

ADMINISTRATION AND TRUST AGREEMENT
OF THE
SHELBY COUNTY, TENNESSEE, RETIREMENT SYSTEM

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ADMINISTRATION AND TRUST AGREEMENT
OF THE
SHELBY COUNTY, TENNESSEE, RETIREMENT SYSTEM

The Shelby County Retirement System, consisting of Plan A, Plan B, Plan C, Plan D, and such other qualified retirement plans as the County shall establish, and the Trust, shall be administered by the Shelby County Retirement System Board of Administration and Trust (the "Board") as set forth in this instrument.⁵ All capitalized terms used in this instrument shall have the meanings set forth in Plan A, unless otherwise clearly required by the context.

I. COMPOSITION OF THE BOARD OF ADMINISTRATION AND TRUST 1.1

Composition of the Board. There shall at all times be thirteen (13)⁶ members of the Board with the exception of short periods of vacancy. Each member of the Board shall also be a Trustee of the Trust Fund. The members of the Board shall consist of the following persons:

- (a) the County Mayor or his written designee;
- (b) the Chairman of the County Commission or his written designee;
- (c) the Chairman of the County Commission Budget Committee;
- (d) the County's duly appointed Director of Administration and Finance;
- (e) a popularly elected full-time County official who is elected by majority vote of all full-time popularly elected County officials, who shall serve for the period of his popularly elected term;
- (f) one (1) County employee who is an Active Participant with at least 10 years of participation in the Retirement System, who shall be appointed by the County Mayor to serve an initial term of two (2) years from their date of appointment and, if reappointed, shall serve for a term of four (4) years from their date of

reappointment, provided that at all times during their terms they remain Active Participants;

- (g) two (2) Pensioned Participants under the System who shall be appointed by the County Mayor to serve a term of four (4) years; and
- (h) three (3) citizens of Shelby County, Tennessee, who shall be appointed by the County Mayor to serve a term of four (4) years, who have demonstrated that they are knowledgeable in pension systems, and who are not Participants in the System;¹ and⁴
- (i) two (2) citizens of Shelby County, Tennessee, who may but are not required to be Participants in the System, who shall be appointed by the County Mayor to serve a term of four (4) years, and who have demonstrated financial or investment expertise.⁴

1.2 Appointments Subject to Commission Approval. All appointments by the Mayor shall be subject to the approval of the majority of the members of the County Commission.

II. GOVERNANCE OF THE BOARD

2.1 Officers. The County Mayor (or his written designee) shall be the Chairman of the Board. The Board shall appoint a County employee who is not a member of the Board as the Secretary of the Board; the Chairman of the Board, or in his absence the Board member presiding over any particular meeting, may further appoint any other County Employee who is not a member of the Board as Secretary pro tem with respect to any meeting at which the appointed Secretary is not present.³ The Chairman of the County Commission Budget Committee shall be Treasurer of the Board. From time to time the Chairman of the Board may appoint one or more Vice-Chairmen from among the members of the Board for the purpose of presiding over Board meetings in the Chairman's absence.

2.1.1 Duties and Authority of Chairman. The Chairman shall have the duty to preside over all Board meetings. The Chairman shall have authority over all employment matters relating to the operation and administration of the System.

2.1.2 Duties and Authority of Secretary. The Secretary shall not be entitled to vote upon any matter coming before the Board but shall have the following duties and authority:

(a) Certification of all Board minutes.

(b) Responsibility for oversight of all records of the System and of the Board.

(c) Responsibility and general supervisory authority over the day-to-day administration of the System, subject to Board review.

2.1.3 Duties of Treasurer. The Treasurer shall be responsible for overseeing the audit of the Fund and for making whatever certifications to the auditors and to the Board as are necessary and appropriate with respect to the audit of the Fund.

2.2 Establishment of Committees. The Board may, from time to time, establish committees composed of three (3) or more members for whatever purposes it deems appropriate. Such committees may be standing committees or special purpose committees. The Board may change the members of any committee at any time and for any reason. Committees shall report only to the Board and shall have no independent authority other than that authorized by the Board. The following are the initial standing committees maintained by the Board:

(a) The Disability Committee, which shall conduct the initial review of all disability applications, annual reviews, and disability appeals, and which shall make its findings and recommendations known to the Board;

(b) The Actuarial Committee, which shall consult with the Actuary from time to time concerning the soundness of the System and the underlying actuarial assumptions and the effect of changes to the System;

(c) The Investment Committee, whose members shall include the Board members identified in 1.1(i), and which, after appropriate consultations with the System's investment consultants and pension manager, shall (i) analyze the credentials of, review the results of, and recommend the engagement or discharge of investment managers, (ii) participate in presentations by sponsors of non-traditional investment

opportunities and recommend the investment in any such non-traditional investment opportunities, (iii) make recommendations with respect to asset allocations and cash flow needs, and (iv) do such other things related to the investment of the Trust's assets as the Board shall direct;⁴

(d) The Special Projects Committee, to which the Board shall assign extraordinary projects.

2.3 Meetings of the Board. The Board shall meet at least once a month, with the regularly scheduled meeting being on the first Tuesday of each month at 10:00 a.m. At the request of the Chairman (or in his absence, the Treasurer), the regularly scheduled meeting may be postponed with at least five (5) days notice to all members and officers and, if postponed, shall be rescheduled to take place within two (2) weeks of the regularly scheduled meeting. Both the Chairman and the Treasurer shall have the independent power to call an extraordinary Board meeting at any time either deems it necessary to carry out the business of the Board. In general, at least five (5) days notice of the time, place, and purpose of an extraordinary meeting shall be given to each Board member by first class mail, hand delivery, or facsimile transmission. Emergency meetings may be called with fewer days notice in which case all reasonable efforts shall be made to notify all Board members of the time, place, and purpose of the meeting and to solicit their attendance.

