

THE COMMONWEALTH OF MASSACHUSETTS

PENSION RESERVES INVESTMENT MANAGEMENT BOARD

84 State Street

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Boston, Massachusetts 02109

(617) 946-8401

Operating Trust Agreement, as of September 22, 1998

PENSION RESERVES INVESTMENT MANAGEMENT BOARD

Amended and Restated Operating Trust

THIS DECLARATION OF TRUST made this 22nd day of September, 1998 by Joseph D. Malone, Angelo A. Amato, Robert Brousseau, James B. G. Hearty, Glenn M. Johnson, George F. McSherry, Vikki L. Pryor and Ralph White, the present duly authorized and acting members of the Pension Reserves Investment Management Board (“PRIM Board”), being hereinafter referred to as the “Trustees”;

WITNESSETH:

WHEREAS, the PRIM Board has been charged by its enabling legislation, G.L.c.32§23(2A), with the general supervision of the investment and management of the Pension Reserves Investment Trust Fund (“PRIT Fund”) established under the provisions of G.L.c.32§22(8);

WHEREAS, the PRIM Board is authorized and required by G.L.c.32§23(2A)(e)(i) to act as Trustees for each retirement system that participates in the PRIT Fund; and

WHEREAS, the PRIM Board is further authorized and required by G.L.c.32§23(2A)(e)(i) to adopt a declaration of trust setting forth the duties and obligations of the PRIM Board;

NOW, THEREFORE, the Trustees establish this operating trust and agree and declare that they will hold, administer and manage the PRIT Fund and all money and property received or purchased by them as Trustees hereunder upon the following terms, conditions and trusts:

ARTICLE 1

NAME; PURPOSE OF TRUST; APPLICABLE LAW

SECTION 1.1. *Name.* This Declaration of Trust is hereby designated as the “PENSION RESERVES INVESTMENT MANAGEMENT BOARD OPERATING TRUST.”

SECTION 1.2. *Purpose.* This Declaration of Trust is established, operated and maintained exclusively for the management, investment and reinvestment in one trust portfolio of the PRIT Fund and moneys or property, or both, contributed thereto by various Participating Systems and other Purchasing Systems or otherwise.

SECTION 1.3. *Effect of Trust.* With respect to any moneys or property transferred to the PRIT Fund by any Participating System or invested by any Purchasing System, the Board of such Participating or Purchasing System and all persons interested therein shall be bound by the provisions of this Declaration of Trust (as the same may be amended from time to time).

SECTION 1.4. *Applicable Law and Regulations.* The Trustees shall administer the PRIT Fund hereunder at all times in conformity with the provisions of G.L.c.32, specifically, and with the laws and

regulations of the Commonwealth of Massachusetts, generally. The provisions of this Declaration of Trust shall be governed by and construed and administered according to the laws of the Commonwealth of Massachusetts.

ARTICLE 2 DEFINITIONS

Whenever used in this instrument, unless the context otherwise requires or specifically provides, the following terms shall be defined as follows:

SECTION 2.1. “*Board*” means the person or persons who control the investments of a Participating System (other than the State Employees’ Retirement System and the Teachers’ Retirement System) or Purchasing System and who have the authority to transfer ownership and control of all of the assets of such system to, or to invest any portion of the assets of such system in, the PRIT Fund.

SECTION 2.2. “*Business Day*” means any day which is not a Saturday, a Sunday, a legal holiday or a day upon which by applicable law a national banking association is authorized to be closed to the public for regular banking business during ordinary business hours and is, in fact, so closed.

SECTION 2.3. “*Commonwealth’s Pension Liability Fund*” means the Commonwealth’s Pension Liability Fund established by G.L.c.32§22(8)(e).

SECTION 2.4. “*Expenses*” mean the reasonable and necessary expenses incurred by the Trustees in managing the Trust Fund hereunder, including, without limitation, custody fees, investment management fees, trading commissions, attorneys’ fees, accountants’ fees, staff salaries, office rents and all expenses incident thereto.

SECTION 2.5. “*Fiscal Year*” means the twelve months beginning July 1 and ending June 30.

SECTION 2.6. “*Participating System*” means the State Employees’ Retirement System; the Teachers’ Retirement System; or any other retirement system authorized to contribute moneys and property to the PRIT Fund, and which in fact transfers title and control of all its assets to the PRIM Board in accordance with the provisions of G.L.c.32§22(8)(c).

SECTION 2.7. “*PRIM Board*” means the individuals described in G.L.c.32§23(2A)(a) serving from time to time as members of the Pension Reserves Investment Management Board.

SECTION 2.8. “*Purchasing System*” means any retirement system, other than a Participating System, authorized to purchase shares in the PRIT Fund which does in fact purchase such shares.

