



**WKU**<sup>®</sup>  
*Board of Regents*

# **EXECUTIVE**

**March 1, 2019 - 8:30 a.m. (CT)**

*Jody Richards Hall  
Cornelius A. Martin Regents Room*

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**AUTHORIZATION TO ACCEPT GIFT OF PROPERTY FROM COLLEGE HEIGHTS FOUNDATION TO WESTERN KENTUCKY UNIVERSITY AND AGREEMENTS ASSOCIATED THEREWITH**

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**REQUEST:**

Authorization for Western Kentucky University to (1) accept a gift of property located at 1703 Chestnut Street; (2) enter into long term lease with an option to purchase agreement with the College Heights Foundation.

**BACKGROUND INFORMATION:**

The College Heights Foundation received a \$1,000,000 gift from Mr. Cliff Todd to improve the College Heights Foundation office and facilities. CHF initially explored a renovation of the existing Foundation Building which was constructed in 1969. That renovation was determined to be cost prohibitive when the estimates exceeded \$2.1 million. A new facility in the existing footprint was then explored, and the estimated construction costs far exceeded the budget by nearly 40%. After review of alternative options, the College Heights Foundation Board approved the purchase of a home at 1703 Chestnut Street to serve as a replacement facility for the offices of the College Heights Foundation.

The property located at 1703 Chestnut Street is an approximate 3.2 acre, 6,300 square foot home located adjacent to WKU's main campus. The property was owned by John and Susan Minton and appraised for \$1,350,000. The Mintons agreed to provide a gift-in-kind of \$400,000, and the home was purchased in December by the College Heights Foundation for \$950,000.

The Board of Regents had previously approved an agreement with the College Heights Foundation when the existing site was under consideration. Similarly, listed below are some pertinent terms outlined in the new long term lease agreement and supporting documents:

- The College Heights Foundation agrees to donate the property to WKU.
- In exchange for the property transfer and support that College Heights Foundation provides to the University, WKU would enter into a 99-year lease agreement for \$1 per year, with one 99-year option to renew.

- Agreements include an option for the College Heights Foundation to purchase the property back from WKU for nominal consideration and first right of refusal for WKU, should the College Heights Foundation want to sell the property for any reason.
- WKU would continue to provide the existing operations and maintenance budget of \$19,600 per year with any adjustments requiring action by both Boards. The College Heights Foundation would be responsible for any costs above the budgeted amount.
- Any renovations or additions will be managed by WKU's Department of Planning, Design, and Construction, but will be a College Heights Foundation sole cost and expense.

**BUDGETARY IMPLICATIONS:**

Existing obligations of \$19,600 for operations and maintenance will continue. Any closing costs associated with title transfers of the real property are to be paid by the College Heights Foundation.

**RECOMMENDATION:**

President Timothy C. Caboni recommends approval to accept the gift of property at 1703 Chestnut Street and enter into a long term lease agreement with the College Heights Foundation.

**MOTION:**

**AUTHORIZATION FOR WKU TO ACCEPT A GIFT OF PROPERTY AT 1703 CHESTNUT STREET AND FOR WKU TO ENTER INTO A LONG TERM LEASE WITH OPTION TO PURCHASE AGREEMENT WITH THE COLLEGE HEIGHTS FOUNDATION.**

**D E E D**

THIS DEED OF CONVEYANCE, made and entered into on this \_\_\_ day of \_\_\_\_\_, 2019, by and between **THE COLLEGE HEIGHTS FOUNDATION**, a **Kentucky corporation**, 1906 College Heights Blvd., # 41016, Bowling Green, Kentucky 42101, hereinafter called "GRANTOR", and **WESTERN KENTUCKY UNIVERSITY**, 1906 College Heights Blvd., Bowling Green, Kentucky 42101, hereinafter called "GRANTEE", and pursuant to KRS 382.135, the property tax bill(s) shall be mailed to this address.

WITNESSETH: That as a gift from the Grantor to the Grantee, the Grantor does hereby bargain, sell, alien, grant and convey unto the Grantee, its successors and/or assigns, that certain real property located in Bowling Green, Warren County, Kentucky, and more particularly described as follows:

Lot No. 1 of the Effie C. Dent and E.G. Dent property as it appears of record in Plat Book 3, Page 44, on file in the office of the Warren County Clerk, and more particularly described as follows:

Beginning at a point in the property line on the northwest side of U.S. Highway 31-W and running N. 70' W. 545 feet, more or less, to a point as a corner common to Lot No. 1 and Lot No. 2 of the Dent property; thence S. 31' W. with the rear line of this lot and the rear lines of Lot No. 2, Lot No. 3 and Lot No. 4 of the Dent property aforesaid, (which lots fronts upon the Normal Drive) 261.5 feet, more or less, to a point in the original line, a corner common to this lot and Lot No. 4 aforesaid; thence S. 70' E. 545 feet, more or less, to a point in the property line on the northwest line of U.S. Highway 31-W, another corner of this lot; thence with the property line upon U.S. Highway 31-W 261.5 feet, more or less, to the beginning.

Being the same property conveyed to The College Heights Foundation from John D. Minton and Susan Page Minton, husband and wife, by deed dated December 28, 2018, of record in Deed Book 1176, Page 936, in the Warren County Clerk's Office.

TO HAVE AND TO HOLD, the above-described real property, together with all the

improvements thereon and all the appurtenances thereunto belonging, unto the Grantee, its successors and/or assigns, forever, with Special Warranty of Title, subject, however, to easements for public utilities, rights of way for public roads, the Rules and Regulations of the Planning Commission of Warren County, Kentucky, and that certain Option to Purchase in favor of Grantor created by separate instrument of even date herewith.

The parties hereto state that the estimated fair cash value for this property is \$1,350,000.00. The Grantee joins in this deed for the sole purpose of certifying the consideration pursuant to KRS Chapter 382.

This transaction is exempt from transfer tax pursuant to KRS 142.050(7)(b).

IN TESTIMONY WHEREOF, witness the hands of the Grantor and Grantee on this the date first above written.

