



INDEMNITY AGREEMENT

THIS AGREEMENT, made and entered into as of this _____ day of _____, 20____, by and among the Associated Builders & Contractors of Tennessee Workers' Compensation Self Insurance Fund, acting by and through its Board of Trustees, and all persons who are now or hereafter become MEMBERS of the Trust.

WITNESSETH:

WHEREAS, the undersigned persons, partnerships, corporations or other entities, hereinafter referred to as "Members", wish to pool their liabilities under the Tennessee Workers' Compensation Act and, specifically, as authorized by Section 50-6-405(c), Tennessee Code Annotated and Chapter 0780-1-54 of the Rules of the Tennessee Department of Commerce and Insurance; and

WHEREAS, the Members have organized and created a Trust known as the Associated Builders & Contractors of Tennessee Workers' Compensation Self Insurance Fund, (the "Trust") to hold and administer the self-insurance fund to be contributed by Members (the "Fund"); and



WHEREAS, the persons named in Exhibit “A” have been designated as the first Board of Trustees of the Trust to direct the affairs of the Trust and to authorize the admission of future Members of the Trust until their successors are elected; and

WHEREAS, the Board of Trustees has designated WILLIS ADMINISTRATIVE SERVICES CORPORATION, D.B.A. WILLIS POOLING; ALTERNATIVE SERVICE CONCEPTS, LLC and FORTIER LOSS CONTROL CONSULTANTS INC as Service Agents for the Trust; and

WHEREAS, the Members wish to agree that the Trust and each Member will, jointly and severally, assume and discharge by payment any final, non-appealable, awards entered in the Courts of the State of Tennessee against any Member of the Trust, or the Trust itself, for workers’ compensations benefits for employees or their dependents;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties to this instrument agree as follows:

- 1.** The Members, jointly and severally, will pay any final award based upon a claim against any of them under the workers’ compensation laws of the State of Tennessee; and the Trust will pay any assessments lawfully levied against it by the State of Tennessee.
- 2.** This Agreement is a mutual covenant of assumption and not a partnership.
- 3.** The Board of Trustees will set up, operate and enforce the administrative rules, regulations and bylaws of the Trust and the Fund.



- 4. a.** The Members ratify and confirm the appointment of WILLIS ADMINISTRATIVE SERVICES CORPORATION, D.B.A. WILLIS POOLING; ALTERNATIVE SERVICE CONCEPTS, LLC AND FORTIER LOSS CONTROL CONSULTANTS INC. as Service Agents for the fund, the Trust and it’s Members, individually and collectively, as appointed by the Board of Trustees. However, the Board of Trustees reserves the right to designate a new Service Agent(s) from time to time.

b. The Service Agent(s) shall determine all Contributions due to the Trust from the Members, pay all approved items of expense as directed by the Board of Trustees, and submit a monthly account of all monies so handled.

c. For its services to the Fund and Trust, the Service Agent(s) shall receive a fee to be negotiated from time to time with the Board of Trustees. Such fee shall be compensation in full for all services and expenses contracted for with the Trust, including counseling with the Trustees as to safety hazards, claims handling and investigations, and providing for excess insurance coverage.

d. The Service Agent(s)’ books and records shall be open to inspection by the Tennessee Department of Commerce and Insurance (the “Department”) and by the Trustees and their agents at all reasonable times.

- 5.** The Administrator, to be appointed by the board of Trustees, shall deposit to the account of the Trust, at any bank or banks located in the State of Tennessee designated by the Board of Trustees, all contributions as and when collected, and said monies shall be disbursed only as provided by:



or failure to maintain status as a Member in good standing of the Associated Builders & Contractors, Inc.

- d.** In addition, any Member that becomes insolvent, files a voluntary petition in bankruptcy or has a petition for involuntary bankruptcy filed against it may be expelled from membership at the discretion of the Board of Trustees. Such expulsion shall become effective after the same notice provided in (b) above.

