

RESOLUTION NO. 2010-69

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE REVISED TERMS OF THE FLORIDA ASSOCIATION OF COUNTIES TRUST (FACT) AGREEMENT, FOR THE PURPOSE OF INCREASING THE SCOPE OF INSURANCE SERVICES PROVIDED TO MEMBER COUNTIES.

WHEREAS, St. Johns County is a member of the Florida Association of Counties Trust (hereinafter the Insurance Trust);

WHEREAS, the Board of Trustees of the Insurance Trust (hereinafter the Board) has approved a Fourth Amendment to the Agreement and Declaration of Trust (hereinafter the Fourth Amendment), a copy of which is attached to this Resolution and incorporated herein by reference;

WHEREAS, the Insurance Trust is currently limited to providing only general liability and automobile liability coverage to Member Counties;

WHEREAS, the Fourth Amendment expands the capabilities of the Insurance Trust to provide additional lines of coverage for Member Counties, including but not limited to property coverage, workers' compensation coverage, and automobile physical damage coverage;

WHEREAS, the Fourth Amendment therefore provides more choice of coverage to Member Counties and the opportunity to satisfy all of their coverage needs through the Insurance Trust;

WHEREAS, the Fourth Amendment provides for various other modifications of the Insurance Trust in support of an adjunct to the provision of additional lines of coverage for Member Counties, a copy of which is attached to this Resolution and incorporated herein by reference, hereinafter "Insurance Trust Fourth Amendment Itemization";

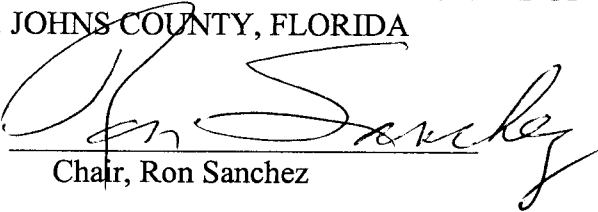
WHEREAS, the Agreement and Declaration of Trust dated March 1, 1989, creating the Insurance Trust requires the written consent of a percentage of the Members for the changes incorporated into the Fourth Amendment;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS: that the Fourth Amendment is hereby approved and that this Resolution shall document the written consent of St. Johns County, as a Member of the Insurance Trust, to the Fourth Amendment.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 16th day of March, 2010.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

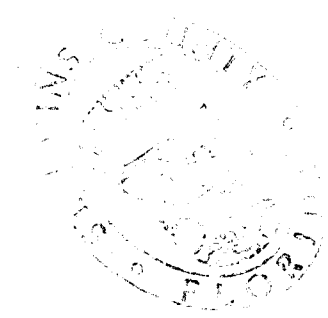
By:



Chair, Ron Sanchez

Attest: Cheryl Strickland, Clerk

By: Pam Halterman
Deputy Clerk



RENDITION DATE 3/18/10

Insurance Trust Fourth Amendment Itemization

February 17, 2010

- All pertinent references to “Liability Coverage” throughout the Trust Agreement have been stricken and/or changed to merely “Coverage.” This reflects the broadening of the Trust’s authority to expand its writing from liability only to all lines of property/casualty coverage.
- All references to “government liability pools” throughout the Trust Agreement have been changed to “government risk sharing pools. This reflects the broadening of the Trust’s authority to expand its writing from liability only, to all lines of property/casualty coverage.
- Definitional item “Act” has been broadened to include Art. VII, Section 1, Fla. Const.; Section 768.28(16), Florida Statutes; Section 111.072, Florida Statutes; Section 624.4622, Florida Statutes. These additional statutory references update references contained within the original Trust Agreement and now include references to provisions authorizing the writing of all lines of property/casualty coverage.
- Definitional item “Commission” and all subsequent references thereto have been deleted from the Trust Agreement as the Florida Liability Insurance Commission referenced in the original 1989 Trust Agreement no longer exists.
- Definitional item “County Association” has been deleted as the only reference within the Trust Agreement to this Association (FAC) was to set the date of the FACT Annual Members and Membership Meeting in Sec. 3.11 to the same date and place as the FAC Legislative Conference. Sec. 3.11 has been modified as set forth below.
- Definitional item “Coverage Period” has been modified so that a Coverage Agreement is no longer required to end on the last day of FACT’s Fiscal Year.
- Definitional item “Normal Premium” has been added. This new defined term aligns the FACT Trust Agreement with language contained in Section 624.4622, Florida Statutes wherein authority is granted to FACT to write all lines of property/casualty coverage.
- Definitional item “Trustee” has been changed to “Trustee(s)” to include member representatives individually as well as collectively.
- Sec. 2.06 Risk Management Program has been modified in that the ‘5% of premium’ cap on risk management funding has been removed.
- Sec. 3.05 Provision of Coverage has been edited to provide clarification on 1) Coverage Agreements are not now required to expire on the last day of FACT’s Fiscal Year; 2) the procedure Members must follow to non-renew a Coverage Agreement; and 3) the procedure that the Trust must follow in notifying Members of their estimated Premiums for the next ensuing Coverage Agreement renewal.

- Sec. 3.06 Extraordinary Loss Reserve Contributions, B(1) has been edited to clarify that the Florida Liability Insurance Commission no longer exists.
- Sec. 3.11 Annual Members Meeting. Annual Membership Meeting. This provision has been modified and no longer requires these meetings to be held at and during the FAC Legislative Conference.
- Sec. 3.12 Termination of Liability coverage has been edited to reflect that a Coverage Agreement is not required to end on the last day of FACT's Fiscal Year.
- Sec. 4.01 Number and Qualifications of Trustees has been modified as follows:
 - (a) the minimum number of Trustees has been reduced from 9 to 7;
 - (b) Trustees must be an elected official of Member County;
 - (c) a member County is entitled to no more than 1 Trustee on the Board at any given time;
 - (d) the minimum number of Board Trustees has been reduced from 7 to 5 in conjunction with (a) above;
 - (e) language authorizing the Board to appoint Optional Trustees has been deleted and moved to Sec. 4.04.
- Sec. 4.03 Appointment and Terms of Board Trustees has been modified to reflect that all Members are eligible to vote at the Annual members Meeting unless said Member has had its right to purchase coverage from the Trust terminated pursuant to Sec. 3.12 of the Trust Agreement.
- Sec. 4.04 Optional Trustees has been modified to:
 - (a) increase the maximum number of such additional Trustee positions to 4;
 - (b) provides that a majority vote of the Board is necessary to authorize such positions;
 - (c) deletes prior provisions outlining the manner of appointment or election of Optional Trustees and replaces it with provisions authorizing the Board to appoint such Trustees;
 - (d) clarifies that the maximum number of all Trustees is 11;
 - (e) delineates the purpose and function of Optional Trustees;
 - (f) provides that Optional Trustees may be elected or otherwise qualified officials, or an employee of a Member County.

AGREEMENT AND DECLARATION OF TRUST

Creating and establishing the

FLORIDA ASSOCIATION OF COUNTIES TRUST

FINAL BOARD ADOPTED COPY FOR APPROVAL BY FACT MEMBER BOARDS OF COUNTY COMMISSIONERS

Original Effective: 03/01/89

With Amendments:

1st Amendment Effective 10/01/89

2nd Amendment Effective 10/12/90

3rd Amendment Effective 10/28/97

4th Amendment - Adopted by FACT Board 02/17/10

FACT AGREEMENT AND DECLARATION OF TRUST

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AGREEMENT AND DECLARATION OF TRUST

THIS AGREEMENT AND DECLARATION OF TRUST is made and entered into as of March 1, 1989, by and among Lee Draper, Robert Fernandez, Ernie Padgett, Bill Peebles, Sue Schmitt, Richard Seltzer, and Lee Vause as the trustees of the Florida Association of Counties Trust (the "Trustees"), and Bay County, Brevard County, Jackson County, Leon County, Okaloosa County, and Polk County, as the charter members of the Florida Association of Counties Trust (the "Charter Members") as duly amended in accordance with its provisions.

WHEREAS, pursuant to the Act (as hereinafter defined), public agencies of the State of Florida (the "State") are authorized to establish local government ~~liability~~ risk sharing pools; and

WHEREAS, pursuant to the Act, the Charter Members desire to establish such a local government risk sharing ~~liability~~ pool to be known as the Florida Association of Counties Trust for the purpose of pooling the resources described herein to provide ~~liability~~ coverage for themselves and for other public agencies of the State; and

WHEREAS, pursuant to the Act, it is the desire and intent of the Trustees to serve in the capacity of Trustees of the Florida Association of Counties Trust for the purpose of operating, managing and maintaining the assets and liabilities thereof; and

WHEREAS, it is deemed to be in the best interest of the Florida Association of Counties Trust to execute and deliver an Agreement and Declaration of Trust fully setting forth the duties and responsibilities of the Trustees;

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the Florida Association of Counties Trust is hereby established and created as follows:

FACT AGREEMENT AND DECLARATION OF TRUST

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following capitalized terms shall have the meanings set forth below unless the text otherwise expressly requires. Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include legal entities.