**GRANTOR:**

THE COLLEGE HEIGHTS FOUNDATION,  
a Kentucky corporation

By: \_\_\_\_\_  
Donald Smith, President

**GRANTEE:**

WESTERN KENTUCKY UNIVERSITY

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

STATE OF KENTUCKY    )  
  ) SCT.  
COUNTY OF WARREN    )

The foregoing Deed and Consideration Certificate was acknowledged and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Donald Smith, President and duly authorized representative of The College Heights Foundation, a Kentucky corporation, on behalf of said corporation, as Grantor.

\_\_\_\_\_  
Notary Public, State of Kentucky at Large  
My commission expires: \_\_\_\_\_

STATE OF KENTUCKY     )  
   ) SCT.  
COUNTY OF WARREN    )

The foregoing Consideration Certificate was acknowledged and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_,  
\_\_\_\_\_ of Western Kentucky University as Grantee.

\_\_\_\_\_  
Notary Public, State of Kentucky at Large  
My commission expires: \_\_\_\_\_

PREPARED BY:

BELL, ORR, AYERS & MOORE, P.S.C.  
P.O. BOX 738  
BOWLING GREEN, KENTUCKY 42102-0738  
PHONE (270) 781-8111

BY: \_\_\_\_\_  
Kevin C. Brooks

## LEASE AND OPTION TO PURCHASE AGREEMENT

THIS LEASE AND OPTION TO PURCHASE AGREEMENT (the "Agreement") is made and entered into in duplicate on this the \_\_\_\_ day of \_\_\_\_\_, 2019 (the "Effective Date"), by and between WESTERN KENTUCKY UNIVERSITY, whose address is 1906 College Heights Blvd, Bowling Green, Kentucky 42101 ("WKU"); and COLLEGE HEIGHTS FOUNDATION, INC., a Kentucky non-profit corporation, whose address is 1906 College Heights Blvd, #41016, Bowling Green, Kentucky 42101, ("CHF").

### WITNESSETH:

WHEREAS, WKU by Deed of even date herewith has acquired from CHF 3.2 acres of real property and a 6,300 square foot home located at 1703 Chestnut Street which will serve as offices of CHF, and which real property is more particularly on Exhibit "A" attached hereto and incorporated herein by reference (the "Premises"); and

WHEREAS, CHF has made and/or agreed to make all necessary improvements to the Premises for it to serve as the offices of CHF and has conveyed the Premises to WKU as a gift in exchange for a long-term lease agreement and the ability of CHF to purchase the Premises back if deemed necessary as stated in the deed transfer; and

WHEREAS, WKU agrees that in consideration of 1) the transfer of the Premises as a gift, 2) the services provided by CHF on an annual basis, 3) the improvements to the Premises undertaken by CHF, and 4) the obligations relating to the Premises assumed in this Agreement by CHF, that a lease of One Dollar (\$1.00) per year for ninety-nine (99) years, with an option to renew for an additional ninety-nine (99) years is appropriate.

NOW THEREFORE, for and in consideration of the mutual covenants, terms and conditions contained herein, it is agreed as follows:

1. **Premises Leased.** WKU hereby leases unto the CHF and the CHF hereby leases from WKU the Premises; and,

2. **Term.** The term of this lease shall begin, and the first annual installment of rent shall become due and payable as of the Effective Date, and continue for a period of ninety nine (99) years from and after the Effective Date.

3. **Renewal Option.** The CHF shall have the option to renew this lease for one (1) successive period of ninety nine (99) years, under the same terms and conditions contained herein, provided the CHF notifies WKU of its intentions to renew in writing at least one hundred eighty (180) days prior to the expiration of the term immediately preceding the desired renewal term.

4. **Rent; Purchase Option.** The annual rental payment shall be One Dollar and NO/100 (\$1.00), payable in advance. The first such annual rental payment due as of the Effective Date. All payments of rent shall be made by CHF to WKU in a timely fashion when invoiced by WKU.



In exchange for initially gifting the Premises to WKU, CHF has the absolute right, in its sole discretion, to purchase the Premises from WKU for One Dollar (\$1.00) at any point in time during the term, or any extended term, of this Agreement or during the two year period after the effective date of a voluntary termination by CHF of its tenancy. The Option may be exercised by CHF by giving WKU written notice as provided in this Agreement. The transaction closing the conveyance from WKU to CHF shall occur no earlier than thirty (30) days and no later than sixty (60) days from the date upon which the Option is exercised. CHF will be responsible for all expenses related to the Closing of the transaction upon exercise of the Option.

5. **Renovation.** The CHF may renovate the existing structure, construct any necessary additions to the existing structure, and provide any necessary parking upon the Premises to service and facilitate the operations of the College Heights Foundation, at CHF's sole cost and expense.

WKU shall provide assistance to CHF and CHF shall coordinate with WKU, through its Department of Planning, Design, and Construction for any improvements or additions to the Premises in order to ensure satisfactory design standards and to ensure that CHF is in compliance with applicable standards and laws. WKU and the Department of Planning, Design, and Construction shall not unreasonably deny or delay the architectural design, construction, or future remodeling of the building.

6. **Utilities, Telephone and Internet.** The CHF shall pay for any additional stubbing of water, sewer, and electric on the Premises. The CHF shall pay for the installation of all other utilities on the Premises, and any deposits required.

Water, sewer and electric expenses for the premises is included in the definition of routine maintenance and operations, and WKU will be responsible for these expenses only to the extent provided in item 7, below.

WKU will continue to provide support services to CHF for telephone and internet through the WKU Division of Information Technology.

7. **Routine Maintenance and Operations for Premises.** WKU shall be responsible for routine maintenance and operations, including grounds keeping, for the existing building and premises in an amount not to exceed \$19,600.00 annually during its fiscal year. CHF shall be responsible for any additional routine maintenance and operations costs, including grounds keeping, for the building, the Premises and any improvements or additions made to the Premises which are incurred annually over and above the amount stated herein.

The parties agree that routine maintenance and operations as contemplated herein is specifically described and defined in Exhibit B.