2.4 Quorum; Required Vote. Seven (7)⁶ members of the Board shall constitute a quorum to transact any business properly brought before it, but not less than seven (7)⁶ affirmative votes shall be required to carry any matter presented to the Board. A majority of the members of each committee other than the Investment Committee⁴ shall constitute a quorum to transact any business properly brought before such committee, and a majority of those present shall be required to carry any matter presented to such committee. Three (3) members of the Investment Committee shall constitute a quorum to transact any business properly brought before it, but not less than three (3) affirmative votes shall be required to carry any matter presented to it.^{1,4}

2.5 Personal Liability; Indemnification. No member or officer of the Board nor the Trustee shall have any personal liability to the County, to any Participant or Beneficiary, or to any other person for monetary damages as a result of any act

or omission taken or omitted to be taken in such capacities on behalf of the System or the Trust in good faith. From the assets of the Trust Fund, the Trustee shall indemnify each member and officer of the Board and the Trustee against any and all claims, losses, damages, expenses and liabilities arising from any act of commission or omission in such capacities, to the same fullest extent permissible by corporations in favor of their directors, officers and employees under the Tennessee Business Corporation Act. The County shall defend and assume all costs of the such defense of any action brought against each member and officer of the Board and each Trustee arising from such act of commission or omission.

III. EXPENSES OF BOARD

3.1 Engagement of Retirement System Employees.

3.1.1 Manager of Administration. The County, upon the recommendation of the Board, shall hire a Manager of Pension Administration, who shall have the day-to-day responsibilities of managing the System pursuant to a written job description provided by the Board. The Board may further delegate to the Manager of Pension Administration any ministerial duties incident to the Board's administrative responsibilities and not contained in the job description, and any such delegation shall be in writing.

3.1.2 Manager of Investments. The County Mayor, upon the recommendation of the Board, shall appoint a Manager of Investments to serve at the will and pleasure of the County Mayor. The Manager of Pension Investments shall have the day-to-day responsibilities of managing the investments of the System pursuant to a written job description provided by the Board. The Board may further delegate to the Manager of Pension Investments any ministerial duties incident to the Board's responsibilities of the Board in its capacity as Trustee and not contained in the job description, and any such delegation shall be in writing.

3.1.3 Other Staff Employees. With the advice of the Manager of Pension Administration and the County Administrator of Personnel, the County shall employ such other persons ("Staff Employees") in such other positions as the Board determines to be necessary and advisable to adequately carry out the

responsibilities of the Board in its dual capacities as administrators and Trustees.

3.1.4 Employment Classification and Costs. The Manager of Pension Administration and all Staff Employees shall be "classified" Employees of the County. The Manager of Pension Investments shall be an "unclassified" Employee. The payroll and benefits costs of all such Employees and all expenses reasonably necessary to enable them to carry out their responsibilities shall be charged to the Trust Fund.

3.2 Engagement of Professional Advisers. For the purpose of maintaining a soundly designed, administered, and financed Retirement System, the Board shall have the authority to engage professional advisers including the Actuary, legal counsel (who may also be counsel to the County), accountants and auditors, medical consultants, investment consultants, and other necessary advisers and shall further have the authority to discharge such advisers and to engage successor advisers. Contracts with investment consultants, and where appropriate with other advisers, shall require such consultant or adviser to acknowledge that it is a fiduciary with respect to the System and its Trust and to agree that neither it nor any officer, employee, or affiliated entity will accept any compensation from any person other than the Trust for or in relation to the provision of its services under the contract. The Board may charge the compensation and reasonable expenses of such professional advisers against the Trust Fund to the extent they are not assumed by the County.

3.3 Engagement of Investment Advisers⁵.

3.3.1 Traditional Investment Advisers. Subject to the provisions of 6.9.1, dealing with the required contents of investment advisory agreements, the Board shall have the authority to hire traditional investment advisers to direct the investment of any portion of the Trust Fund, provided that such investment advisers shall first have been recommended by the Investment Committee. All investment advisers shall be investment advisers registered with the Securities and Exchange Commission under section 3(a) of the Investment Advisers Act of 1940 (the "Act"). The Board shall have the authority to give any investment adviser so employed the discretionary authority to make investment decisions within specific parameters of authorized by the Board. The Board shall also have the

authority to discharge any investment adviser at any time upon the recommendation of the Investment Committee.⁵

3.3.2 Pooled Investments. Subject to the provisions of 6.9.2, dealing with the required contents of subscription agreements and other required documentation of investments in hedge funds, venture capital funds, private equity funds, and other unregistered securities acquired through private placements and permitted as investments under 6.6(m) (hereinafter called "Pooled Investment Funds"), the Board shall have the authority to enter into agreements to make acquisitions of such Pooled Investment Funds, provided they are permitted investments under 6.6(m) and provided that such investments shall first have been recommended by the Investment Committee. The investment manager of each such Pooled Investment Fund (or its affiliated entity with contractual investment obligations with respect to such Fund's assets) shall be an investment adviser registered with the Securities and Exchange Commission under section 3(a) of the Act or a Company that would be such an investment adviser under the Act but for the exclusions provided from that definition by section 3(c)(1) of the Act (dealing with certain unregistered securities offered to 100 or fewer persons) and section 3(c)(7) of the Act (dealing with certain unregistered securities offered only to persons who are "qualified investors." Once the Investment Committee and Board have approved the investment as presented to them in general, the Mayor shall have the authority to approve the particular investment vehicles and the contractual details. The Board shall further have the authority to exercise any rights granted to the System or the Trust under the governing documents of each Pooled Investment Fund.⁵

3.4 Compensation of Members of the Board. No member of the Board shall receive any compensation with respect to his service in such capacity. The Board may prospectively authorize reimbursement from the Trust Fund of reasonable and necessary expenses of any one or more members of the Board incurred for the benefit of the System.