"**Act**" shall mean, collectively, Art. VIII, Section 1, Fla. Const., Chapter 163, Part I, Florida Statutes, Chapter 125, Part I, Florida Statutes, Chapter 166, Part II, Florida Statutes, Section 768.28 (14) (16), Florida Statutes, Section 111.072, Florida Statutes, Section 624.4622, Florida Statutes and other applicable provisions of law.

"**Administrator**" shall mean the Administrator appointed or employed as provided in Section 5.07 of the Agreement.

"**Agreement**" shall mean this Agreement and Declaration of Trust, including any amendments or supplements hereto executed and delivered in accordance with the terms hereof.

"**Annual Board Meeting**" shall mean the annual meeting of the Board as provided in Section 4.07.

"**Annual Members Meeting**" shall mean the annual meeting of the Members provided for in Section 3.11 of the Agreement and the annual meeting held for the election of Member Trustees as required in Section 4.03 of the Agreement.

"**Board**" shall mean the Trustees constituting the governing board of the Trust.

"**Board Counsel**" shall mean an attorney or firm of attorneys, experienced in matters of local government law and duly admitted to practice law in the State, engaged or employed by the Board pursuant to Section 5.08 of this Agreement.

"**Board Trustee**" shall mean Trustees appointed or reappointed by the Board pursuant to the provisions of Article 4 of this Agreement.

"**Chair**" shall mean the Chair of the Board designated in Section 4.11 of this Agreement.

"**Charter Members**" shall mean the initial Public Agency signatories to this Agreement.

"**Claims Reserve Subaccount**" shall mean one or more subaccounts created within the Operating Account pursuant to Section 2.02 of this Agreement for the purpose of allocating funds for the payment of known claims.

~~"**Commission**" shall mean the Florida Liability Insurance Commission, a public body~~

FACT AGREEMENT AND DECLARATION OF TRUST

~~corporate and politic created pursuant to the Act.~~

~~"County Association" shall mean the Florida Association of Counties, Inc., a Florida not for profit corporation.~~

"~~Liability Coverage~~" shall mean the coverage or indemnity ~~of certain liability~~ of Members and other covered organizations and persons, within the monetary limits and under the terms and conditions established by the Board, all as described and specified in the Coverage Agreement.

"Coverage Agreement" shall mean the ~~liability~~ coverage agreement entered into between a Member and the Board providing for participation in the Trust and specifying the ~~Liability~~ Coverage provided by the Trust to the Member for the Coverage Period.

"Coverage Period" shall mean the period of time in which ~~Liability~~ Coverage is provided to a Member under a Coverage Agreement. ~~Each Coverage Period shall end on the last calendar day of a Fiscal Year.~~

"Designated Member Subaccount" shall mean a subaccount in the Extraordinary Loss Reserve Account established by the Board at the request of a Member pursuant to the Operations Manual.

"Distribution Date" shall mean the date Trust Assets are distributed to the Members upon dissolution of the Trust pursuant to Article VI of this Agreement.

"Excess Reserve Amount" shall mean, at any time of calculation, the amount on deposit in the Extraordinary Loss Reserve Account in excess of the Extraordinary Loss Reserve Account Requirement.

"Extraordinary Loss Reserve Account" shall mean the separate account in the Trust Fund established pursuant to Section 2.02(A) of this Agreement.

"Extraordinary Loss Reserve Account Requirement" shall mean the amount established by the Board, in its sole discretion, as necessary to be on deposit in the Extraordinary Loss Reserve Account for the provision of actuarially sound ~~Liability~~ Coverage to the Members for up to one future Fiscal Year.

"Extraordinary Loss Reserve Contribution" shall mean the contribution to the Trust Fund required of each Public Agency, pursuant to Section 3.01 or 3.06(A) of this Agreement, as a condition of becoming a Member. Each Extraordinary Loss Reserve Contribution shall include amounts required to fund the Extraordinary Loss Reserve Account and amounts required to pay costs associated with the initial formation of the Trust.

"Fiscal Year" shall mean the period commencing on October 1 of each year and continuing through the next succeeding September 30, or such other period as may be designated by the Board.

FACT AGREEMENT AND DECLARATION OF TRUST

"**Investment Earnings**" shall mean the aggregate of interest earned, dividends, and gains or losses realized from the investment of monies in the Trust Fund.

"**Loan**" shall mean an unrepaid amount of any loan ~~from the Commission or~~ from the Trust to a Member.

"**Loan Agreement**" shall mean the loan agreement between ~~the Commission or~~ the Trust and any Member.

"**Member**" shall mean and include each Charter Member and any other Public Agency located in the State of Florida which is accepted for membership in the Insurance Trust pursuant to Article III of this Agreement; provided however, that any Public Agency that has received Reserve Contribution Refunds equal to its Extraordinary Loss Reserve Contribution previously paid to the Insurance Trust shall no longer be deemed a "Member".

"**Member Trustee**" shall mean Trustees who are elected by Members of the Trust under and pursuant to the provisions of Section 4.03 of this Agreement.

"Normal Premium" shall mean the premium for the entire Trust, after application of experience modifications, but prior to the application of any deductible credit or any other form of premium modification permitted and/or required by the Operations Manual.

"**Operating Account**" shall mean the separate account in the Trust Fund established pursuant to Section 2.02(A) of this Agreement.

"**Operations Manual**" shall mean the Operations Manual adopted by the Board, including all appendices thereto, as amended from time to time by the Board, and all other policies and regulations approved by the Board for the operation and administration of the Trust or relating to the provision of ~~Liability~~ Coverage.

"**Optional Trustee**" shall mean ~~Trustees~~ Trustees who are authorized by the Board under and pursuant to Section 4.01 of this Agreement and are ~~elected or~~ appointed under and pursuant to the provisions of Section 4.04 of this Agreement.

"**Percentage Share**" shall mean, with respect to each Member, at any time of calculation, the percentage derived by dividing (i) the portion of such Member's Extraordinary Loss Reserve Contribution previously paid to the Trust less the sum of all Reserve Contribution Refunds to such Member, by (ii) the aggregate amount of Extraordinary Loss Reserve Contributions made by all Members less the sum of all Reserve Contribution Refunds to all Members.

"**Permanent Committees**" shall mean committees of the Board described in Section 4.12 (B) of this Agreement.

"**Policy**" shall mean and include any policy of insurance and/or reinsurance purchased by or assigned to the Trust and shall be deemed to include any and all amendments or riders

FACT AGREEMENT AND DECLARATION OF TRUST

attached to each such policy or policies.

"Premium Credit" shall mean the amount of Investment Earnings to which a Member may be entitled as a credit against its Premium or otherwise, pursuant to Section 3.06 (F) of this Agreement.

"Premium" shall mean annualized payments or installments required of a Member under the Coverage Agreement for ~~Liability~~ Coverage, as computed and adjusted in accordance with the provisions of the Operations Manual and pursuant to rates adopted by the Board pursuant to such actuarial review as may be deemed appropriate by the Board.

"Program Documents" shall mean this Agreement, the Operations Manual, the Coverage Agreement, the Regulations and any Policy.

"Public Agency" shall mean a "public agency" as defined in Part I of Chapter 163, Florida Statutes, which is a "state or political subdivision" within the meaning of Section 103(c)(1) of the Internal Revenue Code of 1986, as amended.

"Regulations" shall mean all laws and regulations affecting the Trust, as they are currently in force or hereafter amended, which are promulgated by the State or a department or a division thereof.

"Reserve Contribution Refund" shall mean the refund of all or a portion of any Member's Extraordinary Loss Reserve Contribution pursuant to Sections 3.06(B), (C), (D) or (G) of this Agreement but shall not include any Premium Credit.

"Secretary" shall mean the secretary of the Board designated in Section 4.11 of this Agreement.

"Service Company" shall mean an independent firm, corporation or other business entity qualified to serve as a ~~professional liability coverage~~ service provider which has been designated by the Board, pursuant to Section 5.09 of this Agreement, to provide all or part of the services necessary in the establishment, operation and conduct of the business of the Trust.

"State" shall mean the State of Florida.

"Temporary Committees" shall mean committees of the Board described in Section 4.12 (A) of this Agreement.

"Termination Date" shall mean the date on which a Member's participation in the Trust is terminated pursuant to Section 3.12 of this Agreement.

"Trust" shall mean the Florida Association of Counties Trust which is hereby created as a local government risk sharing ~~liability~~ pool pursuant to the Act.

"Trust Assets" shall mean the sum of all monies and other assets held by the Trustees

FACT AGREEMENT AND DECLARATION OF TRUST

on behalf of the Trust, which shall include, but not be limited to, all bank accounts, savings accounts or certificates of deposit, Premiums received from Members, interest income, or other return thereon, Policies together with any premium dividends, refunds or other sums payable on account of such Policies, all investments made and held by the Trustees on behalf of the Trust, and any other property of any kind whatsoever, received and held for the uses and purposes declared by this Agreement.

"Trust Fund" shall mean all funds, accounts and subaccounts created pursuant to Section 2.02 of this Agreement.

