

## **TOLLING AGREEMENT**

THIS TOLLING AGREEMENT (“Agreement”) is made and entered into by and between the Parties, with an effective date of December 23, 2017.

### **I. DEFINITIONS**

1. “Acuity” shall mean ACUITY, A Mutual Insurance Company, its members, subscribers, directors, managers, officers, employees, agents, independent contractors, shareholders, attorneys, representatives, owners, managers, and their respective heirs, administrators, executors, assigns, successors, affiliates and subsidiaries.

2. “Acuity Policy” shall mean Acuity’s Policy No. K77046, issued to Doug & Steve Construction, Inc., as the named insured, with original effective dates of coverage of November 15, 2009, to November 15, 2010, and renewed thereafter on a yearly basis through November 15, 2018.

3. “American Fire” shall mean American Fire & Casualty Company, its members, subscribers, directors, managers, officers, employees, agents, independent contractors, shareholders, attorneys, representatives, owners, managers, and their respective heirs, administrators, executors, assigns, successors, affiliates and subsidiaries.

4. “American Fire Policy” shall mean American Fire & Casualty Company’s Policy No. 50437299, issued to Doug & Steve Construction, Inc. as the named insured, with original effective dates of coverage of November 15, 2006, to November 16, 2007, and renewed thereafter on a yearly basis through November 15, 2009.

5. “Complaint” shall mean the “Complaint for Damages” which was filed on or about April 18, 2016, in the Lawsuit.

6. “Insurers” shall mean Acuity, American Fire, QBE and West Bend.

7. “Larson Danielson” shall mean Larson Danielson Construction Company, Inc., its members, subscribers, directors, managers, officers, employees, agents, independent contractors, shareholders, attorneys, representatives, owners, managers, and their respective heirs, administrators, executors, assigns, successors, affiliates and subsidiaries.

8. “Lawsuit” shall mean a certain legal proceeding styled as “*Town of Munster, Indiana and Munster Municipal Center Corporation, Plaintiffs, vs. Larson Danielson Construction Company, Inc., Linden Group, Inc., K&S Engineers, Inc., and Illiana Remedial Action, Inc., Defendants; Larson Danielson Construction Company, Inc., Cross Plaintiff, vs. Illiana Remedial Action, Inc., Cross Defendant; Larson Danielson Construction Company, Inc., Third-Party Plaintiff, vs. Robinson Engineering, Ltd., McCluskey Engineering Corp., Doug & Steve Construction, Inc., Acuity Insurance, Inc., Ohio Casualty Group n/k/a Liberty Mutual Group, Inc., West Bend Mutual Insurance Company, and QBE Insurance Corporation, Third-Party Defendants*”, Cause No. 45C01-1604-PL-35, Circuit Court No. 1 of Lake County, Indiana.

9. “Limitations” shall mean all periods of limitation, whether statutory, contractual, or otherwise, and all statutes of repose.

10 “Munster” shall mean the Town of Munster, Indiana and the Munster Municipal Center Corporation, their members, subscribers, directors, managers, officers, employees, agents, independent contractors, shareholders, attorneys, representatives, owners, managers, and their respective heirs, administrators, executors, assigns, successors, affiliates and subsidiaries.

11. “Parties” shall mean Acuity, American Fire, Larson Danielson, , Munster, QBE and West Bend.

12. “Policies” shall mean the Acuity Policy, the American Fire Policy, the Hoosier Policy and the West Bend Policy.

13. “QBE” shall mean QBE Insurance Corporation and Hoosier Insurance Company.

14. “Hoosier Policy” shall mean Hoosier Insurance Company’s Policy No. CCI 0449143, issued to Illiana Remedial Action, Inc. as the named insured, with effective dates of coverage of October 1, 2006, to October 1, 2007.

15. “Third-Party Complaint” shall mean “Larson Danielson Construction Company, Inc.’s First Amended Third Party Complaint” that was filed on or about May 31, 2017, in the Lawsuit.

16. “Cross-Claim” shall mean “Larson Danielson Construction Company, Inc.’s Crossclaim against Illiana Remedial Action, Inc.” that was filed on or about May 31, 2017, in the Lawsuit.

