

INSTALLMENT PAYMENT AGREEMENT

THIS INSTALLMENT PAYMENT AGREEMENT (this "Agreement"), is by and between the board of education for the Kentucky school district identified below (the "Board of Education") and Sharon P. Clark, Commissioner of the Kentucky Department of Insurance (the "Rehabilitator"), in her capacity as Rehabilitator of the Kentucky School Boards Insurance Trust Workers Compensation Self-Insurance Fund (the "Fund").

RECITALS:

1. The Fund is a fund pursuant to which participating members, including the Board of Education, pooled their liabilities as a workers' compensation self-insured group under KRS 304.50-005, *et. seq.*
2. Due to a substantial deficit, the Fund was placed into rehabilitation (the "Rehabilitation") before the Franklin Circuit Court (the "Court"), pursuant to KRS Chapter 304, Subtitle 33, wherein the Rehabilitator was appointed rehabilitator of the Fund.
3. In connection with the Rehabilitation and pursuant to a Loss Portfolio Transfer Agreement ("LPT Agreement"), contemplated to be entered between the Rehabilitator and Kentucky Employers' Mutual Insurance ("KEMI"), which LPT Agreement has been approved by the Court, KEMI would agree to accept transfer of certain workers' compensation insurance obligations of the Fund in exchange for a transfer payment of Thirty-Five Million Dollars (\$35,000,000) (the "Transfer Payment").
4. The members of the Fund, including the Board of Education, are jointly and severally liable for the Fund's liabilities and the Fund has insufficient assets to pay the Transfer Payment. The Rehabilitator on behalf of the Fund has assessed the members of the Fund an aggregate assessment of **\$204,828** (the "Aggregate Assessment") to fund, *inter alia*, the payment of the Transfer Payment to KEMI and the payment of the special fund assessment to the Kentucky Workers' Compensation Funding Commission. The Aggregate Assessment was approved by the Court.
5. The Aggregate Assessment was allocated among the members liable therefor in a manner determined by the Rehabilitator to be fair and equitable, which allocation has been approved by the Court, and the allocation of the Aggregate Assessment to the Board of Education is as set forth below (the "Assessment").
6. As permitted by KRS 304.50-055(9) and approved by the Court, the Rehabilitator and KEMI have agreed that conditioned upon entering this Agreement, the Board of Education may pay its Assessment over a period of years, not to exceed six (6) years, and the Board of Education has elected to pay the Assessment as set forth below.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the Board of Education and the Rehabilitator, in its capacity as Rehabilitator of the Fund and for and on behalf of the Fund, agree as follows:

1. Basic Terms. [to be completed by Board of Education]:

(a) *Name of Board of Education*. The Board of Education is the board of education for:

HENDERSON COUNTY BOARD OF EDUCATION

(b) *Approval*. The Board of Education approved this Agreement and the installment payments set forth herein at [complete and select one]:

_____ at a regular meeting held on _____ [insert date], pursuant to the duly adopted regular meeting schedule of the Board of Education that has been made available to the public; or

_____ at a special meeting of the Board of Education held on _____ insert date [date], pursuant to written notice duly given at least 24 hours in advance of the meeting to all Board of Education members and to local news media that have requested to be so notified, and posted at a conspicuous place at the offices of the Board of Education;

all in compliance with the applicable provisions of KRS 61.820 through 61.850.

(c) *Assessment Amount*. The Assessment upon the Board of Education is **\$204,828**.

(d) *Financing*. Unless indicated to the contrary below, the Board of Education will pay the Assessment in multiple installments, the first installment in an amount equal to 25% of the Assessment due and payable on or prior to August 31, 2014 ("Initial Installment Date") and the balance paid as follows [select one]:

_____ in two additional annual installment payments each equal to 37.5% of the Assessment, the first of such additional installment payments due on August 15, 2015 and the remaining installment payment due on August 15, 2016. On August 15, 2016, the entire unpaid balance of the Assessment is due and payable in full.

_____ in three additional annual installment payments each equal to 25% of the Assessment, the first of such additional installment payments due on August 15, 2015, and the remaining installment payments due on each August 15 thereafter until the Assessment is paid in full. On August 15, 2017, the entire unpaid balance of the Assessment is due and payable in full.

_____ in four additional annual installment payments each equal to 18.75% of the Assessment, the first of such additional installment payments due on August 15, 2015, and the remaining

installment payments due on each August 15 thereafter until the Assessment is paid in full. On August 15, 2018, the entire unpaid balance of the Assessment is due and payable in full.

_____ in five additional annual installment payments each equal to 15% of the Assessment, the first of such additional installment payments due on August 15, 2015, and the remaining installment payments due on each August 15 thereafter until the Assessment is paid in full. On August 15, 2019, the entire unpaid balance of the Assessment is due and payable in full.

