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**MONTANA MENTAL HEALTH SETTLEMENT TRUST**

**Among**

**Eli Lilly and Company  
as Trustor,**

**Attorney General Steve Bullock,**

**On Behalf of the State of Montana,**

**and**

**The Honorable John Warner,  
as Trustee**

**Pursuant to Section VII of a Consent Judgment  
dated February 22, 2010**

**Effective as of February 23, 2010**

## MONTANA MENTAL HEALTH SETTLEMENT TRUST

This Trust Agreement ("Agreement") is entered into and effective as of February 23, 2010, by and among Eli Lilly and Company, as Trustor, Attorney General Bullock, representing the State of Montana, and The Honorable John Warner, as Trustee.

### RECITALS

WHEREAS, the State of Montana filed a Complaint against the Trustor Eli Lilly and Company alleging wrongdoing and liability regarding Trustor's promotional practices, sampling practices, dissemination of information, and remuneration to Health Care Professionals regarding Zyprexa®;

WHEREAS, without admitting liability but desirous of settling all claims against it by the State of Montana, as represented by its Attorney General, Trustor entered into negotiations for the purpose of resolving any and all such claims;

WHEREAS, on February 22, 2010, Trustor and the Montana Attorney General entered into a Consent Judgment and Assurance of Voluntary Compliance (the "Consent Judgment");

WHEREAS, the United States District Court for the Eastern District of New York (Weinstein, J.) has approved the Consent Judgment and entered an Order Establishing a Qualified Settlement Fund and Appointing Trustee and Fund Administrator (the "QSF Order"), which provides for the creation of this Trust (the "Trust") and the transfer of the Consent Judgment Trust Payment to the Trust; and

WHEREAS, pursuant to the QSF Order, the Trust is intended to qualify as a qualified settlement fund ("QSF") within the meaning of Section 1.468B-1(c) of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended from time to time.

NOW, THEREFORE, in consideration of the mutual covenants and understandings contained herein, and subject to and on the terms and conditions set forth herein, the parties hereby agree as follows:

### ARTICLE 1. DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the respective meanings set forth below:

"Attorney General" - The Attorney General of the State of Montana.

"Beneficiary(ies)" - The recipient(s) of distributions of the Trust Estate, as determined by the Trustee, with the advice and recommendations of the Trust Committee pursuant to Article 5 of this Agreement. The recipients may include natural persons and/or public or private entities, whether organized for profit or for non-profit.

“Code” – The Internal Revenue Code of 1986, as amended, as set forth in Title 26 of the United States Code, and any successor statute.

“Consent Judgment Trust Payment” – The payment to be made by the Trustor to the Trust pursuant to paragraph VII.A.3. of the Consent Judgment.

“Court” – The United States District Court for the Eastern District of New York.

“Court Order” – The Order of the Court approving the Consent Judgment in the Underlying Action.

“Trust” – The Trust created by this Montana Mental Health Settlement Trust Agreement by and among Trustor, the Attorney General, and the Trustee, and established by the QSF Order.

“Trust Advisor” – The Montana Attorney General or his designee, as more fully defined under Article 8 of this Trust.

“Trust Code” – Chapters 33 through 36, Montana Code Annotated (“MCA”) (73-33-102 *et seq.*)

“Trust Committee” – The persons to be appointed by the Trustee pursuant to Article 4 of this Trust.

“Trust Estate” – The Consent Judgment Trust Payment and any interest or other earnings thereon, including accrued but undistributed income, together with any other assets or funds contributed to the Trust from whatever source.

“Trustee” – The Honorable John Warner, and any successor trustee.

“Trustor” – Eli Lilly and Company.

“Underlying Action” – The lawsuit by the State of Montana against Eli Lilly and Company, bearing Cause No. MDL No. 1596 / 07-CV-1933 (JBW) in the United States District Court for the Eastern District of New York.

## ARTICLE 2. DECLARATION OF TRUST

2.1 Creation and Name. The Trustor hereby creates a trust known as the “Montana Mental Health Settlement Trust.” This Trust may be referred to (and/or identified in all legal documents for payee or other designations) as the “MMHST.” The affairs of the Trust shall be managed by the Trustee and Trust Committee for the benefit of the Beneficiaries.