3.5 Other Expenses. The Board shall have the authority to incur and pay any other expense reasonably necessary for the efficient administration of the Retirement System and the Trust Fund and for the installation, design, and financing of the System and may charge such expenses to the Trust Fund to the extent they are not assumed by the County.

IV. ADMINISTRATIVE AUTHORITY

4.1 Interpretation of Plan Documents. The Board shall have complete authority to interpret and construe the provisions of this instrument and of each Plan established and maintained under the System, to resolve any ambiguities therein, and to decide any disputes that may arise relative to the rights of Employees and Participants, whether past or present, and their Beneficiaries. The decisions of the Board shall be final unless determined by a court of competent and final jurisdiction to have been arbitrary and capricious.

4.2 Establishment of Rules, Policies, and Procedures; Forms. The Board may establish such rules, policies, and procedures as it deems proper for the sound and efficient administration of the System. It shall adopt such forms as it deems necessary to enroll Participants, to enable Participants to make elections and to make claims for benefits, and to otherwise permit the administration of the System in accordance with the terms of the constituent Plans.

4.3 Benefit Payments. The Board shall determine the eligibility for benefit payment of each Participant or Beneficiary who has applied for payment of a benefit and shall cause appropriate payments to be made to each Participant or Beneficiary whose eligibility for benefit payments it has approved, pursuant to the provisions of the applicable Plan document. Such payments may be made by check or by direct deposit.

4.4 Correction of Errors. If any change in a record or an error results in any person receiving from any Plan under the Retirement System more or less than he would have been entitled to receive had the records been correct or the error not been made, the Board, upon discovery of such error shall correct the error by paying or, as the case may be, demanding repayment of a cash settlement, or by adjusting in a reasonable and practicable manner the future benefit payments under the Plan.

4.5 False Statements. Any person who shall knowingly and willfully make any false statement or falsify or permit to be falsified any record or records of a Plan or the County or the Board or any report or other information requested by the Board in an attempt to defraud the Retirement System in any manner, shall be subject to punishment prescribed by law. The Board shall have the right to refer the matter for criminal

proceedings, if appropriate, and to bring civil proceedings against such person for repayment of amounts wrongfully retained. Upon final adjudication of his conviction in a criminal proceeding or the rendition of a judgment against him in a civil proceeding, such person shall forfeit all rights to benefits he would otherwise have been entitled to receive under the System except for his right to a refund of any amount standing to his credit in his Employee Contributions Account.

4.6 Cessation of Benefits. Upon the discovery of any false or incorrect statement in any report required by the Board to which the Board attributes an overpayment of benefits to any person, the Board shall immediately stop benefit payments. Unless the forfeiture provisions of section 4.5 apply, the Board shall thereafter offset future benefit payments in a reasonable and practicable manner until the Plan has made a full recovery of amounts owed by the recipient. The Board may additionally take any legal action it deems necessary to recover the overpayment.

4.7 Change in Actuarial Assumptions. The Board shall have the authority, after consultation with Actuary and approval by the Actuarial Committee, to change, at any time and from time to time, any one or more of the actuarial assumptions utilized by the Actuary in calculating the funding requirements of the System and in calculating Actuarial Equivalence.

V. CLAIMS FOR BENEFITS

5.1 Claims for Benefits Other Than Disability Benefits.

5.1.1 Claims for Benefits. Claims for benefits other than Disability benefits and claims for participation in the Plan shall be filed in writing with the Board on forms provided by the Board. Each claim shall be submitted to the Board at a regular monthly meeting as soon as reasonably possible after the claim has been filed. Written notice of the Board's disposition of each claim shall be furnished to the claimant within 10 business days after the Board meeting at which the claim was addressed or, if later and if a claim for benefits, within 10 business days after the claimant (if an Employee) has received his final paycheck as an Active Employee from his Employer. If a claim is denied, the reasons for the denial shall be specifically set forth in the written notice in language calculated to be understood by the claimant. Pertinent

provisions of the applicable Plan shall be cited. Where appropriate, an explanation as to how the claimant may perfect the claim shall be set forth, along with an explanation of the Board's appeal procedure. The Board shall provide the claimant with the opportunity to review all documents in the possession of the Board to the extent pertinent to the claim and its disallowance.

5.1.2 Appeal Procedure. Any claimant whose claim has been denied by the Board shall be entitled to appeal in writing for a hearing before the Board. Such written appeal shall contain a statement of the reasons that the claimant believes his claim should be allowed and shall be filed within 60 days after receipt of the written notice of the initial denial of the claim. The Board may first refer the appeal to a committee. The hearing before the Board shall take place at a regular monthly meeting of the Board as soon as reasonably possible after the appeal was made (or after disposition by the committee, if referral is made). At the hearing the claimant may be represented by an attorney or any other representative of his choosing and expense and he shall have the opportunity to submit written and oral evidence and argument in support of his claim. The Board may refer the matter back to committee, may defer action pending receipt of additional evidence, or may make a decision on the appeal at that Board meeting. In all events, a final decision as to the allowance or the disallowance of the claim shall be made within 60 days after the date of the hearing unless deferred as a result of special circumstances. Each action of the Board shall be communicated to the claimant as soon as reasonably possible after it is taken, and the final decision on the appeal shall be in writing and shall contain specific reasons for the decision.