SECTION 2.9. “*PRIT Fund*” means the Pension Reserves Investment Trust Fund established under G.L.c.32§22(8).

SECTION 2.10. “*Securities*” include, without limitation, bonds, debentures, notes, certificates and other evidences of indebtedness, whether or not in registered form, and common and preferred stocks and all other forms of certificates representing an interest or participation in any enterprise, whether or not incorporated.

SECTION 2.11. “*Trustees*” mean the PRIM Board members in their capacity as Trustees under this Declaration of Trust. All PRIM Board members serving from time to time shall be Trustees under this Declaration of Trust.

SECTION 2.12. “*Trust Fund*” means all funds, moneys and property received, held and managed by the Trustees hereunder and for the purposes hereof is synonymous with PRIT Fund.

SECTION 2.13. “*Valuation Date*” means, in the case of the Capital Fund and any separate account thereof established hereunder, any business day or days as the Trustees may from time to time designate, and in the case of the Cash Fund, each business day.

ARTICLE 3 ESTABLISHMENT OF INVESTMENT FUNDS

SECTION 3.1. *Separate Investment Funds.* The Trust Fund shall consist of two investment funds, to be known as the “Capital Fund” and the “Cash Fund.” Each of these Funds shall be separately held, managed, administered, valued, invested, reinvested, distributed, accounted for and otherwise dealt with. References to the “Trust Fund” shall be deemed to refer to both the Capital Fund and the Cash Fund, and each of them.

SECTION 3.2. *Investments of the Capital Fund.* The Trustees shall invest and reinvest the assets of that part of the Trust Fund known as the Capital Fund in accordance with the standards set forth in this instrument and as required by applicable law.

SECTION 3.3. *Investments of the Cash Fund.* The Trustees shall receive, maintain and invest cash deposits on a temporary basis in the Cash Fund in such a way as to meet the liquidity requirements of the various systems, in accordance with the standards set forth in this instrument and as required by applicable law. To the extent not needed for current or future liquidity requirements, the Trustees may use funds credited to the account of any system to purchase (on an appropriate Valuation Date) Units of Participation in the Capital Fund or one or more separate accounts thereof for the account of such system.

SECTION 3.4 *Separate Accounts of the Capital Fund.* The beneficial interest in the Capital Fund may be divided into such separate accounts (“Accounts”) thereof as the Trustees shall from time to time create and establish. The Trustees shall have full power and authority, in their sole discretion, to create and establish (and to change in any manner) any Account, to abolish any one or more Accounts, and to take such other action with respect to any Accounts as the Trustees may deem desirable. Each Account established hereunder shall be a separate component of the assets of the Capital Fund, and the holders of Units of Participation representing the beneficial interest in the assets of that Account shall be considered Unit Holders of such Account. Without limiting the authority of the Trustees to establish and designate further Accounts, there are hereby established and designated the following ten Accounts: General Allocation Account (the investments in which may consist in whole or in part of Units of other Accounts, other than the State Employees’ and Teachers’ Separate Account), Domestic Equity Account, International Equity Account, Fixed Income Account, Emerging Markets Account, Real Estate Account, Real Estate Core Program Account, Alternative Investment Account, Alternative Investments Vintage Year Account and State Employees’ and Teachers’ Separate Account. Such Accounts, and any further Accounts which may from time to time be established and designated by the Trustees, shall have the following attributes:

(a) Assets Belonging to an Account. Any portion of the Trust Fund allocated to a particular Account, and all deposits received by the Trust for the acquisition of Units of such Account, together with all assets in which such deposits are invested or reinvested, all interest, dividends, income, earnings, profits and gains therefrom, and proceeds thereof, including any proceeds derived from the sale, exchange or liquidation of such assets, and any funds or payments derived from any reinvestment of such proceeds in whatever form the same may be, shall be held by the Trustees in trust for the benefit of the holders of Units of Participation of that Account and shall irrevocably belong to that Account for all purposes, and shall be so recorded upon the books of account for the Trust Fund, and the Unit Holders of such Account shall not have, and shall be conclusively deemed to have waived, any claims to the assets of any Account of which they are not Unit Holders. Such deposits, assets, interest, dividends, income, earnings, profits, gains and proceeds, together with any General Items allocated to that Account as provided in the following sentence, are herein referred to collectively as "Account Assets" of such Account. In the event that there are any assets, income, earnings, profits, and proceeds thereof, funds or payments which are not readily identifiable as belonging to any particular Account (collectively "General Items"), the Trustees shall allocate such General Items to and among any one or more of the Accounts established and designated from time to time in such manner and on such basis as they, in their sole discretion, deem fair and equitable; and any General Items so allocated to a particular Account shall belong to and be part of the Account Assets of that Account. Each such allocation by the Trustees shall be conclusive and binding for all purposes.