"Trustee(s)" shall mean ~~the~~ a trustee or trustees of the Trust designated in Section 4.01, 4.02, 4.03 and 4.04 of this Agreement.

"Vice-Chair" shall mean the Vice-Chair of the Board designated in Section 4.11 of this Agreement.

FACT AGREEMENT AND DECLARATION OF TRUST

ARTICLE II

PURPOSE OF TRUST AND APPLICATION OF TRUST ASSETS

Section 2.01. Creation of Trust. There is hereby created and established a local government ~~risk sharing liability~~ pool to be known as the Florida Association of Counties Trust, the operation and administration of which shall be the responsibility of the Trustees. The initial Trustees hereby accept the trusts imposed upon them by this Agreement and agree to perform such trusts. The Trust Assets shall be held by the Trustees on behalf of the Members for the purpose of providing and maintaining on a group basis as provided in the Act, a voluntary joint shared risk program for Public Agencies located in the State to provide ~~Liability~~ Coverage. Title to all Trust Assets paid to the Trust and all of the property of the Trust shall be vested in and remain exclusively in the Trust. The Trustees, Administrator, Service Company and Members shall not have any right, title or interest in or to any of the Trust Assets or any part thereof. It is the intention of the parties hereto that the Trust shall constitute an irrevocable trust, until terminated as provided herein, for the sole and exclusive benefit of Members entitled to the benefits of the Trust, and no benefits or monies or property of this trust shall at any time be subject in any manner to anticipation, alienation, claims for alimony or marital or child support, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempts to do so shall be void.

Section 2.02. Funds and Accounts.

(A) The Board covenants and agrees to establish with one or more banks, trust companies or other entities in the State, which are eligible under the laws of the State to be depositories of public funds, one or more accounts which may include or consist of, in whole or in part, some or all of one or more of the following accounts: (1) the "Florida Association of Counties Trust Operating Account", (2) the "Florida Association of Counties Trust Extraordinary Loss Reserve Account," and (3) such other accounts or subaccounts as the Board shall deem advisable or which may be necessary to comply with the Program Documents, applicable Regulations and insurance accounting practices as defined in the National Association of Insurance Commissioners' Standard Accounting Principles.

(B) The monies required to be accounted for in each of the accounts established herein may be deposited in one or more accounts, and amounts allocated to the various accounts may be invested in one or more common investment pools, accounts or funds, subject to the investment policy of the Board, provided that adequate accounting records are maintained.

Section 2.03. Operating Account.

(A) Premiums shall be deposited upon receipt into the Operating Account. Funds on deposit in the Operating Account shall be applied for the following purposes:

- (1) to pay claims which are or may be covered by a Coverage Agreement;

FACT AGREEMENT AND DECLARATION OF TRUST

(2) to pay or provide for the payment of premiums and other expenses on any Policy, if any, including any excess insurance of the Trust, when such premiums shall become due;

(3) to provide for a risk management program as described in Section 2.06 of this Agreement;

(4) to enforce the payment of, or to pay or provide for the payment of, all reasonable and necessary expenses of collecting Premiums required under the Coverage Agreement;

(5) to administer or provide for the administration of the affairs of the Trust and its Trust Assets, including, without limitation, the payment of all expenses which may be incurred in connection with the establishment, preservation and extension of the Trust, the employment of such administrative, legal, expert and clerical assistance, the purchase of surety bonds, the leasing of such premises and the purchase or lease of such materials, printed matter, supplies and equipment as the Board, in its discretion, finds necessary or appropriate; and

(6) to make direct payments in lieu of Premium Credits in accordance with Section 3.06(F) of this Agreement.

Investment Earnings derived from the funds on deposit in the Operating Account shall be retained in the Operating Account.

(B) Amounts equal to the Service Company's estimate of the Trust's aggregate unpaid liability for known claims, including allocated and unallocated loss expenses and settlement costs, shall be set aside in a Claims Reserve Subaccount in the Operating Account. If the Service Company determines that the funds on deposit in the Operating Account exceed the amount reasonably required for the purposes of such Account, any excess amounts may be transferred to the Extraordinary Loss Reserve Account.

Section 2.04. Extraordinary Loss Reserve Account. Extraordinary Loss Reserve Contributions shall be deposited upon receipt into the Extraordinary Loss Reserve Account. Funds on deposit in the Extraordinary Loss Reserve Account shall be applied for the following purposes:

(A) for transfer to the Operating Account if (1) there are no funds on deposit in the Operating Account other than those set aside in a Claims Reserve Subaccount, or (2) necessary to comply with written direction of a Member pursuant to Section 2.05(B) of the Operations Manual; and

(B) for the payment of Reserve Contribution Refunds in accordance with Sections 3.06(B), (C), (D) and (G) of this Agreement.

Investment Earnings derived from the funds on deposit in the Extraordinary Loss Reserve Account shall be credited to the Operating Account.

FACT AGREEMENT AND DECLARATION OF TRUST

Section 2.05. Application of Trust Assets. The Board may use and apply the Trust Assets on its own behalf or may delegate the use and application of such Trust Assets to the Administrator or the Service Company for the following purposes:

- (A) to pay claims which are or may be covered by a Coverage Agreement;
- (B) to pay or provide for the payment of premiums and other expenses on any Policy, if any, including any excess insurance of the Trust, when such premiums shall become due;
- (C) to provide for a risk management program as described in Section 2.06 of this Agreement.
- (D) to enforce the payment of, or to pay or provide for the payment of all reasonable and necessary expenses of collecting, Premiums required under the Coverage Agreement;
- (E) to administer or provide for the administration of the affairs of the Trust and its Trust Assets, including, without limitation, the payment of all expenses which may be incurred in connection with the establishment, preservation and extension of the Trust, the employment of such administrative, legal, expert and clerical assistance the purchase of surety bonds, the leasing of such premises and the purchase or lease of such materials, printed matter, supplies and equipment as the Board, in its discretion, finds necessary or appropriate; and
- (F) to make payments to Members, in accordance with Sections 3.06(B), (C), (D), (F) and (G) of this Agreement.

Section 2.06. Risk Management Program. Recognizing the potential effect of a vigorous risk management program upon total losses suffered by Members, the Trust shall allocate an amount determined by the Board ~~not to exceed five percent of the Premiums,~~ for risk management purposes. The risk management program may, among other things: fund studies of Members' exposures and losses; fund preparation and production of risk management manuals, pamphlets and other materials; conduct risk management education and training for Members' officials and employees; encourage the formation and expansion of risk management departments of Members through direct assistance, grants or other means; provide continuing education of Members' risk management and other personnel; and implement other risk management activities for Members.

FACT AGREEMENT AND DECLARATION OF TRUST

ARTICLE III

MEMBERSHIP

Section 3.01. Charter Members. Upon establishment of the Trust, the Public Agency parties to this Agreement shall become Charter Members upon payment of their respective Premiums and the following Extraordinary Loss Reserve Contributions.

Section 3.02. No Waiver of Immunity. It is the intent of the Members that, by entering into this Agreement, they do not waive and are not waiving any immunity provided to the Members or their officers, employees, agents or independent contractors by any State law.

Section 3.03. Qualifications for New Members. An applicant for membership in the Trust shall demonstrate to the satisfaction of the Board that it: (A) is a Public Agency located in the State; (B) qualifies for participation in the Trust under the Act; (C) qualifies for participation in the Trust under the eligibility requirements set forth in the Operations Manual; (D) submits an application for participation in the Trust in the form approved by the Board; (E) makes, prior to the effective date of any ~~Liability~~ Coverage, an Extraordinary Loss Reserve Contribution pursuant to Section 3.06(A); and (F) purchases ~~Liability~~ Coverage and pays its initial Premium. The Board may require each new Member to reimburse the Trust for the cost of processing its membership application and for any costs incurred in connection with reduction in Loan principal for existing Members by the amounts shown in the Notice of Payment and Redemption issued by the Board upon the approval of such new Member (including any premium payment required or negative arbitrage incurred in connection with the redemption of indebtedness issued ~~by the Commission~~ to provide funds for such Loans). Such costs may be paid separately or as part of the initial Premium.

Section 3.04. Acceptance for Membership. The Board, in its sole discretion, shall have the right to accept or reject any applicant for membership. Membership in the Trust shall commence on the date determined by the Board as specified in the Coverage Agreement. Each new Member shall agree by written instrument to be bound by the terms of the Program Documents. Except as provided in Section 3.12 of this Agreement, all Members shall be entitled to purchase ~~Liability~~ Coverage and shall be responsible for the payment of Premiums in connection therewith.