The amount and funding of routine maintenance and operations by WKU, as stated herein, may be reviewed and modified upon mutual agreement of the parties and approval of the parties' respective boards. Any changes to WKU's financial commitment will be contained in an addendum to this Lease Agreement.

8. **Insurance; Indemnification.** The parties shall maintain insurance as follows:

(a) WKU shall procure and maintain, at its expense, fire, earthquake, and extended coverage insurance, in the customary form, in amounts as determined by CHF and WKU.

(b) CHF shall procure and maintain, at its expense, general public liability insurance against claims for bodily injury, death, or property damage occurring on, in or about the Premises, such insurance to afford protection to the WKU of not less than \$2,000,000.00 with respect to bodily injury or death to any one person, not less than \$1,000,000.00 with respect to any one accident, and not less than \$1,000,000.00 with respect to property damage. Policies for such insurance shall be for the mutual benefit of WKU and CHF.

(c) Any and all required insurance as set forth in Paragraphs (a) and (b) hereinabove shall be procured from insurance companies legally authorized to do business in the Commonwealth of Kentucky.

The CHF agrees to indemnify WKU against and to hold WKU harmless from any and all claims or demands for loss or damage to the Premises or for injury or death to any person from any cause whatsoever while in, or upon, or about the Premises during the term of this Lease Agreement or any extended term, unless such claims or damages were caused by the act or omission of WKU, its employees or agents, or its successors or assigns.

9. **Warranties by WKU.** WKU warrants that it is the owner of a good title to the Premises in fee simple, that WKU has the full right to enter into this Lease Agreement, as approved by the WKU Board of Regents. WKU warrants unto the CHF quiet enjoyment and possession of the Premises during the term of this Lease Agreement or any extended term.

10. **Warranties by CHF.** The CHF warrants unto WKU during the term of this Lease Agreement and any extended term, that the Premises shall be used for the operation and services provided by the College Heights Foundation, Inc.

11. **Hazardous Materials.** The CHF shall: (i) comply with all applicable laws or regulations governing the generation, production, bringing upon, use, storage, treatment or disposal of such hazardous materials in or about the Premises, (ii) not generate, produce, bring upon, use, store, treat, or dispose of any hazardous materials from which the CHF is prohibited by any law or regulation; and (iii) remain liable for failure to exercise due care in any such generation, production, bringing upon, use storage, treatment, or disposal, and remain liable for all costs and expenses resulting from any actual damage to person(s) or property proximately caused by the generation, production, etc. of hazardous materials on or about the Premises, and agrees to indemnify and hold WKU harmless from and against any costs, expenses, damages, and liabilities, including reasonable attorney fees, which WKU may suffer or incur by reason of any action taken by Purchaser with regard to same. "Hazardous materials" shall mean any hazardous or toxic substances, materials, waste, or related materials now or subsequently regulated by any applicable federal, state, or local laws or regulations.

12. **Default / Remedies.** In the event of default by either party, WKU and CHF shall be entitled to all remedies available under the laws of the Commonwealth of Kentucky.

13. **Parking.** CHF agrees and understands that WKU will not provide any parking enforcement for the Premises. CHF further agrees that it will not issue any permit for parking on the Premises, nor use the Premises for the purposes of generating parking revenue.

14. **Subletting and Assigning.** The CHF may not assign or sublet Premises or any part thereof without the prior consent of WKU which consent shall not be unreasonably withheld or delayed.

15. **Liens.** Neither party will, during the term or any extended term of this Agreement, cause, permit, or suffer any mortgage, lien, license, lease, mechanic's or materialman's lien, or charge or assessment of any nature to be placed against the Premises (each, a "lien"). In the event of any such lien and upon demand by a party, the other party will immediately cause such lien to be discharged at its expense.

16. **Destruction.** In the event that at any time during the term of this Lease Agreement or any extended term, the buildings or improvements located on the Premises shall be destroyed or damaged in whole or in part by fire or other cause; then CHF in its judgment and in its sole discretion may raze, repair, replace, or rebuild. In any event, CHF shall be entitled to receive any and all insurance proceeds payable as a result of such damage or destruction. In the event CHF elects to repair, replace, or rebuild then CHF may do so with such changes in the design, type, or character of the building and improvements as CHF may deem desirable and with the prior consent of WKU which consent shall not be unreasonably withheld or delayed.

17. **Condemnation.** In the event all or any portion of the Premises is condemned by any public authority during the term of this Lease Agreement or any extended term, then in that event any condemnation award for land shall be the sole property of CHF

18. **Severability.** If any provision of this Lease Agreement shall be declared invalid or unenforceable, the remainder of this Lease Agreement shall continue in full force and effect.

19. **Successors and Assigns.** This Lease Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs or personal representatives, successors and assigns and/or their successors in title.

20. **Authority.** WKU and CHF warrant that the parties executing this Lease Agreement on its behalf do so by virtue of authority granted by resolutions appropriately adopted.

21. **Entire Agreement.** This Lease Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, is a total integration thereof, and may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, and/or discharge is sought.

22. **Governing Law.** This Lease Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Kentucky.

23. **Grammatical Usage.** In construing this Lease Agreement, neuter pronouns shall be substituted for those masculine in gender and vice versa, and plural terms shall be substituted for those singular and singular for plural in any place in which the context so requires.

24. **Force Majeure.** The period of time during which WKU and CHF are prevented or delayed in the performance or fulfilling any obligation required under this Lease Agreement due to delays caused by catastrophe, civil commotion, war, acts of God or the public enemy, governmental prohibitions, or regulations shall be added to WKU's and the CHF's time for performance thereof and WKU and the CHF shall have no liability by reason thereof.

25. **Recording.** A Memorandum of Lease may be placed of record by either of the parties hereto, same to reflect only the parties to the agreement, the terms of the agreement and the tract of land which is affected by this Lease Agreement. A copy of which is shown on Exhibit "C" attached hereto and made a part hereof.