_____ in six additional annual installment payments each equal to 12.5% of the Assessment, the first of such additional installment payments due on August 15, 2015, and the remaining installment payments due on each August 15 thereafter until the Assessment is paid in full. On August 15, 2020, the entire unpaid balance of the Assessment is due and payable in full.

_____ the Board of Education elects to pay the entire Assessment in full on or before the Initial Installment Date.

If any payment is due on a day other than a business day, the payment shall be due the last business day preceding such due date. If the Board of Education does not elect an installment payment option set forth above and approve this Agreement and cause its execution and delivery to the Rehabilitator at KSBIT-Workers Compensation Fund, 10400 Linn Station Rd., Suite 211, Louisville, Kentucky 40223-3839, on or before the Initial Installment Date, the Board of Education shall be required to pay the entire Assessment in full on the Initial Installment Date, unless the Rehabilitator and KEMI agree in writing to the contrary upon request by the Board of Education.

2. Payment. The Board of Education agrees to pay the Assessment in accordance with Section 1 of this Agreement. Such payments shall be due and payable without any right of set-off or deduction. The Assessment may be prepaid in whole or part at any time without penalty or premium. If at any time any payment is not paid when due, the past due payment shall accrue interest at a rate of twelve percent (12%) per annum until paid (or the highest rate permitted by law, if less).

3. Intercept. The Board of Education acknowledges and agrees that if it does not timely pay the Rehabilitator any payment when due hereunder, the Rehabilitator or KEMI may notify the Kentucky Department of Education ("DOE"), as assisted as necessary by the Kentucky Finance and Administration Cabinet ("FAC"), to withhold or intercept appropriations from the Commonwealth of Kentucky otherwise due to the Board of Education (the "Appropriations") to the extent of the payment then due. If at any time the Memorandum of Understanding by and among the DOE, FAC, the Rehabilitator and KEMI is canceled or terminated by any of the DOE, FAC or Rehabilitator, the entire Assessment, including all installment payments not yet paid, shall become immediately due and payable without any further action and, if such Assessment is not then paid in full immediately, the Rehabilitator and KEMI shall each have the right to cause the DOE to withhold or intercept the Appropriations to the extent of the Assessment then due. The Board of Education hereby releases and indemnifies the DOE, FAC, Rehabilitator and KEMI for effectuating any withholding or intercept of Appropriations.

4. Events of Default. The occurrence of any of the following events shall be deemed an "Event of Default": (i) the Board of Education fails to make any payment when due under this Agreement; (ii) the Board of Education breaches any other obligation under this Agreement; (iii) the Board of Education shall commence any case, proceeding or other action under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered or seeking to adjudicate it as a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part its assets or it shall make a general assignment for the benefit of their creditors; (iv) there shall be commenced against the Board of Education any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which continues undismissed and unstayed for a period of thirty (30) days or which results in the entry of an order for any such relief; (v) the Board of Education shall breach or default, beyond any period of grace with respect thereto, in any of the

terms or conditions of any agreement covering any debt owing to any person or entity in excess of One Million Dollars (\$1,000,000.00); or (vi) entry of a judgment in the amount of One Million Dollars (\$1,000,000.00) or greater against the Board of Education, which remains unsatisfied or undischarged and in effect for thirty (30) days after such entry without a stay of enforcement or execution.

5. Remedies. Upon the occurrence of any Event of Default described in the foregoing Section 4, upon the election of Rehabilitator, the entire Assessment, including all installment payments not yet paid, shall be immediately due and payable (except where such Event of Default is under clause (iii) or (iv) of Section 4, in which event the entire Assessment, including all installment payments not yet paid, shall automatically become immediately due and payable without any election by or action of the Rehabilitator), and the Rehabilitator may exercise all rights and remedies under this Agreement and applicable law. The rights provided for in this Agreement are cumulative and not exclusive of any other rights, powers, privileges or remedies provided by law or in equity. Upon the occurrence of any Event of Default, the Rehabilitator may either at law or in equity, by suit, action, mandamus or other proceedings, enforce and compel performance by the Board of Education and its officers and agents of all duties imposed or required by law or by this Agreement.

6. General.

(a) *KEMI*. KEMI is relying on this Agreement and the obligations of the Board of Education in permitting the Board of Education to pay the Assessment in installments rather than as a lump-sum payment. As a result thereof, the Rehabilitator and Board of Education agree that KEMI is and shall be a third-party beneficiary of this Agreement and the Board of Education and Rehabilitator agree not to modify or terminate this Agreement without the prior written consent of KEMI.

