# DECLARATION OF TRUST
# STATE OF MONTANA PUBLIC EMPLOYEES POOLED TRUST

**Effective:** Jan 1, 2010

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# DECLARATION OF TRUST
# STATE OF MONTANA PUBLIC EMPLOYEES POOLED TRUST

## PREAMBLE

**WHEREAS**, the State of Montana Public Employees' Retirement Board, an independent board appointed by the Governor of the State of Montana having its principal place of business at 100 North Park Avenue, Suite 200, Helena, Montana 59620 (the "Board" or "Trustee") serves as administrator, and the Board members serve as trustees, of the State of Montana Public Employee Defined Contribution Plan, a qualified governmental pension plan, and the State of Montana Public Employee Deferred Compensation Plan, an eligible governmental 457(b) plan (the "Plans");

**WHEREAS**, the Board has determined that, with respect to certain types and classes of investments, the assets of the Plans allocated to the stable value fund options would be more efficiently managed if such assets are pooled and commingled in a group trust for investment purposes only;

**WHEREAS**, the Board has approved the establishment of a group trust for the common investment of the assets of the Plans allocated to the stable value fund options;

**WHEREAS**, the Board is willing to serve as Trustee of said group trust;

**WHEREAS**, the Pooled Trust is intended to qualify as a group trust under Sections 401(a) (including Section 401(a)(24)) and 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and all provisions of this Declaration of Trust must be so construed; and

**WHEREAS**, the Pooled Trust is a governmental entity or instrumentality and therefore will assert that it is not subject to federal taxes, the Employee Retirement Income Security Act of 1974, as amended, or the Investment Company Act of 1940, as amended.

**NOW, THEREFORE**, the Trustee declares that it will hold and administer in trust all money and property acceptable to it and received or purchased by it as Trustee under this Declaration of Trust, together with the income and proceeds thereof, upon the following terms, conditions and trusts:

## ARTICLE I.
## DEFINITIONS

Wherever used in this Declaration of Trust, unless the context clearly indicates otherwise, the following words have the following meanings:

**Section 1.1.** ***"Board"*** means the State of Montana Public Employees' Retirement Board acting as the trustee and administrator of each of the Plans.

**Section 1.2.** ***"Code"*** means the Internal Revenue Code of 1986, as amended.

**Section 1.3.** ***"Custodian"*** means the State Street Bank and Trust Company or any other entity with which the State of Montana Public Employees' Retirement Board may contract to provide such services for the Pooled Trust. The duties and obligations of the Custodian will be set forth in a separate contract between the Custodian and the Trustee.

**Section 1.4.** ***"Interested Person(s)"*** means the Board, the employers participating in the Participating Trusts and any other person entitled to receive a regular periodic accounting of, or inspect the records of, a Participating Trust under federal, state or local law.

**Section 1.5.** ***"Investment Manager"*** means any person or entity appointed by the Board to manage the Pooled Trust Fund. The duties and obligations of the Investment Manager, to the extent not addressed herein, will be set forth in a separate contract between the Investment Manager and the Trustee.

**Section 1.6.** ***"Investment Policy"*** means any investment policy adopted by the Board, provided the Investment Manager is required to comply with the policy pursuant to any agreement between the Board and the Investment Manager.

**Section 1.7.** ***"Participating Trust"*** means each of the trust for the State of Montana Public Employee Defined Contribution Plan and the trust for the State of Montana Public Employee Deferred Compensation Plan.

**Section 1.8.** ***"Pooled Trust"*** means the State of Montana Public Employees Pooled Trust established by this Declaration of Trust.

**Section 1.9.** ***"Pooled Trust Fund"*** means all property received by the Trustee hereunder and any property into which the same may be converted, together with the income thereon, excluding amounts properly disbursed by the Trustee under the terms hereof. The Participating Trusts shall transfer to the Trustee only the assets of the Participating Trusts allocated to the stable value fund options.