(b) Liabilities of an Account. The assets belonging to each particular Account shall be charged with the liabilities in respect of that Account and all expenses, costs, charges and reserves attributable to that Account, and any general liabilities, expenses, costs, charges or reserves of the Trust Fund which are not readily identifiable as pertaining to any particular Account shall be allocated and charged by the Trustees to and among any one or more of the Accounts established and designated from time to time in such manner and on such basis as the Trustees in their sole discretion deem fair and equitable. Each allocation of liabilities, expenses, costs, charges and reserves by the Trustees shall be conclusive and binding for all purposes.

ARTICLE 4 PARTICIPATION AND WITHDRAWAL

SECTION 4.1. *Acceptance of Deposits.* The participation of any Participating System or Purchasing System in the Trust Fund shall be subject to all the provisions of this Declaration of Trust. All deposits accepted from any such system or otherwise, together with the income therefrom, shall be held, managed and administered pursuant to this Declaration of Trust.

SECTION 4.2. *Conditions of Participation.* Except with respect to the State Employees' Retirement System and the Teachers' Retirement System, participation in or investment in the Trust Fund shall be upon the following terms and conditions:

(a) On or before January 1 of each year, the Trustees shall notify each retirement system authorized to participate in the Trust Fund or to purchase shares in the Trust Fund of such system's options to participate or invest in the Trust Fund. Such notice shall be accompanied by the most recent financial statement of the Trust Fund, a description of the rights and duties of the PRIM Board if participation or purchase is elected and a copy of this Declaration of Trust.

(b) Any such retirement system may elect to participate by vote of its Board, subject to the approval of the legislative body and chief executive officer of the applicable governmental unit in accordance with the provisions of G.L.c.32§22(8)(c).

(c) After the decision of the Board of a retirement system to participate has been approved and such system has become a Participating System, the decision to participate may not be revoked for five (5) years. Such revocation shall become effective on the first Valuation Date which occurs six (6) months after the PRIM Board receives notification of such Board's decision.

(d) The Trustees shall accept deposits from Participating Systems to the Trust Fund on such Valuation Dates as this instrument sets forth or as the Trustees may determine.

(e) The Trustees may require such certification as they deem acceptable that all of the assets of a Participating System have been transferred into the Trust Fund in conformity with the provisions of G.L.c.32§22(8)(c).

(f) A retirement system that does not elect to become a Participating System may elect to purchase units of participation herein, by vote of its Board. The Trustees shall accept deposits from Purchasing Systems on such days as the Trustees may determine.

SECTION 4.3. *Allocation of Deposits.* Deposits from Purchasing Systems and from Participating Systems other than the State Employees' Retirement System and the Teachers' Retirement System shall be allocated to such Account or Accounts other than the State Employees' and Teachers' Separate Account as may be designated by the Board of such Purchasing System or Participating System and in the absence of such a designation shall be allocated to the General Allocation Account. The assets of the State Employees' Retirement System and Teachers' Retirement System shall be allocated to such Account or Accounts as the Trustees may, in their sole discretion, determine.

SECTION 4.4. *Commonwealth's Pension Liability Fund.* The Commonwealth's Pension Liability Fund shall include all assets of the State Employees' Retirement System and the Teachers' Retirement System except for the Annuity Savings Fund, the Annuity Reserve Fund and the Expense Fund of each such system. The Trustees shall account for the Commonwealth's Pension Liability Fund as a portion of the PRIT Fund in accordance with the provisions of G.L.c.32§22(8)(e).

SECTION 4.5. *Participation Based on Current Valuation.* Each participation, purchase, redemption or withdrawal shall be made upon the basis of the value of the Trust Fund and its Units of Participation, determined as of a Valuation Date in the manner set forth in the following provisions of this instrument. Units of Participation shall be purchased by Participating or Purchasing Systems upon deposit in the Trust Fund and shall be redeemed from such systems upon withdrawal from the Trust Fund.

SECTION 4.6. *Payments upon Issue and Redemption of Units of Participation.*

(a) On the payment by a Participating System or a Purchasing System in cash or in kind, or partly in cash or partly in kind, to the satisfaction of and in the discretion of the Trustees, into the Trust Fund of an amount equal to the total value of the Units to be issued, the Trustees shall issue to such System Units of Participation.

(b) Upon redemption of Units of Participation by a Participating System or a Purchasing System, the Trustees shall pay to such system an amount equal to the total value of the Units redeemed. Such payment shall be in cash unless the Trustees, in their discretion, determine it appropriate to make payment to such system in kind or partly in cash and partly in kind and unless the Board of such system agrees to accept Payment in kind or partly in cash and partly in kind.