5.2 Claims for Disability Benefits.

5.2.1 Exclusive Authority of Board. The Board shall have the exclusive authority to determine the existence of a Disability, the termination of a Disability, and whether or not a Participant's Disability is an Ordinary Disability or a Line of Duty Disability. The Board's determination shall be final subject to the Participant's right to appeal under section 5.2.4.

5.2.2 Procedures for Determining Existence and Continuance of Disability.

5.2.2.1 Initial Disability Application; Additional Evidence Secured by Board or Required of Participant. Each Participant claiming to be eligible for a Disability Pension shall furnish to the Board a Disability Application within 60 days of the date the Disability is claimed to have been incurred (whether or not the Participant is then continuing to be paid as a result of accrued vacation or accumulated sick leave), unless such 60-day period is extended by the Board for good cause. The fact that a Participant is receiving salary continuation payments pursuant to the Employer's OJI policy or that a Participant has applied for such salary continuation payments and the disposition of such application has not been determined in a final decision (whether in an administrative proceeding or by a court of competent jurisdiction) shall be deemed to constitute good cause until the termination of such payments. The fact that the Disability Application is incomplete in that it does not set forth all conditions the Participant believes to justify a finding of Disability or that it does not include all medical reports relevant to his claim for Disability (or refer to medical reports that the Participant expects to be forthcoming) shall not be deemed to constitute good cause for failing to file the Disability Application within the initial 60 day period. Absent a Board-granted extension, a Participant who does not submit his Disability Application within the 60-day period (or within any extension period) will not be eligible for a Disability Pension on account of that Disability. Upon receipt of the Disability Application, the Board shall secure, at its expense, such independent written medical or other evidence it deems necessary or appropriate, including, but not limited to, additional medical reports. When and if requested by the Board, each Participant who has filed a Disability Application agrees to submit to one or more independent medical examinations by a Physician or Physicians approved by the Board. The Disability Application and all such additional written information and reports shall constitute the Disability Report.

5.2.2.2 Line of Duty Disability Applications. No Disability Application for Line of Duty Disability benefits will be processed without the inclusion of relevant OJI Report.

5.2.2.3 Subsequent Application after Denial of Initial Application. After a Participant's initial Disability Application, the Board shall have the discretion to decline to entertain any subsequent Disability Application that is based upon (i) the same claimed Disability, (ii) a new claimed Disability arising out of the same condition or occurrence

unless the Participant presents clear and convincing evidence of a worsening condition, or (iii) a condition existing at the time of the initial Disability Application but not disclosed or properly documented in the initial Disability Application. If the Board does determine to entertain a subsequent Disability Application, it shall have the discretion to require the Participant to pay into the Fund (a) a fee for such Disability Application and (b) the estimated costs (including Physician fees and the Board's consultant's fees) of its investigation into the claimed Disability, and the Participant's payment of such amounts shall be a condition precedent to the Board's entertainment of such Application. Thereafter, if a Disability Pension is granted, the Fund may, in its discretion, reimburse the Participant such costs, and, if a Disability Pension is not granted, the Fund shall reimburse the Participant the amount of the estimated costs paid into the Fund that are in excess of the Fund's actual costs of its investigation.

5.2.2.4 Procedures for Making Disability Determination.

The Board shall delegate all Disability Reports to a committee for initial review, necessary supplementation, and recommended action. Upon its receipt of the committee's report and recommendation with respect to a Disability Report, the Board shall make its determination on the basis of the Disability Report and the committee's review and recommendation. If the Board determines that the Participant is entitled to a Disability Pension, the Board shall further determine whether such Disability is an Ordinary Disability or a Line of Duty Disability. The Board shall give written notice to the Participant of its determination within five (5) business days after the determination is made.

5.2.3 Supplementary Disability Reports.

5.2.3.1 Annual Disability Report. To enable the Board to determine whether or not a Participant remains under a Disability after the initial determination, at least once in each calendar year (but no more often than quarterly) the Board shall notify the Participant to submit a supplemental Disability Report to the Board within a prescribed time period and shall further prescribe the contents of such Disability Report.

5.2.3.2 Failure to Timely File Disability Report. If a supplementary Disability Report is not submitted to the Board within the prescribed time, as it may be extended by the Manager

of Pension Administration, the Participant's Disability Pension shall be withheld until it is submitted.

5.2.3.3 Discretion of Manager of Pension Administration to Continue Disability Pension. Upon submission of a supplementary Disability Report, the Manager of Pension Administration shall have the discretion to continue payment of the Disability Pension without Board action, if it appears to such Manager from such Report that Disability persists.

5.2.3.4 Submission of Disability Report to Board; Discretion to Withhold Disability Pension. If it appears to the Manager of Pension Administration that Disability may not persist, prompt notice shall be given to the Participant that the matter will be presented to the Board at the next Board meeting that is at least 10 days after such notice has been mailed and that the Participant shall have the right to be heard at such Board meeting. Thereafter, the provisions of section 5.2 shall apply as if the Disability Report were a Disability Application. The Manager of Pension Administration determines from the Disability Report that there is a substantial likelihood that Disability does not persist, such Manager shall have the discretion to withhold the Participant's Disability Pension until otherwise directed by the Board.