**Section 1.10.** ***"Qualified Trust"*** means a qualified governmental pension plan trust under Code Sections 401(a) and 414(d), the assets of which may be invested in a group trust as provided in Code Section 401(a)(24), or an individual retirement account under Code Section 408(q), the assets of which may be invested in a group trust as provided in Revenue Ruling 81-100 (as revised by Revenue Ruling 2004-67), or an eligible governmental plan trust or custodial account under Code Section 457(b) that is exempt under Code Section 457(g), the assets of which may be invested in a group trust as provided in Revenue Ruling 81-100 (as revised by Revenue Ruling 2004-67), or any other trust permitted by the Internal Revenue Service to participate in a group trust.

**Section 1.11.** ***"Trust Expenses"*** means amounts paid by the Pooled Trust for administration of the Pooled Trust, including, but not limited to, investment management, accounting, custodian, legal counsel and litigation expenses.

**Section 1.12.** ***"Trust Income"*** means, as of each Valuation Date, all amounts received from dividends, interest, rents, royalties, net income or losses realized on the sale of Pooled Trust assets, and any other form of income that the Trustee determines should properly be included.

**Section 1.13.** "***Trustee***" means the State of Montana Public Employees' Retirement Board when it is acting, or is to act, as Trustee under this Declaration of Trust.

**Section 1.14.** "***Valuation Date***" means each date established by the Trustee under Section 4.2.

## ARTICLE II.
## ESTABLISHMENT OF THE GROUP TRUST

**Section 2.1.** **Creation of the Pooled Trust.**

a. The Board has established the Pooled Trust consisting of contributions made from time to time by the Participating Trusts and all earnings on investments of those contributions, in trust.

b. The Board has prepared this Declaration of Trust to govern the operation of the Pooled Trust.

c. The Board agrees to serve as trustee of the Pooled Trust on the terms and conditions set forth in this Declaration of Trust.

d. The Pooled Trust is named the State of Montana Public Employees Pooled Trust. The principal business address of the Pooled Trust is 100 North Park Avenue, Suite 200, Helena, Montana 59620.

e. The Pooled Trust is intended to be a valid trust under Montana law.

**Section 2.2.** **Purpose of the Pooled Trust.** The purpose of the Pooled Trust is to hold and jointly invest the assets of the Participating Trusts allocated to the stable value fund options, and make appropriate payments pursuant to directions from the Participating Trusts.

**Section 2.3.** **Tax Status.** The Pooled Trust is intended to qualify as a group trust under Code Sections 401(a) and 501(a), Revenue Ruling 81-100 and Revenue Ruling 2004-67, and all provisions of this Declaration of Trust must be so construed.

**Section 2.4.** **Exclusive Benefit.** Notwithstanding anything to the contrary contained in this Declaration of Trust, or in any amendment hereto, no part of the Pooled Trust that equitably belongs to a Participating Trust, other than that portion required for reasonable fees, taxes (if applicable) and Trust Expenses (as determined pursuant to Section 7.2 herein) applicable to the Participating Trust, may be used or diverted for any purpose other than the exclusive benefit of the Participating Trust's participants or their beneficiaries who are entitled to benefits under the Participating Trust.

## ARTICLE III.
## ADMINISTRATION

**Section 3.1.** **Responsibility and Authority of Trustee.** The Trustee's determination as to whether or not any investment is within the class or classes of property in which the Pooled

Trust may be invested will be conclusive; provided, however, that all such decisions must be made in accordance with the Investment Policy. The Trustee is solely and exclusively responsible for, and has exclusive authority and discretion for, the management and control of the Pooled Trust. Subject to the provisions of the preceding sentence, the Trustee may at its reasonable expense retain the services of such investment or other advisers, consultants and other third-party service providers as it may deem desirable to assist it in carrying out its responsibilities as Trustee under this Declaration of Trust.