27. **Notices.** Any notice, request, demand, approval, consent, or other communication which WKU or CHF may be required or permitted to give to the other party shall be in writing. All notices and communications required to be sent pursuant to the terms of this Lease Agreement shall be sent by registered or certified mail as follows:

To WKU:

President, Western Kentucky University  
1906 College Heights Blvd.  
Bowling Green, KY 42101

With a copy to:

Chief Financial Officer  
Western Kentucky University  
1906 College Heights Blvd.  
Bowling Green, KY 42101

To CHF:

President, College Heights Foundation  
1906 College Heights Blvd, #41016  
Bowling Green, KY 42101

Either party may change the address at which it receives Notices pursuant to this Agreement by providing the other party Notice as provided above to the addresses above.

[Signature Pages to Follow]

IN WITNESS WHEREOF, authorized representatives of The College Heights Foundation have caused this Agreement to be executed actually on the date indicated in the notarial certificate affixed hereto and effective as of this \_\_\_\_ day of \_\_\_\_\_, 2019.

CHF: THE COLLEGE HEIGHTS FOUNDATION

By (signature): \_\_\_\_\_

Name (printed): \_\_\_\_\_

Title (printed): \_\_\_\_\_

STATE OF KENTUCKY )  
                                    ) SCT.  
COUNTY OF WARREN )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by \_\_\_\_\_,  
the \_\_\_\_\_, of The College Heights Foundation, on this \_\_\_\_ day of \_\_\_\_\_,  
2019.

\_\_\_\_\_  
NOTARY PUBLIC, State of Kentucky at Large  
My commission expires: \_\_\_\_\_



Exhibit "A"

Legal Description/Survey of the Property/ Premises

Lot No. 1 of the Effie C. Dent and E.G. Dent property as it appears of record in Plat Book 3, Page 44, on file in the office of the Warren County Clerk, and more particularly described as follows:

Beginning at a point in the property line on the northwest side of U.S. Highway 31-W and running N. 70° W. 545 feet, more or less, to a point as a corner common to Lot No. 1 and Lot No. 2 of the Dent property; thence S. 31° W. with the rear line of this lot and the rear lines of Lot No. 2, Lot No. 3 and Lot No. 4 of the Dent property aforesaid, (which lots fronts upon the Normal Drive) 261.5 feet, more or less, to a point in the original line, a corner common to this lot and Lot No. 4 aforesaid; thence S. 70° E. 545 feet, more or less, to a point in the property line on the northwest line of U.S. Highway 31-W, another corner of this lot; thence with the property line upon U.S. Highway 31-W 261.5 feet, more or less, to the beginning.



Exhibit B

Description of Routine Maintenance and Operations

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**ATHLETIC EMPLOYMENT CONTRACT  
HEAD COACH, FOOTBALL**

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**REQUEST:**

Approval of the Athletic Employment Contract between Western Kentucky University and Mr. Tyson Helton.

**FACTS / RECOMMENDATION:**

President Timothy C. Caboni and Mr. Todd Stewart have negotiated an Employment Contract which outlines the terms and conditions of Mr. Helton's employment as Head Coach of the football program at the University. A copy of the Employment Contract is included with this agenda material.

**MOTION:**

**To approve the Athletic Employment Contract between the University and Mr. Tyson Helton.**

**WESTERN KENTUCKY UNIVERSITY  
ATHLETIC EMPLOYMENT CONTRACT**

This Employment Contract is made this 11th day of February, 2019, between **WESTERN KENTUCKY UNIVERSITY ("UNIVERSITY")** and **TYSON HELTON, ("COACH")**.

**ARTICLE I  
PURPOSE**

The **UNIVERSITY** and the **COACH** have entered into a Memorandum of Understanding dated November 25, 2018. The Memorandum of Understanding provided that the **UNIVERSITY** and the **COACH** would execute a formal Employment Contract for the **COACH** to serve as the head coach of the **UNIVERSITY's** football program. The **UNIVERSITY** and the **COACH** agree that head coaches of intercollegiate athletic teams at Western Kentucky University conduct their professional activities under circumstances unique in the family of **UNIVERSITY** employees, including evaluation and scrutiny of team performances by the public and the media and control by external rules and regulations. The **UNIVERSITY** has agreed to employ and the **COACH** has promised to be employed by the **UNIVERSITY** upon the following terms and conditions.

**ARTICLE II  
POSITION**

**2.01 DESCRIPTION OF COACH RESPONSIBILITIES**

**A. RECOGNITION OF DUTIES**

The **COACH** agrees to be a loyal employee of the **UNIVERSITY**, and to use his best efforts and good judgment not to bring disrepute or criticism upon the **UNIVERSITY**. The **COACH** agrees to devote his best efforts full time to the performance of his duties for the **UNIVERSITY**, to give proper time and attention to furthering his responsibilities to the **UNIVERSITY** and to comply with all rules, regulations, policies, and decisions established or issued by the **UNIVERSITY**. The **COACH** also agrees that, notwithstanding the provisions of Section 4.05, during the term of this Employment Contract, he will not engage,

directly or indirectly, in any business or conduct which would detract from his ability to apply his best efforts to the performance of duties hereunder. **COACH** further acknowledges that the integrity and image of the **UNIVERSITY** are of paramount importance, and agrees that he shall act and speak positively about the **UNIVERSITY** and the **UNIVERSITY's** athletic program in private and public forums; and that he will support the **UNIVERSITY's** mission, policies, and decisions in all interactions with the public.

**B. GENERAL DUTIES AND RESPONSIBILITIES OF COACH**

During the period in which the **UNIVERSITY** employs the **COACH** as Head Football Coach, the **COACH** agrees to undertake and perform all duties and responsibilities attendant to the position of Head Football Coach as set forth in Section 2.01C. The **COACH** further agrees to abide by and comply with the constitution, bylaws, and interpretations of the National Collegiate Athletic Association (NCAA) and Conference USA, or any other football conference the **UNIVERSITY** may choose to enter, as well as all **UNIVERSITY** rules and regulations relating to the conduct and administration of the football program. In the event that the **COACH** becomes aware, or has a reasonable cause to believe, that violations of such constitution, bylaws, interpretations, rules, or regulations may have taken place, he shall report the same promptly to the Athletics Director of the **UNIVERSITY**. All academic standards, requirements, and policies of the **UNIVERSITY** shall also be observed by the **COACH** and members of his staff at all times and shall not be compromised or violated at any time.