5.2.3.5 Reapplication Following Termination of Disability Pension. If a Participant's Disability Pension has been terminated by action of the Board, he may not thereafter submit a new Disability Application with respect to the same condition unless a new Disability Application is made within 24 months from the date of payment of his last monthly Disability Pension payment and prior to his Normal Retirement Age. If he does not so reapply or if his Disability Application for reinstatement is denied by the Board, he shall not be permitted to reapply for a Disability Pension with respect to the same condition unless he thereafter completes 24 months of Credited Service. He shall, however, remain eligible to receive any other pension benefit and survivor benefits arising by reason of his Credited Service determined as of the time of his Termination.

5.2.4 Disability Appeals.

5.2.4.1 Notice of Appeal. A Participant who receives notice of the denial of his Disability Application or of the termination of his Disability Pension ("Adverse Board Notice") shall have the right to appeal to the Board the correctness of

any material evidence in the Disability Report justifying the Adverse Board Notice. If the Participant desires to exercise his right to appeal, he shall give written notice to the Board within 30 days after the date of the Adverse Board Notice. If the Participant does not give notice of appeal within such 30-day period, he shall not be entitled to an appeal.

5.2.4.2 Submission of New Evidence. Within 60 days after the date of the Adverse Board Notice the Participant shall submit to the Board written evidence not contained in the original (or supplemental) Disability Application to support the incorrectness of the Board's determination. Upon a showing of good cause the Board may, in its discretion, permit an extension of the 60-day time period for such submission; however, in no event will the 60-day period be extended beyond 180 days after the date of the Adverse Board Notice.

5.2.4.3 Hearing. Upon its receipt of the notice of intent to appeal and of the new evidence described in 5.4.2, and subject to its established committee review procedures, the Board shall cause the appeal hearing to be placed on the agenda of a regular Board meeting as soon as reasonably possible thereafter. The Board may limit the time that it will devote to the hearing of the appeal, in which case it shall give the Participant adequate notice. Unless the matter is returned to committee for development of additional facts or otherwise deferred for decision at a later meeting, the Board shall make its final decision on appeal at such Board meeting and shall notify the Participant forthwith.

VI. INVESTMENT OF TRUST FUND

6.1 Capacity of Board. The Board shall act in its capacity as a Board of Trustees with respect to all of its duties, authority, and responsibilities set forth in this Article.

6.2 Title to Trust Assets. Title to all assets comprising the Trust Fund shall be and remain in the Trustee and neither the County nor any Participant or Beneficiary shall have any legal or equitable right or interest in the Trust Fund except to the extent that such rights or interests are expressly granted under the provisions of the Retirement System.

6.3 Receipt of Contributions; Safekeeping. The Trustee shall receive all contributions to the Trust Fund and shall apply such contributions as hereunder set forth. The Trustee shall have the custody of and safely keep all cash, securities, property and investments, including any annuity contracts received or purchased in accordance with the terms hereof.

6.4 No Duty to Require Remittance of Contributions by County. The Trustee shall be responsible for the property actually received by it in its capacity as Trustee. Neither the Trustee nor the Board acting in its administrative capacity shall have any duty or authority to compute any amount to be paid to the Trust Fund by the County or to bring any action or proceeding to enforce the collection from the County of any contribution to the Trust Fund.

6.5 General Investment Authority. The Trustee shall hold all property received by it in the Trust Fund and shall manage, invest, and reinvest the Trust Fund, collect the income thereof, and make payments therefrom as hereinafter set forth. All contributions paid into the Trust Fund shall be held and administered by the Trustee as a single Trust Fund, and it shall not be required to segregate and invest separately any part of the Trust Fund representing accruals or interests of individual Participants in the Retirement System. The Trustee shall have all the powers necessary for the performance of its duties as Trustee. Without diminution or restriction of the powers vested by law or elsewhere in the Retirement System, and subject to all the provisions of the Retirement System, the Trustee, without the necessity of procuring any judicial authorization therefor or approval thereof, shall be vested with and, in the application of its best judgment and discretion on behalf of the beneficiaries of the Retirement System, shall be authorized to exercise all or any of the powers specifically permitted by statute or judicial decision in, or with respect to, the State of Tennessee.

6.6 Specific Investment Authority and Limitations. The Trust Fund may invest in:

(a) Bonds, notes or treasury bills of the United States or other obligations guaranteed as to principal and interest by the United States or any of its agencies.

(b) Certificates of deposit and other evidences of deposit at Tennessee state chartered banks, savings and loan

associations and federally chartered banks and savings and loan associations. These institutions must be federally insured.

(c) Obligations of the United States or its agencies under a repurchase agreement for a shorter time than the maturity date of the security itself if the market value of the security itself is more than the amount of funds invested. Adequate collateral shall be determined by a majority vote of the Board of Trustees. Counter party institutions shall be approved by the Investment Committee.

(d) Prime commercial paper which is rated at least A2 or equivalent by at least two (2) nationally recognized rating services and issues by a corporation having a record of not default of obligations during the ten (10) years preceding the investment.

(e) Prime bankers acceptances which are eligible for purchases by the Federal Reserve System.