2.2 Purpose. The purpose of the Trust is to implement and carry out the provisions and purposes of the Consent Judgment and QSF Order, including but not limited to, receiving the Consent Judgment Trust Payment from the Trustor, establishing procedures and mechanisms for considering how the Trust Estate is to be distributed, and distributing the Trust Estate to Beneficiaries in accordance with the terms and conditions set forth in this Trust.

2.3 Qualified Settlement Fund. The Trust is intended to be a qualified settlement fund within the meaning of Section 1.468B-1(c) of the Treasury Regulations promulgated under Section 468B of the Code. The Trustee shall take any action or cause the Trust to take any action necessary to create and maintain the status of the Trust as a qualified settlement fund. The Trustee shall not take any action that will adversely affect the qualification of the Trust as a qualified settlement fund.

2.4 Transfer of Assets. Pursuant to the Consent Judgment and the Court Order, the Trustor shall promptly transfer the Consent Judgment Trust Payment to the Trust. All assets received by the Trust, and any earnings thereon, shall be held, administered and disbursed under the terms of this Trust.

2.5 Acceptance of Assets and Assumption of Liabilities. In furtherance of the purposes of the Consent Judgment and QSF Order, the Trustee accepts the transfer of the Consent Judgment Trust Payment and as fiduciary for the Trust assumes all liability for making distributions to Beneficiaries.

2.6 Release of Trustor. By entering into this Agreement, the Attorney General, the Trust Advisor and the Trustee acknowledge and agree that under no circumstances shall the Trustor have any liability to any person with respect to the administration, investment, distribution or any other matter relating to the Trust beyond that of fulfilling its obligation to fund the Trust pursuant to the Consent Judgment.

### ARTICLE 3.

#### POWERS OF TRUST ADMINISTRATION

3.1 Trustee. The Trustee is and shall act as the fiduciary of the Trust in accordance with the provisions of this Trust, the Consent Judgment, and the QSF Order. The Trustee shall at all times administer the Trust and the Trust Estate in accordance with the purposes set forth in Section 2.2 above. Subject to the limitations set forth in this Trust, the Consent Judgment, and the QSF Order, the Trustee shall have the power to take any and all actions that, in the sole and absolute discretion of the Trustee, are necessary or proper to fulfill the purposes of the Trust, including, without limitation, each power expressly granted in Section 3.3, all powers reasonably incidental thereto, and any trust power now or hereafter permitted under the law governing the Trust pursuant to Section 11.7, below.

3.2 Approval. Except as expressly provided in this Agreement, the Consent Judgment, and the QSF Order, or as otherwise required by the Court or applicable law, the Trustee need not obtain the order or approval of any court or any other person or entity in the exercise of any power or discretion conferred hereunder. However, the Trustee may, in its sole and absolute discretion, seek an order or approval of the Court with respect to any action proposed to be taken by the Trustee with respect to the Trust, and in no event shall the Trustee be liable to any person or entity for any actions taken in accordance with such Court order or approval.

3.3 Powers. Without limiting the generality of Section 3.1 above, and except as limited below, the Trustee shall have all the powers under Part 3 of the Trust Code, including but not limited to:

- (A) To receive, hold, and administer the Trust Estate;
- (B) To appoint, retain or hire such officers and employees, and engage such legal, financial, accounting, investment, auditing, forecasting, and other consultants and agents determined by the Trustee, in its sole discretion, to be necessary for the proper administration of the Trust, to compensate such officers, employees, consultants and agents for their services, and to reimburse them for their expenses;
- (C) To indemnify any person entitled to indemnification under Section 4.10 of this Agreement;
- (D) To enter into such other arrangements with third parties as are determined by the Trustee, in its sole discretion, to be necessary in carrying out the purposes of the Trust;
- (E) To obtain and pay the premiums for such fidelity bonds and other insurance policies as the Trustee may determine is reasonably necessary or desirable for the protection of the Trust and the Trustee
- (F) To sue and be sued and participate, as a party or otherwise, in any judicial, administrative, arbitative, or other proceeding or legal action;
- (G) To compensate the Trustee and members of the Trust Committee, and to reimburse all out-of-pocket costs and expenses incurred by such persons in connection with the performance of their duties hereunder, including, without limitation, costs and expenses incurred prior to the execution of this Trust;
- (H) To execute and deliver such instruments as the Trustee considers proper in administering the Trust;
- (I) To pay liabilities and expenses of the Trust, including, but not limited to, the expenses set forth in Section 4.7 below; and
- (J) To adopt and implement a document retention policy for the Trust.