**C. SPECIFIC DUTIES AND RESPONSIBILITIES WHILE EMPLOYED AS COACH**

As of the beginning of this Employment Contract, the duties and responsibilities assigned to the **COACH** in connection with the position as Head Football Coach are as set forth below.

This list of specific duties and responsibilities supplement, and is not exclusive of, the other general duties and responsibilities provided for elsewhere in this Employment Contract.

1. General Description: The position of Head Coach for the Football program is a specialized professional position. The **COACH** is responsible for evaluating, recruiting, training, and coaching student athletes to compete successfully against college competition and to successfully progress toward obtaining a college degree.
2. Responsibilities: In his position as Head Football Coach, the **COACH** shall be responsible for all aspects of the football program including budget, recruiting, training, supervision, evaluation, and performance of student athletes and coaching staff, subject to the terms of 2.03 below. The **UNIVERSITY** Athletics Director shall have sole responsibility and discretion for scheduling for the program, and will make reasonable efforts to consult with **COACH** regarding same.

2.02 **COACH MAY BE DISCIPLINED FOR VIOLATIONS OF UNIVERSITY RULES, REGULATIONS, OR POLICIES; NCAA OR CONFERENCE RULES AND REGULATIONS**

If the **COACH** is found to be in violation of a **UNIVERSITY** rule, regulation or policy, or an NCAA or Conference rule or regulation, the **COACH** shall be subject to disciplinary and/or corrective actions.

2.03 **REPORTING RELATIONSHIPS**

The parties (without delineating the particular terms and conditions) acknowledge that each party will use its best efforts and will cooperate with the other to provide the following support for the **UNIVERSITY's** football program.

- A. The **COACH's** immediate supervisor for purposes of implementing the Contract shall be the Athletics Director of the **UNIVERSITY**; notwithstanding anything to the contrary herein, all matters pertaining to the operation of the **UNIVERSITY's** football program shall be subject to the direction and control of the Athletics Director.
- B. The overall policy of the entire athletics program, including the football program, shall remain the exclusive prerogative of the **UNIVERSITY**. The Head **COACH** shall administer the daily routine and organization of the program as he deems necessary to effectuate its success, provided such administration shall be in accordance with the policies established by and under the direction of the Athletics Director.
- C. The **UNIVERSITY**, through the Athletics Director, shall permit the **COACH** to participate in decisions relating to choice and scheduling of football opponents, means of travel to be employed, hotel, food accommodations, size and content of the travel squad and party, and all other matters pertaining to the operation of similar phases of the football program, but final decisions in such matters shall be with the Athletics Director. It is specifically agreed and understood that travel arrangements shall be made in conformance with any contractual agreements between the **UNIVERSITY** and any travel agency.
- D. The **COACH** shall have the right to release, hire, and retain assistant football coaches subject to the **UNIVERSITY's** recruitment and hiring procedures and policies, and subject to the approval of the Athletics Director, and Kentucky law. In accordance with Kentucky law, the **UNIVERSITY's** Board of Regents must approve any recommended hire or appointment.

**ARTICLE III**  
**TERMS OF EMPLOYMENT**

The term of this Employment Contract shall begin on the 27th day of November, 2018, and shall continue for a term of four (4) years through February 28, 2023. The parties agree that if circumstances do not exist that would justify dismissal for cause as defined in 5.02 herein, the term of this Contract shall

allow for automatic one-year extensions, effective on the last day of each contract year, on the same annual terms. Provided, however, that this extension provision shall not be construed to create an employment term that exceeds four (4) years at any given time, in accordance with the provisions of KRS 164.360(2).

#### **ARTICLE IV COMPENSATION**

In consideration for the promises he has made in entering into this Employment Contract, the **COACH** shall be entitled to the following forms of compensation: base salary payments, season tickets, and outside income.

##### **4.01 BASE SALARY**

The base salary paid by the **UNIVERSITY** to the **COACH** for services and satisfactory performance of the terms and conditions of this Employment Contract shall be \$800,000.00 effective November 27, 2018, which shall be payable in equal monthly installments during the period of this Contract and made in conformity with the payroll procedure of the **UNIVERSITY**. Payment will be annualized for the first contract year, **execution hereof through** February 29, 2020. The parties will use best efforts to structure the payment of the foregoing guaranteed compensation in as tax-efficient a manner as possible, subject to all applicable laws, rules and regulations, and consistent with common practices in the industry.

The **COACH** shall be eligible to participate in a group insurance, retirement, and voluntary payroll deduction program on the same basis and with the same **UNIVERSITY** contributions that apply to the **UNIVERSITY**'s non-academic administrative staff.

The **COACH** will be reviewed for his performance on an annual basis. The parties agree that the **COACH**'s base salary shall be adjusted in accordance with the **UNIVERSITY** performance evaluation policies and salary adjustment pools in effect at the time.

##### **4.02 REIMBURSEMENT FOR MOVING EXPENSES**

**UNIVERSITY** agrees to reimburse **COACH** for all household moving expenses in accordance with University policy and state law.

4.03 **SEASON TICKETS**

The **UNIVERSITY** will provide the **COACH** without charge ten (10) chair-seat football tickets and four (4) chair-seat reserved men's and women's basketball tickets. The **COACH** shall have the option to buy twelve (12) additional football tickets if available. The **COACH** shall be provided ten (10) football tickets for bowl/playoff games. It is agreed and understood that all tickets are provided to aid the **COACH** in the performance of his job (recruiting, etc.). It is intended that the value of the tickets be excluded from compensation under the Internal Revenue Code Section 132(a)(3) as a working fringe benefit.

