Trust Definitions and Questions:

Page 1:
The first paragraph seems to indicate that Joan and I fill all three trust roles (Donor, Trustee, Beneficiary), and that although other Trustees and Beneficiaries may be appointed/added, Joan and I are the only Donors. Is this a correct/safe assumption?

Yes, that's correct. The Donor(s) can and often do wear all three hats. The key here is that there is at least one future beneficiary who is not a Donor. That is what makes it a valid trust. Otherwise the legal title (trustee) and equitable or beneficial title (beneficiary) would merge. That is, a characteristic of trusts is bifurcation of title. Because there is at least one future beneficiary other than you and Joan, you have a true trust.

It seems that the role of "Trustee" is dominant, hence most of what follows is in the name of the Trustee (which I understand refers to all of the Trustees at any one time).

That's correct also. Unless otherwise specified, the word "Trustee" applies to all Trustees, present and future, but more specifically, whomever happens to be serving as Trustee at the applicable time.

Page 2:
It is interesting that at the end of the first paragraph the phrase "in the interest of the Trust and the Beneficiaries" seems to imply that the "Trust" is a separate entity from the Trustees, but in legal terms is considered as the same as the Trustees.

That's right. In practice, you may see checks written as payable to the xyz trust or to Jane Doe, Trustee of the xyz trust, so in that sense they are one in the same. For tax purposes, the Trustee is a separate entity from the trust. An easy example is that income earned by the trust is payable by the trust, not the Trustee personally, even though the Trustee would be the one filing the return and writing a check drawn on an account in the name of the trust in order to pay the government.

Under item 3, the term "grantor trust" is introduced as a definition of the IRS status of the Trust. I assume that Joan and I are the "Grantors" meaning that for tax purposes the Trust is taxable as part of our (joint) tax filings while we are alive. That raises the question of what happens to the tax status of the Trust when we die? Does the Trust have (or will it have) a separate TID? That would seem to allow it to persist as a taxable entity after our Deaths.

100% correct. Any trust income (large enough to report) goes on your personal joint 1040 as your income. Upon your deaths is when a tax ID# would have to be obtained for the trust as its own entity, if at all. By "if at all" I mean this:

1) scenario #1 - You are both dead, and for some reason there was no checking account already established in the trust's name. A checking account would be opened by the successor trustee using a newly obtained tax ID#. It is from this account that all beneficiary distributions would be made.
2) scenario #2: - You are both dead but already had at least one checking account in the trust's name, with your social security numbers. If the trust is not kept open for creditor protection purposes for the beneficiaries, but rather it is administered quickly, there would be no taxable income to report, no tax return to file, and no reason to obtain a tax ID# for the trust.

Item 4 was a bit confusing in that it seems to indicate that the Donors can only amend/revoke the Trust (all or in part) only as long as the responsibilities of the Trustee are unchanged, or the Trustee agrees. There seem to be three cases:

1) Both Donors alive and competent (no issue since they are the Trustee)
2) One Donor is dead or declared incompetent (still no issue since the other Donor is the Trustee)
3) Both Donors cannot serve (dead or incompetent)

In case 3), there are no Donors, so how can the Trust be amended or revoked?

It can't. It can be amended only by the Donors, so once both Donors are either dead or incompetent, no one has the power to amend.

So what that language means is that if you and/or Joan do amend the trust, and said amendment "substantially" changes the responsibilities of the successor trust to something well outside the ordinary scope of what trustees do, you would have to let that trustee know so they know what they would be getting into.

Page 3:

After I looked up the definition of "per stirpes", it was clear in item 6 how the Trust was to be divided, and the Beneficiary list is correct.

I am a bit confused by the first paragraph where it refers to "said beneficiary's share". To what does "said beneficiary" refer? Does it need to say something like "Shares are to be distributed to all beneficiaries (according to per stirpes). But if in the opinion of the Trustee any beneficiary falls under the Spendthrift Provision (which is article 11, not 12), then said beneficiary's share ..."

"said bebeficiary" means any beneficiary to whom the spendthrift provision may apply.