3.4 Principal Office. The Trust shall maintain its principal office at such location as the Trustee determines from time to time, in its sole discretion.

#### ARTICLE 4. TRUSTEE AND TRUST COMMITTEE

4.1 Supervision by the Court. The Trustee and Trust Committee shall operate subject to the supervision of the Court, which shall have the continuing and exclusive authority to

enforce and interpret the provisions of this Trust and the Consent Judgment and QSF Order to which it relates.

4.2 Appointment of the Trust Committee. The Trustee shall appoint seven persons to serve as the Trust Committee, all of whom shall be residents of Montana. The Trust Committee shall be comprised of:

- (1) A mental health service provider;
- (2) One employee of the Addictive and Mental Disorders Division of the Montana Department of Public Health and Human Services ("DPHHS"), to be designated by the Director of DPHHS;
- (3) One employee of the Children's Mental Health Bureau of the Montana DPHHS, to be designated by the Director of DPHHS;
- (4) A representative of the law enforcement community who is familiar with initiatives, programs, and services relating to crisis intervention and jail diversion;
- (5) A representative from a mental health advocacy organization;
- (6) A representative of a Montana Service Area Authority, to be selected from among nominees submitted either jointly or independently by the Western, Central, and Eastern Service Area Authorities; and
- (7) A member of the faculty at a two or four year college or university in Montana with knowledge and experience in the field of mental health.

If the Trustee determines that it is not feasible to appoint a qualified person that meets one or more of the above criteria, the Trustee shall, in its discretion, determine substitute criteria to assure that the Trust Committee is comprised of Montana residents with expertise and experience in the field of mental health. The Trustee may then appoint to the Trust Committee a person or persons who meet(s) the substitute criteria as determined by the Trustee. In this event, the Trustee shall provide written notice to the Trust Advisor of the substitute criteria that the Trustee has established.

4.3 Term of Service; Removal.

(A) The Trustee and members of the Trust Committee shall serve for the duration of the Trust, subject to resignation or removal.

(B) Resignation.

- (1) The Trustee may resign by providing at least sixty (60) days prior written notice of such resignation to the Trust Advisor who shall in turn notify the Court, specifying the date when such resignation shall take effect.

(2) Any member of the Trust Committee may resign by providing at least sixty (60) days prior written notice of such resignation to the Trustee.

(C) Removal.

(1) The Trustee may be removed by the Court only for cause, which shall include, but not be limited to, a consistent pattern of neglect and failure to perform the duties of a trustee hereunder.

(2) Within its sole discretion, the Trustee may remove any member of the Trust Committee for cause, which shall include, but not be limited to, a consistent pattern of neglect and failure to perform the duties of a trust committee member hereunder.

4.4 Appointment of Successor Trustee or Trust Committee Member.

(A) Within sixty (60) days following a Trustee's resignation or removal, the Trust Advisor shall appoint a successor Trustee. If a successor Trustee is not appointed within sixty (60) days following a Trustee's resignation or removal, the Court shall appoint a successor Trustee upon its own motion or upon the application of the Trust Advisor.

(B) Immediately upon the acceptance of office by any successor Trustee, all rights, titles, duties, obligations, powers, and authority of the predecessor Trustee under this Trust shall be vested in and undertaken by the successor Trustee without any further act being required.

(C) Within thirty (30) days following a Trust Committee Member's resignation or removal, the Trustee shall appoint a successor Trust Committee Member, who shall meet the same criteria for appointment under Section 4.2 as the Trust Committee Member who has resigned or has been removed, with all rights, titles, duties, obligations, powers, and authority of the predecessor Trust Committee member under this Trust vested in and undertaken by the successor Trust Committee member without any further act being required.