- 8.** Rules and regulation for administering the Trust and the admission and expulsion or suspension of Members shall be promulgated by the Board of Trustees and furnished to the Members. Pending such promulgation, each Member agrees to abide by the following rules and regulations:

 - a.** Each Member shall initiate and maintain a safety program to provide its employees safe and sanitary working conditions and shall follow the general recommendations of the employees. Each Member shall allow representatives of the Trust and the Service Agent(s) access to all work sites for the purpose of determining whether the Member's safety program and practices meet the Trust's criteria for membership in the Trust. Each Member shall nevertheless remain solely responsible for all decisions concerning its safety programs and practices and may not rely exclusively upon evaluation and/or recommendations made by the Trust, the Service Agent(s), the Administrator or their representatives in making final decisions concerning its safety program and practices.



- b.** In the event of an accident or a reported claim, the Member shall make immediate provision for remedial care for its employees, and shall give immediate notice of the accident to the Service Agent(s) on the prescribed forms.

- c.** Each Member shall pay promptly all contributions and assessments required by the Trust. This requirement shall also extend to former Members who were such during any part of the year(s) for which contribution or assessment is due. The amount of such contributions will be determined by applying applicable experience modification to the rates for the exposure to risk. The required contribution may be reduced by any discount allowed by the Board of Trustees. In the event of a loss fund deficit, the board of Trustees may adopt any plan it deems equitable for the elimination of such deficit.

- d.** Each Member hereby appoints the Service Agent(s) as it's agent and attorney-in-fact, to act in it's behalf and to execute in it's name all such contracts, reports, waivers, agreements and excess insurance contracts as the Service Agent(s) may deem necessary or desirable; and to make or arrange for payment of claims, medical expenses and all other things required or necessary, in so far as they affect it's workers' compensation liability under Tennessee law and are covered by the terms of the Trust and the rules and regulations as now provided or as hereafter promulgated by the Board of Trustees.



- e.** In the event of the payment of any loss by the Trust under this contract, the Trust shall be subrogated, to the extent of such payment, to all the rights of the Member against any person or other entity legally responsible for damages for the loss, and in such event, the Member shall render all reasonable assistance, other than pecuniary, to effect recovery.

 - f.** Each Member shall give the Trust, the Service Agent(s), and any of their agents, servants, employees or attorneys, permission and access at all reasonable times to examine the Member's work place, plant work, machinery and appliances covered by this Agreement, and shall permit such persons at all reasonable times while such person is a Member and within two (2) years after the final termination of membership to examine the Member's books, vouchers, contracts, documents and records of any and every kind which show or tend to show or verify the contribution which is payable under the terms hereof.
- 9.** The Trust agrees as follows:
- a.** The Trust will defend, in the name of the Member and on its behalf, any suits or other proceedings which may at any time be instituted against such member on account of injuries or death within the purview of the Tennessee Workers' Compensation Act, including suits or other proceedings, allegations or demands are wholly groundless, false or fraudulent. The Trust will pay all costs taxed against a Member in any legal



proceedings defended on its behalf, all interest accruing after entry of judgment, and all expenses incurred for investigation, negotiation or defense.

- b.** Liability of the Trust to the employees of any Member is specifically limited to such obligations as are imposed by Tennessee law against the Member for workers' compensation benefits. The coverage of the Trust does not apply to punitive or exemplary damages for such injuries to any employee in violation of law.
 - c.** The Trust will provide each prospective Member at the time of application for membership a written description of any refund plan then in effect.

- 10.** The Board of Trustees is authorized to set aside from the contributions collected a reasonable sum for the operating and administrative expenses of the Trust, including the compensation of the Administrator. All remaining funds of the Trust shall be set aside and used for the following purposes only:
 - a.** Payment of the Service Agent(s)' fee as provided in Paragraph 4, supra.
 - b.** Payment of medical, surgical, hospital and nursing expenses and other workers' compensation benefits to employees or their dependents covered by this Agreement, including settlements, awards, judgments and costs in all contested cases.
 - c.** Payment of lawful assessments required by the State of Tennessee.