(f) Corporate bonds rated B3 or better by Moody's or B- or better by Standard and Poor's (the "minimum rating"), provided that, (i) if a corporate bond is rated below the minimum rating by either rating agency, it may not be purchased (or maintained without approval of the Investment Committee at its next meeting), (ii) non-rated 144A corporate bonds may be purchased if and only if the issuer's other debt securities are rated at or above the minimum rating, and (iii) in all events, the weighted average rating of all bonds (corporate and otherwise) contained in the Trust Fund approximates an A2 rating by Moody's or an A rating by Standard & Poor's.

(g) Common or preferred shares of stock in any entity listed on the New York Stock Exchange, American Stock Exchange or NASDAQ Stock Exchange or in American depository receipts ("ADRs") trading in dollar denominated terms. ADRS and shares of stock may be either dividend paying or non-dividend paying, provided, however, that the total market value of ADRS and common or preferred shares of stock, calculated on a monthly basis, cannot exceed 70% of the total market value of the Trust Fund.

(h) The opening and closing of covered call and put options on individual stocks or indexes, where such options are traded on an organized exchange and where, with the prior

approval of the Investment Committee, specific parameters have been authorized in the relevant investment advisory agreement.

(i) The utilization of financial futures contracts on a limited basis for bona fide hedging purposes and only with prior approval of the Investment Committee.

(j) Real estate including interests in real estate investment trusts, provided, however, that the total real estate investments of Trust Fund shall not exceed five percent (5%) of the total value of the Trust Fund and that any real estate investment shall be recommended by the Investment Committee and approved by a 2/3 vote of the Board of Trustees.

(k) International equities provided, however, that the total international investments of the Trust Fund, excluding American Depository Receipts, shall not exceed thirty percent (30%) of the total value of the Trust Fund and that any investments in international equities shall be recommended by the Investment Committee and approved by a 2/3 vote of the Board of Trustees.^{2,3} Currency exposure may be hedged.

(l) Co-mingled funds, including registered mutual funds and interests in collective trusts, provided that such funds selected as an investment vehicle are in compliance with the above restrictions and are approved by the Investment Committee and the Trustee prior to the investment.

(m) Other investments, as approved individually by the Investment Committee, including securities offered through private placement memoranda.

As to each asset or group of similar assets, the Board shall select a benchmark the market performance of which most closely correlates with the market performance of such asset or group of similar assets. Such benchmarks shall be utilized for performance reports and in the evaluation of investment managers, but they shall also be utilized to categorize assets for purposes of determining whether a particular group of assets exceeds the percentage of investment limitations set forth in this section. If the assets benchmarked to a particular class of investments at any time exceed the percentage of investment limitations placed on such class, they may be maintained until a portfolio restructuring is approved by the Investment Committee at its next meeting.

6.7 Cash Accounts. The Trustee shall retain in cash and keep unproductive of income such funds as from time to time it may deem advisable for ensuring liquidity. Subject to any such provisions as may be otherwise prescribed by law, cash in the Trust Fund may be deposited in any licensed national banks in this County or in any one or more corporations authorized or licensed to do a banking business and organized under the laws of the State of Tennessee and approved by the Commission.

6.8 Other Investment-Related Powers of the Board.

6.8.1 Sale of Trust Fund Assets. The Trustee may sell or exchange any property or asset of the Trust Fund at public or private sale, with or without advertisement, upon terms acceptable to the Trustee and in such manner as the Trustee may deem wise and proper. The proceeds of any such sale or exchange may be reinvested as is provided hereunder. The purchaser of any such property from the Trust Fund shall not be required to look to the application of the proceeds of any such sale or exchange.

6.8.2 Encumbrance of Trust Fund Assets. The Trustee shall have full power to mortgage, pledge, lease or otherwise dispose of the property of the Trust Fund without securing any order of court therefor, without advertisement, and to execute any instrument containing any provisions which the Trustee may deem proper in order to carry out such actions. Any such lease so made by the Trustee shall be binding, notwithstanding the fact that the term of the lease may extend beyond the termination of the Retirement System.

6.8.3 Power to Borrow. The Trustee shall have the power to borrow money on behalf of the Trust Fund upon terms agreeable to the Trustee and pay interest thereon at rates agreeable to the Board, and to cause any such indebtedness to be repaid from the Trust Fund.

6.8.4 Powers with Respect to Securities. The Trustee may participate in the reorganization, recapitalization, merger or consolidation of any corporation in which the Trust Fund owns stock or securities, and may deposit such stock or securities in any voting trust or protective entity, or with the depositories designated thereunder, and may exercise any subscription rights or conversion privileges, and generally may exercise any of the powers of any owner with respect to any stocks or other securities or property comprising the Trust Fund. The Trustee,

may, through any duly authorized officer or proxy, vote on any share of stock which the Trust may own from time to time.

6.8.5 Nominees. The Trustee may hold stocks, bonds or other securities in the name of one or more nominees selected by the Trustee for the purpose, but the Trustee shall nevertheless be obligated to account for all securities received by it as part of the Trust Fund, notwithstanding the name in which the same may be held.

