of interest, compounded annually, that the federal income tax regulations under section 664 of the Code prescribe for this computation.

SECTION 3: For a short taxable year, the Trustee shall prorate on a daily basis the unitrust amount described in Section 1. In the taxable year of the trust during which the unitrust period ends, however, the obligation of the Trustee to pay the unitrust amount shall terminate with the last regular quarterly installment preceding the death of the Recipient.

SECTION 4: At the termination of the unitrust period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due the Recipient under the terms of this trust) to H COLLEGE (hereinafter “the Charitable Organization”). If the Charitable Organization is not an organization described in sections 170(c) and 2055(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in sections 170(c) and 2055(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion.

SECTION 5: No additional contributions shall be made to the trust after the initial contribution. The initial contribution, however, shall be deemed to consist of all property passing to the trust by reason of my death.

SECTION 6: Whenever the value of a trust asset must be determined, the Trustee shall determine the value of any assets that are not cash, cash equivalents, or other assets that can be readily sold or exchanged for cash or cash equivalents (hereinafter “unmarketable assets”), by either (a) obtaining a current “qualified appraisal” from a “qualified appraiser,” as defined in section 1.170A-13(c)(3) and section 1.170A-13(c)(5) of the Income Tax Regulations, respectively, or (b) ensuring the valuation of these unmarketable assets is performed exclusively by an “independent trustee,” within the meaning of section 1.664-1(a)(7)(iii) of the Income Tax Regulations.

SECTION 7: The Trustee shall not engage in any act of self-dealing within the meaning of section 4941(d) of the Code, as modified by section 4947(a)(2)(A) of the Code, and shall not make any taxable expenditures within the meaning of section 4945(d) of the Code, as modified by section 4947(a)(2)(A) of the Code.
SECTION 8: The taxable year of the trust shall be the calendar year.

SECTION 9: The operation of the trust shall be governed by the laws of the State of ________________. However, the Trustee is prohibited from exercising any power or discretion granted under said laws that would be inconsistent with the qualification of the trust as a charitable remainder unitrust under section 664(d)(2) of the Code and the corresponding regulations.

SECTION 10: This trust is irrevocable. However, the Trustee shall have the power, acting alone, to amend the trust from time to time in any manner required for the sole purpose of ensuring that the trust qualifies and continues to qualify as a charitable remainder unitrust within the meaning of section 664(d)(2) of the Code.

SECTION 11: Nothing in this trust instrument shall be construed to restrict the Trustee from investing the trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

SECTION 12: References to the Recipient in this trust instrument shall be deemed to include the estate of the Recipient with regard to all provisions in this trust instrument that describe amounts payable to and/or due from the Recipient. The prior sentence shall not apply to the determination of the last day of the unitrust period.

SECTION 13: If the contribution of property to the trust would, but for the operation of this section, fail to qualify for the estate tax charitable deduction because the value of the remainder interest in such property does not satisfy the requirements of section 664(d)(2)(D) of the Code, such property shall be held in a separate trust. The terms of such separate trust shall be identical to those hereunder, with any modification necessary made by the Trustee, in the Trustee’s sole discretion, to qualify such separate trust under section 664(d)(2) of the Code and the corresponding regulations, including (but not limited to) reduction of the unitrust percentage and, if necessary, reduction of the term of the unitrust interest.

SECTION 14: The provisions specifically applicable to this charitable remainder unitrust shall prevail over any other provision in this trust instrument inconsistent herewith.