

RESOLUTION NO. 97-164

WHEREAS, Nassau County is a member of the Florida Association of Counties Trust (the "Trust"); and

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

WHEREAS, the Third Amendment generally reorganizes the Trust and the Trust Board; makes provision for operating Subcommittees of the Trust Board; and allows the Trust Board, at its option, to vary Board membership by two Trustee positions between a total of nine or eleven Trustees; and

WHEREAS, the Trust Board has approved a fourth amendment to the Agreement and Declaration of Trust (the "Fourth Amendment"), a copy of which is attached to this Resolution and incorporated herein by reference.

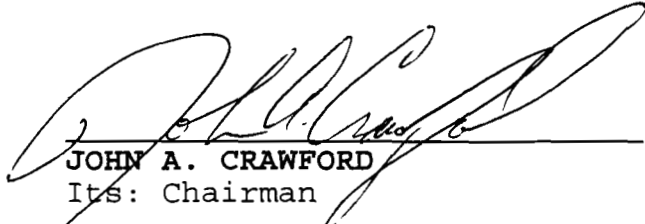
WHEREAS, the Fourth Amendment allows the Trust Board to set the date of the annual members meeting to be after the end of the fiscal year and after receipt of the annual financial audit report; clarifies the financial conditions upon which the Board may return Extraordinary Loss Reserve Account funds; and clarifies when membership in the Trust ceases.

WHEREAS, the Agreement and Declaration of Trust, dated March 1, 1989 (as amended), creating the Trust requires the written consent of certain Members for each of the changes incorporated in

the Third and Fourth Amendments.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Nassau County, Florida, this 11th day of August, 1997 that the Third and Fourth Amendments are hereby approved and that this Resolution shall document the written consent of Nassau County, as a Member of the Trust to the Third and Fourth Amendments.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA




JOHN A. CRAWFORD
Its: Chairman

ATTEST:



J. M. "CHIP" OXLEY, JR.
Its: Ex-Officio Clerk

Approved as to form by the
Nassau County Attorney:



MICHAEL S. MULLIN

DISCUSSION

5. Request by Sue Melogy, of John T. Ferreira Insurance, for Board approval of amendments of F.A.C.T. Agreements.

BOARD MEETING
DATE: 8-11
ACTION: 5
INFO: _____
19 97

RECEIVED JUL 25 1997



July 25, 1997

Mr. Walt Gossett
County Coordinator, Nassau County
3163 Bailey Road
Fernandina Beach, FL 32034

RE: F.A.C.T. Trust Agreement

Dear Walt:

Enclosed for your review is a copy of the Board of Trustees amendments to the Trust Agreement. A memorandum from Duane Benjamin summarizes the updates.

A sample resolution for presentation to the Board of County Commissioners for their approval is also enclosed.

To expedite this, I've also provided a full copy of this packet to Mr. Mullin, County Attorney.

Walt, if you or Mike have any questions, or if we can be of further assistance, please do not hesitate to call me.

Sincerely,

Sue Melogy, AAI
Account Executive

cc: Michael Mullin, County Attorney
26 S. 5th Street
Fernandina Beach FL 32034
w/Enclosures

SM/smm

MEMORANDUM

Date: March 18, 1997
To: File
From: Duane Benjamin
RE: Trust Agreement Change Principles

The following summarizes the guiding principles in updating the Trust Agreement that were discussed at the 3/14/97 Board meeting:

1. Make one FACT Trustee position available to a member of the FAC Executive Committee. FAC to propose the individual, but FACT retains right to approve the proposal.
2. Create two additional (but optional) Trustee positions (even number) to accommodate the new FAC Trustee without dismissing a current Trustee.
3. Make the new Trustee positions optional so a future Board can go back to only 9 members if desired
4. One Optional Trustee position to be appointed (Board Trustee) and one elected (Member Trustee).
5. Confirms that FACT members control the FACT Board and The FACT Board controls FACT operations. (*Removes independent strong powers of FAC, Trust Counsel and Service Company*)
6. Replace independent Trust Counsel with Counsel under the control of the Board (Board Counsel).
7. Ratify the FACT Board's revised operating structure (Board Committees and Sub-Committees).
8. Remove numbered links to other Trust documents so changes in one document won't automatically require numbering changes in other documents.
9. Retain administrator concept, but with reduced level of duties.
10. Reduce potential for personal liability of Trustees acting in good faith.
11. Require quarterly meetings of the Board of Trustees.
12. Change the date of the Annual Meeting and Annual Members Meeting to after the fiscal year audit is completed and reviewed.
13. Remove obsolete historical references.
14. Adopt Trustee conflict of interest wording.