**Section 3.2.** **Powers and Duties of Trustee.** The Trustee has, with respect to any property at any time held by it as part of the Pooled Trust, the power in its discretion:

a. Authorized Investments. To invest and reinvest in any common and preferred stocks; bonds; notes; rights; warrants; debentures; securities; stock options and option contracts of any type; contracts for the immediate or future delivery of financial instruments; certificates of deposit; demand or time deposits (including demand deposits with the Trustee of funds awaiting investment or distribution); bills; certificates; acceptances; repurchase agreements; commercial paper; variable rate or amount notes; interests in trusts and collective and common trust funds; interests in or shares of mutual funds or other investment companies; and foreign unit trusts or other foreign pooled vehicles; provided, however, that the investment choices available to the Trustee are limited by applicable law, the then current investment policy adopted by the Board, and any other limitations applicable to the stable value investment fund options of the Participating Trusts;

b. Retention of Property. To retain any property at any time received by it;

c. Authority to Sell Property. To sell or exchange any property at public or private sale for cash or on credit; to grant options for the purchase or exchange of any property; or otherwise to sell, exchange, convey, transfer or dispose of any property;

d. Participation in Reorganizations, Mergers, etc. To participate in any plan of reorganization, consolidation, merger, combination, liquidation or other similar plan relating to any property and to consent to, or to oppose, any such plan or any action thereunder, or any contract, lease, mortgage, purchase, sale or other action by any person or corporation;

e. Participation in Protective Reorganizations. To the extent permitted by applicable federal and state law, to deposit any property with any protective, reorganization or similar committee; to delegate discretionary power thereto and to pay or agree to pay part of the reasonable expenses and compensation of any such committee and any assessments levied with respect to any such property so deposited;

f. Exercising Conversion Rights. To exercise all conversion, subscription or other rights, whether or not discretionary, and including rights to vote and grant proxies pertaining to any property held by it;

g. Payment Extensions. To extend the time of payment of any obligation to the Pooled Trust;

h. Stand-by Agreements. To enter into stand-by agreements for future investment, either with or without a stand-by fee;

i. Cash Balances. To hold part or all of any assets uninvested, without liability for interest; provided, however, that any such assets are held uninvested only so long as reasonably necessary to accomplish reinvestment or to the extent reasonably necessary to satisfy required payments from the Pooled Trust;

j. Borrowing. To borrow money from any source as may be necessary or advisable to protect the Pooled Trust in the event of a temporary net cash overdraft or similar event; provided, however, that any such borrowing may be undertaken only in accordance with applicable regulations and examination procedures;

k. Custody of Assets. To register or cause to be registered any investment held by it pursuant to this Declaration of Trust in the name of the Trust or of a nominee, with the addition of words indicating that such securities are held in a fiduciary capacity, or in the name of a nominee of any custodian bank acting pursuant to paragraph (p) of this Section 3.2, or of a depository or clearing corporation, or other system for the central handling of securities, either domestic or foreign; to hold any such investment in bearer form; and to maintain the indicia of ownership of assets outside the United States of America in conformity with any applicable federal regulations;

l. Collection of Monies Due. To collect and receive any and all money and other property due to the Pooled Trust and to give full discharge therefor;

m. Litigation. To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Pooled Trust; to commence or defend suit or legal proceedings whenever, in its judgment, any interests of the Pooled Trust require it; and to represent the Pooled Trust in all suits or legal proceedings in any court or before any other body or tribunal;

n. Management of Real Property. To retain, manage, operate, repair, develop, preserve, improve, mortgage or lease for any period, any real property held by the Trustee or by any entity organized by it pursuant to paragraph (o) of this Section 3.2 upon such terms and conditions as the Trustee deems proper, either alone or by joining with others, using other assets for any such purpose as it deems advisable; to modify, extend, renew, waive or otherwise adjust any or all of the provisions of any such mortgage or lease, including the waiver of rentals; and to make such provisions for the amortization of the investment in, or the depreciation of the value of, such property as it may deem advisable; provided, however, that investment in real property is permitted only to the extent permitted by applicable law, the then current investment policy adopted by the Board, and any other limitations applicable to the stable value investment fund options of the Participating Trusts;

o. Organizing Corporations, Partnerships and Trusts. To organize corporations, partnerships or trusts for the purpose of acquiring and holding title to any property which the Trustee is authorized to acquire under paragraph (a) of this Section 3.2;

p. Contracting with Agents. To contract with suitable agents, including custodians, record keepers, auditors, depositories, and counsel, domestic or foreign, and to pay their reasonable expenses and fees; and to transfer any assets of the Pooled Trust to any custodian or subcustodian employed by the Trustee;

q. Contracting with Investment Advisers. To contract with at its reasonable expense the investment advisers and consultants, domestic or foreign, that the Trustee, in its sole discretion, deems advisable; and

r. General Powers. Generally, to do all acts, whether or not expressly authorized, which the Trustee may deem necessary or desirable to carry out the purposes of the foregoing powers or for the protection of the Pooled Trust.

s. Investment Policy. To adopt an investment policy setting forth the permitted investments for the assets of the Pooled Trust.

