

**KESA, The Kentucky Workers' Compensation Fund**  
Operating Agreement and Bylaws

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This is the OPERATING AGREEMENT AND BYLAWS (referred to hereafter as "this Agreement" or "these Bylaws") governing KESA, the Kentucky Workers' Compensation Fund (the "Fund"), as adopted effective as of May 17, 1996, by the Fund's Trustees, and as amended from time to time since that date, including most recently as of April 25, 2006.

Recitals

A. The Fund was originally (i) formed under the Agreement and Declaration of Trust signed and entered into on November 15, 1979 by Kentucky Employers Safety Association, Inc. and George Garcia, James Bersot, Charles Keller, Sam Rosenberg, Lewis Hirsch, G. Hunt Rounsavall, and Covington Logan as duly appointed trustees creating the "Kentucky Employers Safety Association Insurance Trust" and (ii) governed under certain bylaws adopted thereafter. The Fund formerly operated under the name "Kentucky Employers Safety Association Selective Self-Insurance Fund."

B. This Agreement amends and supersedes the Agreement and Declaration of Trust dated November 15, 1979 and the former bylaws in their entirety. The Fund now operates under the name "KESA, The Kentucky Workers' Compensation Fund." It may use the name "KESA" and other variations of its name and other names which the Trustees of the Fund may select from time to time.

C. The Trustees of the Fund, acting for the employers which are members of the Fund, desire to continue the operation of the Fund in conformity with KRS 342.350(4), KRS 304.50-010, and the administrative regulations promulgated by the Executive Director of the Kentucky Office of Insurance, all as amended from time to time, and in conformity with any and all other applicable statutes of the Commonwealth of Kentucky, and any and all other applicable regulations, rules, and policies of agencies of the Commonwealth, as promulgated and amended from time to time.

Agreements

NOW, THEREFORE, in consideration of the foregoing premises, it is mutually contracted, covenanted and agreed as follows:

Article I

Definitions

Section 1. "Assessments" mean any assessments the Trustees may order the Members and former Members to pay into the Fund, in addition to the Premiums due from Members.

Section 2. "Association" shall mean Kentucky Employers Safety Association, Inc., a Kentucky nonstock, nonprofit corporation established under KRS Chapter 273, which is the bona fide trade association with which the Fund is affiliated. All Members of the Fund shall also be members of the Association.

Section 3. "Fund" shall mean the group self-insurance program among employers authorized under the Statutes and the Regulations governed by this Agreement.

Section 4. "Member" shall mean one of the corporations, general partnerships, limited partnerships, limited liability companies, individuals operating as proprietorships, and other employers, whatever their business form, which are duly admitted to membership in the Fund. Members of the Fund shall also be members of the Association, but not all members of the Association shall necessarily be Members of the Fund.

Section 5. "Premiums" shall mean the payments required by the Trustees to be paid by Members to the Fund in consideration of the group self-insurance coverage Members receive as participants in the Fund determined in the manner set forth below in this Agreement.

Section 6. "Regulations" shall mean the regulations promulgated from time to time by the Executive Director of the Kentucky Office of Insurance governing employers' group self-insurance arrangements, such as the Fund, for their Kentucky workers' compensation liability. The current Regulations are codified at Title 803 of the Kentucky Administrative Regulations, Chapter 52. The "Regulations" shall include not only those regulations, but any and all amendments thereto and any and all other regulations promulgated by the Executive Director of the Office of Insurance at any time and from time to time affecting such group self-insurers.

Section 7. "Statutes" shall mean the statutes of the Commonwealth of Kentucky governing group self-insurers such as the Fund. The current Statutes are KRS 342.350(4) and KRS Chapter 304, Subtitle 50. The term "Statutes" shall include any and all amendments to those statutes and any and all other Kentucky statutes governing group self-insurers such as the Fund.

Section 8. "Trustees" shall mean the persons elected to serve as trustees of the Fund in accordance with this Agreement.

Section 9. "Trust Estate" shall mean the assets consisting of the Premiums, the Assessments, if any, the investment return thereon, and any and all other monies paid over to the Fund by Members or derived by the Fund from any other source.

## Article II

### General Provisions

Section 1. LEGAL STATUS. The Fund shall be a non-profit organization which shall operate for the benefit of its Members pursuant to this Agreement and other rules and policies established by the Trustees from time to time in order to provide for self-insuring of the Members' Kentucky workers' compensation liability on a group basis. The Fund shall file federal income tax returns as a mutual property and casualty insurance company or according to such other classification as the federal tax laws may from time to time require.