17. “West Bend” shall mean West Bend Mutual Insurance Company, its members, subscribers, directors, managers, officers, employees, agents, independent contractors, shareholders, attorneys, representatives, owners, managers, and their respective heirs, administrators, executors, assigns, successors, affiliates and subsidiaries.

18. “West Bend Policy” shall mean West Bend’s Contractors Businessowners Policy No. BCD 0954856, issued to Illiana Remedial Action, Inc. as the named insured, with original effective dates of coverage of October 1, 2007, to October 1, 2008, and renewed thereafter on a yearly basis through October 1, 2018.

## **II. RECITALS**

1. Larson Danielson requested that Insurers defend and indemnify it under the Policies against the Complaint; and

2. Insurers denied coverage for the Complaint, and declined to defend Larson Danielson against the Complaint; and

3. On or about May 31, 2017, Larson Danielson filed its Third-Party Complaint against, inter alia, Insurers; and

4. The Parties believe their respective interests will best be served if a judicial declaration of the coverage issues under the Policies is avoided at this time.

### **III. TERMS AND CONDITIONS**

NOW, THEREFORE, in consideration for the following mutual covenants and agreements, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Tolling. The Parties agree that any and all periods of limitation, whether statutory, contractual, or otherwise, and statutes of repose, governing any claim, cause of action, legal theory, defense, lawsuit or legal or equitable action by and between the Parties arising out of the Policies or the Lawsuit, are hereby tolled and suspended from the effective date of this Agreement until it is terminated. The Parties agree and covenant that the time period between the effective date of this Agreement and the date it is terminated shall not be asserted or relied upon in any way in computing the amount of time which may have expired under any periods of Limitations in any such claims, defenses, legal theories, causes of actions, lawsuits or actions by and between the Parties.

2. Term and Termination. Should any Party desire to terminate this Agreement, that Party must provide each other Party forty-five (45) calendar days advance written notice, labeled "Notice of Termination," sent by certified mail, return receipt requested, addressed to the following:

If to Acuity: Stephen M. Brandenburg  
CAMELI & HOAG, P.C.  
Stephen M. Brandenburg  
5920 Hohman Avenue  
Hammond, IN 46320

If to American Fire: Hollie Sharpe  
LIBERTY MUTUAL INSURANCE  
9450 Seward Road  
Fairfield, OH 45014-5412

If to Larson Danielson: Daniel P. Costello  
DANIEL P. COSTELLO & ASSOCIATES  
221 North LaSalle Street, Suite 1300  
Chicago, IL 60601

If to Munster: Paul L. Jefferson  
JEFFERSON & BREWER, LLC  
300 North Meridian Street, Suite 220  
Indianapolis, IN 46204

If to QBE: Hoosier Insurance Company c/o  
Office of the General Counsel  
QBE North America  
One General Drive, Sun Prairie, WI 53590

and

Dennis M. Dolan  
LITCHFIELD CAVO LLP  
303 West Madison Street, Suite 300  
Chicago, IL 60606-3300

If to West Bend: Mark R. Smith  
SMITH FISHER MAAS HOWARD & LLOYD,  
P.C.  
7209 North Shadeland Avenue  
Indianapolis, IN 46250

or to such other address designated by any of the Parties in a written notice given in accordance with this paragraph. This Agreement shall remain in effect for forty-five (45) calendar days after the date of receipt of any "Notice of Termination" sent pursuant hereto.

3. No Revival of Expired Claims or Defenses. This Agreement shall not revive any cause of action, claim, or defense that, as of the effective date, has already become untimely, late, or barred by a period of Limitations or any other time-related defense.

4. Dismissal of Third-Party Complaint Against Insurers. Within five (5) business days of the execution of this Agreement, the Parties shall dismiss, without prejudice, Larson Danielson's Third-Party Complaint against Insurers.

5. Binding Effect. This Agreement governs the right of, and binds and inures to the benefit of, all of the Parties, and their predecessors, successors and assigns, employees, agents and representatives, and any persons or entities acting on their behalf.

6. No Admission of Liability or Waiver. Nothing contained in this Agreement shall be taken or construed to be an admission of any liability, responsibility, fault or wrongdoing by any of the Parties hereto, or as a waiver of any right except as expressly set forth herein, and shall not be used in evidence in any action or proceeding for any purpose other than in the enforcement of the terms hereof.