Section 3.05. Provision of ~~Liability~~ Coverage. ~~Liability~~ Coverage shall be provided to each Member in accordance with a Coverage Agreement issued to each Member. Coverage Agreements shall be issued for periods not in excess of one year. ~~and shall terminate on the last calendar day of each Fiscal Year.~~ A Member may elect not to renew its ~~Liability~~ Coverage starting with the next ensuing at the end of the current Coverage Agreement Fiscal Year, provided that written notice of such election is provided to the Trust not less than ninety (90) days prior to the last calendar day of the current Coverage Agreement Fiscal Year. Not less than one hundred twenty (120) days prior to the last calendar day of the current Coverage Agreement Fiscal Year, the Trust shall notify each Member of its estimated Premium for the next ensuing Coverage Agreement renewal Fiscal Year. Actual Premiums shall not exceed the estimate contained in such notice by more than ten percent (10%) unless incorrect, insufficient or incomplete rating data has been provided to the Trust by the Member. Notwithstanding

FACT AGREEMENT AND DECLARATION OF TRUST

the foregoing, a Member's right to participate in the provision of ~~Liability~~ Coverage may be terminated by the Board in accordance with Section 3.12 of this Agreement.

Section 3.06. Extraordinary Loss Reserve Contributions.

(A) The Board, in its sole discretion, shall, upon consideration of any recommendation of the Service Company and/or any recommendation of any independent actuary engaged by the Board, determine the Extraordinary Loss Reserve Contribution and the amount of the initial Premium for each new applicant to provide actuarially sound ~~Liability~~ Coverage to such applicant; provided however, that the Extraordinary Loss Reserve Contribution for each new applicant shall not be less than such applicant's population (based upon the most recent population estimates for such applicant published by the University of Florida, Bureau of Economic and Business Research) multiplied by the sum of (1) the amount on deposit in the Extraordinary Loss Reserve Account as of the last day of the immediate prior calendar month and (2) the amount required to pay costs associated with the initial formation of the Trust, divided by the aggregate population of the existing Members (as of the date of their admission to membership). The Board shall require the applicant to contribute an amount equal to such applicant's Extraordinary Loss Reserve Fund Contribution, in addition to its initial Premium, as a condition to accepting such applicant as a Member. The Extraordinary Loss Reserve Contribution shall be paid to the Trust either (i) in cash on the date the first Coverage Agreement is issued to the new Member or (ii) pursuant to written agreement between the Trust and such new Member, on such other date or dates as shall be determined by the Board. After determining the portion, if any, of the Extraordinary Loss Reserve Contribution to be paid on the date the new applicant becomes a Member and initial Premium for the new applicant and confirming the new applicant's desire to become a Member, the Board shall compute the Percentage Shares of all Members and the new applicant, of an amount equal to the sum of (1) the amount on deposit in the Extraordinary Loss Reserve Account as of the last day of the immediate prior calendar month and (2) the amount of the new applicant's Extraordinary Loss Reserve Contribution. The Board shall also determine, upon consideration of the Service Company's recommendation, if upon payment of the new applicant's Extraordinary Loss Reserve Contribution, there will be amounts on deposit in the Extraordinary Loss Reserve Account in excess of the Extraordinary Loss Reserve Requirement.

(B) If the Board determines, upon consideration of the Service Company's recommendation, that an Excess Reserve Amount will exist, it shall reduce the new applicant's Extraordinary Loss Reserve Contribution by the amount of its Percentage Share of such Excess Reserve Amount.

(1) If the new applicant's Extraordinary Loss Reserve Contribution is to be provided by the existing Members from outstanding Loan amounts, the Board shall provide a Notice of Admission, in substantially the form attached hereto as Exhibit A, to ~~the Commission and~~ each existing Member of the amount of each existing Member's Percentage Share of such Excess Reserve Amount. The Board shall calculate ~~request that the Commission notify the Board of~~ the outstanding principal amount of the Loan for each Member by completing and returning the Notice of Admission. ~~The Commission and the~~ Board shall determine the amount of Loan financing available to such new Member by completing a Notice of Reallocation, in substantially the form attached hereto as Exhibit B. The Board shall send the completed Notice

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of Reallocation to ~~the Commission~~ and each Member and provide (a) a credit against such Member's unpaid Extraordinary Loss Reserve Contribution, if any, and (b) arrange for a Reserve Contribution Refund to be made to each existing Member, either as a credit against such Member's Loan or a credit against such Member's next Premium; provided that the aggregate amounts provided in the manner described in clauses (a) and (b), above, shall be equal to the amount shown in the Notice of Reallocation. Any such Reserve Contribution Refund will be subject to any restrictions set forth in the Loan Agreements.

(2) If the new applicant's Extraordinary Loss Reserve Contribution is to be provided by a new Loan ~~directly from the Commission~~ or from other funds of the new applicant, the Board shall complete a Notice of Payment and Redemption, in substantially the form attached hereto as Exhibit C, and provide the Notice of Payment and Redemption to ~~the Commission~~ and each Member and provide (a) a credit against such Member's unpaid Extraordinary Loss Reserve Contribution, if any, and (b) arrange for a Reserve Contribution Refund to be made to each existing Member, either as a credit against such Member's Loan, a cash payment, or a credit against such Member's next Premium; provided that the aggregate amounts provided in the manner described in clauses (a) and (b), above, shall be equal to the amount shown in the Notice of Payment and Redemption.

(C) At its first meeting of each Fiscal Year, the Board shall determine, upon consideration of the Service Company's recommendation and such other advice as the Board may seek, if (1) the Extraordinary Loss Reserve Account Requirement is sufficient and (2) whether there is an Excess Reserve Amount. If there is an Excess Reserve Amount, the Board shall give notice to ~~the Commission~~ and each Member and either provide a credit against such Member's unpaid Extraordinary Loss Reserve Contribution in the amount of such Member's Percentage Share of such Excess Reserve Amount or arrange for a Reserve Contribution Refund to be made to each Member, either as a credit against such Member's Loan, as a cash payment, or a credit against such Member's next Premium in amounts equal to each Member's Percentage Share of such Excess Reserve Amount. Any such Reserve Contribution Refund will be subject to any restrictions set forth in the Loan Agreements.

(D) Notwithstanding the provisions of Sections 3.06(B) or (C), the Board may, in its sole discretion, apply all or any portion of an Excess Reserve Amount to make Reserve Contribution Refunds to Members no longer purchasing ~~Liability~~ Coverage from the Trust.

(E) In the event a Member receives a Reserve Contribution Refund pursuant to Section 3.06(D), the full amount thereof must be repaid to the Trust prior to the purchase of any future ~~Liability~~ Coverage by such Member. In the event any repayment of a Reserve Contribution Refund results in an Excess Reserve Amount, such Excess Reserve Amount shall be distributed in the manner described in Section 3.06(B) of the Agreement.

(F) Each Member shall be entitled to a Premium Credit against the Premium payable for any Fiscal Year following the initial Fiscal Year, in an amount to be computed and paid or credited as follows:

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(1) During any period in which there are no funds on deposit in a Designated Member Subaccount, the Premium Credit of each Member shall be computed as the sum of (a) such Member's Percentage Share of the Investment Earnings on the Extraordinary Loss Reserve Account for the immediate prior Fiscal Year plus (b) that portion of the Investment Earnings on the Operating Account for the immediate prior Fiscal Year equal to the aggregate of such Investment Earnings multiplied by such Member's Premium for such Fiscal Year divided by the sum of all Members' Premiums for such Fiscal Year.

(2) During any period in which there are funds on deposit in a Designated Member Subaccount, the Premium Credit of each Member for which a Designated Member Subaccount has been maintained during the immediate prior Fiscal Year shall be computed as the sum of (a) the Investment Earnings on the Designated Member Subaccount maintained for such Member for the immediate prior Fiscal Year plus (b) the product of (i) the average rate of Investment Earnings on amounts on deposit in the Extraordinary Loss Reserve Account during the immediate prior Fiscal Year, times (ii) such Member's Extraordinary Loss Reserve Contribution less the aggregate amount of Reserve Contribution Refunds paid or credited to such Member and less the average daily balance on deposit in the Designated Member Subaccount maintained for such Member, times (iii) the average daily balance on deposit in the Extraordinary Loss Reserve Account divided by the difference between the aggregate amount of Extraordinary Loss Reserve Contributions of all Members and the aggregate amount of Reserve Contribution Refunds paid or credited to all Members, plus (c) that portion of the Investment Earnings on the Operating Account for the immediate prior Fiscal Year equal to the aggregate of such Investment Earnings multiplied by such Member's Premium for such Fiscal Year divided by the sum of all Members' Premiums for such Fiscal Year.

(3) During any period in which there are funds on deposit in a Designated Member Subaccount, the Premium Credit of each Member for which a Designated Member Subaccount has not been maintained during the immediate prior Fiscal Year shall be computed as the sum of (a) the product of (i) the average rate of Investment Earnings on amounts on deposit in the Extraordinary Loss Reserve Account during the immediate prior Fiscal Year, times (ii) such Member's Extraordinary Loss Reserve Contribution less the aggregate amount of Reserve Contribution Refunds paid or credited to such Member, times (iii) the average daily balance on deposit in the Extraordinary Loss Reserve Account divided by the difference between the aggregate amount of Extraordinary Loss Reserve Contributions of all Members and the aggregate amount of Reserve Contribution Refunds paid or credited to all Members, plus (b) that portion of the Investment Earnings on the Operating Account for the immediate prior Fiscal Year equal to the aggregate of such Investment Earnings multiplied by such Member's Premium for such Fiscal Year divided by the sum of all Members' Premiums for such Fiscal Year.