Section 2. CREATION OF TRUST. The Trustees shall receive and hold the Premiums and Assessments paid over by Members and any other monies or properties which may come into their hands as Trustees in trust for and on behalf of the Members for the uses and purposes set forth in this Agreement.

Section 3. NAME. The Fund shall operate under the name "KESA, The Kentucky Workers' Compensation Fund" and such variations thereof and other names as the Trustees shall select.

Section 4. OFFICE. The principal office of the Fund shall be located at 200 Executive Park, Louisville, Kentucky 40207-4202. The Fund may have such other offices within the Commonwealth of Kentucky as the activities of the Fund may require from time to time.

## Article III

### Trustees

Section 1. AUTHORITY OF TRUSTEES. The Trustees shall be responsible for the administration and operation of the Fund and, without limiting the generality of the foregoing, shall be empowered to carry out, and shall be responsible for, the assessment and collection of Premiums, the investment of the Fund's monies, the determination of reserves, the need, if any, for Assessments, and all other aspects of the regular and special operations of the Fund. The Trustees may delegate authority to committees of the Trustees and to officers of the Fund. The Trustees may adopt rules and regulations and require Members to furnish such information as the Trustees deem necessary or advisable.

Section 2. NUMBER OF TRUSTEES. The Board of Trustees of the Fund shall always consist of a number of persons required or allowed in the Statutes. The Statutes currently require the Board to include at least two (2) persons and no more than twenty (20) persons. The Board is currently composed of seven (7) persons. The number of Trustees may be changed within the foregoing limits, or within any other limits established in the

Statutes, by an amendment to these Bylaws. The number of Trustees will always equal the number of directors on the Board of Directors of the Association.

Section 3. ELECTION OF TRUSTEES. The seven (7) Trustees shall serve staggered terms of three (3) years each, with two (2) such terms expiring in one year, two (2) such terms expiring in the next following year, three (3) such terms expiring in the next following year, and the cycle beginning again in the next following year. The Members shall elect at their annual meeting each year either two (2) or three (3) Trustees, as the case may be, each to a new term of three (3) years. Each Trustee shall serve as a Trustee until the earlier of (i) the expiration of that Trustee's term and until his or her successor has been elected and qualified, (ii) he or she resigns as provided below, or (iii) he or she is removed by a majority of the other Trustees, as provided below. Upon the expiration of any Trustee's term, that Trustee shall not be eligible for reelection to the Board of Trustees if he or she shall have served six (6) successive years or more as a Trustee. After being off the Board of Trustees for one (1) year, a former Trustee shall again be eligible for election. The persons serving as Trustees shall always serve simultaneously as members of the Board of Directors of the Association.

Section 4. VACANCIES. Should a vacancy occur on the Board of Trustees before completion of a term, such vacancy may be filled by the affirmative vote of a majority of the remaining Trustees.

Section 5. RESIGNATION OR REMOVAL OF A TRUSTEE. Any Trustee may resign upon giving thirty (30) days notification in writing to the Fund's Executive Director or at an earlier time with the approval of the Chairman of the Board of Trustees. Any Trustee may be removed at any time by a majority of the remaining Trustees, with or without cause. The removal of a Trustee shall become immediately effective upon written notification to the Trustee removed.

Section 6. ANNUAL AND REGULAR MEETING OF TRUSTEES. An annual meeting of the Board of Trustees shall be held each year at a date selected by the Board and to address any other business as may properly come before the Trustees. The Trustees may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution.

Section 7. SPECIAL MEETINGS OF TRUSTEES. Special meetings of the Board of Trustees may be called by the Chairman of the Board or by a majority of the sitting Trustees. Any such special meeting shall be held at the principal office of the Fund or at any other place agreed to by a majority of the Trustees.

Section 8. NOTICE. Separate written notice of any annual or regular meeting of the Board shall not be required. Notice of any special meeting of the Board shall be given at least seven (7) days prior thereto by written notice delivered personally, by facsimile transmission to the fax number on the books and records of the Fund for such Trustee, by mail to the business address on the books and records of the Fund for such Trustee, or by email to the email address on the books and records of the Fund for each trustee. Any notice of a special meeting shall state the time, place, and the matters to be considered at the special meeting. If faxed or emailed such notice shall be deemed delivered on the day transmitted. If mailed, such notice shall be deemed to be delivered two (2) days after it is deposited in the United States mail in a sealed envelope so addressed, with first-class postage thereon prepaid. Any Trustee may waive notice of any meeting. The attendance of a Trustee at any meeting shall constitute a waiver of notice of such meeting, except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 9. QUORUM. A majority of the Trustees shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees.