4.5 Limitations on Liability of Trustee and Trust Committee Members. Subject to Section 72-34-512 of the Trust Code, the Trustee and Trust Committee Members, where applicable, shall not be liable for any damages with respect to their actions or omissions regarding the Trust. Further, the Trustee and Trust Committee Members shall not be liable for any damages for any act or omission of any agent or employee of the Trust unless such agent's actions or the Trustee's selection or retention of such agent or employee intentionally breaches the duties the Trustee owes to the Beneficiaries and / or meets the standards of misconduct identified in the exculpatory provisions of the Trust Code.

4.6 Reliance On Experts. The Trustee may, but shall not be required to, retain or consult with counsel, accountants, appraisers, auditors and forecasters, and other parties deemed by the Trustee to be qualified as experts on the matters submitted to them, and the opinion of any such parties on any matters submitted to them by the Trustee shall be full and complete

authorization and protection in respect of any action taken or not taken by the Trustee hereunder in good faith and in accordance with the opinion of any such party.

4.7 Trust Expenses. All expenses, costs, and expenditures associated with the formation, operation, administration, and termination of the Trust shall be paid out of the Trust Estate.

4.8 Compensation and Expenses of Trustee. The Trustee shall receive compensation from the Trust for its services as Trustee in the amounts provided in Exhibit A attached to this Agreement. In addition, the Trustee shall be reimbursed out of the Trust Estate for its reasonable out-of-pocket expenses. Such compensation and reimbursements shall not be reduced by any of the costs of the operation or administration of the Trust.

4.9 Compensation and Expenses of Trust Committee Members. Unless the Trustee, in its sole discretion, determines otherwise, members of the Trust Committee shall serve without compensation. If serving on the Trust Committee would cause financial hardship to any member of the Committee, the Trustee, in its sole discretion, may provide compensation from the Trust to any such member of the Trust Committee for their services as Trust Committee members, in amounts to be determined by the Trustee. The Trust Committee Members shall be reimbursed out of the Trust Estate for their reasonable out-of-pocket expenses.

4.10 Indemnification.

(A) Trustor, Trustee and Trust Committee Members.

(1) The Trust shall indemnify, defend, and hold harmless the Trustor, Trustee, Members of the Trust Committee, and the Trust's officers and employees (the "Indemnitees") and the Attorney General agrees that the State of Montana shall in addition indemnify, defend, and hold harmless the Trustor against any and all claims, demands, suits, liabilities, awards, expenses, losses, costs, fees (including reasonable attorneys' fees and costs), damages, causes of action, and judgments ("Losses") incurred by the Indemnitees in the performance of their respective duties hereunder, or in connection with activities undertaken by any or all of them prior to the date of this Agreement relating to the formation, establishment, or funding of the Trust; provided that the Indemnitees, whether one or more, acted in good faith and in a manner that such Indemnitee(s) reasonably believed to be in or not opposed to the best interests of the Trust and in furtherance of its purposes.

(2) Reasonable expenses, costs and fees (including attorneys' fees and costs) incurred by or on behalf of an Indemnitee in connection with any action, suit, or proceeding from which they are indemnified by the Trust pursuant to Section 4.10(A) shall be paid by the Trust in advance of the final disposition thereof upon receipt of proof of an undertaking, by or on behalf of such Indemnitee, to repay such amount in the event that it shall be determined ultimately by final order that such Indemnitee is not entitled to be indemnified by the Trust.

(B) Insurance. The Trustee may purchase and maintain reasonable amounts and types of insurance on behalf of the Trust, the Trustor and any individual who is or was an officer, employee, representative, or agent of the Trustee against liability asserted against or incurred by such individual in that capacity or arising from his or her status as an Indemnitee.

4.11 Lien. The Trustor, the Trustee and Indemnitees shall, to the extent consistent with the governing law of the Trust as described in Section 11.7, have a prior lien upon the Trust Estate to secure the payment of any amounts payable to the Trustor, the Trustee or Indemnitees pursuant to Sections 4.9 and 4.10. The Trustee shall take such actions as may be necessary to evidence such Lien, including, without limitation, filing appropriate financing statements or other documents.

4.12 Bond. The Trustee shall not be required to post any bond or other form of surety unless otherwise ordered by the Court.

4.13 Independence. Any person or entity appointed as Trustee shall be independent of the Trustor and each of the Beneficiaries, except as specifically disclosed and waived by both the Trustor and the Trust Advisor, and approved by the Court. The Trustee shall not, during the term of its service, act as attorney for the Trustor or any Beneficiary.