(4) Notwithstanding the foregoing, Premium Credits shall be reduced or eliminated by the Board, if necessary, if the implementation thereof would jeopardize the ability of the Trust to provide ~~Liability~~ Coverage to Members on an actuarially sound basis or otherwise potentially jeopardize the financial soundness of the Trust, including, without implied limitation, maintenance of an adequate Extraordinary Loss Reserve Account. The Premium Credit for any Member whose Extraordinary Loss Reserve Contribution was paid during the immediate prior Fiscal Year shall be computed only on Investment Earnings for such Member's period of membership.

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Any Member electing not to purchase ~~Liability~~ Coverage in accordance with Section 3.05 hereof or whose right to purchase ~~Liability~~ Coverage has been terminated pursuant to Section 3.12 hereof shall receive an equivalent direct payment in lieu of its Premium Credit.

(G) Upon the expiration of four consecutive complete Fiscal years during which a Member has not purchased ~~Liability~~ Coverage from the Insurance Trust, such Member shall be entitled to a refund of its Percentage Share of the amount on deposit in the Extraordinary Loss Reserve Account at the end of the last Fiscal Year during which such Member purchased ~~Liability~~ Coverage, which shall be payable in not more than three equal annual installments; provided however, that there shall be no entitlement to any such refund or annual installment if the payment thereof would jeopardize the ability of the Insurance Trust to provide ~~Liability~~ Coverage to Members on an actuarially sound basis.

Section 3.07. Limits of Liability. All Members understand and agree that all property, liability or other claims made against any Member payable by the Trust shall be limited to that amount established by the Board in the Program Documents and specified in the applicable Coverage Agreement or Policy. It is further understood and agreed that the aggregate liability of the Trust is expressly limited to the amount of Trust Assets available for the payment of claims as determined by the Board. Any and all liability in excess of such amounts shall be borne by the Member against whom such claim was brought.

Section 3.08. Other Membership Obligations. Each Member agrees to be bound initially and continually by all of the burdens, obligations, duties and requirements placed on a Member by the Program Documents and by all of the terms of this Agreement as amended from time to time. Each Member further agrees to abide by the procedures, policies and decisions promulgated by the Board for the administration of the Trust, which burdens, obligations, duties and responsibilities shall include, but not be limited to, the following:

(A) Each Member agrees to initiate and maintain a risk management program to attempt to reduce the exposure of the Member and its officials and employees to claims and losses and agrees to comply with the provisions of the risk management program of the Trust, including all reasonable action to implement the recommendations of any loss control inspections; provided however, that each Member shall remain solely responsible for all decisions concerning its risk management program and practices and may not rely on evaluations or recommendations made by the Board, the Administrator, the Board Counsel or the Service Company or their respective officials, directors, officers, employees, agents or independent contractors in making final decisions concerning the Member's risk management programs and practices. Neither the Trust, the Board, the Administrator, the Board Counsel or the Service Company, nor their respective officials, officers, directors, employees, agents or independent contractors shall be liable for any claim, loss or liability caused by or arising out of any risk management program or any risk management related evaluation or recommendation, whether or not caused in whole or in part by the actual or alleged negligence of any such person or organization.

(B) In the event of an "occurrence", an "offense", an "error or omission" (each as defined in the Coverage Agreement) or any other happening to which the Coverage Agreement may apply, the Member shall provide all notices and reports and shall comply with all other terms and provisions of the Coverage Agreement.

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(C) The Member shall cooperate with the Board, the Administrator, the Board Counsel and the Service Company and upon the request of their agents require the appropriate officers, officials, employees, agents or independent contractors of the Member to attend court hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and otherwise cooperate in the conduct of suits, court hearings or proceedings relating to any ~~Liability~~ Coverage under the Coverage Agreement. The Member shall not, except at its own cost, which shall not be reimbursed out of the accounts and funds of the Trust, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical attention and other services at the time of injury as are required by law.

(D) Each Member shall make prompt payment of all Premiums and other payments required by the Program Documents.

(E) Each Member does hereby appoint the Trust and the Service Company as its agent to act in the Member's behalf to file reports and to make or arrange for payment of claims, medical expenses and all other things required or necessary insofar as they affect the Member's liability for claims covered under a Coverage Agreement.

(F) Each Member agrees that, in the event of the payment of any loss by the Trust under this Agreement, the Trust shall be subrogated to the extent of such payment to all the rights of the Member against any person or other entity legally responsible for damages for said loss, and in such event, the Member hereby agrees to render all reasonable assistance, other than pecuniary assistance, to effect recovery.

(G) Each Member agrees that time is of the essence in the performance of its obligations to the Trust.

Section 3.09. Provision of Records. The Members shall furnish to the Board, the Service Company and the Administrator, such records and any and all other information that may be required in connection with the Program Documents, including information required in connection with issuance of a Policy or Policies.

Section 3.10. Inspections. The Board, the Service Company, the Administrator and any of their agents, representatives, employees or independent contractors, shall be permitted at all reasonable times to inspect all land, buildings and places and all equipment, machinery, papers and records for which ~~Liability~~ Coverage is provided under the Coverage Agreement whether under the control of the Member, or its employees, agents or independent contractors. In addition, inspection and examination shall be permitted at all reasonable times within four years after the termination of status as a Member, of a Member's books, vouchers, contracts, documents and records of any and every kind which show or tend to show or verify the Members' contributions which are payable or were paid under the terms of the Program Documents.

Section 3.11. Annual Members Meeting. Annual Membership Meeting. An annual meeting of the Members shall be held at the place designated by the Board. ~~of and during the Legislative Conference of the County Association.~~ The Administrator shall furnish by regular mail

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each Member notice of the time, place and date of the Annual Member Meeting at least fourteen (14) days prior to the date of the meeting. At such Annual Member Meeting, the Administrator shall submit a statement of the claims experiences of the Insurance Trust for the same period.

Section 3.12. Termination of ~~Liability~~ Coverage.

(A) The right of any Member to purchase ~~Liability~~ Coverage from the Trust may be terminated: (1) if a Member fails to remit its Premiums on the date due under the terms of the Coverage Agreement; (2) if a Member fails to continue to comply with the requirements set forth in Section 3.03 of this Agreement; (3) if a Member files any report related to its ~~Liability~~ Coverage containing a materially false statement or a material omission; (4) because of the failure of a Member to meet other requirements found by the Board to be necessary to preserve the stability and strength of the Trust for continued membership in the Trust including compliance with established underwriting criteria and participation in risk management programs approved by the Board; (5) if it is subsequently discovered that a Member made a false statement or misrepresentation, whether intentional or unintentional, in meeting the requirements of Section 3.03 of this Agreement and in the event such false statement and misrepresentation is found by the Board, in its sole discretion, to have been a material factor of membership; or (6) because of failure to perform or comply with all terms and conditions of this Agreement or any of the other Program Documents.

(B) Upon the occurrence of an event or condition described in Section 3.12(A), the Board may, in its sole discretion, terminate a Member's Coverage Agreement and its right to purchase future ~~Liability~~ Coverage in accordance with the following procedure:

(1) Upon recommendation of the Service Company, the Board shall send a written notice of termination to the affected Member (the "Notice of Termination"), by registered or certified mail, which shall include (a) a brief description of the event or occurrence upon which the termination is based; (b) a statement that such termination will become effective on the thirtieth day following such Member's receipt of the Notice of Termination (the "Termination Date"); and (c) the time, date and location at which the Board will convene, if requested by the Member, to consider rescinding the Notice of Termination, which date shall be not earlier than the 15th day following the date on which the Notice of Termination is delivered to the postal authorities for delivery to the Member.

(2) Such Member's Coverage Agreement and right to purchase future ~~Liability~~ Coverage will be terminated on the Termination Date unless the Member submits a written request to the Board to rescind the Notice of Termination within 5 days of its receipt thereof.

(3) Upon receipt of such Member's request to rescind the Notice of Termination, the Board shall convene a meeting at the time, date and location specified in the Notice of Termination. At the meeting, the Board shall hear a report from the Service Company regarding the reasons for issuance of the Notice of Termination and such Member will be permitted an opportunity to refute the report of the Service Company and the findings contained in the Notice of Termination.

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(4) The Board may, by affirmative vote of not less than a majority of the then currently authorized number of Trustees, rescind the Notice of Termination. If the Board takes no action, the ~~Liability~~ Coverage of the Member and its officers and employees shall terminate as of the Termination Date. Subsequent to the Termination Date, no liability shall accrue to the Trust or its Members for any "occurrence", "offense", "error or omission" (each as defined in the Coverage Agreement) or any other happening to which the Coverage Agreement may otherwise apply, with respect to the Member whose ~~Liability~~ Coverage has been terminated.

Section 3.12. Termination of Liability Coverage.

(C) If a Member's right to purchase ~~Liability~~ Coverage is terminated during the effective period of its Coverage Agreement, ~~a Fiscal Year~~, any unearned portion of the Premium paid by such Member shall be refunded at the earliest practicable date. For purposes of this Section 3.12(C), Premiums shall be deemed earned on an equal daily basis over the Coverage Period.