AMERICAN FIRE & CASUALTY COMPANY

By: *Hollie L. Sharpe*

*Hollie L. Sharpe*

Printed *Sr. Claims Tech*

Title/Position

STATE OF OHIO )  
 ) SS:  
COUNTY OF Burke )

Before me the undersigned, a Notary Public in and for the County of Burke, State of Ohio, personally appeared Hollie L. Sharpe, a duly authorized representative of American Fire & Casualty Company, who, first being duly sworn upon his/her oath, acknowledged execution of this Agreement and verified that the facts stated in this Agreement are true. Signed and sealed this 21<sup>st</sup> day of March, 2018.

*[Signature]*

*James V. Siciliano III*, Notary Public

County of Residence: *Warren*

My Commission Expires: *February 18, 2020*



JAMES V. SICILIANO III  
Notary Public  
State of Ohio  
My Commission Expires Feb. 18, 2020

LARSON DANIELSON CONSTRUCTION  
COMPANY, INC.

By: *Thomas M. Walter*

Thomas M. Walter  
Printed

Vice President  
Title/Position

STATE OF Indiana )  
 ) SS:  
COUNTY OF Lake )

Before me the undersigned, a Notary Public in and for the County of Lake, State of Indiana, personally appeared Tom Walter, a duly authorized representative of Larson Danielson Construction Company, Inc. who, first being duly sworn upon his/her oath, acknowledged execution of this Agreement and verified that the facts stated in this Agreement are true. Signed and sealed this 24 day of April, 2018.



Erin Cannon, Notary Public  
County of Residence: Lake  
My Commission Expires: 2/13/21

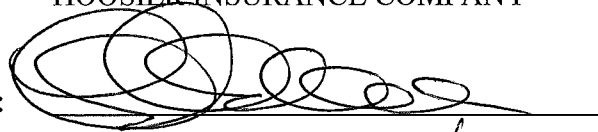






QBE INSURANCE CORPORATION AND  
HOOSIER INSURANCE COMPANY

By:



Melinda C. Konicke

Printed

QBE Sr Claims Technical Specialist

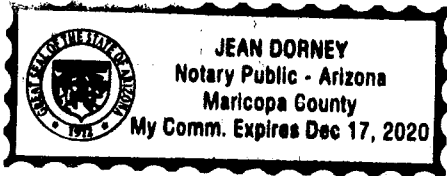
Title/Position

STATE OF Arizona )

) SS:

COUNTY OF Maricopa )

Before me the undersigned, a Notary Public in and for the County of Maricopa, State of Arizona, personally appeared Melinda Konicke, a duly authorized representative of QBE Insurance Corporation and Hoosier Insurance Company, who, first being duly sworn upon his/her oath, acknowledged execution of this Agreement and verified that the facts stated in this Agreement are true. Signed and sealed this 5<sup>th</sup> day of April, 2018.



Jean Dorney  
\_\_\_\_\_, Notary Public

County of Residence: Maricopa  
My Commission Expires: 12/17/2020

WEST BEND MUTUAL INSURANCE  
COMPANY

By:

[Handwritten Signature]

ROLLIN E. KRAFFT

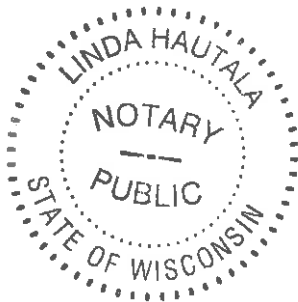
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SENIOR ATTORNEY

Title/Position

STATE OF Wisconsin )  
 ) SS:  
COUNTY OF Washington )

Before me the undersigned, a Notary Public in and for the County of Washington, State of Wisconsin, personally appeared Rollin Krafft, a duly authorized representative of West Bend Mutual Insurance Company, who, first being duly sworn upon his/her oath, acknowledged execution of this Agreement and verified that the facts stated in this Agreement are true. Signed and sealed this 19th day of March, 2018.



Linda Hautala  
\_\_\_\_\_, Notary Public  
County of Residence: Washington, WI  
My Commission Expires: June 11, 2021