RESOLUTION NO. 97-

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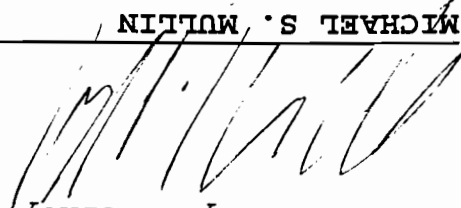
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WHEREAS, the Agreement and Declaration of Trust, dated March 1, 1989 (as amended), creating the Trust requires the written consent of certain Members for each of the changes incorporated in

MICHAEL S. MULLIN



Approved as to form by the
Nassau County Attorney:

J. M. "CHIP" OXLEY, JR.
Its: Ex-Officio Clerk

ATTEST:

JOHN A. CRAWFORD
Its: Chairman

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA

the Third and Fourth Amendments.
NOW, THEREFORE, BE IT RESOLVED by the Board of County
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Resolution # _____

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NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF

_____ COUNTY, FLORIDA that the Third and Fourth Amendments are hereby approved and that this Resolution shall document the written consent of _____ County, as a Member of the Trust, to the Third and Fourth Amendments.

Dated this _____ day of _____, 1997.

_____ County

ATTEST:

Chairman, Board of County Commissioners

Clerk

**Proposed 4th Amendment
to the
FACT - Agreement and Declaration of Trust**

[NOTE: • Underline means material added. • Strikethru means material deleted.]

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

Section 3.06 (g) Upon the expiration of four consecutive complete Fiscal Years during which a Member has not purchased Liability Coverage from the 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 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.

Section 3.11. Annual Membership Members Meeting. An annual meeting of the Members shall be held at the place of and during the Legislative Conference of the County Association. The Administrator shall furnish by regular mail after the close of each Fiscal Year at such time and on such date and at such place as shall be determined by the Board. The Board shall furnish 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 Members Meeting, the Administrator Chair of the Board shall submit a balance sheet and income statement of the etatms experiences of the Insurance Trust for the same period. most recent Fiscal Year.

Clarifies that membership status is directly tied to FACT's return (per § 3.06) of ELR amounts due a Member who ceases participation in the Trust.

Clarifies the financial basis on which the Board makes the decision to return ELR Funds.

Gives Board flexibility in setting date and place of annual meeting (usually after completion of audit). Confirms that Board Chair, rather than Administrator, shall make the annual report to Members and broadens the content of the report.

Original Effective: 03/01/89

With Amendments:
1st Amendment Effective 10/01/89
2nd Amendment Effective 10/12/90
3rd Amendment Effective 06/XX/97

Proposed

FLORIDA ASSOCIATION OF COUNTIES TRUST

creating and establishing the

AGREEMENT AND DECLARATION OF TRUST

Throughout
 this document,
 the following
 editing rules
 apply:
 • Underline
 means
 material
 added.
 • Strikethru
 means
 material
 deleted.

FACT AGREEMENT AND DECLARATION OF TRUST

TABLE OF CONTENTS

PAGE

**ARTICLE I
DEFINITIONS**

Section 1.01. Definitions 2

**ARTICLE II
PURPOSE OF TRUST AND APPLICATION OF TRUST ASSETS**

Section 2.01. Creation of Insuree Trust 7
 Section 2.02. Funds and Accounts 7
 Section 2.03. Operating Account 8
 Section 2.04. Extraordinary Loss Reserve Account 8
 Section 2.05. Application of Trust Assets 9
 Section 2.06. Risk Management Program 9
 Section 2.07. Separate Accounts 9

At each location at which "insurance" appears as a part of a defined term, it has been omitted as FACT is not considered insurance under Florida Law.

See FSS768.28(14).

**ARTICLE III
MEMBERSHIP**

Section 3.01. Charter Members 11
 Section 3.02. No Waiver of Immunity 11
 Section 3.03. Qualifications for New Members 11
 Section 3.04. Acceptance for Membership 11
 Section 3.05. Provision of Liability Coverage 11
 Section 3.06. Extraordinary Loss Reserve Contributions 12
 Section 3.07. Limits of Liability 13
 Section 3.08. Other Membership Obligations 13
 Section 3.09. Provision of Records 14
 Section 3.10. Inspections 14
 Section 3.11. Annual Membership Meeting 15
 Section 3.12. Termination of Liability Coverage 15
 Section 3.13. No Rights of Membership Granted 16
 Section 3.14. Status of Member Obligations 16

**ARTICLE IV
APPOINTMENT AND ORGANIZATION OF TRUSTEES**

Section 4.01. Number and Qualification of Trustees 20
 Section 4.02. Initial Trustees 20
 Section 4.03. Appointment and Terms 20
 Section 4.04. Election of Member Trustees 20
 Section 4.05. Transaction Period for Trustee Appointment 20
 Section 4.06. Resignations 20
 Section 4.07. Successor Trustees 20
 Section 4.08. Board Meetings 20
 Section 4.09. Quorum and Voting 20
 Section 4.10. Conflicts of Interest 20
 Section 4.11. Principal Office 20
 Section 4.12. Officers of the Board 20
 Section 4.02. Appointment and Terms of Board Trustees 20
 Section 4.03. Election and Terms of Member Trustees 20

Page numbers will be adjusted in final document
 Some section titles have changed. Refer to the section for further notes.