(b) *No Waiver*. Any waiver, forbearance, failure or delay by the Rehabilitator in exercising any right, power or remedy under this Agreement will not be deemed to be a waiver of such right, power or remedy, and any single or partial exercise of any right, power or remedy under this Agreement will not preclude the further exercise thereof; and every right, power and remedy of the Rehabilitator will continue in full force and effect until such right, power or remedy is specifically waived by an instrument in writing executed by the waiving party.

(c) *Submission to Venue and Jurisdiction and Waiver of Jury Trial*. The undersigned agree that any action or proceeding arising, directly, indirectly, or otherwise, in connection with, out of, or from this Agreement, any breach hereof, or any transaction covered hereby shall be resolved in, and the parties consent and submit to the sole and exclusive jurisdiction and venue of, the Franklin Circuit Court, Commonwealth of Kentucky. Notwithstanding the foregoing, if the enforcement of the Rehabilitator's or KEMI's rights or remedies herein requires pursuing an action or proceeding in an alternative or other court, such action or proceeding shall not be subject to the foregoing jurisdictional and venue exclusivity provision, and the Rehabilitator or KEMI may so pursue any such action or proceeding against the Board of Education in any court of competent jurisdiction. **THE PARTIES HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY RESPECTING ANY CLAIM BROUGHT AGAINST THE OTHER PARTY ARISING OUT OF THIS AGREEMENT.**

(d) *Governing Law*. The laws of the Commonwealth of Kentucky will govern the construction of this Agreement and the rights, remedies and duties of the parties hereto, without regard to principles of conflicts of laws.

(e) *Time of Essence.* Time will be of the essence in the performance of the Board of Education's obligations under this Agreement.

(f) *Heirs, Successors and Assigns Bound.* This Agreement will bind and inure to the benefit of the successors and assigns of the Board of Education, Rehabilitator and the Fund, and will bind the Board of Education, Rehabilitator and the Fund, and all successors and permitted assigns of any of them.

(g) *Assignment.* The Board of Education may not assign this Agreement without the prior written consent of the Rehabilitator. The Rehabilitator may assign its rights and interests herein to any person, including KEMI.

(h) *Severability of Provisions.* A judicial decree, order or judgment holding any provision herein invalid or unenforceable will not in any way impair or preclude enforcement of the remaining provisions herein, and will not in any way impair or preclude enforcement of rights or remedies of the Rehabilitator under applicable law or their right to collect the Assessment.

(i) *Counterpart Execution.* This Agreement may be executed in several counterparts, any of which will be treated for all purposes as an original, and all of which will be treated as one and the same Agreement.

(j) *Notices.* All notices under this Agreement shall be given to the parties at the following addresses (i) by personal delivery; (ii) by certified mail, postage prepaid, return receipt requested; and (iii) by nationally recognized overnight or other express courier services:

If to the Rehabilitator:

Joseph N. Pope, Jr., CPA, CFE
Deputy Rehabilitator
KSBIT-Workers Compensation Fund
10400 Linn Station Rd., Suite 211
Louisville, KY 40223-3839

Sharon P. Clark
Rehabilitator
KSBIT – Workers Compensation Fund
215 W. Main St.
Frankfort, KY 40601

If to the Board of Education, to the attention of the Superintendent at the Board of Education's principal office address.

All notices shall be effective and shall be deemed delivered (i) if by personal delivery, on the date of delivery if delivered during normal business hours of the recipient, and if not delivered during such normal business hours, on the next business day following delivery; (ii) if by courier service, on the next business day after dispatch thereof; and (iii) if by mail, on the third (3rd) business day after dispatch thereof.

Any party hereto may change its address by notice to all parties hereto delivered in accordance with this Section 6(j).

(k) *Headings.* Section headings used in this Agreement are for convenience only and are not part of this Agreement.

(l) *Joint and Several Liability.* The Board of Education acknowledges that this Agreement and its performance hereunder in no way limits or reduces its joint and several liability with the other members of the Fund for the liabilities and obligations of the Fund.

(m) *Integration and Modification.* This Agreement comprises the entire agreement between the Board of Education and Rehabilitator concerning its subject matter. Any modification to this Agreement must be made in writing and signed by the party against whom the modification is sought to be enforced.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first
above written.

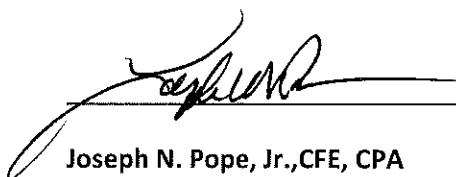
Board of Education for the School District of

(print school district name)

By: _____

Name: _____

Title: _____



Joseph N. Pope, Jr., CFE, CPA

**Deputy Rehabilitator of the Kentucky School Boards
Insurance Trust Workers Compensation Self-Insurance
Fund**