SECTION 4.7. Procedure for Redemptions and Withdrawals.

(a) The Board of each Participating System other than the State Employees' Retirement System and the Teachers' Retirement System shall notify the Trustees of the amounts needed for the funds of such System for such System's next fiscal year no later than ninety (90) days before the start of the next fiscal year. The Trustees shall develop a schedule of transfers to be made to said systems during the next fiscal year and notify the systems of that schedule no later than thirty (30) days prior to the start of the next fiscal year. The Trustees shall transfer such amounts in accordance with said schedule during the course of said fiscal year.

(b) If any request is made by any such Board in excess of or as a supplement to the annual amount reported under subparagraph (a) of this Section 4.7, such Board shall certify to the Trustees the purpose of such excess or supplemental request. The Trustees shall approve or deny such request within thirty (30) days of receipt of such request. If such request is approved, distribution of the amount requested shall be made on the next Valuation Date of the fund from which withdrawal is being made. The Trustees may deny such request only if (i)(A) there is insufficient liquidity in the Trust Fund to meet such request and projected reasonable liquidity requirements and (B) the amount of such request, added to the aggregate amount of similar such requests for the same year, equals more than ten percent (10%) of the annual amount reported under subparagraph (a) of this Section 4.7 or (ii) if the purpose of such distribution would be contrary to any provision of G.L.c.32. Notwithstanding the foregoing or any other provision of this Declaration of Trust to the contrary, the Trustees shall not be required to approve a request for a withdrawal from the Alternative Investments Vintage Year Account unless and to the extent there has been a cash liquidation or distribution in respect of one or more assets allocated to said account.

(c) On or before December 15 of each year, in accordance with the provisions of G.L.c.32§22(7)(b), the State Board of Retirement and the Teachers' Retirement Board shall certify to the Trustees the amounts necessary to be distributed and paid for the ensuing fiscal year for the Pension Fund and the Special Fund for Military Service Credit of the State Employees' Retirement System and the Teachers' Retirement System, respectively. All amounts required by each such Pension Fund and each such Special Fund for Military Service Credit shall be provided by distribution from the Commonwealth's Pension Liability Fund.

(d) The Board of each Purchasing System may from time to time make requests of the Trustees for payments and withdrawals. The Trustees shall approve or deny such request within thirty (30) days of receipt of such request. If such request is approved, distribution of the amount requested shall be made on the next Valuation Date of the fund from which withdrawal is being made. The Trustees may deny such request only if there is insufficient liquidity in the Trust Fund to meet such request and projected reasonable liquidity requirements. In the case of the Alternative Investments Vintage Year Account, the foregoing sentence shall be construed not to require the Trustees to approve a withdrawal request unless and to the extent there has been a cash liquidation or distribution in respect of one or more assets allocated to said account.

ARTICLE 5
UNITS OF PARTICIPATION; VALUATION OF UNITS

SECTION 5.1. *Division Into Units.* The beneficial interest of each Participating System and each Purchasing System in the Capital and Cash Funds or any Account established hereunder shall be represented by Units. Each Unit of each such Fund or Account shall be of equal value to every other Unit of such Fund or Account, and each Unit of each such Fund or Account shall be without priority or preference one over the other except that following the establishment of separate Accounts within the Capital Fund each Unit of the Capital Fund will not be of equal value, although each Unit of any one Account shall always be of equal value to all other Units of such Account. The Trustees shall evidence ownership of Units in the Trust Fund by keeping books in which shall be clearly recorded the number of Units of each such Fund or Account standing to the credit of each Participating or Purchasing System. The Trustees shall not issue any certificates of such Units. The Trustees may from time to time divide or combine Units of the Capital Fund or Cash Fund or any Account, or any of them, into a greater or lesser number, provided that the proportionate interest of each Participating or Purchasing System in each such Fund or Account is not thereby changed. Fractional shares of Units may be credited to participant accounts.

SECTION 5.2. *Determination of Unit Values.* On each prescribed Valuation Date (or each additional Valuation Date designated by the Trustees) and, with respect to each Account established pursuant to Section 3.4, on the effective date of the establishment of such Account, the Trustees shall determine the value of the Capital Fund or the Cash Fund or any Account, or any of them, and the Units of such Fund, or Funds or Accounts or Accounts in the manner hereinafter described. Each valuation of the Capital Fund or any Account shall be completed as soon as practicable following each Valuation Date. Each valuation of the Cash Fund shall be completed prior to the opening of the Fund for admissions and withdrawals on the next Valuation Date.