6.9 Investment Advisory Agreements, Subscription Agreements, and Other Investment Documentation.⁵

6.9.1 Contents of Investment Advisory Agreements.⁵ In each investment advisory agreement as described in 3.3(a), the investment adviser shall, in addition to provisions normally contained therein:

- (a) acknowledge that it is a duly registered investment adviser under the Act;
- (b) acknowledge that it is a fiduciary with respect to the account;
- (c) acknowledge the extent of and limitations upon the Trustees' investment authority as set forth in section 6.6 of this Agreement, which section shall be attached as an exhibit, and agree that it will cause all of the assets of the account to be invested in accordance with such provisions;
- (d) warrant that the fee amount or structure, which shall be attached as an exhibit, is the lowest fee amount/fee structure the investment manager offers any of its clients whose accounts are of substantially similar size and composition and require substantially similar services (with any exceptions for existing clients specifically noted), and agree that, if in the future it contracts for or otherwise charges a lower fee amount/fee structure with any client whose account is (or will be as a result of the contract) of similar size and composition as that of the Trust, has substantially similar investment guidelines and restrictions, and requires substantially similar services, it will

automatically on the same effective date reduce the System's fee amount/fee structure to be equal to the other;

- (e) agree that, if it or any affiliated company or person receives a publicly known subpoena with respect to a grand jury investigation of its conduct or the conduct of any principal officer or receives a notice, such as a "Wells notice," by any regulator or law enforcement agency to the effect it is under investigation for any infraction of law or rule, whether civil or criminal, or if it is named as a defendant in any action brought by any public agency, including the United States Justice Department, it will advise the Board of such action in writing, with full publicly known detail, within 10 business days thereafter;
- (f) warrant that it is full compliance with, and agrees that it will remain in full compliance with (i) the Shelby County Code of Ethics, a copy of which shall be attached as an exhibit, and (ii) the Securities and Exchange Commission's "pay to play" rules, to wit: 17 CFR Part 275: Section 275.204-2 (as amended); Section 275.206(4)-3 (as amended); and Section 275-206(4)-5;
- (g) warrant that it has not engaged any third person to secure the agreement and has not agreed to pay any third person any fee or other remuneration, including indirectly through donations, related to the securing of the agreement, unless such engagement and remuneration have been fully disclosed in writing to the Board before the execution of the investment advisory agreement;
- (h) warrant that it has not made and agree that it will not make, directly or indirectly, any gift or contribution (political or otherwise) to or for the benefit of, or for any part of its compensation from the agreement to be paid to, any elected or appointed official or employee of the County or to any member of the Board in exchange for the granting of the agreement or for

services or facilities in connection with the work to be performed by adviser under the agreement and further agree that, regardless of motivation, it will promptly disclose to the System the amount and time of each gift, contribution, or remuneration to any such person made by it or any of its owners, executive officers, or employees, whether permitted by the United States Security and Exchange Commission's pay-to-play rule or not; and

- (i) agree that it will not employ a former County elected or appointed official or any County employee whose services were provided in whole or substantial part to the System, within one (1) year after termination of such person's position with the County.

6.9.2 Pooled Investment Fund Investment Documentation.⁵

In addition to subscription agreements and other documentation required by an issuer of securities in a covered investment pool, as defined in 17 CFR Part 275, section 275.206(4)-5(f)(3), issued through private placement, including but not limited to venture capital fund, private equity fund, and hedge fund investments, as a condition precedent to the Trust's investment each such issuer, or if more appropriate, managing entity and investment adviser of such issuer, shall execute and deliver to the Board a certification containing the acknowledgments, warranties, and agreements described in 6.9.1 to the extent apropos to the particular investment.

VII. ACCOUNTS AND REPORTS; AUDITS

7.1 Maintenance of Records. The Board, in its dual capacity, shall keep an accurate record of its administration of the Trust Fund, including a detailed account of all investments, receipts, disbursements, and other transactions. Such records shall contain a detailed description of all securities and other investments purchased, exchanged, and sold, along with the costs and net proceeds of sales. Such records shall also contain a detailed description of all securities and other investments held at the end of such plan year, along with the cost and fair market value of each item. All accounts, books, and records relating thereto shall be open for inspection to any person designated by the Board or the County at all reasonable times.

7.2 Performance Reports. At each regularly scheduled monthly meeting of the Board, the Board, in its capacity as Trustee, shall cause a report of performance of the Trust Fund for the second preceding calendar month to be issued to each Board member. A similar calendar year-to-date report shall be presented to the Board no later than the regularly scheduled March Board meeting.

7.3 Actuarial Report. The Board shall engage the Actuary to prepare an annual actuarial valuation report certifying the percentage of aggregate compensation of Participants that is the minimum actuarial requirement to maintain the System on an actuarially sound financial basis. Based on the valuation report, the County Commission shall set a percentage for funding the Plan which may be higher or lower than the minimum actuarial requirement; however, the funding amount must be at least sufficient to meet current and anticipated near future benefit payment requirements. In the valuation report the Actuary shall describe the funding method, actuarial assumptions and asset valuation method, thereby providing a reasonable assessment of the Plan's liabilities and expected patterns of payroll contribution requirements. Each report will declare and explain any change in funding method, actuarial assumptions or asset valuation method made since the preceding report. The actuarial report shall be delivered to the Board, which shall deliver it to the County Director of Administration and Finance and the County Commission, all within 180 days after the end of the Plan Year.

7.4 Annual Audit. An annual audit of the Trust Fund shall be conducted by the same auditor or auditors selected by the Shelby County Board of Commissioners to perform the annual Shelby County audit. The auditors shall submit a separate audited financial statement report to the Board in addition to including the Retirement System in the Shelby County Comprehensive Annual Financial Report which is presented to the County Commission.