4.04 **COACH'S BONUS / VEHICLE**

A. Beginning with the 2019 football season and continuing thereafter for the term of the Contract, the **COACH** shall be entitled to the following bonuses:

1. Season ticket sales in excess of 12,000 per year	\$25,000
2. New Year's Six Bowl Appearance	\$100,000
3. CUSA Coach of the year	\$25,000
4. Winning percentage greater than .500	\$50,000
5. Victory in Bowl Game	\$50,000
6. Conference USA Championship	\$50,000
7. Single-Year APR 950-969	\$50,000
8. Single-Year APR 970+	\$50,000

All payments referenced above, including any payments to assistant coaches and/or staff, shall be paid in the form of salary and in accordance with the **UNIVERSITY's** payroll procedures.



B. The **UNIVERSITY** shall furnish to the **COACH**, for his use on a loan basis during the term of his Employment Agreement, one (1) automobile and shall pay for automobile liability and comprehensive insurance and taxes, if applicable, upon the vehicle. **COACH** shall be solely responsible for all upkeep, maintenance, and/or repair of vehicle. If possible, the **UNIVERSITY** shall provide **COACH** a second vehicle, under the same terms and conditions.

4.05 **OPPORTUNITIES TO EARN OUTSIDE INCOME**

While the **COACH** is representing the **UNIVERSITY** as Head Football Coach, he shall have the opportunity to earn outside income as a result thereof, but only upon the following terms and conditions:

General provisions concerning outside income. The following general terms and conditions shall apply to each case in which the **COACH** seeks to or makes arrangements to earn outside income as a result of his being Head Football Coach:

- A. **UNIVERSITY OBLIGATIONS ARE PRIMARY.** Such outside activities shall not interfere with the full and complete performance by the **COACH** of his duties and obligations as the **UNIVERSITY COACH**, recognizing always that the **COACH's** primary obligations lie with the **UNIVERSITY** and its students;
- B. **NCAA RULES CONTROL.** In no event shall the **COACH** accept or receive directly or indirectly any monies, benefit, or any other gratuity whatsoever from any person, group, corporation, Hilltopper Athletic Foundation, or Alumni Association if such action would violate NCAA legislation. The constitution, bylaws, rules and regulations, or interpretations thereof shall automatically apply to the agreement;
- C. **UNIVERSITY APPROVAL IS REQUIRED.** The **COACH** shall obtain the advance written approval from the President and Athletics Director of the **UNIVERSITY** before entering into such agreements. Approval shall not be unreasonably withheld;

- D. **UNIVERSITY IS NOT LIABLE.** Such activities are independent of the **COACH's** **UNIVERSITY** employment and the **UNIVERSITY** shall have no responsibility nor bear any liability for any claims arising therefrom;
- E. **COACH RETAINS ALL REVENUES.** Except for the limitations on such outside compensation as established by or set forth in this Agreement and in the constitution, bylaws, rules and regulations, and interpretations thereof of the **UNIVERSITY**; Conference USA, or any other conference the **UNIVERSITY** may choose to enter; and the NCAA, the **COACH** shall be entitled to retain all revenues generated by such outside activities (i.e., shoe contracts, speaking engagements, outside camps, etc.). **COACH** shall have the sole right to determine the brand of shoe wear, uniforms, and athletic equipment to be used by the **UNIVERSITY** football team.
- F. **SUMMER CAMPS.** **COACH** shall be entitled to at least three (3) weeks of football camps using **UNIVERSITY's** athletic facilities and equipment. **COACH** shall have priority to conduct at least two weeks of camp (i.e., fourteen days) in the month of June after the regular term of public school in Kentucky has concluded. The operation of camp(s) will be conducted under the auspices of **UNIVERSITY** Athletic Department and shall be conducted in accordance with general policies of the **UNIVERSITY**. **COACH** will be obligated to pay the **UNIVERSITY** the sum of one dollar (\$1) for the use of its intercollegiate athletic facilities and equipment for each of the football camps, and said equipment and facilities shall be available for use for a minimum of three (3) weeks per year. A separate rate will be determined for the use of the Raymond B. Preston Health and Activities Center, which rate will not be unreasonable and which shall be determined by September 30 of the preceding year. Rates for room and meals to be charged by **UNIVERSITY** for such student camps shall be the lowest rate charged for student camps generally by the **UNIVERSITY**, which

may vary from year to year. **COACH** agrees and understands that the **UNIVERSITY** will place a surcharge on each camper enrolled in the camps, and **UNIVERSITY** agrees to give **COACH** notice of the amount of the surcharge on or before September 30 of the preceding year. Such surcharge commence at \$3 per camper, effective with the summer of 2010.

Should there be a conflict between **UNIVERSITY's** men's football program and any other **UNIVERSITY** athletic team or **UNIVERSITY** sponsored or affiliated program or organization concerning the use of the above facilities and equipment, this conflict shall be resolved by and in the sole discretion of the Athletics Director, who shall have the final determination on all matters. The **UNIVERSITY** agrees that it will cap the per camper fee at \$5 per camper throughout the term of this Agreement.

- G. **RADIO AND TELEVISION.** The **UNIVERSITY** will use its best efforts to secure a **COACH's** radio and/or television program to air weekly for thirty (30) minutes during the football season. The compensation payable to the **COACH** will be negotiated at such time as the plan(s) for the radio and/or television program are finalized.

#### **ARTICLE V TERMINATION**

The **COACH** recognizes that his promise to remain the **UNIVERSITY's COACH** through the entire term of this Employment Contract is of the essence. It is also recognized, however, that certain limited circumstances may make it appropriate for the **UNIVERSITY** to terminate this Contract prior to the completion of its entire term.

##### **5.01 BUYOUT TO CURRENT INSTITUTION**

**UNIVERSITY** agrees to pay the buyout owed to your current institution . The University will make a good faith attempt to minimize tax liability to the coach but the coach will ultimately be responsible for all personal tax obligations.