**Section 3.3. Limitations of Responsibility.** The Trustee's authority, powers, duties, responsibilities and liabilities are subject to the following limitations and other limitations as set forth in federal and Montana law or this Declaration of Trust:

a. The Trustee has no duties with respect to the Pooled Trust other than those expressly set forth in this Declaration of Trust.

b. The Trustee is responsible only for money and property actually received by the Trustee, and then only to the extent described in this Declaration of Trust or, as applicable, the respective retirement plan and trust of a Participating Trust.

c. The Trustee has no liability for the acts or omissions of any Participating Trust.

## ARTICLE IV.
## INTERESTS OF PARTICIPATING TRUSTS

**Section 4.1. Accounting for the Undivided Interest of Each Participating Trust.** All transfers to, withdrawals from, and other transactions regarding the Pooled Trust shall be conducted in such a way that the proportionate interest in the Pooled Trust of each Participating Trust and the fair market value of that interest may be determined at any time. Whenever the assets of more than one Participating Trust are commingled in the Pooled Trust, the undivided interest therein of that Participating Trust shall be debited or credited (as the case may be) (i) for the entire amount of every contribution received on behalf of that Participating Trust, every benefit payment or other expense attributable solely to that Participating Trust, and every other transaction relating only to the Participating Trust, and (ii) for its proportionate share of every item of collected or accrued income, gain or loss, every general expense, and every other transaction attributable to the Pooled Trust as a whole. As of each date when the fair market value of the investments held in the Pooled Trust are determined as provided for in Section 4.2, the Trustee shall adjust the value of each Plan's interest therein to reflect the net increase or decrease in such values since the last such date. For all of the foregoing, fractions of a cent may be disregarded.

**Section 4.2.** **Valuation Dates.** The Trustee shall determine the value of the Pooled Trust and the proportionate interest of each Participating Trust in U.S. Dollars as of the close of business of (i) the last business day of each calendar month and (ii) each other day designated by the Trustee. Each day as of which such value is determined is referred to herein as a "Valuation Date." As of each Valuation Date the Trustee shall determine the total value of the assets of the Pooled Trust Fund on the basis of the provisions of Sections 4.1 and 4.3.

**Section 4.3.** **Valuation Rules.** The net value of the assets of the Pooled Trust Fund shall be determined and securities valued on the basis of the following valuation rules:

a. Securities shall be valued at their market values or, if none, at their fair values as determined in good faith and pursuant to procedures established or approved by the Trustee. Market values may be taken as of such times as the Trustee determines to be appropriate, and from such financial publications, pricing services, or other services or sources, including the Investment Manager. The Trustee may rely on valuations provided by the Investment Manager without any duty to review or inquire into such valuations.

b. An investment purchased and awaiting payment against delivery shall be included for valuation purposes as a security held, and the accounts payable of the Pooled Trust Fund shall be adjusted to reflect the purchase price, including brokers' commissions and other expenses incurred in the purchase thereof, but not disbursed as of the Valuation Date. Investments sold but not delivered pending receipt of proceeds shall be valued at the net sales price.

c. Upon the execution of a securities purchase or sale, the Investment Manager shall notify the Trustee and the Custodian of the transaction and, if necessary, shall instruct the Custodian to execute a foreign exchange contract of matching settlement date. For purposes of valuation with respect to (a) and (b) above, all securities and cash or cash equivalents will be quoted in the local currency and then converted into U.S. dollars using the appropriate exchange rate obtained by the Custodian.