## ARTICLE 5. DISTRIBUTIONS AND BENEFICIARIES

5.1 Distribution Decision Making Authority. Subject to Section 5.2, the Trustee shall make all decisions concerning the management and disbursement of Trust Assets, in conformity with the Consent Judgment, QSF Order and this Trust Agreement.

5.2 Trust Committee Advice and Recommendations. In performing its responsibilities, the Trustee shall regularly meet and confer with, and consider the advice and recommendations of, the Trust Committee, as more fully set forth in Article 9 of this Trust Agreement.

5.3 Allocation. The Trust Estate shall be allocated among Beneficiaries who are identified as qualifying for distributions as provided in this Article 5.

5.4 Distributions. The Trust Estate, in amounts to be determined by the Trustee after conferring with and considering the advice and recommendations of the Trust Committee, shall be distributed to Beneficiaries, provided however, distributions are made exclusively for the following purposes:

(A) Mandatory Distributions. The Trust Estate shall, in the Trustee's sole and absolute discretion, be applied to or for the benefit of Beneficiaries qualifying as providing mental health programs, services and resources in each of the following areas:

(1) Education and information for medical providers concerning appropriate prescribing practices for patients with mental illness;

- (2) Training and education for Law Enforcement personnel concerning effective and appropriate crisis intervention techniques and resources;
- (3) Crisis intervention services to persons who come in contact with the criminal justice system;
- (4) Transition funding for persons transitioning from an in-patient mental health treatment environment to an out-patient treatment and independent living environment;
- (5) Children's mental health programs; and
- (6) Peer-to-peer services.

(B) Discretionary Distributions. In addition to the foregoing specifically identified purposes, the Trust Estate may, in the Trustee's sole and absolute discretion, be applied to or for the benefit of other programs, services and/or resources dedicated to the prevention, treatment and management of mental illness in Montana adults and children.

5.5 The Trustee, in consultation with the Trust Committee, shall establish the procedures and conditions to govern the applications for and receipt of distributions from the Trust Estate.

5.6 Subject to Article 10, the Trustee shall distribute the Trust Estate to each Beneficiary at such time and in such manner as the Trustee determines to be appropriate, in its sole and absolute discretion.

## ARTICLE 6. INVESTMENT MANAGEMENT OF TRUST ESTATE

6.1 Investment of Public Funds. Because the Trust Estate represents public money and property based on the Underlying Action, which is restricted by law and the terms of this Trust Agreement (MCA § 17-8-101(1)), the Trustee shall follow the uniform accounting system provided under Chapters 1 and 2 of Title 17 of the Montana Codes Annotated, including but not limited to the Treasury Fund Structure Act (MCA §§17-2-101 *et seq.*)

6.2 Special Revenue Fund Type. Upon receipt of any funds paid under the terms of the Consent Judgment, or any other funds received as part of the Trust Estate, the State of Montana shall deposit the funds into a State of Montana special revenue fund, as provided for in MCA § 17-2-102(1)(b)(i), to be known as the "Montana Mental Health Settlement Trust Special Revenue Fund" ("Montana Mental Health Settlement Trust Fund"), which shall be held and maintained by the State of Montana solely for the purposes established by this Trust Agreement. All interest and other earnings on the Montana Mental Health Settlement Trust Fund shall be paid into the Montana Mental Health Settlement Trust Fund, and no portion of the Montana Mental Health Settlement Trust Fund or any earnings on the Mental Health Settlement Trust Fund is to be treated as a general revenue source.

6.3 Segregation Requirement. To effectuate the intent of the Trustor, and the terms of the Consent Judgment, the Trust Estate shall be held in a separate account as authorized by MCA §17-2-105(1).

6.4 Board of Investments. Pursuant to Chapter 6 of Title 17 of the MCA, the Board of Investments shall provide investment management services for the Trust, following the separate recording principles of MCA §17-6-202(1).

6.5 No Liability for Investment Decisions. The Trustee and the Trust Committee members shall have no liability for losses on account of any deposit held by the Board of Investments.

6.6 Custodial Bank or other Depository. The Trust Estate shall be deposited consistent with Chapter 6 of Title 17 of the MCA.