FACT AGREEMENT AND DECLARATION OF TRUST

18	Optional Trustees	Section 4.04.
18	Resignations	Section 4.05.
18	Successor Trustees	Section 4.06.
18	Board Meetings	Section 4.07.
18	Quorum and Voting	Section 4.08.
19	Conduct of Trustees and Conflicts of Interest	Section 4.09.
20	Principal Office	Section 4.10.
20	Officers of the Board	Section 4.11.
21	Committees of the Board	Section 4.12.
24	Compensation	Section 4.13.
24	222	Section 4.14.
24	Standard of Care	Section 4.14.
24	Liability	Section 4.15.
24	Indemnification	Section 4.16.
25		
23		

**ARTICLE V
POWERS AND DUTIES OF TRUSTEES**

26	Determination of Eligibility	Section 5.01.
26	Discharge of Claims	Section 5.02.
26	Amendment of Operations Manual	Section 5.03.
26	Enforcement of Agreement	Section 5.04.
26	Establishment of Liability Coverage	Section 5.05.
26	Policies of Insurance or Reinsurance	Section 5.06.
26	Appointment of Administrators	Section 5.07.
27	Appointment of Trust Counsel	Section 5.08.
27	Appointment of Service Companies	Section 5.09.
27	Investments	Section 5.10.
27	Books and Records	Section 5.11.
27	Annual Audits	Section 5.12.
27	Reports to Members	Section 5.13.

**ARTICLE VI
TERMINATION OF INSURANCE TRUST**

29	Termination	Section 6.01.
29	Procedure for Termination	Section 6.02.

**ARTICLE VII
GENERAL PROVISIONS**

30	Amendments	Section 7.01.
30	Fidelity Bonds	Section 7.02.
30	Reliance by Third-Parties	Section 7.03.
30	Construction	Section 7.04.
30	Counterparts	Section 7.05.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Ammendment vs. 2nd Ammended

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 pools; and

WHEREAS, pursuant to the Act, the Charter Members desire to establish such a local government liability pool to be known as the Florida Association of Counties Trust for the purpose of pooling the resources described herein to provide liability insurance 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

COMPARITIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

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 firms and corporations. Legal entities.

"Act" shall mean, collectively, Chapter 163, Part I, Florida Statutes, Chapter 125, Part I, Florida Statutes, Chapter 166, Part II, Florida Statutes, Section 768.28 (14), Florida Statutes, and other applicable provisions of law.

"Administrator" shall mean the County Association or any successor 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 5.07 of the Agreement. 4.07.

"Annual Member Meeting" means 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 Charter Members Member Trustees as required in Section 4.04 4.03 of the Agreement.

"Board" shall mean the Trustees constituting the governing board of the Insurance 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.

"Chairman" shall mean the chairman Chair of the Board initially designated in Section 4.02 of this Agreement or any successor appointed thereafter as provided in Section 4.10 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.

New definition
Previous reference to "Charter Members" was incorrect.
New definition
Moved this definition to the "Definitions" section.
Throughout the document, the term "Chairman" has been changed to "Chair".
New definition - replaces prior "Trust Counsel".
New definition

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

"Commission" shall mean the Florida Liability Insurance Commission, a public body corporate and politic created pursuant to the Act.

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

"Coverage Agreement" shall mean the liability coverage agreement entered into between a Member and the Board providing for participation in the Insurantee Trust and specifying the liability coverage provided by the Insurantee 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 Section 2.05 of the Operations Manual.

"Distribution Date" shall mean the date Trust Assets are distributed to the Members upon dissolution of the Insurantee 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 Insurantee 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, upon consideration of the Service Company's recommendation, 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. ~~The initial Extraordinary Loss Reserve Account Requirement shall be \$5,000,000.~~

"Extraordinary Loss Reserve Contribution" shall mean the contribution to the Insurantee 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 Insurantee 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.

Board is not limited to following advice of the Service Company.
Historical reference to initial amount is removed.

Unnecessary references to specific sections of other documents have been removed.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARATIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

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

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

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

"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.

"Loan" shall mean an unpaid 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.

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

"Operations Manual" shall mean the Operations Manual adopted by the Board initially in the form attached hereto as Exhibit C, 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 Insurance Trust or relating to the provision of liability coverage.

"Optional Trustee" shall mean 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 (1) the portion of such Member's Extraordinary Loss Reserve Contributor

Corrects previous omission - Some loans were made by the Trust.

New formal definition - Previously defined in body of text.

"Periodic" implies changes will be made at regular intervals. Also clarifies that Board makes all changes.

New definition - Allows for two additional Trustees.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

previously paid to the Insurane 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 Insurane Trust and shall be deemed to include any and all amendments or riders 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) 3.06 (E) of this Agreement.

"Premium" shall mean annual payments or installments required of a Member under the Coverage Agreement for Liability Coverage, as actuarially computed and adjusted under 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 Insurane Trust, as they are currently in force or hereafter amended, which are promulgated by the State of Florida 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.