Section 10. MANNER OF ACTING. The act of the majority of the Trustees present at a meeting at which a quorum is present shall be the act of the Board of Trustees. The Trustees may act under the name of the Fund, which may be used to designate the Trustees collectively, and all instruments may be effected by them in such name upon the signature of the Chairman or any other person whom the Trustees may designate for that purpose.

Section 11. COMMITTEES. The Board of Trustees shall have authority to establish such committees as it may consider necessary or convenient for the conduct of its business. The Board of Trustees may establish an executive committee to which it may delegate any or all authority of the Board of Trustees.

Section 12. INFORMAL ACTION. Any action required or permitted to be taken at a meeting of the Board of Trustees, or any action which may be taken at a meeting of the Board of Trustees or of any committee, may be taken without a meeting if a consent, in writing, setting forth the actions so taken shall be signed by all of the Trustees, or all of the members of the committee, as the case may be, and included in the minutes or filed with the records of the Fund. Such consent shall have the same effect as a unanimous vote.

Section 13. COMPENSATION. No Trustee shall receive compensation for his services as a Trustee, but any expenses incurred by any Trustee by reason of his duties

or responsibilities as such may be paid by the Fund; provided, that nothing contained herein shall be construed to preclude any Trustee from serving the Fund in any other capacity and receiving compensation therefor.

Section 14. CONFLICTS OF INTEREST POLICY. The Board shall establish a formal Conflicts of Interest Policy applicable to the Board and officers and employees of the Fund that includes a system used to monitor compliance with the policy.

#### Article IV

##### Officers

Section 1. CLASSES. The officers of the Fund shall be Chairman of the Board, a Vice Chairman of the Board, an Executive Director, a Secretary, a Treasurer, and such other officers whose titles and duties may be fixed from time to time by the Board of Trustees and who may be elected in accordance with the provisions of this article.

Section 2. ELECTION AND TERM OF OFFICE. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. The officers of the Fund shall be elected every year by the Board of Trustees at the annual meeting. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as shall be convenient. Vacancies may be filled or new offices created and filled at any meeting of the Board of Trustees.

Section 3. REMOVAL. Any officer elected or appointed by the Board of Trustees may be removed by the Board of Trustees, with or without cause, whenever in its judgment the best interest of the Fund would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 4. VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the Board of Trustees for the unexpired portion of the term.

Section 5. CHAIRMAN. The Chairman of the Board shall preside over meetings of the Board of Trustees, appoint such committees and task forces as are necessary, and perform other duties that usually pertain to the top elective non-staff position in a voluntary association.

Section 6. VICE CHAIRMAN. The Vice Chairman, during the absence or disability of the Chairman, shall perform all of the duties of that office.

Section 7. EXECUTIVE DIRECTOR. The Fund's Executive Director shall in general supervise and control all of the day-to-day business and affairs of the Fund and shall serve as the chief executive officer of the Fund, subject to the direction of the Board of Trustees. The Executive Director shall perform all duties appropriate for a chief executive officer and such other duties as may be prescribed by the Board of Trustees from time to time.

Section 8. SECRETARY. The Secretary, or the Secretary's designee, shall (1) keep the minutes of the members' and the Board of Trustees' meetings in one or more books provided for that purpose; (2) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (3) be custodian of the corporate records; and (4) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the Executive Director or by the Board of Trustees.

Section 9. TREASURER. The Treasurer, or the Treasurer's designee, shall (1) have charge and custody of and be responsible for all funds and securities of the Fund; (2) have authority to receive and give receipts for monies due and payable to the Fund from any source whatsoever and deposit all such monies in the name of the Fund in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of these Bylaws; and (3) in general, perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the Executive Director or by the Board of Trustees.

#### Article V

##### Trustee and Officer Liability and Insurance

Section 1. INSURANCE. The Trustees may, in their discretion, purchase, at the expense of the Fund, trustee and fiduciary coverage, directors and officers coverage, errors and omissions coverage, and any and all other coverages which they, in their sole discretion, may deem advisable covering themselves and any officers, employees, or agents of the Fund. The Trustees shall consider the expense of any and all such insurance, along with all other Fund expenses, in establishing Premium rates from year to year.