**Section 4.4.** **Records.** The Trustee will keep all records it deems necessary or appropriate, in its sole discretion, to record the assets and Trust Income of the Pooled Trust and to account for the proportionate interest of each Participating Trust. Interested Persons have the right to examine and audit the records of the Trustee, at mutually agreeable times and locations, in accordance with Article VI. The Trustee will maintain these records in accordance with reasonable and appropriate record retention policies adopted by the Trustee.

## ARTICLE V.
## ADMISSIONS AND TERMINATION

**Section 5.1.** **Admission to Participation.** Participation in the Pooled Trust is limited to the Participating Trusts. The Participating Trusts will participate in the Pooled Trust from the inception of the Pooled Trust. While assets of any Participating Trust are held in the Pooled Trust, this Declaration of Trust is part of that Participating Trust's retirement plan.

**Section 5.2.** **Qualified Status of Participating Trusts.** Each Participating Trust must maintain its status as a Qualified Trust.

**Section 5.3.** **Contributions.** The Trustee will accept transfers of assets only from current and potential Participating Trusts and participating employers of those Participating Trusts and not from any other person except as permitted by law. The Trustee shall determine in its sole discretion the value of any non-cash asset to be transferred on the basis of fair market value on the date of contribution and consistent with the terms of this Declaration of Trust. These transfers may be made by any form of transfer agreed to by the Trustee and the Participating Trust.

**Section 5.4.** **Termination by Participating Trust.** A Participating Trust may terminate its participation in the Pooled Trust at any time by resolution of the Board. The Participating Trust shall cease to be a Participating Trust on the next following Valuation Date which is at least ninety days after the Participating Trust provides written notice to the Trustee of its desire to terminate participation.

**Section 5.5.** **Termination by Trustee.** The Trustee may terminate the Pooled Trust as of any Valuation Date, provided the Trustee gives the Participating Trusts written notice no less than ninety days prior to the Valuation Date.

**Section 5.6.** **Distribution on Termination.** In the event of a termination pursuant to Section 5.4 or Section 5.5, the Trustee will distribute to the terminating Participating Trust its share of the Pooled Trust in cash, assets or otherwise as determined by the Trustee after consultation with the trustee or administrator of the affected Participating Trust.

**Section 5.7.** **Distribution on Disqualification.** If, at any time, the Trustee reasonably determines or becomes aware that any Participating Trust is no longer a Qualified Trust, and the Participating Trust fails to become a Qualified Trust after a reasonable cure period agreed to by the Trustee taking into account the circumstances, the Trustee will distribute to that Participating Trust its entire participation in the Pooled Trust in cash, assets or otherwise as the Trustee determines in its sole discretion as soon as practicable after the next Valuation Date following the expiration of the applicable cure period.

**Section 5.8.** **Valuation of Assets upon Distribution.** In all cases, at no time prior to the satisfaction of all liabilities with respect to participants and their beneficiaries under any Participating Trust will that part of the corpus or income of the Pooled Trust which equitably belongs to that Participating Trust be used for, or diverted to, purposes other than for the exclusive benefit of such participants and their beneficiaries. All distributions from the Pooled Trust to the successor trustee or administrator of a Participating Trust (in the case of a termination) are deemed to be for the exclusive benefit of participants and their beneficiaries under the Participating Trust.

## ARTICLE VI.
## ACCOUNTING

**Section 6.1.** **Trustee's Accounts.** The Trustee will keep a record of all of its receipts and disbursements. These records will be open to inspection at all reasonable times during the Trustee's business hours by the authorized representative of any Interested Person.

**Section 6.2.** **Judicial Accounting.** Except as otherwise provided by law, only the Trustee and any Interested Person may require the judicial settlement of the Trustee's account, or bring any other action against the Trustee with respect to the Pooled Trust, or its action as Trustee. In any such action or proceeding, the only parties that need be joined are the Trustee and any Interested Person(s). Any final, non-appealable judgment or decree entered in that action will be conclusive.

**Section 6.3.** **Audits and Reports of Pooled Trust.** At least once during each twelve-month period, the Trustee will obtain an audit of the Pooled Trust from the Legislative Audit Division of the State of Montana. Based upon this audit, after the close of each fiscal year of the Pooled Trust, and also after the termination of the Pooled Trust, the Trustee will render a written report, without charge, to each Interested Person. The Trustee will furnish a copy of the report, upon request, to any other person for a reasonable charge. The report will include those financial statements and disclosures required by law, as well as any statements and disclosures the Trustee deems appropriate after consultation with the independent certified public accountant.