~~**"Risk Management Account"** shall mean the Risk Management Account created within the Insurane Trust Fund pursuant to Section 2.02 of this Agreement.~~

"Secretary" shall mean the secretary of the Board initially designated in Section 4.02 of this Agreement or any successor appointed thereafter as provided in Section 4.10 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 Insurane Trust.

New definition-

Recognises

Board's new

operational

style.

Increases Board

options for

outside advice

Reference is

updated.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Ammendment vs. 2nd Ammended

"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 Insurance Trust is terminated pursuant to Section 3.12 of this Agreement.~~

~~"Trust Assets" shall mean the sum of all monies and other assets held by the Trustees on behalf of the Insurance Trust, 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 Insurance Trust, and any other property of any kind whatsoever, received and held for the uses and purposes declared by this Agreement.~~

~~"Trust Counsel" shall mean an attorney or firm of attorneys, experienced in matter 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.~~

~~"Trustees" shall mean the trustees of the Insurance Trust initially designated in Section 4.02 of this Agreement or any successors appointed thereafter as provided in Section 4.02, 4.03 and 4.04 of this Agreement.~~

~~"Vice-Chairman" "Vice-Chair" shall mean the vice-chairman Vice-Chair of the Board initially designated in Section 4.02 of this Agreement or any successor appointed thereafter as provided in Section 4.10 4.11 of this Agreement.~~

New Definition-
Recognises
Boards's new
operational
style.

Removed
definition and
replaced with
Board Counsel.

Reference is
updated and
prior omission
corrected.

Reference is
updated.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

ARTICLE II

PURPOSE OF TRUST AND APPLICATION OF TRUST ASSETS

Section 2.01. Creation of Insuree Trust. There is hereby created and established a local government 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 Insuree Trust Fund and all of the property of the Insuree Trust Fund shall be vested in and remain exclusively in the Insuree Trust Fund. The Trustees, Administrator, Service Company and Members shall not have any right, title or interest in or to any of the Insuree Trust Fund assets or the Trust Assets or any part thereof. It is the intention of the parties hereto that the Insuree Trust Fund shall constitute an irrevocable trust, until terminated as provided herein, for the sole and exclusive benefit of Members entitled to the benefits of the Insuree Trust Fund, Trust, and no benefits or moneys 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, a trust fund to be known as the "Florida Association of Counties Insuree Trust Fund," which shall consist of the following Accounts: (1) the "Florida Association of Counties Insuree Trust Fund," which may include one or more claims reserve subaccounts, 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 Insuree 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 moneys monies required to be accounted for in each of the accounts established herein may be deposited in a single bank account, one or more accounts, and amounts allocated to the various accounts may be invested in a one or more common investment pools, accounts or funds, subject to the investment policy of the Board, provided that adequate accounting records are maintained to reflect and control the reserated allocation of the moneys on deposits therein and such investments for the various purposes of such accounts

Insurance Trust
Fund is more
accurately
referred to as the
"Trust".

Allows multiple
accounts to better
track new
investment and
banking
arrangements.

Increases
flexibility for
investment and
financial
management.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

as herein provided, 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;

(2) to pay or provide for the payment of premiums and other expenses on any Policy or Policies, if any, including any reinsurance or excess insurance of the Insured 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 G.L. or to pay or provide for the payment of G.L. 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 Insured 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 Insured Trust, the employment of such administrative, legal, expert and clerical assistance (including the Administrator, the Trust Counsel and the Service Company), 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. Amounts equal to the Service Company's estimate of the Insured 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. Notwithstanding the foregoing, that portion of each Charter Member's Extraordinary Loss Reserve Contribution required to pay costs associated with the initial formation of the Insurance Trust shall be deposited to the Operating Account; provided, however, that the aggregate amount of Charter Members' Extraordinary Loss Reserve Contributions deposited in

Removed Trust
Counsel. Other
specific
references were
also removed as
unnecessary &
possibly
limiting.
Removed term
"unallocated"
per discussions
with CPAs.
Added term
Removed
unnecessary
historical
wording.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARATIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

~~the Extraordinary Loss Reserve Account shall not be less than the Extraordinary Loss Reserve Account Requirement. 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.

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 or Policies, if any, including any reinsurance or excess insurance of the Insurane 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 ~~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 Insurane 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 Insurane Trust, the employment of such administrative, legal, expert and clerical assistance (including the Administrator and the Service Company), 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), (E) 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 Insurane 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

Removed
reference to
specific sections
of other
documents which
are
independantly
subject to change.

Removed
specific
examples which
were not
necessary and
may be limiting.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Ammendment vs. 2nd Ammended

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.