Section 2. LIMITATION OF LIABILITY. Except as otherwise specifically provided in this Section 2, no Trustee, officer, or employee of the Fund, or any person formerly serving in any such capacity, (an "Indemnatee") shall be personally liable for monetary damages for breach of his duties with respect to the Fund. Each Indemnatee shall use ordinary care and reasonable diligence in the performance of their duties with respect to the Fund; no Indemnatee shall be liable

for any mistake of judgment or other action made, taken, or omitted by that Indemnatee in good faith, nor for any action taken or omitted by any agent, employee, or attorney selected by that Indemnatee with reasonable care, nor for the loss incurred through investment of monies of the Fund or any failure to invest such monies. No Indemnatee shall be liable for any action taken or omitted by any other Indemnatee. Except as may be required by the Statutes or the Regulations, no Indemnatee shall be required to give a bond or other security to guarantee the faithful performance of their duties to the Fund.

Section 3. INDEMNIFICATION. The Fund shall indemnify and advance expenses to any and all Indemnitees to the fullest extent allowed by law. Upon receipt of any notice from an Indemnatee describing a claim involving the Indemnatee's action or failing to act in his or her official capacity with respect to the Fund, the Fund shall advance to such Indemnatee the cost and expenses to defend, settle, and pay such a claim and shall thereafter forever indemnify and hold such Indemnatee harmless against any and all liability and expenses with respect to the claim described therein. Notwithstanding the foregoing, no Indemnatee shall be indemnified against, or be reimbursed or receive advances for any expense or liability incurred in connection with any claim arising out of such Indemnatee's dishonesty or intentional unlawful activity. Any determination that an Indemnatee is guilty of any such dishonesty or intentional unlawful activity must first be made by the affirmative vote of two-thirds of the Trustees then in office, excluding the Indemnatee if the Indemnatee is serving as a Trustee at such time.

#### Article VI

##### Members

Section 1. MEMBER APPLICATIONS. Each employer making application for participation in the Fund as a Member thereof must do so on the forms adopted by the Trustees from time to time. The application form of each employer accepted as a Member shall constitute a portion of the contract and agreement between that Member and the Fund. Each Member, by giving its application to the Fund, consents to be governed by this Agreement and such other rules and regulations as the Trustees may adopt.

Section 2. FINANCIAL STANDARDS. Each Member must have a net worth of at least two (2) times its estimated annual Premium, unless such Member pays its full estimated annual Premium in advance.

Section 3. KENTUCKY EMPLOYEE REQUIREMENT. Participation in the Fund is open only to otherwise qualifying employers with respect to their Kentucky

employees. At the discretion of the Trustees, out of state employers may be admitted as Members with respect to, and only with respect to, their Kentucky employees.

Section 4. SUSPENSION OR EXPULSION. The Trustees may suspend or expel any Member from the Fund due to adverse claims experience or lack of cooperation with safety and loss prevention policies by giving the Member and the Executive Director of the Office of Workers' Claims thirty (30) days advance written notice. Notwithstanding the foregoing, the failure by any Member to pay the Premium due prior to the due date may result in immediate suspension or expulsion from the Fund by the Trustees upon ten (10) days advance written notice to the Member and the Executive Director of the Office of Workers' Claims.

Section 5. WITHDRAWALS. A Member may withdraw from the Fund only upon written notice to the Trustees and the Executive Director of the Office of Workers' Claims to be received by each of them at least sixty (60) days prior to the effective date of the withdrawal, and any withdrawing Member shall not be entitled to receive dividends, adjustments, or other payments from the Fund for at least two (2) years after the effective date of the withdrawal, except for return premium adjustments determined as a result of payroll audits.

Section 6. EFFECT OF SEPARATION. Any Member which is suspended or expelled, or which voluntarily withdraws, from the Fund shall remain liable for any and all Premiums and Assessments required to be paid by the Members with respect to the period during which that Member was provided coverage by the Fund. No Member suspended or expelled or which withdraws shall have any right or claim to any portion of any surplus in the Fund or any distributions from the Fund, except for Premium adjustments in the ordinary course. Any separating Member shall continue to allow the Fund to examine its books and records in order to make such Premium adjustments and to otherwise settle accounts between the Fund and that Member.