6.7 Investments. The Trust Estate shall not be invested in any stock, securities, or other obligations of the Trustor, any Beneficiary, the Trustee, or any party related thereto.

6.8 Reporting.

(A) Periodic Accounting. The Trustee may, in its sole discretion, cause to be prepared a periodic accounting of the Trust, including, without limitation, a balance sheet of the Trust, a statement of receipts and disbursements, a statement of profit and loss prepared on an accrual basis, a supplementary schedule of investments and assets, and a statement of significant events.

(B) Approval by the Court and Discharge of Liability. The Trustee may, in its sole discretion, render such periodic accounting to the Court, with a copy submitted to the Trust Advisor. Upon the approval of any periodic accounting by the Court, and subject to the terms of the order of the Court granting such approval, the Trustee shall be discharged from any further liability or responsibility as to all matters disclosed in such periodic accounting, and no action arising out of any matter disclosed in such periodic accounting may be brought against the Trustee.

## ARTICLE 7. TAX MATTERS

7.1 Trustee. The Trustee shall serve as the “administrator” of the Trust within the meaning of Treasury Regulation § 1.468B-2(k)(3) and shall be responsible for the undertakings specified in the regulations under Section 468B of the Code, including, but not limited to, the obtaining of an employer identification number for the Trust, the filing of all required federal and state tax and information returns, any required withholding of tax, and the payment of any federal or state taxes, including estimated taxes, for which the Trust may be liable.

7.2 Taxable Year and Accounting Method. The taxable year of this Trust shall be the calendar year. The Trust shall use an accrual method of accounting within the meaning of Section 446(c) of the Code.

7.3 Relation-Back Election. The Trustor and the Trustee shall join in the filing of a "relation-back election" within the meaning of Treasury Regulation § 1.468B-1(j)(2) with respect to the Trust, unless the Trustee determines that doing so is not in the best interests of the Trust. The Trustee shall comply with all of the requirements contained in Treasury Regulation § 1.468B-1(j)(2) that apply to such election.

ARTICLE 8.  
TRUST ADVISOR

8.1 Duties. The duties of the Trust Advisor shall be fiduciary in nature and shall include, but shall also be limited to retaining the authority to exercise, or choose to not exercise, the following powers:

- (A) To modify or amend the Trust to achieve favorable tax status or because of such changes in the IRC, state law or the rulings and regulations implementing such changes;
- (B) To modify or amend the Trust to take advantage of any other changes in the Rule Against Perpetuities, laws governing restraints on alienation, or other state laws restricting the terms of the Trust, the distribution of Trust assets, or of the administration of the Trust;
- (C) To review and approve the accountings of the Trustee; and
- (D) To appoint a successor Trustee pursuant to Section 4.4, above.

8.2 Limitations. The Trust Advisor shall have no other responsibility for investment or monitoring the actions of the Trustee. The Trust Advisor shall have no direct or indirect control over the decisions of the Trustee and/or the Trust Committee with respect to any distributions of the Trust Estate that are made in conformity with the terms of this Trust, the Consent Judgment and the QSF Order. The Trust Advisor shall not be held liable or responsible for the action or non-action of the Trustee.

ARTICLE 9.  
OPERATION OF THE TRUST COMMITTEE

9.1 Chairperson. The Trustee shall be the Chairperson of the Trust Committee.

9.2 Meetings. The Trust Committee shall meet as follows:

- (A) On a quarter-annual basis;
- (B) Via telephone conference or in person, as the Chairperson directs, or as is appropriate under the circumstances;

(C) Following written notice, electronically or otherwise, provided to each member not less than fifteen (15) days prior to such meetings, unless a special meeting is requested by the Trust Advisor.

9.3 Special Meetings. The Trustee, in its discretion, may schedule a meeting of the Trust Committee outside of its regularly scheduled meetings for any good cause.

9.4 Number. The number of members for the Trustee Committee shall be no fewer or more than seven (7).

9.5 Quorum. A majority vote of the members of the Trust Committee shall constitute a quorum.

9.6 Purpose. The Trust Committee shall meet to establish and identify the distribution qualifications for a Beneficiary of the Trust, including but not limited to the development of grant applications and other similar mechanisms by which Beneficiaries may receive distributions from the Trustee, which direction shall be considered by the Trustee without liability.