(D) The Extraordinary Loss Reserve Contribution of such Member shall be retained by the Trust subject to the provisions of Section 3.06(D) or (G) of this Agreement. Prior to the date such Member has received Reserve Contribution Refunds equal to its Extraordinary Loss Reserve Contribution previously paid to the Trust, it shall, unless otherwise provided herein, be entitled to all rights granted to Members pursuant to this Agreement other than the right to purchase ~~Liability~~ Coverage.

Section 3.13. No Rights of Membership Granted. Nothing contained in this Article III, or any other section of this Agreement or in any other Program Document, shall be construed to grant any Public Agency the right to become a Member of the Trust or to receive ~~Liability~~ Coverage under a Coverage Agreement issued by the Trust regardless of technical or apparent compliance with requirements and conditions for membership as provided herein. Membership in the Trust and ~~Liability~~ Coverage under the Coverage Agreement is within the sole discretion of the Board despite any enumeration of any eligibility requirements in this Agreement and the other Program Documents.

Section 3.14. Status of Member Obligations. Anything in this Agreement and Declaration of Trust to the contrary notwithstanding, it is understood and agreed that the ad valorem taxing power and the full faith and credit of the Member has not been pledged to secure any obligations of the Member hereunder. ~~Neither the Commission nor the~~ Trust shall not have any right to compel the exercise of any ad valorem taxing power of the Member to pay any obligations of the Member owing hereunder. All obligations of the Member under this Agreement shall be payable solely from Pledged Revenues as such revenues are described in the Loan Agreement by and between the Member and ~~the Commission or~~ the Trust. The provisions of this paragraph shall survive the termination of this Agreement.

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ARTICLE IV

APPOINTMENT AND ORGANIZATION OF TRUSTEES

Section 4.01. Number and Qualification of Trustees. The Trust shall be ~~administered~~ governed by a Board of Trustees consisting of a an odd number of Trustees, not less than seven (7) nor more than eleven (11) in number. ~~total of either nine (9) or (11) Trustees.~~ Each Trustee shall be an elected or otherwise duly qualified member of the governing body of a Member Public Agency or ~~an official or full-time employee of a Public Agency~~ and shall not be an owner, officer or employee of the Service Company. A Member shall be entitled to no more than one (1) Trustee on the Board at any given time. ~~A majority of the Trustees shall be duly qualified county commissioners or members of the governing board of a Public Agency.~~ Two Trustees shall be elected by the Members at the Annual Members Meeting in the manner provided in Section 4.03 and shall be designated Member Trustees. Not less than five (5) nor more than nine (9) ~~Seven (7)~~ Trustees shall be appointed in the manner provided in Section 4.02 and shall be designated Board Trustees. ~~Upon a majority vote of the Board, two (2) additional Trustee positions may, from time to time, be authorized and be appointed or elected in the manner provided in Section 4.04.~~ ~~Such Trustees shall be designated Optional Trustees.~~ Regardless of their manner of appointment or election, all Trustees whose term of office expires shall continue to serve until his or her successor is appointed or elected in the manner provided in this agreement.

Section 4.02. Appointment and Terms of Board Trustees. The Board shall appoint, by majority vote, individuals to the position of Board Trustee for each Board Trustee position for which the term of office shall have expired. Appointments to expired term Board Trustee positions may be made by the Board at any special meeting called for the purpose of Trustee appointment or at any regular meeting or at the Annual Board Meeting. Board Trustees shall serve a term of two (2) years and may be reappointed for successive terms. In the event of a vacancy of a Board Trustee prior to the expiration of a term because of resignation, removal or any other reason, a successor Board Trustee may be appointed to serve the remainder of the term of the vacated Board Trustee by majority vote of the Board at the Annual Board Meeting, any regular meeting or any special meeting called for the purpose of Trustee appointment. A Board Trustee may be removed, with or without cause, by an affirmative majority vote of the Board at the annual meeting or any special meeting called for the purpose of Trustee removal.

Section 4.03. Election and Terms of Member Trustees. Two (2) Trustees, one (1) in even numbered years and one (1) in odd numbered years, shall be elected by the eligible Members at the Annual Members Meeting. All Members shall be eligible to vote unless their right to purchase Coverage from the Trust has been terminated pursuant to Section 3.12. Member Trustees shall serve a term of two (2) years and may be reelected for successive terms. The Members shall elect a Member Trustee for the term expiring on the succeeding September 30th. Each Member shall be entitled to one vote and may designate a representative, who shall be an official or employee of the Member, to appear in person at the Annual Members Meeting and cast its vote. The Member Trustee shall be elected by a majority vote of the Member representatives present and voting. The Chair, or his or her designee, shall conduct the Annual Members Meeting. The Board may by resolution adopt such rules and procedures

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with respect to the election provided for in this Section as it deems appropriate.

The notice of the Annual Members Meeting shall include a notification of the conduct of the Member Trustee election. Within its discretion, the Board can submit a nominee or list of nominees for consideration by the Members for election as Member Trustee. Nominations may be additionally made by any Member representative at the Annual Members Meeting. If a Member Trustee is not elected at the Annual Members Meeting, the election shall be held at a special meeting of Members at such time and place as may be determined by the Board or, in the discretion of the Board the election shall be held by mail in ballot under and pursuant to such rules and procedures as the Board deems appropriate.-

In the event of a vacancy of a Member Trustee prior to the expiration of a term because of resignation, removal or any other reason, a successor Member Trustee may be appointed to serve the remainder of the term of the vacated Member Trustee by a majority vote of the remaining Trustees. A Member Trustee may be removed, with or without cause, by an affirmative majority vote of the Board at the Annual Board Meeting or any special meeting called for the purpose of Trustee removal.

Section 4.04. Optional Trustees. ~~Optional Trustees shall consist of one additional Board Trustee and one additional Member Trustee. Upon majority vote of the Board, up to four (4) additional Trustee positions may, from time to time, be authorized and be appointed. Such Trustees shall be designated Optional Trustees. Pursuant to Section 4.01, in no event shall the total number of all Trustees exceed eleven (11).~~

~~Such Trustees shall be for the purpose of allowing the Board to obtain additional and/or specialized knowledge on the Board in the areas of administration, finance, human relations, risk management, or any other area that the Board, in its sole discretion, desires. Such Optional Trustees shall be an elected or otherwise duly qualified member of the governing body of a Member Public Agency or an official or full time employee of a Member Public Agency and shall not be an owner, officer or employee of the Service Company. The terms of office and manner of appointment or election shall be the same as provided for in Sections 4.02 and 4.03 for other Board Trustees and Member Trustees, respectively, except that the expiration year of the initial terms of office for each Optional Trustee position shall be determined by the Board of Trustees at the time the Optional Trustee positions are authorized.~~

Section 4.05. Resignations.

(A) Any Trustee may resign by delivering, either by mail or in person, his or her written resignation to the Chair.

(B) Any Trustee leaving office for whatever reason shall forthwith turn over to the remaining Trustees, at the principal office of the Trust, any and all records, books, documents, property or other assets in his possession owned by the Trust or by the Board incident to the fulfillment of this Agreement and the administration of the Trust.

(C) The powers of the Board to act shall not be impaired or limited in any way pending the appointment of a successor Trustee to fill any vacancy.

Section 4.06. Successor Trustees. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Board an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its

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predecessors; but such predecessor shall, nevertheless, on the written request of the ~~Commission, or of the~~ successor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder.

Section 4.07. Board Meetings. To the extent practicable, the dates of the Annual Board Meeting and regular quarterly meetings of the Board shall be determined and set annually for the following year. Once set, the dates may be changed at any subsequent Board meeting at which a quorum is present or by agreement of a majority of the then current members of the Board.

(A) The Annual Board Meeting shall be held at such times and at such places as determined from time to time by the Board.

(B) Regular quarterly meetings of the Board shall be held at such times and such places as determined from time to time by the Board.

(C) Special meetings of the Board may be called by the Chair, or in his or her absence by the Vice-Chair, or by a majority of the then currently authorized number of Trustees. By unanimous consent of all of the Trustees, special meetings of the Board may be held without notice at any time and place; otherwise, notice of all special meetings of the Board shall be mailed to each Trustee at least ten (10) days prior to the time fixed for the meeting. All notices of special meetings of the Board shall state the purpose thereof and shall be confined to the purpose stated.

(D) In the event all of the Trustees shall consent in writing to any action taken or to be taken by the Trust, such action is valid action as though it had been authorized at a meeting of the Board held in compliance with the provisions of this Agreement.

(E) Telephonic regular quarterly or special meetings by conference call or other method of electronic voice or voice and picture transmission which permits each participant to hear every other participant and join in the discussion are specifically authorized.

(F) The Board shall meet not less than quarterly.

(G) Absence of any Trustee for three (3) consecutive meetings, other than special meetings, shall be deemed a resignation by such Trustee and the Board may declare the position vacant. The position shall then be filled in the manner indicated in Sections 4.02 or 4.03, above, as is applicable to the position declared vacant.