~~**Section 2.07. Separate Accounts.** The moneys required to be accounted for in each of the foregoing funds, accounts and subaccounts established herein may be deposited in a single bank account, and funds allocated to the various funds, accounts and subaccounts established herein may be invested in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the moneys on deposit therein and such investments for the various purposes of such funds, accounts and subaccounts as herein provided.~~

~~The designation and establishment of the various funds, accounts and subaccounts in and by this Agreement shall not be construed to require the establishment of any completely independent, self balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues for certain purposes and to establish certain priorities for application of such revenues as herein provided. Any of the various funds, accounts or subaccounts established by this Agreement may be further divided if necessary to comply with insurance accounting practices as defined in the National Association of Insurance Commissioners' Standard Accounting Principles.~~

Changes to
Section 2.02(A)
and (B)
duplicate or
supersede this
section.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

ARTICLE III

MEMBERSHIP

Section 3.01. Charter Members. Upon establishment of the Insurance 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: Bay County, \$538,913.00; Breward County, \$1,544,836.00; Jackson County, \$181,727.00; Leon County, \$732,364.00; Okaloosa County, \$619,343.00; and Polk County, \$1,616,817.00. Contributions.

Section 3.02. No Waiver of Immunity. It is the intent of the Members that, by entering into this Agreement, that 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 Insurance 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 Insurance Trust under the Act; (C) qualifies for participation in the Insurance Trust under the eligibility requirements set forth in the Operations Manual; (D) submits an application for participation in the Insurance 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 Insurance 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 Insurance 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 purchase a Coverage Agreement for renewal its Liability Coverage, starting with the next ensuing Fiscal Year, provided that written notice of such election is provided to the Insurance Trust not less

Changed to
emphasize
participation
rather than
purchase.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARATIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

than ninety (90) days prior to the last calendar day of the current Fiscal Year. Not less than one hundred twenty (120) days prior to the last calendar day of the current Fiscal Year, the Insurance Trust shall notify each Member of its estimated premium for the next ensuing 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 Insurance Trust by the Member. Notwithstanding the foregoing, a Member's right to purchase 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's recommendation, 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 Insurance 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 Insurance Trust either (1) in cash on the date the first Coverage Agreement is issued to the new Member or (1f) pursuant to written agreement between the Insurance 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.

Increases the Board's options for outside advice.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARATIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

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 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 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, 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 Insuranc

Increases the
Board's options
for outside
advice.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

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 Insurance 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:

(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 (1) the average rate of investment earnings on amounts on deposit in the Extraordinary Loss Reserve Account during the immediate prior Fiscal Year, times (11) 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 (1) the average rate of investment earnings on amounts on deposit in the Extraordinary Loss Reserve Account during the immediate prior Fiscal Year, times (11) the average daily Contribution less the aggregate amount of Reserve Contribution Refunds paid or credited to such Member, times (111) the average daily

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Ammendment vs. 2nd Ammended

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 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 Insurane 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. 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.

(5) Upon the expiration of four consecutive complete Fiscal Years during which a Member has not purchased Liability Coverage from the Insurane 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 Insurane 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 Insurane 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 Insurane 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 Insurane Trust, which burdens, obligations, duties and responsibilities shall include, but not be limited to, the

Clarifies the financial basis on which the Board makes the decision to pay Premium Credits.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARATIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

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 Insurance 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 Trust Counsel, Board Counsel or the Service Company or their respective officials, directors, employees, agents or independent contractors in making final decisions concerning the Member's risk management programs and practices. Neither the Insurance Trust, the Board, the Administrator, the Trust Counsel or the Service Company, nor their respective officials, 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.

Substitutes term "Board Counsel" for prior term "Trust Counsel".

(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.

(C) The Member shall cooperate with the Board, the Administrator, the Trust Board Counsel and the Service Company and upon the request of their agents require the appropriate 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 Insurance 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 Administrator, the Trust Counsel 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.

Clarifies the reason for appointment of "agent" and that this is a duty assigned to the Service Company.

(F) Each Member agrees that, in the event of the payment of any loss by the Insurance Trust under this Agreement, the Insurance 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

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - Proposed 3rd Amendment vs. 2nd Ammended

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 Insurane 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 Membership Meeting.

An annual meeting of the Members shall be held at the place of and during the Legislative Conference of the County Association. The Administrator shall furnish by regular mail 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 Insurane 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 Insurane Trust for continued membership in the Insurane 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.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

(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 Administrator 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.

(4) The Board may, by affirmative vote of not less than four (4) 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 Insurance 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.

(C) If a Member's right to purchase Liability Coverage is terminated during a Fiscal Year, any unearned portion of the Premium paid by such Member shall be returned refunded at the earliest practicable date. For purposes of this Section 3.12(C), Premium 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 Insurance 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 Insurance Trust, it shall, unless otherwise provided herein, insure

Clarifies that regardless of Service Contractor's recommendation, this power is reserved solely to the Board.

New wording to describe "simple majority" when number of Board Trustees may vary from 9 to 11.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Ammendment vs. 2nd Ammended

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 Insuree Trust or to receive Liability Coverage under a Coverage Agreement issued by the Insuree Trust regardless of technical or apparent compliance with requirements and conditions for membership as provided herein. Membership in the Insuree 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 Florida Liability Insurance Commission nor the Florida Association of Counties Trust shall 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 and Declaration of Trust shall be payable solely from pledged Revenues as such revenues are described in the Loan Agreement by and between the Member and the Florida Liability Insurance Commission or the Trust. The provisions of this paragraph shall survive the termination of this Agreement and Declaration of Trust Agreement.