- d.** Payment of the cost of all bonds and auditing expenses required of the Trust or its agents or employees.
 - e.** Reimbursements legally required pursuant to the terms of any bonds, excess insurance policy or similar agreement entered into by the Trust.
 - f.** Distributions to Members in such manner as the Trustees shall deem suitable, (including limiting distribution to Members with a loss ratio not in excess of a level designated by the Board of Trustees, and/or providing that any Member may share in prorate distribution of dividends regardless of when such dividends are declared so long as such member participated during the year for which distribution is made) of up to 90% of any excess monies remaining after payment of claims and claims' expenses and reserves; provided, however, that no such distribution shall be made earlier than eighteen (18) months after the end of such fiscal year, and after approval by the Board of Trustees. It is further provided that undistributed excess funds from previous fiscal year(s) may be distributed at any time if not required for reserves and if approved for distribution by the Board of Trustees. Any such distribution shall be subject to written approval by the Commissioner.
- 11.** The Trust shall operate on a fiscal year from 12:01 a.m., April 1 to midnight of March 31 of each year. Application for membership, when approved in writing by the Board of Trustees or its designee shall constitute a continuing contract for each succeeding fiscal period unless cancelled by the Board of Trustees, or unless the Member shall have resigned or withdrawn from the Trust by written notice.



- 12.** The Members, joint and severally, agree that there will be no disbursements to Members out of the assets of the Trust in the form of dividends or distributions of accumulated reserves until provision has been made for the Trust's obligations under the Workers' Compensation Law and then only at the discretion of the Board of Trustees.
- 13.** Any Member who formally applies for membership in the Trust and is accepted by the Board of Trustees shall automatically become a party to this Agreement, bound by all the terms and conditions, and said application shall constitute a counterpart of this agreement.
- 14.** This Agreement shall be irrevocable and remain in effect for the entire year in which the Member receives any workers' compensation coverage through the Fund, shall bind any successor in interest, and shall remain in effect as long as there is any obligation or liability of the Fund in this State.



IN WITNESS WHEREOF, the Associated Builders & Contractors of Tennessee Workers' Compensation Self Insurance Fund, has caused this agreement to be signed by the duly authorized Chairperson of its Board of Trustees and each Member.

WITNESSES:

_____ BY: _____
CHAIRPERSON, BOARD OF TRUSTEES

APPLICANT

OFFICIAL AND TITLE

STATE OF TENNESSEE

County of _____

Subscribed and sworn to me by _____

on this _____ day of _____ 20____.

NOTARY PUBLIC

My Commission Expires:



ADDENDUM

6. The Trust shall procure excess insurance coverage to protect its member(s) against excess losses. Effective 4.1.02, for the annual term expiring 4.1.03, the excess insurance coverage shall be \$5,000,000 excess of the Loss Fund in the aggregate and statutory limits excess of a \$500,000 SIR specific insurance per occurrence.



ADDENDUM

6. The Trust shall procure excess insurance coverage to protect its member(s) against excess losses. Effective 4.1.04 for the annual term expiring 4.1.05, the excess insurance coverage shall be \$5,000,000 excess of the Loss Fund in the aggregate and statutory limits excess of a \$750,000 SIR specific insurance per occurrence.



ADDENDUM

7.c. Grounds for suspension or expulsion shall be non payment of premium, failure to follow required safety guidelines and procedures, failure to allow reasonable safety surveys, failure to report losses immediately, failure to cooperate with the claims process, failure to cooperate with the payroll audit process, adverse loss experience, failure to maintain status as a Member in good standing of the Associated Builders & Contractors, Inc., and, at the discretion of the Board of Trustees of Associated Builders & Contractors Workers' Compensation Self Insurance Fund, for any other reason deemed necessary.



ADDENDUM

6. The Trust shall procure excess insurance coverage to protect its member(s) against excess losses. Effective 4.1.05 for the annual term expiring 4.1.06, the excess insurance coverage shall be \$3,000,000 excess of the Loss Fund in the aggregate and statutory limits excess of a \$750,000 SIR specific insurance per occurrence.



ADDENDUM

6. The Trust shall procure excess insurance coverage to protect its member(s) against excess losses. Effective 4.1.07 for the annual term expiring 4.1.08, the excess insurance coverage shall be \$2,000,000 excess of the Loss Fund in the aggregate and statutory limits excess of a \$750,000 SIR specific insurance per occurrence.