Section 4.08. Quorum and voting. A quorum for the transaction of business at any regular or special meeting of the Board shall consist of a majority of the Trustees then in office, but shall never be less than five (5) Trustees; provided however, that a majority of the Trustees present may act to continue the meeting to any time and date specified in such action. Each Trustee shall be entitled to one vote at any meeting of the Board. No vote by proxy shall be permitted. The affirmative vote of a majority of the Trustees present and eligible to vote shall be required for any action of the Board.

Section 4.09. Conduct of Trustees and Conflict of Interest.

(A) Purpose and Scope

(1) The Trust is a public entity risk pool formed to provide certain ~~liability~~

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coverages to participating members. The Trust is not subject to regulation by the Florida Department of Insurance, and must be administered in a manner that is fair to all participating members.

(2) This Agreement calls for the establishment of a Board of Trustees, which operates subject to this Agreement. The Trustees, in carrying out their obligations, must engage in business transactions in order to provide and administer the required Coverage and maintain adequate funds to support the Trust. In order for the Trustees to fully execute their responsibilities required by this Agreement, conflict or inappropriate activity, or the appearance thereof, with regard to Members must be avoided. This policy has been adopted to ensure that Trustees are aware of the ethical standards which govern their conduct while serving as Trustees.

(B) **Conduct of Trustees** To assure that the Trust is free from potential conflict or inappropriate behavior, the following are adopted as the guidelines governing loyalty and ethical conduct for Trustees:

(1) No Trustee shall act as an administering entity for the Trust.

(2) No Trustee shall use his or her position to foster or facilitate any pecuniary gain for himself or herself, or any other entity in which the Trustee has a substantial financial interest.

(3) No Trustee shall use his or her position on the Trust to secure or promote any business relationship from which they may derive a financial gain.

(4) Except as provided in Section 4.13, no Trustee shall receive any gift or gratuity, other than meals in their capacity as Trustee.

(5) Trustees shall avoid extravagant or excessive expenses in conjunction with service as a Trustee.

(C) **Conflict of Interest** The fact that a Trustee is an official or employee of a Member shall not, by itself, constitute a conflict of interest. Notwithstanding the foregoing, no Trustee shall obtain or receive confidential information or documentation about or vote on any matter which inures to his or her special private gain, or to the special gain of any Member or other principal of which the Trustee is an employee, official or agent. Such Trustee shall, prior to a confidential discussion, review of confidential documents, or a vote being taken, disclose the existence and nature of his or her interest in the matter from which he or she is abstaining from discussion, document review or voting.

Section 4.10. Principal Office. The Board shall establish and maintain a principal office for the Trust, the exact location of which will be made known to the Members and others interested in the Trust. The books and records pertaining to the Trust shall be made available, upon reasonable notice, to Members at the principal office of the Trust, unless the Board or a committee thereof determines, in its discretion, that a potential conflict of interest which shall preclude access to any part or all of such books and records.

Section 4.11. Officers of the Board. Officers of the Board required by this Agreement shall be elected at the Annual Board Meeting held in accordance with Section 4.07(A) of this Agreement. In addition, the Board may elect such other officers from their number as it deems advisable. Notwithstanding their stated terms, all officers shall serve at

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the pleasure of the Board.

(A) The Board shall elect a Chair from their number by a majority vote, who shall serve for a period of one year, or until a successor shall have been duly elected and qualified, whichever is later and may be elected to an unlimited number of consecutive terms. The Chair shall be the chief executive officer of the Trust, shall preside at all meetings of the Board and of the Members of the Trust, shall have general supervision over the affairs of the Trust and over the other officers, and shall perform all such other acts and duties as are incident to the Chair's responsibilities as chief executive officer.

(B) The Board shall elect a Vice-Chair from their number by a majority vote, who shall serve for a period of one year, or until a successor shall have been duly elected and qualified, whichever is later and may be elected to an unlimited number of consecutive terms. In case of the absence or disability of the Chair, the Chair's duties shall be performed by the Vice-Chair. The Vice-Chair shall perform such additional duties as are authorized by the Board.

(C) The Board shall elect a Secretary from their number by a majority vote, who shall serve for a period of one year, or until a successor shall have been duly elected and qualified, whichever is later and may be elected to an unlimited number of consecutive terms. The Secretary shall be responsible for recording and circulating the minutes of all meetings, preparation of agendas and records, and preparing and mailing notices of meetings and other notices or correspondence required of the Board by this Agreement and shall perform such additional duties as are authorized by the Board. Nothing herein shall prohibit the Secretary from delegating the clerical activities of Secretary to others.

Section 4.12. Committees of the Board. The Board may, in order to more effectively and timely administer its duties, create and empower committees of the Board as follows:

(A) **Temporary Committees** Either the Board or, if so provided by resolution of the Board, the Chair may create and assign Trustees to serve on Temporary Committees of the Board. Temporary Committees created pursuant this Section 4.12.(A) shall be assigned specific duties or goals and shall have only those powers to act on behalf of the Board as may be specifically and expressly provided in the Board resolution by which the Temporary Committee is formed and in any subsequent Board resolutions. All such Temporary Committees shall cease to exist upon the conclusion of their assigned duties or on the date of the Annual Board Meeting, whichever shall come first. At the Annual Board Meeting or at any other time, the Board may, in its discretion, continue the existence of Temporary Committees and may confirm or modify the previously assigned duties or goals of any or all Temporary Committees and the Trustees assigned thereto.

(B) **Permanent Committees** In addition to any other committees created or authorized elsewhere in this Agreement, either the Board or, if so provided in a resolution of the Board, the Chair may create and assign Trustees to serve on such Permanent Committees of the Board as may be deemed appropriate from time to time. Permanent Committees created pursuant this Section 4.12.(B) shall have those general and/or specific duties and powers to act, on behalf of the Board as may be assigned by Board. Permanent Committees shall continue to exist until dissolved by the Board. Members of Permanent Committees shall continue to serve as such until they resign or are replaced by the Board.

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Section 4.13. Compensation. No Trustee shall be compensated for service as a Trustee. A Trustee may be reimbursed by the Trust for reasonable and customary out-of-pocket expenses in attending meetings or for other expenses incurred on behalf of the Trust in accordance with a reimbursement policy established by the Board. No Trustee shall be employed or engaged by the Board to provide professional or other services to the Trust.

Section 4.14. Standard of Care. The Trustees shall use ordinary care and reasonable diligence in the administration of the Trust. Nothing contained in this Agreement, either expressly or by implication, shall be deemed to impose any duties or responsibilities on the Trustees other than those expressly set forth in this Agreement.

Section 4.15. Liability.

(A) Without implied limitation, neither the Trust, the Trustees, the Service Company, Board Counsel, nor any Member, nor their respective officials, officers, directors or employees, shall be liable on account of the failure of any insurer or reinsurer to make any payment under any Policy or any annuity held by the Trust or for the failure, insolvency or bankruptcy of any depository or custodian of the assets of the Trust.

(B) A Trustee shall not be personally liable for monetary damages to any person for any statement, vote, decision, or failure to act, regarding the management or policy of the Trust unless:

(1) the Trustee breached or failed to perform his or her duties as a Trustee;
and

(2) the Trustee's breach of, or failure to perform, his or her duties constitutes:

(a) A violation of the criminal law, unless the Trustee had reasonable cause to believe such conduct was lawful or had no reasonable cause to believe such conduct was unlawful. A judgment or other final adjudication against a Trustee in any criminal proceeding for violation of the criminal law shall estop that Trustee from contesting the fact that such breach, or failure to perform, constitutes a violation of the criminal law; but does not estop the Trustee from establishing that such Trustee had reasonable cause to believe that such conduct was lawful or had no reasonable cause to believe that such conduct was unlawful;

(b) A transaction from which the Trustee derived an improper personal benefit, either directly or indirectly; or

(c) Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(C) For the purposes of this Section 4.14 the term "recklessness" means the acting or omission to act, in conscious disregard of a risk: (1) known, or so obvious that it should have been known to the Trustee; and (2) known to the Trustee, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.

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Section 4.16. Indemnification. The Board shall, to the extent permitted by law, indemnify any person who was or is a party (other than an action by, or in the right of, the Trust), by reason of the fact that such person is or was a Trustee, officer, employee or agent of the Trust or was serving at the request of the Trust or a Trustee, officer, employee, or agent of the Trust against liability incurred in connection with such proceedings on behalf of the Trust, including any approval of such proceedings, if such person acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the Trust and, with respect to any criminal action or proceedings, had no reasonable cause to believe such conduct was unlawful. The termination of any proceedings by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Trust, or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

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ARTICLE V

POWERS AND DUTIES OF TRUSTEES

Section 5.01. Determination of Eligibility. The Board shall determine all questions of the scope of ~~Liability~~ Coverage, eligibility, methods of providing or arranging for benefits and all other related matters. It shall have full power to construe the provisions of this Agreement and the other Program Documents and the terms used herein and therein. Any such determination and any such construction adopted by the Board in good faith shall be binding upon all parties hereto and the Members, provided such determination or such construction is consistent with the laws of the State.