VIII. LIMITATIONS ON POWERS

8.1 No Self-Dealing or Conflict of Interest. No member of the Board nor any Employee described in section 3.1 shall have any personal interest, directly or indirectly, for himself or as an agent, broker, employee, partner, or relative of others, in the making of any investment by the Trust Fund, in providing any service to the Trust Fund, or in any other transaction in which

the Trust Fund is a party. No member of the Board nor any Employee described in section 3.1, directly or indirectly, for himself or as an agent or partner or relative of others, shall borrow any of the Trust Fund or in any manner use the same except to make such current and necessary payments as are authorized by the Board. No member of the Board nor any Employee described in section 3.1 shall become an endorser or surety or become in any manner an obligor for monies invested by the Trustee.

8.2 Prohibited Transactions. The Board shall not cause or permit the Trust Fund to engage in a "prohibited transaction," as defined in IRC 503(b), including:

(a) lending any part of its income or corpus to the County, without the receipt of adequate security and a reasonable rate of interest;

(b) paying any compensation to the County, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered;

(c) making any part of its services available on a preferential basis to the County;

(d) making any substantial purchase of securities or any other property from the County, for more than adequate consideration in money or money's worth;

(e) selling any substantial part of its securities or other property to the County, for less than an adequate consideration in money or money's worth; and

(f) engaging in any other transaction which results in a substantial diversion of its income or corpus to the County.

8.3 Prohibition Against Diversion of Funds; Contributions Irrevocable. Contributions made by the Employers to the Fund shall be made irrevocably and it shall be impossible for the assets of the Fund to inure to the benefit of any Employer or to be used in any manner other than for the exclusive purpose of providing benefits to Participants and their Beneficiaries and for defraying reasonable expenses of administering the System. However, nothing herein shall be construed to prohibit the return to an Employer of all or part of a contribution which is made by such Employer by a mistake of fact, provided the return

is made within one (1) year after the contribution is made. In addition, nothing herein shall be construed to prohibit a distribution to any Employer of any residual assets of the Plan after satisfaction of all liabilities of the Plan to Participants and their Beneficiaries upon the termination of the Plan.

8.4 Benefits Exempt from Taxation, Execution, or Assignment. Any and all benefits paid, accrued or accruing to any Participant or other person participating in any Plan that is a part of the Retirement System or otherwise entitled to receive benefits under any such Plan, and the contributions of Participants as well as by the Employers, and all other assets of the Fund are and shall be exempt from any State, County or municipal tax and shall not be subject to execution, attachment, garnishment or any other legal process whatsoever, except as provided herein or otherwise by law. Any attempted or purported assignment of any such benefits shall not be enforceable in any court, except that levy of execution granted by a court of competent jurisdiction may be issued against any of the assets described above under the circumstances described in sections 4.5 and 4.6 above.

8.5 Ethical Standards for Board Members.⁵ Each member of the Board, before taking office, shall certify to the Board that he has thoroughly read the Shelby County Ethics Ordinance and shall acknowledge that he is bound by the provisions of such ordinance that are applicable to him. Each member of the Board shall submit to County-sponsored ethics training at the earliest opportunity training is available after his appointment and thereafter as required by County policy.

IX. RELIANCE UPON COUNTY

9.1 Certificates and Signatures. The Board may rely upon any certificate, notice or direction of the County which the Board reasonably believes to have been signed by a duly authorized officer or agent of the County.

9.2 Inadequacy of Trust Fund. The Board, in either of its capacities, shall not be responsible for the adequacy of the Trust Fund to discharge any and all payments under the Retirement System.

9.3 Funding Policy. From time to time the County shall communicate to the Board the current funding policy and method

that have been established to carry out the objectives of the Retirement System.

X. AMENDMENT; TERMINATION

10.1 Right to Amend. The County reserves the right at any time and from time to time by action of the County Commission to amend in whole or part any or all of the provisions of this instrument by an instrument in writing duly acknowledged and delivered to the Board, provided that no such amendment which affects the rights, duties, responsibilities or immunities of the members of the Board may be made without the Board's consent. Each amendment to this instrument shall be prepared or its language approved by counsel to the Board (which may be outside counsel or the County Attorney, at the Board's discretion) before its submission to the County Commission.

10.2 Termination. If the Retirement System is terminated in whole or part by the County, the Board (subject to the provisions of Section 8.3) and reserving such sums as the Board shall deem necessary in settling its accounts and to discharge any obligations of the Trust Fund for which the Board may be liable) shall apply or distribute the Trust Fund in accordance with the written directions of the County in its resolution of termination. When the accounts of the Board shall have been settled, or when the Trust Fund shall have been applied or distributed, the Board thereupon shall be released and discharged from all further accountability or liability respecting the Trust Fund (or that part of the Trust Fund so applied or distributed if the Retirement System is terminated only in part) and shall not be responsible in any way or to any person for the further disposition of the Trust Fund (or that part of the Trust Fund so applied or distributed if the Retirement System is terminated only in part).

XI. COMPLIANCE WITH LAW

11.1 Governing Law. Where not otherwise governed by federal law, this instrument, as it may be amended from time to time, shall be administered, construed and enforced according to the laws of the State of Tennessee.

11.2 Intent to Constitute a Qualified Plan. The Retirement System, including this instrument and the Trust Fund, is intended to comply the requirements of Sections 401(a) and

501(a) of the Internal Revenue Code of 1986, as the same may be amended from time to time. This instrument shall be interpreted in every respect and, if necessary, shall be amended to so comply.

SCHEDULE 1
SHELBY COUNTY, TENNESSEE, RETIREMENT SYSTEM
ADMINISTRATION AND TRUST AGREEMENT

INDEX OF RESOLUTIONS AFTER RESTATEMENT EFFECTIVE DATE,
AS FOOTNOTED

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