ARTICLE 6
CAPITAL FUND AND ACCOUNTS; VALUATION OF UNITS

SECTION 6.1. *Valuation of Assets of the Capital Fund and each Account.* The Trustees shall use the following method in the valuation of the assets of the Capital Fund and each Account:

(a) Securities listed on the New York Stock Exchange, the American Stock Exchange or other security exchanges or in the National Association of Securities Dealers Automated Quotation system or any other nationally recognized system shall be valued at their closing sale prices on the Valuation Date. If no sale has been reported for the Valuation Date, the last published sale or the mean between the last recorded bid and asked prices, whichever is the more recent, shall be used. If such value shall be unavailable or if in the opinion of the Trustees the value thus obtained may not fairly indicate the actual market value, the security shall be valued as of the Valuation Date by a reputable broker or investment banker selected by the Trustees. If fair market value is not readily determinable by any of these means, the value of such security shall be determined in good faith by the Trustees. Unlisted securities shall be valued either by taking the mean between the most recent published bid and asked prices, or by averaging quotations as of the Valuation Date obtained from dealers, brokers or investment bankers approved by the Trustees or, if unavailable, by any other reasonable method approved by the Trustees in good faith.

(b) For the purpose of subparagraph (a) of this Section 6.1, the Trustees may rely, as sufficient evidence, upon reports of sale and bid and asked prices, and over the counter quotations, appearing in any newspaper of general circulation published in Boston, Massachusetts, or in New York City, New York, or in any financial periodical or quotation service approved by the Trustees or in the records of securities exchanges or brokers.

(c) A security purchased, and awaiting payment against delivery, shall be included for valuation purposes as a security held, and the cash accounts of the Trust Fund shall be adjusted by the deduction of the purchase price, including brokers' commissions and other expenses of the purchase.

(d) A security sold but not delivered pending receipt of proceeds shall be valued at the net sales price after deducting trading commissions and other expenses of the sale.

SECTION 6.2. *Valuation of Units of Participation of Capital Fund and Each Account.* The value on any Valuation Date of each unit of participation into which the Capital Fund, prior to the establishment of separate Accounts, and each Account, after the establishment of separate Accounts, is divided, shall be determined by dividing the then value of the net assets of the Capital Fund and each Account, as the case may be, (such net assets being the value of the assets of such Fund or Account less the liabilities of such Fund or Account) by the number of units into which the Capital Fund and each Account, as the case may be, is then divided. In determining said unit values, there shall be included in the Capital Fund and each Account, as the case may be, units to be redeemed as of that valuation date, and there shall be excluded therefrom units to be issued as of that date.

ARTICLE 7
CASH FUND; VALUATION OF UNITS;
PROVISIONS REGARDING CASH FUND DISBURSEMENTS

SECTION 7.1. *Valuation of Assets of the Cash Fund.* The Trustees shall use the following method in the valuation of the assets of the Cash Fund:

- (a) Securities shall be valued at their amortized cost (which shall mean the gross price at which such securities are purchased for the Cash Fund, including traders' commissions and all other fees, charges and expenses of such purchase), whether purchased at par, at a discount or at a premium.
- (b) A security purchased and awaiting payment against delivery shall be included for valuation purposes as a security held, and the cash accounts of the Cash Fund shall be adjusted by deducting the purchase price of such security.
- (c) A security sold but not delivered pending receipt of proceeds shall be valued at its sale price.

SECTION 7.2. *Valuation of Units of Participation of Cash Fund.* The value on any Valuation Date of each Unit into which the Cash Fund is divided shall be determined by dividing the then value of the net assets of the Cash Fund (such net assets being the value of the assets of such Fund less the liabilities of such Fund) by the number of units into which the Cash Fund is then divided.

SECTION 7.3. *Disbursement of Net Income of Cash Fund.* To facilitate the disbursement of accrued but uncollected income required to be credited to the accounts of and paid out to Participating or Purchasing Systems, the cash principal of the Cash Fund may be used by the Trustees to the extent they deem necessary, and if the equivalent of any such accrued but uncollected income shall be disbursed to a Participating or Purchasing System as herein required, and thereafter such accrued income shall not actually be collected by the Trustees, the Trustees shall have the right to charge to and recover from each Participating or Purchasing System the amount thereof disbursed to such Participating or Purchasing System.

ARTICLE 8
ALLOCATION OF STATE APPROPRIATIONS

SECTION 8.1. *State Appropriations.* All amounts which may be appropriated pursuant to the provisions of G.L.c.32§22B each fiscal year and deposited to the PRIT Fund pursuant to the provisions of G.L.c.32§22(8)(b) shall be allocated to and among the accounts of the State Employees' Retirement System, the Teachers' Retirement System and the other Participating Systems (but not any Purchasing Systems) as provided in this Article 8.