Section 7. ANNUAL MEETING. Annual meetings of the Members shall be held each year at such time and place as designated by the Board of Trustees in the notice thereof. The primary purpose of such meetings shall be to elect Trustees according to the system of staggered terms for Trustees set out in Article III and to receive information from the Fund's Executive Director and his or her designees regarding the financial performance of the Fund and its operations for the year most recently ended, and other general and special business.

Section 8. NOTICE OF MEETINGS. The Fund's Executive Director shall cause written notice of the

date, time, and place of the annual meeting of Members to be given to all Members at least ten (10) but not more than forty (40) days before the date set for the annual meeting. If the notices are mailed, they shall be placed in the United States Mail postage pre-paid, addressed to the Member at its address appearing on the Fund's records. A notice so given shall be deemed to have been given on the date when mailed.

Section 9. WAIVER OF NOTICE. Notice of any meeting of Members may be waived in writing at any time before or after the meeting by any representative of a Member. The attendance at any meeting of a representative of a Member without protesting the lack of proper notice shall be deemed to be a waiver of that notice.

Section 10. VOTING AND QUORUM. No minimum percentage of Members shall be required at any duly constituted meeting of Members for a quorum to be deemed to be present. Except as otherwise provided herein, each Member shall be entitled to one vote on each proposal submitted at each meeting, despite the relative Premium paid by that Member. A Member may appoint a proxy to vote or otherwise act for that Member by signing an appointment form either personally or by an attorney-in-fact for the Member. A photostatic or equivalent reproduction of a writing appointing a proxy shall be deemed a sufficient signed appointment form. An appointment of a proxy shall be effective when the appointment form is received by the Fund's Executive Director or the Trustees and shall be valid for a period of eleven (11) months unless a longer or a shorter period is expressly provided for in the appointment form. An appointment of a proxy shall be revocable despite any language to the contrary in the appointment form. The Trustees and any nominating committee they appoint may submit to the Members prior to the annual meeting of Members the recommendations of the Trustees or the nominating committee for the Trustee positions to be filled by the vote of the Members at the annual meeting, and such recommendation may include a form of proxy which, if returned signed by the Member shall be deemed a vote in favor of the nominees designated by the Trustees or the nominating committee unless the Member shall have specified that the Member withholds its vote for those nominees or casts its vote in favor of one or more other candidates.

#### Article VII

##### Members' Payment Obligations

Section 1. PREMIUMS. Each Member shall pay Premiums to the Fund on such dates and in such amounts as the Fund shall require for allowing participation in the Fund's group self-insurance program. Members

shall be liable for their Premiums at the times and in the amounts established from time to time by the Trustees, or their designees, and may include, with respect to each insurance year, an initial payment, installments through all or a portion of the insurance year, and additional payments as a result of one or more audits of a Member's number and type of employees during or after any insurance year. The Premiums may be based upon the pure premium rates developed by the National Council on Compensation Insurance, modified by an expense factor and the Member's individual loss experience, with other discounts and adjustments as the Trustees may determine.

Section 2. ASSESSMENTS. In addition to any and all Premium charges, the Trustees may at any time and from time to time levy Assessments against Members in accordance with their respective Premium obligations for the then current insurance year, or in accordance with any other method reasonably determined by the Trustees, including, without limitation, the method established for dealing with any insolvency or liquidation of the Fund under Article XII. Any Assessments may be made against any or all former Members suspended or expelled or which have withdrawn from the Fund if the Assessments are made, as reasonably determined by the Trustees, because of losses or expenses incurred during the period of membership of the particular former Member against which the Assessment is made. The Fund shall file for prior approval a plan for assessments with the Executive Director of the Office of Insurance and may file changes to that plan from time to time.

Section 3. JOINT AND SEVERAL LIABILITY. All Members shall be jointly and severally liable for the payment of any workers' compensation claims against any other Member of the Fund for injuries to or occupational diseases contracted by employees of Members during the period of a Member's membership in the Fund and jointly and severally liable for the payment of the expenses of the Fund incurred during such period. A Member may be assessed for the payment of such claims and expenses at any time during that Member's membership or after that Member resigns from or is expelled from the Fund; and in the event a Member or former Member fails to pay any Premium, Assessment, or other amount due the Fund on the date the same shall become due, the Member or former Member shall be liable for and shall pay all costs of the collection thereof, including but not limited to reasonable attorney's fees incurred in the collection of the amounts due.