5.02 **TERMINATION BY UNIVERSITY FOR JUST CAUSE**

The **UNIVERSITY** shall have the right to terminate this Employment Contract for just cause prior to its normal expiration on February 28, 2023 (or 2024 or 2025, in the event of extension). The term "just cause" shall include, in addition to normally understood meaning in Employment Contracts, any of the following:

- A. Conviction of a felony or declared by a court of competent jurisdiction to be guilty of a crime involving moral turpitude;
- B. Serious violation of any law, rule, regulation, constitutional provision, bylaw, or interpretation of the **UNIVERSITY**; Conference USA, or any other football conference the **UNIVERSITY** may choose to enter, or the NCAA;
- C. Serious violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of the **UNIVERSITY**, the Conference USA or the NCAA by a member of the football coaching staff, student athletes in the football program, or any other person under the **COACH's** supervision and direction, with the knowledge or consent of the **COACH**;
- D. Prolonged absence from duty without the consent of the Athletic Director or his designee; or,
- E. Engaging in conduct, as solely determined by the **UNIVERSITY**, which is clearly contrary to the character and responsibilities of a person occupying the position of Head Football Coach or which negatively or adversely affects the reputation of the **UNIVERSITY's** Athletics Program in any way, as determined by the **UNIVERSITY**.

5.03 **UNIVERSITY'S OBLIGATIONS UPON TERMINATION FOR CAUSE**

In the event this Employment Contract is terminated for cause in accordance with the provisions of Section 5.02 hereof, and at the time of such termination if there is more than one (1) month of unexpired term of this Contract, the "severance fee" shall be computed and paid as if the unexpired term of this Contract was only one (1) month. The "severance fee" will be calculated solely on the base salary

shown in Section 4.01. The **COACH** shall not be required or obligated to perform any further service or duties for the **UNIVERSITY** to be entitled to the “severance fee.” In any meeting between **UNIVERSITY** official(s) and **COACH**, relating to termination for cause, both the **UNIVERSITY** and **COACH** have the right to have representation by legal counsel present.

5.04 **TERMINATION WITHOUT CAUSE BY UNIVERSITY OR COACH**

The **UNIVERSITY** and **COACH** shall have the right to terminate this Employment Contract prior to its normal expiration on February 28, 2023, (or 2024 or 2025, in the event of extension), without cause. Termination “without cause” shall mean termination of this Contract on any basis other than those set forth in Section 5.02. Termination by either party without cause shall be effectuated by delivering to the other party written notice of the terminating party’s intent to terminate this Contract without cause.

5.05 **LIQUIDATED DAMAGES UPON TERMINATION WITHOUT CAUSE**

- A. If **COACH** terminates the contract without cause he will pay the **UNIVERSITY**, in equal payments over a twelve (12) month period, according to the following schedule:
  - 1. Prior to March 1, 2020 - \$1.2 million
  - 2. From March 1, 2020 to February 28, 2021 - \$900,000
  - 3. After February 28, 2021 - \$600,000
  
- B. If **UNIVERSITY** terminates the contract without cause at any time, it will pay **COACH**, in equal payments over a twelve (12) month period, according to the following schedule:
  - 1. Prior to March 1, 2020 - \$1.2 million
  - 2. From March 1, 2020 to February 28, 2021 - \$900,000
  - 3. After February 28, 2021 - \$600,000
  
- C. If **COACH** is terminated without cause and obtains employment within 12 months (“Offset Period”), each subsequent monthly payment will be reduced by the amount of

monthly compensation **COACH** receives from the new employer with respect to the Offset Period.

- D. Failure to timely pay such liquidated damages shall constitute a breach of this Contract and such sum shall be recoverable together with reasonable attorney fees.
- E. In no case shall the **UNIVERSITY** be liable for the loss of any collateral business opportunities or any other benefits, perquisites, or income resulting from activities such as, but not limited to, camps, clinics, media appearance, apparel or shoe contracts, consulting relationships, or from any other sources that may ensue as a result of the **UNIVERSITY's** termination of this Contract without cause.
- F. Should **COACH** decide to resign or retire from collegiate men's football and thereafter does not accept employment as a head men's football coach for at least one full year following the date of his resignation or retirement, these provisions shall not apply.

5.06 **ADDITIONAL CONSIDERATION UPON TERMINATION BY COACH WITHOUT CAUSE**

In addition to the provisions of paragraph 5.05, if **COACH** terminates this Contract without cause prior to its expiration date and within one (1) year of his termination accepts employment as Head Coach of the football program with any other college/university with a Division I-A (FBS) football program, **COACH** agrees to use his best efforts to schedule a (2) two-year home/home game series (i.e., one game to take place at Western Kentucky University, and one game to occur at hiring college/university) between the football team of the college/university which employs him and the **UNIVERSITY's** football team, with no requirement for financial remuneration on the part of that college/university or the **UNIVERSITY**. Said series will be scheduled within 12 months of termination of **COACH's** employment with **UNIVERSITY**, but in no event to begin later than twelve (12) years following the date of termination of **COACH's** employment with **UNIVERSITY**.

5.07. **TERMINATION BY DISABILITY OR DEATH**

It is expressly understood and agreed that this Contract constitutes a personal service agreement between the **UNIVERSITY** and **COACH**. In the event a disability prevents **COACH** from performing the duties and responsibilities specified in this Contract, as certified by two (2) physicians selected or approved by the **UNIVERSITY**, or in the event of **COACH**'s untimely demise, this Employment Contract shall terminate and neither party, including **COACH**'s estate, shall have any further rights or obligations hereunder, the same as though termination were by the **COACH** were a resignation or retirement from collegiate men's football; provided, however, that in the event of a disability as set forth herein, **COACH** shall be entitled to apply for and, if eligible, participate in the Kentucky Teachers Retirement System disability retirement program and the **UNIVERSITY**'s Long Term Disability Insurance Program.

5.08 **UNIVERSITY APPROVAL REQUIRED PRIOR TO NEGOTIATION WITH OTHER SCHOOLS OR EMPLOYERS**

The parties agree that should another coaching or sports related employment opportunity be presented to **COACH** or should **COACH** be interested in another coaching position during the term of his Employment Agreement, **COACH** must notify the **UNIVERSITY**'s Athletics Director of such opportunity or interest, and obtain permission from the Athletics Director before any discussions can be held by **COACH** with anticipated coaching position principals, which permission shall not be unreasonably withheld.