Section 5.02. Discharge of Claims. The Board shall have full power to assume and discharge any lawful and proper award or claim pertaining to ~~Liability~~ Coverage of Members. Any such award or claim shall be paid from such of the Trust Assets held by the Trust as the Board shall determine under the provisions of the Program Documents.

Section 5.03. Amendment of Operations Manual. The Operations Manual attached hereto as Exhibit C is hereby approved by the Members and the Trustees and incorporated in this Agreement by reference as if fully set out herein. The Board shall have the authority to amend the Operations Manual, including all appendices thereto, by action of a majority of the Trustees present at an Annual Board Meeting, regular meeting or special meeting of the Board; provided, however, that no amendment to Section 7.06 relating to admission of new members shall be made without the affirmative vote of a majority of the then currently authorized number of Trustees. No amendment to the Operations Manual shall be inconsistent with the substantive rights and obligations of Members specifically set forth in this Agreement. New Members shall be deemed to have approved the Operations Manual upon application for membership in the Trust.

Section 5.04. Enforcement of Agreement. The Board shall have the right to enforce the performance of all obligations in this Agreement and the other Program Documents and to institute proceedings of any nature whatsoever to enforce the same. Except as expressly set forth herein and in the Operations Manual, neither the Board, the Service Company nor the Administrator shall be authorized to extend credit to any Member.

Section 5.05. Establishment of ~~Liability~~ Coverage. The Board shall have the right to establish the ~~Liability~~ Coverage of Members to be provided under the Coverage Agreements and to reduce or increase such ~~Liability~~ Coverage in the manner provided in the Coverage Agreements.

Section 5.06. Policies of Insurance or Reinsurance. The Board shall have the power to contract for Policies of insurance (including reinsurance) and to set the limits of any claim against any Member to be paid out of the Trust or by such Policies of insurance or reinsurance.

Section 5.07. Appointment of Administrators. The Board may hire or appoint one or more Administrators to perform such duties and functions as shall be specified in an agreement executed by the Administrator and by the Board. In the absence of an Administrator, the Chair shall assume those responsibilities.

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Section 5.08. Appointment of Board Counsel. The Board may engage or employ a Board Counsel. Board Counsel shall, upon request of the Board:

- (A) attend meetings of the Board to advise the Board on its duties under the Trust Agreement,
- (B) provide general legal representation of the Trust,
- (C) be the custodian of those official Trust documents and records not designated to be held by the Service Company, and
- (D) perform such other duties as may be assigned by the Board from time to time.

Board Counsel shall represent and act only for and at the direction of the Board and shall not undertake representation of clients or other involvement in litigation or other representation which may give rise to a conflict of interest with respect to representation of the Trust, a Member or any person covered under a Member's Coverage Agreement. In the event a conflict of interest is identified by either Board Counsel or any Trustee, the Board shall determine whether the potential conflict of interest exists and, if so, whether it can be waived under the then current standards of professional responsibility adopted by the Florida Bar Association. If a conflict is determined to exist but to be waivable, the Board may decide whether to waive the conflict or to take such other action as the Board, in its discretion, may determine to be appropriate.

Section 5.09. Appointment of Service Companies. The Board shall have the power to contract in writing with one or more Service Companies. Such contracts shall provide the duties and compensation of the Service Companies and such other matters as the Board shall deem appropriate, but not inconsistent with the terms of this Agreement and the Act.

Section 5.10. Investments. All funds on deposit in the accounts established pursuant to Section 2.02 of this Agreement shall be continuously invested and reinvested. The Board may contract or otherwise arrange for the investment and investment management of any or all Trust Assets. The Board, or a Permanent Committee created for this purpose, shall oversee the investment of the Trust Assets in accordance with provisions of applicable law and this Agreement and shall develop an investment policy which shall be subject to approval by the Board. Except as otherwise provided in this Agreement or the Operations Manual, all earnings derived from the investment of funds in each account or subaccount will be retained in such respective account or subaccount.

Section 5.11. Books and Records. The Board shall keep or cause to be kept true and accurate books of account and records of all their transactions as Trustees and all transactions of the Trust and shall provide summary financial statements of the Trust to the Members on an annual basis. Such financial records shall be maintained in accordance with insurance accounting practices as defined in the National Association of Insurance Commissioners' Standard Accounting Principles.

Section 5.12. Annual Audits. The financial statements required by Section 5.11 of this Agreement shall be audited by an independent certified public accountant as required by any applicable Regulations but not less often than annually. A statement of the results of said audit shall be made available for inspection by Members and others as required by law at the principal office of the Trust, or at such other place as may be designated by the Board.

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Section 5.13. Reports to Members. The Board shall, within its discretion and not more often than quarterly nor less often than Annually, furnish to Members reports representing the financial status of the Trust and such other pertinent information regarding the operation of the Trust and the benefits obtained under any Policies as the Board may deem desirable or advisable. The report from the Chair provided for in Section 3.11 of this Agreement shall satisfy the reporting requirement set forth in this Section, unless the Board determines otherwise. The Board shall cause to be made and filed all required documents and reports to governmental entities as required by applicable law and regulations.

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ARTICLE VI

TERMINATION OF TRUST

Section 6.01. Termination.

(A) The Trust shall not be authorized to issue new Coverage Agreements for any Fiscal Year in which there will be insufficient Trust Assets, including Premiums to be paid in connection with Coverage Agreements for such Fiscal Year, to provide actuarially sound ~~Liability~~ Coverage to the Members.

(B) The Board may elect not to issue new Coverage Agreements for any reason and at any time after January 1, 1996.

(C) Upon the occurrence of any event described in Sections 6.01(A) or (B), the Trust may be terminated in accordance with the provisions of this Article VI.

Section 6.02. Procedure for Termination.

(A) In the event the Trust is terminated, the Board shall continue to meet at such times as shall be necessary to conclude the affairs of the Trust.

(B) All Trust Assets shall be transferred to the Operating Account and held solely for the purposes described in Sections 2.05(A) and (E) of this Agreement.

(C) At the beginning of each Fiscal Year, the Board shall, determine the amount of Trust Assets which should be retained for the purposes described in Section 6.02(B). Trust Assets not required for such purposes shall be distributed to the Members in proportion to their Percentage Shares.

(D) If at any time all of the Trust Assets are set aside in a Claims Reserve Subaccount, the amounts reserved for the benefit of each Member shall, upon payment of all other expenses of the Trust, be distributed directly to such Members.

(E) Upon distribution of all remaining Trust Assets pursuant to Sections 6.02(C) or (D), all obligations imposed by the Program Documents with respect to the Members, the Trust and the Trustees shall be discharged. Thereafter, any claim due to an "occurrence", "offense", "error or omission" (each as defined in the Coverage Agreement) or any other happening to which the Coverage Agreement may otherwise have applied, shall become the responsibility of the Member against whom such claim is asserted.

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ARTICLE VII

GENERAL PROVISIONS

Section 7.01. Amendments. This Agreement may be amended at any time, and from time to time, (A) by the affirmative vote of a majority of the then currently authorized number of Trustees and (B) upon receipt of written consents to such amendment executed by Members whose aggregate Percentage Shares exceed fifty percent (50%). Notwithstanding the foregoing, no amendment may be made without the approval of all current Members hereto, which (A) shall divert the Trust Assets to a purpose other than that set forth in Section 2.05 of this Agreement; (B) affects the computation of Percentage Shares, (C) modifies the rights and obligations of Members as set forth in Sections 3.05, 3.06, 3.08, 3.11, 3.14, 5.12, 7.01 and Article VI of this Agreement.

Section 7.02. Fidelity Bonds. Each Trustee and each person who is authorized by the Board to sign checks or is or may be engaged in handling Trust Assets or securities held in the Trust Fund, or any other person who must be bonded according to applicable Regulations, shall be bonded at the expense of the Trust by a duly authorized fidelity company in such amounts as may from time to time be required by the Board or by any applicable law.

Section 7.03. Reliance by Third-Parties. No person, firm or corporation dealing with the Board shall be obligated to see to the application of any property or Trust Assets of the Trust Fund or to see that the terms of the Trust have been complied with or be obliged to inquire into the necessity of any act of the Board, and every instrument executed by the Board shall be conclusive in favor of any person, firm or corporation relying thereon that:

(A) at the time of the delivery of said instrument, the Trust was in full force and effect;

(B) said instrument was effected in accordance with the terms and conditions of this Agreement and the Operations Manual; and

(C) the Board was duly authorized and empowered to execute such instrument.

Section 7.04. Construction. All questions pertaining to the validity, construction and administration of the Trust created herein shall be determined in accordance with the laws of the State.

Section 7.05. Counterparts. This Agreement may be signed in one or more counterparts, all of which taken together shall constitute one instrument. The signatures of parties appearing on one or more counterparts shall bind them as fully as though all such parties had signed the same counterpart.

Section 7.06. Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any provision or subprovision of the Agreement shall not affect the validity or enforceability of any other provision or subprovision of this Agreement.