Section 4. LIMITED INTEREST OF MEMBERS. No Member nor any person or entity claiming by or through a Member by reason of having been named a beneficiary of insurance benefits or otherwise shall have any claim against the funds or property of the Fund. The rights and interest of Members and persons and entities claiming by or through

them shall be limited to the insurance benefits provided by the Fund and as specified in the Statutes and the Regulations.

Section 5. DEDUCTIBLES. If a Member and the Fund have agreed to any per claim deductible, then the Member shall turn over to the Fund for payment by the Fund as appropriate all statements with respect to each claim for medical, hospital, and other health care services on a first dollar basis; and the Fund shall bill the Member for, and the Member shall be liable for and shall pay within thirty (30) days of each such billing, any and all amounts paid by the Fund, including without limitation all amounts paid health care providers and the indemnity benefits paid to employees, with respect to that claim up to the agreed upon per claim deductible amount. The Member's obligation to repay to Fund the deductible amount with respect to each claim shall survive any non-renewal by the Member, any termination of the Member's membership by the Fund, and any other event with respect to the Member or the Fund.

Section 6. CERTAIN COSTS OF MEMBERS. In no event shall the Fund be liable for the fees and costs of any attorneys, investigators, or other third parties a Member may have employed, or for any in-house expenses of the Member, with respect to any claim.

#### Article VIII

##### Reserves, Distributions, and Related Matters

Section 1. MAINTENANCE OF FUNDS. The Trustees shall demand, collect, receive, and hold the Premiums, Assessments, and other contributions of Members in such amounts and at such times as the Trustees, in their discretion, may deem necessary and proper to carry out the purposes set forth herein, and may take such steps, including the institution and prosecution of, or the intervention in, any proceeding at law, in equity, or in bankruptcy, as may be necessary or desirable to accomplish the collection of any and all such Member contributions.

Section 2. ESTABLISHMENT OF RESERVES. The Trustees shall, in their sole discretion, determine the amount of reserves to be carried by the Fund at any time and from time to time. In this regard, the Fund may employ actuaries and other consultants as they shall deem appropriate.

Section 3. DEPOSITS AND INVESTMENTS. The Trustees shall deposit and invest all monies received by them in such accounts and investments as they, in their sole discretion, deem appropriate, subject to any restrictions imposed by the Statutes or the Regulations. Any insurance dividends or experience ratings refunds which may from time to time be received by the Trustees may be held or used by them for the purposes of the Fund or may be distributed by them on such basis and on such times as they in their sole discretion deem advisable.

Section 4. RETURNS TO MEMBERS. Once claims

against the Fund have been completely determined and reserved, the Trustees shall then be empowered to return any unused portion of the Fund's monies to Members upon any equitable method determined and approved by the Trustees from time to time as may be allowed by the Statutes and the Regulations. The Trustees may, however, elect to retain any and all such monies to strengthen the financial integrity of the Fund.

Section 5. RESTRICTIONS ON USE OF FUNDS. Notwithstanding any other provision of this Agreement, neither the Trustees, any fiscal agent they employ, or any other person shall use any of the monies coming into their hands as Trustees for any purpose unrelated to the Fund's self-insurance program. Neither any Trustee, any fiscal agent the Trustees employ, nor any other person shall borrow any monies from the Fund except as allowed by the Regulations.

Section 6. EXCESS AND OTHER INSURANCE. The Trustees are empowered and authorized to obtain aggregate and specific excess insurance, and other insurance, in such amounts, and from such insurance carriers, as the Trustees shall determine from time to time. The Trustees shall cause the Fund to obtain any and all insurance necessary to satisfy any and all requirements established in the Statutes and Regulations then in effect.

#### Article IX

##### Books, Records and Reports

Section 1. MAINTENANCE OF BOOKS, RECORDS AND REPORTS. The Trustees shall maintain, or cause to be maintained, correct and accurate books and records in reasonable detail of the business and financial transactions of the Fund, which may be maintained at the principal office of the Fund or at such other locations as the Trustees shall determine.

Section 2. ANNUAL AUDIT. The Trustees shall employ an independent certified public accountant or firm of independent certified public accountants to conduct an audit of the financial statements of the Fund each year, and the Trustees shall file with the Office such auditors' written audit report with respect to those financial statements promptly after the end of each of the Fund's annual self-insurance years.