Page 4:

Item 7. Who are the "descendants of the Donor living at the creation of the Trust?" Does that include Lilianna, or just Crystal and Robin?

In either case, how do we make sure that there is a Trustee at the end of the period? I guess I am asking about the succession of Trustees - should that end up with a law firm or bank as the last on the list?

Don't worry one bit about this one. It is called a saving clause. It refers to the Rule Against Perpetuities which states, "an interest must vest or fail within 21 years after the end of some life in being at the time of the creation of the trust." This rule is so difficult to understand and even more difficult to apply that they stopped testing for it on the bar exam many many years ago, and that in many states it is not even considered malpractice to violate the rule. Lawyers, judges, law students and professors alike had struggled with the concept for years, so in 1990 the Mass. legislature essentially abolished it by going to a flat rate 70 year vesting statute, which no one can really explain either except to say that no Massachusetts trust is in danger of violating the rule against perpetuities. Out of superstition, I along with every other lawyer still includes a saving clause in there, and even changes it from 21 to a more conservative 20 years. How's that for a legal explanation?

Page 5:

Item .02: If the situs changes to South Carolina (likely) will this cause problems? What if it changed to France (unlikely)?

It wouldn't cause a problem for several reasons:

1) as long as it was valid in Mass. it will be valid in other states due to the full faith and credit clause of the US Constitution. By counterexample, one of the very rare instances where states would not recognize something from another state is when a court in a red state refuses to grant a divorce to a same sex couple who was originally married in a blue state.
2) it is extremely likely that this trust would continue to exist as long as provided for by the Rule Against Perpetuities
3) a move by the Donors of a trust is not tantamount to changing the situs of the trust. You would essentially have to see a South Carolina lawyer to amend the trust, indicating that from that day forth it is to be interpreted under the laws of South Carolina. Otherwise, it will continue to be viewed through the lens of Mass. law. See Article 10.01 on page 6.

Page 6:

Section 10.04: This section seems to cover "any person...", but then mentions only a "Donor". Is this intended?

Yes. It applies to any beneficiary but also specifically includes the Donor (which may be interpreted as singular or plural as the context dictates - see 10.02). The only time this would come into play is if one or more of the Donors are incompetent. In that case, the successor Trustee would be the acting Trustee, but the Donor would still be a beneficiary as long as he/she is alive. And if incompetent, it is possible they may have a legal guardian appointed. It would make more sense for a Trustee to distribute money to a guardian rather then a legally incompetent person if that option were available. Also see Article 9.01 on page 5-6 which covers beneficiaries in general.

Page 7:

Section 10.07: I assume the "Donor" is Joan or me. Since it is highly unlikely that we will have any more children, I am wondering if this is just "extra baggage", or whether it might refer to a case where one of us (likely me) would have a child after a divorce or death of Joan. Please clarify.

It is there for the unlikely event that you and/or Joan have more children. This could be via surrogate, adoption, etc. There have even been cases where people adopt adults for legal or financial purposes. In a practical sense though, it would most likely end up being extra baggage.

Page 8:

The first line mentions Article 15.02, but it seems to refer to Article 14.02.

You are right. Good catch. I just corrected it to 14.02. The reason for that was that I removed an earlier article that I usually include in a trust, and it changed the subsequent numbering.

What I removed had to do with a scenario in which all your descendants have predeceased you. But because you listed charities to receive trust assets there was no need for it. That is because charities don't die. Even if they are out of business, there is always another charity that performs a similar function.

Page 10:

Section .02: Should Robin be mentioned in the line of trustee succession, or is that "understood"?

It is generally understood because Robin would likely be the successor trustee anyway. It is optional to list a second successor trustee. I have just added Robin as second successor just to eliminate any future confusion on that point.

Page 12:

Section .08(a): Is "a" bankrupt, or "as" bankrupt?

Correct as is. Bankrupt is also a noun:

noun: bankrupt; plural noun: bankrupts

1. a person judged by a court to be insolvent, whose property is taken and disposed of for the benefit of creditors

Pages 13-23: Seem to be clear.