## ARTICLE VII.
## TAXES AND EXPENSES

**Section 7.1.** **Taxes.** The Trustee may deduct from and charge against the Pooled Trust any taxes or other charges imposed upon the Pooled Trust or the income of the Pooled Trust, or which the Trustee is required to pay with respect to the interest of any Participating Trust by any present or future laws of any jurisdiction or taxing authority. However, the Pooled Trust is established as a governmental entity and the Trustee will generally assert that no taxes may be assessed.

**Section 7.2.** **Allocation and Apportionment of Trust Expenses.** The Trustee may pay reasonable Trust Expenses from the Pooled Trust, if these amounts would have been chargeable to the Participating Trusts with respect to the stable value assets held in the Pooled Trust if incurred in their separate administration. For each year, the Trustee will determine and allocate to each Participating Trust the reasonable and quantifiable Trust Expenses from the previous fiscal year that the Trustee recorded as directly attributable to that Participating Trust. All remaining Trust Expenses will be allocated to the Participating Trusts on the basis of the proportionate interest of each Participating Trust as of the last Valuation Date.

## ARTICLE VIII.
## MISCELLANEOUS

**Section 8.1.** **Amendment.** The Trustee may amend this Declaration of Trust at any time and in any respect by a resolution. Notice of any amendment that may affect a Participating Trust must be sent to each Interested Person prior to adoption of the amendment; provided, however, that this Declaration of Trust is adopted subject to the condition that it will be amended, without prior notice to any such persons, to the extent required or deemed necessary by the Trustee in order to qualify as a group trust under Code Section 401(a) and to be exempt from taxation under Code Section 501(a). If a Participating Trust determines that the

amendment is not acceptable, that Participating Trust may withdraw from the Pooled Trust pursuant to Section 5.4.

**Section 8.2.** **Duty of Trustee.** For all purposes under this Declaration of Trust, the Trustee must discharge its duties under this Declaration of Trust with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Trustee will not be liable for any loss sustained by the Pooled Trust by reason of the purchase, retention, sale or exchange of any investment in good faith and in accordance with the provisions of this Declaration of Trust, the laws of the State of Montana, the then current investment policy adopted by the Board, any other limitations applicable to the stable value investment fund options of the Participating Trusts and any applicable federal law.

**Section 8.3.** **Non-Transferability.** No Participating Trust may assign or transfer all or any portion of its interest in the Pooled Trust, except transfers in accordance with Article V of this Declaration of Trust.

**Section 8.4.** **Reliance of Communications.** The Trustee is fully protected in acting upon any instrument, certificate or paper it reasonably believes is genuine and signed or presented by a proper person or persons, and the Trustee has no duty to make any investigation or inquiry as to a statement contained in any such writing, but may accept the writing as conclusive evidence of the truth and accuracy of the statements in the writing.

**Section 8.5.** **Governing Law.** Except as otherwise provided, this Declaration of Trust is governed by, and must be construed according to, the laws of the State of Montana. In the event of any conflict between the provisions of this Declaration of Trust and the laws of the State of Montana, the latter law and regulations will prevail. The Pooled Trust is organized in the United States and will be maintained at all times as a domestic trust in the United States.

**Section 8.6.** **Availability of Copies of Declaration of Trust.** The Trustee will keep a copy of this Declaration of Trust on file at its principal office and it will be available for inspection during regular business hours. A copy of this Declaration of Trust will be sent, upon request, to each Interested Person, and will be furnished to any other person, upon request, for a reasonable charge.

**Section 8.7.** **Titles and Headings.** The titles and headings in this Declaration of Trust are for convenience and reference only and will not limit or affect in any manner any provisions contained herein.

The Board has caused this Declaration of Trust to be signed by an appropriate and duly authorized officer on September 10, 2009.

**SETTLOR AND TRUSTEE**

**MONTANA PUBLIC EMPLOYEES RETIREMENT BOARD**

By: John P Paull
Chair