SECTION 8.2. *Entitlement to Allocable Share.* No Participating System shall be entitled to such an allocation unless it was a Participating System on July 1 (or the first business day in July, as the case may be) of the fiscal year with respect to which such appropriation shall have been made. Except as provided in the next sentence, allocation of such amounts among such Participating Systems shall be proportionate to the fair market value of the assets of the Trust Fund credited to the account of each such Participating System as of such July 1 (or such first business day in July), provided that, for purposes of such allocation, the amount of the combined assets of the State Employees' Retirement System and the Teachers' Retirement System shall be

deemed not to exceed One Billion Six Hundred Twenty-four Million Two Hundred Two Thousand Six Hundred and Seventy-eight Dollars (\$1,624,202,678). Participating Systems which accept the provisions of G.L.c.32§22D shall be entitled to an allocation equal to the greater of (i) the amount produced by application of the preceding sentence or (ii) the amount the system would be entitled to by application of the pension funding grant allocation provisions contained in G.L.c.32§22D(4)(c), provided that any such Participating System which elected to participate in the PRIT Fund on or before January 1, 1988 shall be entitled to an allocation equal to the sum of the amounts described in clauses (i) and (ii) above, and provided, further, that Participating Systems that did so elect to participate on or before such date shall receive either an allocation of the appropriation described in Section 8.1 or a pension funding grant, but not both.

SECTION 8.3. *Time and Method of Allocation.* Any amounts so appropriated and deposited with the Trustees during the course of a fiscal year shall be allocated ratably to the accounts of all such Participating Systems upon receipt by the crediting of additional Units of Participation to each such Participating System.

ARTICLE 9 RIGHTS, POWERS AND DUTIES OF TRUSTEES

SECTION 9.1. *Management and Ownership of Assets.* The Trustees shall have exclusive control and management of the Trust Fund hereunder. Title to all assets of the Trust Fund shall at all times be considered vested in the Trustees in a fiduciary capacity. No Participating or Purchasing System shall be deemed to have a severable ownership in any individual asset of the Trust Fund, but each such system shall have an undivided interest in the Funds and Accounts to which its deposits have been allocated and shall share with the others in the income, profits and losses thereof as provided herein.

SECTION 9.2. *Rights and Powers.* In exercising its exclusive right to manage and control the Trust Fund, the Trustees shall have the following rights and powers, in each case to be exercised or exercisable from time to time, in their uncontrolled discretion, without notice to any Participating or Purchasing System:

(a) To retain indefinitely any investment made by them and any property, real or personal, transferred to them by any Participating or Purchasing System and to invest and reinvest in stocks, shares and obligations of corporations, of unincorporated associations (including, but not limited to, capital investments in joint ventures and limited partnerships), trusts and investment companies, or in a common trust fund, or in any other kind of personal (tangible or intangible) or real property, such investments to be in such amounts, upon such terms and of such character as the Trustees may deem advisable; subject, however, to the restrictions on and directions concerning investments set forth in G.L.c.32§23(2A)(h) and the fiduciary standards of care and prudence set forth in G.L.c.32§23(3); provided, however, that the Cash Fund shall consist primarily of money market funds or short-term obligations, including, by way of illustration and not of limitation, bonds, bills, notes, certificates of deposit, deposits at interest, bankers' acceptances, sale and repurchase agreements and other evidences of indebtedness of the United States, instrumentalities of the United States, states or territories of the United States and political subdivisions thereof (including authorities or other public entities) and corporations;

(b) Subject to the provisions of G.L.c.32§23(2A)(h), to lend money to such borrowers as the Trustees may deem desirable;

- (c) To buy, exchange, sell, give options and make contracts for such consideration and upon such terms as to credit or otherwise as the Trustees may deem desirable;
- (d) To hold bonds, shares or other securities or property in bearer form or in the name of a nominee;
- (e) To sue and be sued, to plead and be impleaded and to compromise, submit to arbitration or pay any claim or matter of difference;
- (f) To maintain an office in the city of Boston in accordance with the provisions of G.L.c.32§23(2A)(j);
- (g) To vote directly or to give general or special proxies or powers of attorney for voting or acting with respect to shares or securities, which may be discretionary and with power of substitution; to deposit shares or securities with, or transfer them to, protective committees or similar bodies; to join in, vote upon and act in any manner that the Trustees deem appropriate with respect to any reorganization, merger or consolidation; and to pay assessments or subscriptions called for in connection with shares or securities held by them;
- (h) To employ investment counsel (on a discretionary or recommendation basis), custodians, brokers, accountants, auditors, agents and attorneys;
- (i) To keep any or all of the trust property in any place or places in the Commonwealth of Massachusetts or elsewhere or with a depository or custodian at any such place or places;
- (j) To execute assignments, notes, contracts or other instruments in writing, whether or not under seal, incident to any of the Trustees' powers;
- (k) To combine part or all of the Trust Fund for investment purposes with other funds of (i) plans that meet the requirements of Section 401(a) of the Internal Revenue Code ("Code") that are exempt from tax under Section 501(a) of the Code, or (ii) governmental plans described in Section 414(d) of the Code or governmental units described in Section 818(a)(6) of the Code, and permitted by existing or future rulings under the Code to pool their respective funds in a group trust (the provisions of any such group trust shall be deemed a part of this Declaration of Trust with respect to any such investment or reinvestment);
- (l) To accept and receive in trust, and combine with the Trust Fund, funds from any source, public or private, by gift, grant, bequest or otherwise; and
- (m) To do all other acts in their judgment necessary or desirable for the proper administration of the Trust Fund or with respect to the investment, disposition or liquidation of any assets of the Trust Fund, although the power to do such acts is not specifically set forth herein.