"Commission",
"Trust" and
"Agreement" are
defined terms
and are used in
place of the full
names.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

ARTICLE IV

APPOINTMENT AND ORGANIZATION OF TRUSTEES

Section 4.01. Number and Qualification of Trustees. Except during the transition period provided in Section 4.05, the Insurane The Trust shall be administered by a Board of Trustees consisting of a 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 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. The initial Trustees shall be those listed in Section 4.02 of this Agreement. Not less than five (5) Trustees shall be a majority of the Trustees shall be duly qualified county commissioner or a member commissioners or members of the governing board of a Public Agency. Two Trustees shall be elected by the Members at the Annual Member Meeting in the manner provided in Section 4.04 4.03 and shall be designated "Member Trustees". Seven (7) Trustees shall be appointed in the manner provided in Section 4.03 4.02 and shall be designated as "Board Trustees". 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, 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. Trustees shall not be required to be an officer or full-time employee of a Member.

Section 4.02. Initial Trustees. Commencing upon the effective date of this Agreement, the initial Trustees and officers of the Board and their initial terms shall be as follows:

Name	Position	Term Expires
Richard Seltzer*	Chairman/Trustee	September 30 1991
Sue Schmitt*	Vice Chairman/Trustee	September 30 1991
Lee Vause*	Secretary/Trustee	September 30 1991
Bill Peebles*	Trustee	September 30 1991
Lee Draper*	Trustee	September 30 1990
Ernie Padgett*	Trustee	September 30 1990
Robert Fernandez	Trustee	September 30

Removed Initial and Transition wording.

Wording for new "Optional Trustees" was added.

Last sentence is in direct conflict with remainder of ¶

Purely historical material (§4.02) was removed.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARATIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

1990

~~* Member Trustees.~~

~~Section 4.03- Appointment and Terms of Board Trustees.~~

~~Seven (7) Trustees shall be appointed by majority vote of the Board at the annual meeting or 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 and shall be designated "Board Trustees" 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 removal. In the event, for any reason, there ever exists less than five (5) Board Trustees, the President of the County Association shall have the power to appoint successor Board Trustees to serve the remainder of the term of the vacated Board Trustee or Trustees.~~

~~Section 4.04. 4.03. Election and Terms of Member Trustees. Two (2) Trustees Trustees, one (1) in even numbered years and one (1) in odd numbered years, shall be elected by the Members at the Annual Member Meeting to be held at the place of and during the Annual Convention of the County Association. Except for the initial election of one Member Trustee, as provided in Section 4.05, Members Meeting. Member Trustees shall serve a term of two (2) years and may be reappointed reelected for successive terms. Notice of the time and place of the Annual Member Meeting shall be given by regular mail by the Administrator. 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 shall designate a representative to represent, 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 Executive Director of the County Association, Chair, or his or her designee, shall serve as Chairman of the Annual Member Meeting for the purpose of conducting the Member Trustee election. conduct the Annual Members Meeting. The Board may by resolution adopt such rules and procedures with respect to the election provided for in this Section as it deems appropriate.~~

~~The notice of the Annual Member 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.~~

Allows appointment of members to occur at any regular, special or annual meeting.

Clarified that only the FACT Board may appoint Trustees to vacant positions.

• Alternate year elections

wording transferred from prior "Transition" section to this section.

• Lets Board set date of Annual Members Meeting.

• Prohibits multiple votes from one representative. • Transfers certain administrative duties to the Board.

• Clarifies that the Board controls their own election process.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARATIVE DOCUMENT - Proposed 3rd Amendment vs. 2nd Ammended

Nominations may be additionally made by any Member representative at the Annual Member Meeting. In the event for any reason if a Member Trustee is not elected at the duly noticed Annual Member Meeting, the President of the County Association shall have the power to appoint a Member Trustee to serve the ensuing term. 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 the President of the County Association. 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 meeting Annual Board Meeting and with the written concurrence by the President of the Florida Association. removal.

~~**Section 4.05. Transition Period for Trustee Appointment.** Notwithstanding any other provision in this "Second Amendment" to the Agreement and Declaration of Trust (the "Second Amendment"), the Insurance Trust shall be administered until October 1, 1991 by the seven (7) Board Trustees appointed in the manner provided in Section 4.03 of this Second Amendment. The initial two (2) Member Trustees shall be elected or appointed in the manner provided in Section 4.04 of this Second Amendment at the Annual Member Meeting to be held during September, 1991, one Member Trustee for a term commencing on October 1, 1991 and ending on September 30, 1992 and the other Member Trustee for a term commencing on October 1, 1991 and ending on September 30, 1993 thereafter a Member Trustee shall be elected for a two (2) year term commencing the October 1 succeeding the Annual Member Meeting until the commencement of the initial term of the Member Trustee on October 1, 1991, the quorum provision for the transaction of business by the Board shall be four (4) Trustees and the number of Trustees needed to approve an amendment to the Agreement shall be four Trustees notwithstanding the amendments to Sections 4.08 and 7.01 of this Second Amendment. Upon the commencement of the term of the initial Member Trustees on October 1, 1991, the initial Trustees designated in Section 4.02 of the Trust Agreement and the Second Amendment shall be designated Board Trustees notwithstanding any contrary designation in Section 4.02. The transition period provided for in this Section 4.05 shall terminate upon the commencement of the initial term of the Member Trustees on October 1, 1991.~~