9.7 Proxy. A member of the Trust Committee may designate a proxy to vote on its behalf by providing a writing to the Trustee prior to, or contemporaneous with a meeting. The notice shall specify the limits of such proxy's voting powers and shall provide an expiration date for such powers.

ARTICLE 10.  
TERMINATION AND WINDING UP THE TRUST

10.1 Winding Up. The Trustee may administratively terminate and wind up the affairs of the Trust when the Trustee determines that the purposes of the Trust have been substantially met and no further transfers will be made to the Trust. Unless good cause exists, in the sole and absolute discretion of the Trustee, the Trust shall be terminated by December 31, 2012.

10.2 Termination. Subject to Section 10.1, the Trust shall terminate within a reasonable time following:

- (A) the date the Trust no longer has any assets (other than a reasonable reserve for potential tax liabilities and related professional fees) and will not receive any more transfers;
- (B) the Trustee's determination that the purposes of the Trust have been met;
- (C) notice by the Trustee to the Trust Advisor and the Court of such determination and a recommendation to the Court that the Trust be terminated; and
- (D) the Court's approval of termination of the Trust.

ARTICLE 11.  
GENERAL PROVISIONS

11.1 Irrevocability. The Trust shall be irrevocable.

11.2 Modifications. This Agreement may be amended by an agreement executed by the Trustee and the Trust Advisor, or by the Court upon application of the Trustee. Notwithstanding the foregoing, this Agreement shall not be amended in any manner that adversely affects the treatment of the Trust as a qualified settlement fund or affects the release of liability and the indemnification of the Trustor pursuant to Section 2.6, Section 4.10, and Section 4.11.

11.3 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the Trustor, the Trust, and the Trustee, and their respective successors and permitted assigns.

11.4 Severability. Should any provision of this Trust be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this Trust.

11.5 Headings. The headings used in this Trust are inserted for convenience only and shall not affect the construction of any provisions of this Trust.

11.6 Counterparts; Facsimile Signature. This Trust may be executed in any number of counterparts, each of which shall constitute an original, and all such counterparts shall together constitute one and the same instrument. This Trust may be executed by facsimile or electronic signature.

11.7 Governing Law. This Agreement shall be administered, governed by, construed, and enforced according to the laws of the State of Montana, except that all matters of federal tax law and this Trust's compliance with Section 468B of the Code and the Treasury Regulations thereunder shall be governed by federal income tax law.

11.8 Jurisdiction and Venue. The parties submit to the continuing and exclusive jurisdiction of the Court for purposes of any suit, action or proceeding seeking to interpret or enforce any provision of, or based on any right arising out of, this Trust, and the parties agree not to commence any such suit, action or proceeding except in the Court. The parties waive any objection to the laying of venue of any such suit, action or proceeding in the Court and further waive and agree not to plead or claim in the Court that any such suit, action or proceeding has been brought in an inconvenient forum.

11.9 No Waiver. No failure to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof or of any other right, power, or privilege. The rights and remedies herein provided are cumulative and are not exclusive of rights under law or in equity.

IN WITNESS WHEREOF, this Agreement has been executed by the Trustor, the Trust Advisor, and Trustee, all as of the date first written above.

TRUSTOR

  
\_\_\_\_\_  
By: Michael J. Harrington  
Vice President/Deputy General Counsel

TRUST ADVISOR

\_\_\_\_\_  
Steve Bullock, Montana Attorney General

TRUSTEE

\_\_\_\_\_  
Hon. John Warner

IN WITNESS WHEREOF, this Agreement has been executed by the Trustor, the Trust Advisor, and Trustee, all as of the date first written above.

TRUSTOR

\_\_\_\_\_

By: \_\_\_\_\_


(Print Name and title)

TRUST ADVISOR



Steve Bullock, Montana Attorney General

TRUSTEE



Hon. John Warner

**EXHIBIT A**

**TRUSTEE COMPENSATION**

The Trustee shall be compensated for its services at the rate of \$125.00 per hour. The Trustee shall also be reimbursed for expenses it incurs in serving as Trustee.

The Trustee shall submit billing statements at reasonable intervals for services and expense reimbursement to the Fiscal Bureau Chief of the Central Services Division of the Montana Department of Justice.

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