SECTION 9.3. *Expenses.* The Trustees shall pay Expenses from the income of the Trust Fund. Expenses, in the discretion of the Trustees, may be assessed against the assets of the Trust Fund as a percentage of income collected or the aggregate fair market value of all assets managed hereunder, or any combination thereof.

SECTION 9.4. *Trustees' Compensation.* Except as otherwise provided by law, the Trustees shall be entitled to no compensation for management and supervision of the Trust Fund or for fulfilling their responsibilities as Trustees hereunder, although they shall be reimbursed for their actual and necessary expenses.

SECTION 9.5. *Executive Director; Trust Staff and Employees.* In accordance with the provisions of G.L.c.32§23(2A)(f),(g), the Trustees shall employ an Executive Director who shall serve at their pleasure. The Executive Director shall, with the Trustees' approval:

- (a) plan, direct, coordinate and execute administrative and executive functions in conformity with policies and directives set by the Trustees;
- (b) employ professional and clerical staff as necessary;
- (c) report to the Trustees on all operations under his control and supervision;
- (d) prepare an annual budget for review by the Trustees; and
- (e) undertake any other activities necessary to implement the power and duties of the Trustees hereunder.

SECTION 9.6. *Books.* The Trustees shall keep full records and books of account. The Trustees' accounts shall be kept on an accrual basis or on a cash basis, in the Trustees' discretion, provided that no change in accounting method shall be made during the course of a fiscal year.

SECTION 9.7. *Audit.* The Trustees shall at least once each year cause an independent certified public accountant to audit the Trust Fund. A copy of the report of such audit shall be furnished to each Participating or Purchasing System.

SECTION 9.8. *Statements and Accounts.* The Trustees shall cause statements of assets and transactions to be prepared and distributed to each Participating or Purchasing System. Annually, within ninety (90) days after the close of the Trust Fund's fiscal year, the Trustees shall furnish a written account of the operation of the Trust Fund for the preceding fiscal year to the Board of each Participating or Purchasing System. Any Board to which an account of the Trustees is furnished may approve such account by an instrument in writing delivered to the Trustees. If objections to specific items in such account are filed with the Trustees within sixty (60) days after the account has been furnished and the Trustees believe such objections to be valid, the Trustees may adjust the account in such manner as they deem equitable under the circumstances. Each Board to which the Trustees furnish an account shall be notified by the Trustees of any adjustments so made. If

- (a) all Boards to which such account of the Trustees is furnished approve such account,
- or
- (b) no objections to specific items in such account are filed by any Board with the Trustees within sixty (60) days after the account has been furnished, or

(c) objections to specified items in such account are filed with the Trustees within sixty (60) days after the account has been furnished, and the Trustees give no notice of any adjustment to the account within one hundred and fifty (150) days after such account has been furnished,

then and in any of said events, the account of the Trustees, with respect to all matters contained therein (as originally furnished if no adjustment was made, or as adjusted if an adjustment was made), shall be deemed to have been approved by all Participating and Purchasing Systems.

SECTION 9.9. *Annual Report.* In addition to the statements and accounts described in Section 9.8, the Trustees shall annually, on or before May 1 (or such later date as may be set by the Public Employee Retirement Administration Commission) file with the Clerks of the House of Representatives and the Senate and with the secretary of the Board of each Participating System, on a form prescribed by said Commission, a sworn statement of the financial condition of the Trust Fund as of December 31 of the previous year.

SECTION 9.10. *Fiduciary Bonds.* No bond, surety or security shall be required of any Trustee or any employee of the Trust Fund unless the Trustees, in their sole discretion, determine bonding of any employee to be appropriate.