~~**Section 4.04. Optional Trustees.** Optional Trustee shall consist of one additional Board Trustee and one additional Member Trustee. The terms of office and manner of appointment of 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~~

With the exception of alternate year election wording, (moved to new section is historical and was removed. Describes makeup of new Optional Trustee positions.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARATIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

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 ~~Chairman~~-Chair.

(B) Any Trustee leaving office for whatever reason shall forthwith turn over to the remaining Trustees, at the principal office of the Insurane Trust, any and all records, books, documents, property or other assets in his possession owned by the Insurane Trust or by the Board incident to the fulfillment of this Agreement and the administration of the Insurane 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 4.07. 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 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 4.08. 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 meeting of the Board shall be held at such times and (A) The Annual Board Meeting shall be held at such times and at such places as determined periodically from time to time by the Board.~~

~~(A) The annual meeting (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.~~

~~(B) (C) Special meetings of the Board may be called by the Chairman and Chair, or in his or her absence by the Vice Chairman, or by any four (4) 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. The Administrator shall receive notice of all meetings. All notices of special meetings of the Board~~

Reinforces
concept of
regular meetings
and allows
orderly setting
and change of
the meeting
calendar.
Sets up 3 types of
meetings
(Annual, regular
& special).
New formula for
determining
simple majority
was added.
Trustees are the
only parties
with a "right" to
receive notice of
meetings.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Ammendment vs. 2nd Ammended

shall state the purpose thereof. thereof and shall be confined to the purpose stated.

(d) In the event all of the Trustees shall severally or collectively consent in writing to any action taken or to be taken by the Insuree Trust, such action is valid action as though it had been authorized at a meeting of the Board. 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 semiannually quarterly.

(g) Absence of any Trustee for three (3) consecutive meetings in a year without justification, excuse or good cause shall be deemed a resignation, other than special meetings, which by such Trustee and the Board may declare the position, which shall the position vacant. The position shall then be filled in the manner indicated above. in Sections 4.02 or 4.03, above, as is applicable to the position declared vacant.

Section 4.09: Quorum and Voting. 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 4.10: Conduct of Trustees and Conflict of Interest. (A) Purpose and Scope (1) The Trust is a public entity risk pool former to provide certain liability 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 coverages 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

Technical wording update

Allows

telephonic regular meetings and allows for

future video

technology.

Increases meeting frequency.

Clarifies rule and makes

application more objective. (Note: Board can

always reappoint).

This "Conflict of interest" wording was drawn up by Board Counsel and adopted by the Board.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

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.

No Trustee shall (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 principal, other than a public agency, by whom he or she is retained. 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 4.11. Principal Office. The Board shall establish and maintain a principal office for the Insurance Trust, the exact location of which will be made known to the Members and others interested in the Insurance Trust. The books and records pertaining to the Trust shall be made available, upon reasonable notice, to the Members and the County Association at the principal office of the Insurance Trust. 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 4.12. Officers of the Board. Officers of the Board required by this Agreement shall be elected at

Clarifies that the "special gain" prohibition also applies to certain information and discussions (such as specific claims strategies, etc.)
Acknowledges that only Members have rights to certain data and then only if no conflict of interest exists.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

the annual meeting 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 the pleasure of the Board.

(A) The Board shall elect a Chairman 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 initial Chairman shall be the Trustee designated in Section 4.02 of this Agreement. The Chairman Chair shall be the chief executive officer of the Insurance 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 Chairman's Chair's responsibilities as chief executive officer.

(B) The Board shall elect a Vice-Chairman 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. The initial Vice-Chairman shall be the Trustee designated in Section 4.02 of this Agreement. In case of the absence or disability of the Chairman, the Chairman's Chair, the Chair's duties shall be performed by the Vice-Chairman. The Vice-Chairman 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 initial Secretary shall be the Trustee designated in Section 4.02 of this Agreement. The Secretary shall record and circulate Secretary shall be responsible for recording and circulating the minutes of all meetings, shall prepare preparation of agendas and records, and preparing and mailing notices of meetings and other notices of 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 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 to 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 any subsequent Board resolutions. All such Temporary Committees shall

FACT would
rely on internal
committees for
oversight of
operations.
Temporary
Committees
have very
specific duties,
power and
limited lifetime

Historical
reference to
initial Chair,
Vice-Chair and
Secretary were
removed.
Ultimate
responsibility
rests with
Secretary,
although
clerical portion
of duties may be
contracted to
others (such as
FAC or Counsel).