Section 3. ANNUAL REPORT TO MEMBERS. Within one hundred eighty (180) days after the end of each of the Fund's annual self-insurance years, the Trustees shall furnish each Member with a copy of the financial statements of the Fund and a summary of the independent auditors' report.

Section 4. AVAILABILITY OF RECORDS. Upon ten (10) days prior written notice to the Trustees, each Member through its designated representative shall have reasonable access during business hours to the books and records of the Trustees and the Fund.

Section 5. OTHER REPORTS. The Trustees shall file with the agencies of the Commonwealth of Kentucky, including but not limited to the Office of Insurance, any and all other reports and filings which such agencies may lawfully require from time to time.

#### Article X

##### Bonds

The Trustees shall cause the Fund to provide at its expense to the Office any and all fidelity and surety bonds the Office of Insurance may require from time to time.

#### Article XI

##### Self-Insurance Year

The self-insurance year of the Fund, and its fiscal year, shall be the calendar year.

#### Article XII

##### Continuance and Termination

Section 1. CONTINUANCE. The Trustees of the Fund shall use their best efforts to cause the Fund to (a) observe reasonable underwriting standards in accepting new business and deciding whether to renew existing business from time to time, (b) adjust premiums annually as the Trustees shall find necessary or appropriate, and (c) otherwise operate in a manner that will assure the Fund's continuing financial soundness. Notwithstanding the foregoing, in the event of the insolvency of the Fund or the liquidation of the Fund for any other reason, premiums and assessments shall be determined, assessed and collected from current and previous members of the Fund on the following basis.

Section 2. PLAN FOR INSOLVENCY OR LIQUIDATION. In addition to the general potential liability of Members and former Members for assessments under Article VII, Section 2, above, every Member of the Fund at the time of an "event of insolvency or liquidation" (as defined below), and every former Member which was a Member at any time within seven (7) years of that event, or such other period of time as a court with jurisdiction may establish, shall be liable for assessments to pay losses, administrative expenses, the costs of reorganization or liquidation, and any and all other costs of the Fund which may then be due. The Trustees holding office at the time of that event, their successors, the receiver(s), rehabilitator(s), liquidator(s), or any other persons or entities with power to conduct the reorganization, rehabilitation, or liquidation shall make the assessments taking into account the losses and costs reasonably allocable to each insurance year of the Fund in order to equitably distribute such costs and expenses among those current and former Members liable for premiums and assessments.

Section 3. DEFINITION. As used in this Plan, the term

“event of the insolvency or liquidation” shall include, but shall not be limited to: (a) any determination of the Trustees of the Plan that the Plan should liquidate, whether based on a determination that cash and other current assets on hand are insufficient to pay sums immediately due, an analysis of the viability of the Fund based on all accrued liabilities, including but not limited to incurred but not reported claims, or any other basis, in the reasonable judgment of the Trustees, (b) the filing of an application by the Fund for, or its consent to, the appointment by a court of competent jurisdiction of a trustee of the Fund’s assets (other than the Trustees normally serving as such under the governing documents of the Fund) or a receiver, rehabilitator or liquidator with respect to the Fund; (c) the filing by the Fund of a voluntary petition in bankruptcy or a pleading in any court of record admitting in writing the Fund’s inability to pay its debts as they become due; (d) the making by the Fund of a general assignment for the benefit of the Fund’s creditors; (e) the filing by the Fund of an answer admitting the material allegations of, or consenting to, or defaulting in answering, a bankruptcy petition filed against the Fund in any bankruptcy proceeding; or (f) the entry of an order, judgment or decree by any court of competent jurisdiction adjudicating the Fund a bankrupt

or appointing a trustee of the Fund’s assets, and that order, judgment or decree continuing unstayed and in effect for a period of sixty (60) days.

Section 4. TERMINATION. Should the Trustees decide to terminate the Fund’s group self-insurance program, or should the Fund terminate for any other reason, the Trustees shall file a detailed plan of dissolution with the Executive Director of the Office of Insurance for prior approval and give at least sixty (60) days prior written notice, or such other notice as the then effective Statutes and Regulations may require, to the Executive Director of the Office of Insurance and to each Member by certified mail. The Trustees shall also demonstrate to the Office that the Fund has made satisfactory arrangements for the continued payment and servicing of all outstanding claims by following the plan for insolvency liquidation set forth above

### Article XIII

#### Amendment

These Bylaws may be amended at any time by a majority of the Trustees then serving. Written notice of any such amendment shall thereafter be promptly delivered to all Members.