SECTION 9.11. *Trustee Liability.* No Trustee shall be liable for any act or omission of any other Trustee. Each Trustee shall be liable only for his own breaches of fiduciary duty, acts of willful dishonesty and intentional violations of law.

SECTION 9.12. *Third Parties.* No one dealing with the Trustees hereunder need inquire into the validity of anything the Trustees may purport to do or need see to the application of any money paid or property transferred to or upon the order of the Trustees.

SECTION 9.13. *Action by Majority.* In accordance with the provisions of G.L.c.30A§11A1/2, a majority of the Trustees may act.

SECTION 9.14. *Trustees' Discretion.* Whenever the Trustees are given discretion, such discretion shall be exercised and exercisable solely by them and shall not be subject to control, whether or not the particular provision providing for such discretion so states.

SECTION 9.15. *Fiduciary Standards for Action.* In accordance with the provisions of G.L.c.32§23(3), the Trustees shall discharge their duties for the exclusive purpose of providing benefits to the Participating or Purchasing Systems (and thereby to such systems' members and beneficiaries) 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 like character and with like aims and by diversifying the investments of the Trust Fund so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

SECTION 9.16. *Fiduciary Standards for Selection of Investment Counsel.* The Trustees shall, to the best of their ability and in a manner consistent with sound investment policy, engage as investment counsel individuals or firms who subscribe to a code of professional ethics such as The Institute of Chartered Financial Analysts Code of Ethics and Standards of Professional Conduct.

SECTION 9.17. *Conduct of Trustees.* The provisions of G.L.c.268A relating to the conduct of public employees shall apply to each of the Trustees. In accordance with the provisions of G.L.c.32§23(2A)(b), with

respect to investments made by the Trustees, the requirements of G.L.c.268A shall be met if the following procedure is complied with. If any Trustee has an interest or involvement in any investment which the Trustees propose to make, then the Trustees may make such investment if:

- (a) such Trustee discloses his interest or involvement in advance to the other Trustees;
- (b) such disclosure is contemporaneously recorded in the minutes of the Trustees; and
- (c) such Trustee abstains from participating in any particular matter (as defined in G.L.c.268A§1) relating to such investment.

ARTICLE 10 AMENDMENT

SECTION 10.1. *Amendments.* This Declaration of Trust may be amended from time to time by a written instrument signed and approved by a majority of the Trustees and filed with the Clerks of the House of Representatives and the Senate, subject to the approval of the Committee on Public Service in accordance with the provisions of G.L.c.32§23(2A)(e)(i). Notice of any such amendment shall be furnished to the Board of each Participating and Purchasing System as soon as practicable.

ARTICLE 11 MISCELLANEOUS PROVISIONS

SECTION 11.1. *Agent for Process.* The Trustees shall be deemed to represent all persons, natural or legal, having an interest in the Trust Fund for the purpose of all judicial proceedings affecting the Trust Fund or any asset thereof, and only the Trustees need be made a party to any such action. The Trustees shall give notice to the Attorney General of the Commonwealth of any such proceedings.

SECTION 11.2. *Definition of Words.* Feminine or neuter provisions shall be substituted for those of the masculine form, and the plural shall be substituted for the singular, or vice versa, in any place or places herein where the context may require such substitution or substitutions.

SECTION 11.3. *Headings.* Any paragraph or clause headings used throughout this instrument and any amendment to this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this instrument or any amendment to this instrument.

SECTION 11.4. *Records.* The Trustees acknowledge that the trust is a public trust, and through the Executive Director and his designees the Trustees shall keep accurate and detailed records of its transactions hereunder, and all its accounts, books and records relating thereto shall be open at all reasonable times to public inspection (subject to provisions of G.L.c.66A).

SECTION 11.5. *Effective Date; Amendment of Prior Trust Agreement.* This Declaration of Trust shall be effective upon its approval by the Committee on Public Service in accordance with the provisions of G.L.c.32§23(2A)(e)(i). This Declaration of Trust shall constitute an amendment and complete restatement of,

and upon such approval shall supersede, that certain Declaration of Trust made on September 17, 1996 by Joseph D. Malone, John J. McGlynn, James B. G. Hearty, Daniel O'Neil, Joseph DeLorey, Glenn Johnson, Robert Brousseau and Ralph White, the then duly authorized and acting members of the PRIM Board.

IN WITNESS WHEREOF, the undersigned Trustees have executed this instrument as of the 22nd day of September, 1998.

/s/Joseph D. Malone,
/s/Glenn Johnson,
/s/Angelo A. Amato,
/s/Robert Brousseau,
/s/James B. G. Hearty,
/s/George F. McSherry,
/s/Vikki L. Pryor
/s/Ralph White