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Ammendment vs. 2nd Ammended

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.

~~Section 4.13 Compensation.~~ No Trustee shall be compensated for service as a Trustee. A Trustee may be reimbursed for by the Trust for reasonable and customary out-of-pocket expenses in attending meetings or for other travel expenses incurred on behalf of the Insurance Trust. 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 Insurance Trust.

Section 4.14. Standard of Care. The Trustees shall use ordinary care and reasonable diligence in the administration of the Insurance 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) Neither the Trustees nor any Member (A) Without implied limitation, neither the Trust, the Trustees, the Service Company, Board Counsel, nor any Member, nor their respective officers, directors, 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 Insurance Trust or for the failure, insolvency or bankruptcy of any depository or custodian of the Insurance Trust Fund. 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 Insurance 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,

Permanent
Committees
have broader
duties and
powers (but still
subject to full
Board).
Committee
members acquire
and utilize
certain skills,
and thus rotate
less often.
Adds reasonable
and customary
and calls for
Board to set a
policy.
Permanent
Trust
Makes Trust
Agreement
consistent with
various contracts
and with the
indemnity
provision
elsewhere in the
Agreement.
Technical
correction.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - Proposed 3rd Amendment vs. 2nd Ammended

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 the Trustee, to be so great as to make it highly probable that harm would follow from such action or omission.

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 Trustee, 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.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

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 Insurance 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 Charter Members and the initial 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 provided, however, that no amendment to Section 7.06 relating to admission of new members shall be made without the affirmative vote of at least five (5) 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 Insurance 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 of the Insurance Trust 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 Insurance Trust or by such Policies of Insurance or reinsurance.

Allows changing
the Operations
Manual at
regular meeting
of the Board.
Adds new
"simple majority
formula".

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Ammendment vs. 2nd Ammended

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 Chairman shall assume those responsibilities. The initial Administrator shall be the County Association. Replacement or termination of the County Association as an Administrator shall require joint approval by the Board and the Board of Directors of the County Association.

Section 5.08. Appointment of Trust Board Counsel. The Board shall have the power to 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 Insurance Trust, defense of certain claims, and supervision of all claims defense. Trust records not designated to be held by the Service Company, and (C) be the custodian of those official Trust documents and perform such other duties as may be assigned by the Board from time to time.

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 management of any or all Trust Assets. The Chairman, Vice Chairman, Secretary and representative of the Administrator shall serve as an investment committee for the Insurance Trust. The investment committee Board, or

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 management of any or all Trust Assets. The Chairman, Vice Chairman, Secretary and representative of the Administrator shall serve as an investment committee for the Insurance Trust. The investment committee Board, or

Delete historical material. Allows Board to appoint administrators and to determine their duties.

Replaces Trust Counsel with Board Counsel, sets forth "corporate type" duties and allows Board to determine other duties.

Provides procedure for resolving a "positional" conflict of interest.

Allows for stability on the Investment Committee, even if Officers rotate annually.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

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 approved 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 a perfered an annual basis. Such financial statements and 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 reviewed 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 review audit shall be made available for inspection by Members and others as required by law at the principal office of the Insurance Trust, or at such other place as may be designated by the Board.

Section 5.13. Reports to Members and County Association. The Board, within its discretion, shall, at reasonable intervals, furnish to the 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 Insurance Trust Fund and such other pertinent information regarding the operation of the Insurance Trust and the benefits obtained under any Policies as may seem desirable or advisable, but shall not be required to furnish such reports more often than annually. 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. The Board shall also provide a financial status report to the Board of Directors of the County Association at each Board of Directors meeting. regulations.

Technical correction. Reference was only to Trustees, not to the Trust.

Clarifies "reasonable" to be no more often than quarterly & no less often than annually.

"Duty" of Board to report to Association is deleted. (Note: mutual exchange of officers will give opportunity for exchange of financial information.)

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARATIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

ARTICLE VI

TERMINATION OF INSURANCE TRUST

Section 6.01. Termination.

(A) The Insurance 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 Insurance Trust shall be terminated in accordance with the provisions of this Article VI.

Section 6.02. Procedure for Termination.

(A) In the event the Insurance Trust is terminated, the Board shall continue to meet at such times as shall be necessary to conclude the affairs of the Insurance 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, upon consideration of the Service Company's recommendation, 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 Insurance 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 Insurance 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.

Current wording suggests Board's actions are limited to that recommended by Service Company.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARATIVE DOCUMENT - proposed 3rd Amendment vs. 2nd Ammended

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 five (5) a majority of the then currently authorized number of Trustees and (B) upon receipt of written consent 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 Trustee 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 obligated 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 Insurance 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.

Replaces fixed simple majority with variable simple majority formula as size of Board may now fluctuate.

FACT AGREEMENT AND DECLARATION OF TRUST

COMPARITIVE DOCUMENT - proposed 3rd Ammendment vs. 2nd Ammended

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.

Added
important
contractual
provision.