5.09 **WAIVER OF JURY TRIAL AND RESOLUTION OF DISPUTES**

Parties to this agreement agree to waive trial by jury for any claim arising out of or relating in any way to this agreement or breach of this agreement.

**ARTICLE VI  
MISCELLANEOUS**

6.01 **AMENDMENTS TO AGREEMENT**

This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto. This Contract can only be altered or amended by written agreement between the **COACH** and the **UNIVERSITY's** designated representative.

6.02 **UNIVERSITY RETAINS ALL MATERIALS AND RECORDS**

All materials or articles of information, including, without limitations, personnel records, team information, films, tapes, statistics, or any other material or data furnished to the **COACH** by the **UNIVERSITY** or developed by the **COACH** on behalf of the **UNIVERSITY** or at the **UNIVERSITY's** direction of the **UNIVERSITY's** use or otherwise in connection with the **COACH's** employment hereunder are and shall remain the sole and confidential property of the **UNIVERSITY**. Within thirty (30) days of the expiration of the term of this Contract or its earlier termination as provided herein, the **COACH** shall immediately cause any such materials in his possession or control to be delivered to the **UNIVERSITY**.

6.03 **TAX LIABILITIES**

The **COACH** shall be responsible for any and all income tax liabilities, interest, and/or penalties related to any benefits received pursuant to this contract.

6.04 **LAWS OF THE COMMONWEALTH OF KENTUCKY**

This Contract shall be interpreted under the Laws of the Commonwealth of Kentucky, and if any provision of the Contract may be prohibited, this shall not invalidate the remaining provisions of the Contract.

6.05 **ACKNOWLEDGMENT**

**COACH** acknowledges that he has read and understands the foregoing provisions of this Contract, that he has had the opportunity to consult with legal counsel, and that such provisions are

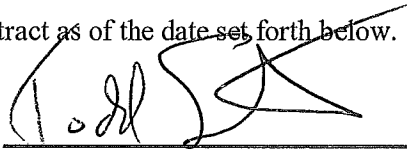


reasonable and enforceable, and he agrees to abide by this Contract and the terms and conditions set forth herein.

**IN WITNESS WHEREOF**, the parties hereto set forth their respective signatures on this

Contract as of the date set forth below.

BY:

  
TODD STEWART  
ATHLETICS DIRECTOR

Date

2-18-19

BY:

  
TYSON HELTON  
HEAD FOOTBALL COACH

Date

2/18/19

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**APPROVAL OF SECOND ADDENDUM TO  
ATHLETICS DIRECTOR EMPLOYMENT CONTRACT**

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**REQUEST:**

Approval of Second Addendum to the Athletics Director Employment Contract between Western Kentucky University and Mr. Todd Stewart.

**FACTS:**

The University and Mr. Stewart have negotiated a Second Addendum to the Athletics Director Employment Contract which outlines revised terms and conditions of his employment. A copy of the Second Addendum is included with this agenda material.

**BUDGETARY IMPLICATIONS:**

Todd Stewart's annual base salary will increase from \$204,132 to \$270,000. Pending Hilltopper Athletics Foundation approval, this increase will be generated through private funds.

**RECOMMENDATION:**

President Timothy C. Caboni requests approval of the Second Addendum to the Athletic Employment Contract between Western Kentucky University and Todd Stewart.

**MOTION:**

**Approval of the Second Addendum to the Athletics Director Employment Contract between Western Kentucky University and Mr. Todd Stewart.**

**WESTERN KENTUCKY UNIVERSITY  
SECOND ADDENDUM TO  
ATHLETICS DIRECTOR EMPLOYMENT CONTRACT**

This Second Addendum to the Athletics Director Employment Contract is made this \_\_\_ day of March, 2019, between **WESTERN KENTUCKY UNIVERSITY** (the "**UNIVERSITY**") and Todd Stewart ("**AD**").

The parties agree that the following provisions of the Athletics Director Employment Contract dated August 1, 2012, and the First Addendum dated March 8, 2016 to the extent applicable, is hereby amended to provide as follows:

Article III, TERM OF EMPLOYMENT

The term of the Employment Contract shall be a period beginning with the 1st day of March, 2019, and expiring on the 30th day of June, 2023.

4.01 BASE SALARY AND BENEFITS

As of the date of this Addendum, **AD's** current base salary paid by the **UNIVERSITY** to **AD** for services and satisfactory performance of the terms and conditions of the Employment Contract is \$204,132.00. Effective March 1, 2019, **AD's** base salary shall be increased to \$270,000.00. **AD** and **University** agree that the increase in salary, including any and all benefit costs associated with the increase, will be funded in advance on March 1, 2019 for the University's current fiscal year, and on July 1 of each subsequent fiscal year, and that payment of the increase (and associated benefits) is contingent upon said funding. **AD** will be reviewed for his performance on an annual basis, and assuming funds are available will be given a raise appropriate and in accordance with the **UNIVERSITY** performance evaluation policies and compensation policies.

Article IV, 4.02 B. (1) POST-SEASON COMPETITION / CHAMPIONSHIPS / RANKING

The **AD** shall be entitled to an additional supplemental salary payment as follows:

<u>Sport</u>	National Invitational Tournament
Men's Basketball	\$10,000
Women's Basketball	\$5,000

All amendments to the Employment Contract dated August 1, 2012, are specifically noted and described in the First Addendum and this Second Addendum, and the parties agree that all terms, conditions, agreements, and provisions of the Employment Contract dated August 1, 2012, not specifically modified by the First Addendum or this Second Addendum shall continue in full force and effect as established therein. The parties further agree that this Second Addendum to the Employment Contract is contingent upon subsequent approval by the University's Governing Board of Regents which will be sought by the University at the Board's next regular meeting, March 1, 2019.

WITNESS WHEREOF, the parties hereto set forth their respective signatures on this Agreement as of the date set forth below.

WESTERN KENTUCKY UNIVERSITY

  
\_\_\_\_\_  
Timothy C. Caboni  
President

19 Feb 2017  
Date

DIRECTOR, INTERCOLLEGIATE ATHLETICS

  
\_\_\_\_\_  
Todd Stewart

2-19-19  
Date