

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

BRET A. BIELEMA

PLAINTIFF

v.

Case No. 5:20-cv-05104-PKH

THE RAZORBACK FOUNDATION, INC.

DEFENDANT

COMPLAINT

Through the undersigned counsel, the plaintiff, Bret Bielema, brings this action for Breach of Contract and False Light Invasion of Privacy against the defendant, The Razorback Foundation, Inc., and alleges:

JURISDICTION

1. Bret A. Bielema (“Coach Bielema”) is a citizen and resident of Norfolk County, Massachusetts.
2. The Razorback Foundation, Inc. (“the Foundation”) is an Arkansas non-profit corporation. The Foundation’s principal place of business is in Fayetteville, Washington County, Arkansas.
3. There is “diversity of citizenship” between the plaintiff and the defendant, and the amount in controversy exceeds \$75,000. Therefore, the Court has subject-matter jurisdiction of this dispute pursuant to 28 U.S.C. § 1332.

VENUE

4. This action is based on the Foundation's breach of a "Release and Waiver Agreement" entered into between the parties on January 30, 2018 in Washington County, Arkansas. As further explained below, the "Release and Waiver Agreement" is one of five interrelated written contracts that Coach Bielema entered into as the head football coach, and then former head coach, of the Arkansas Razorbacks.
5. Coach Bielema and the Board of Trustees of the University of Arkansas ("the University") were parties to two of those contracts, Coach Bielema's Employment Agreement, *Exhibit 1*, and the First Amendment to Employment Agreement, *Exhibit 2*. Coach Bielema and the Foundation were parties to the other three contracts, a 2012 Personal Services and Guaranty Agreement, *Exhibit 3*, a 2015 Personal Services and Guaranty Agreement, *Exhibit 4*, and a Release and Waiver Agreement, *Exhibit 5*. These five interrelated contracts are attached to this Complaint and are incorporated herein by reference. In collegiate sports, the Personal Services and Guaranty Agreements and the Release and Waiver Agreement would commonly be referred to as "buyout agreements." For the sake of clarity, the 2012 Personal Services and Guaranty Agreement will be referred to the "2012 Buyout Agreement," the 2015 Personal Services and Guaranty Agreement will be referred to as the "2015 Buyout Agreement," and the Release and Waiver Agreement will be referred to as the "Final Buyout Agreement."
6. The 2012 and 2015 Buyout Agreements included a forum selection clause that provided venue would lie "solely with the *Circuit Court of Washington County, Arkansas.*" *Exhibit 3*, at 5-6 ¶ 15; *Exhibit 4*, at 5 ¶ 15 (emphasis added). Instead of referring to a particular state or federal court, the forum selection clause in the Final Buyout Agreement is only a

geographical restriction on where the parties may file a lawsuit to enforce its terms: “*Washington County, Arkansas*, shall be the exclusive venue for any action arising under or relating to the Agreement.” *Exhibit 5*, at 6 ¶ 6 (emphasis added). As such, pursuant to 28 U.S.C. § 1391 and the precedent established by Judge Holmes’s opinion in *Northport Health Services of Ark., LLC v. Ellis*,¹ the Fayetteville Division of this Court is a proper venue for this action.

PARTIES

Coach Bielema

7. Coach Bielema is currently the “Outside Linebackers Coach and Senior Assistant” for the New York Giants (“Giants”), a professional sports organization that is part of the National Football League (“NFL”). Before joining the Giants earlier this year, Coach Bielema worked for the New England Patriots (“Patriots”), another professional sports organization that is part of the NFL. Coach Bielema’s tenure with the Patriots involved three consecutive contracts that progressively increased his responsibilities and compensation – the last of which involved a promotion from “Special Assistant to the Head Coach” to “Defensive Line Coach.” Contrary to published media reports based on anonymous sources associated with the Foundation and/or the Razorbacks Athletic Department (“Athletic Department”), Coach Bielema was never a “volunteer” for the Patriots. Nor did he ever perform services for the Patriots “for free.”
8. From 2012 until 2017, Coach Bielema was the University’s head football coach, ending with a 29–34 win/loss record. From 2006 until 2012, Coach Bielema was the head football

¹ No. 2:20-CV-02021, 2020 U.S. Dist. LEXIS 62901 (W.D. Ark. Apr. 10, 2020).

coach for the University of Wisconsin (“Wisconsin”), where he achieved three consecutive conference titles and a 68–24 win/loss record.

9. Like virtually every other NCAA Division I (“DI”) head football coach, Coach Bielema is assisted by a sports agent in all his dealings with universities and their fundraising affiliates. At all times relevant to the allegations in this Complaint, Coach Bielema was represented by Neil Cornrich, President and owner of *NC Sports, LLC*. Mr. Cornrich has been a leader in the field of sports management for over 25 years. In 2013, *Sports Illustrated* ranked Cornrich among the 15 most influential agents in sports and called him “arguably the leading agent of football coaches, both professional and collegiate.” A graduate of The University of Michigan and a licensed attorney, Mr. Cornrich lectures on a variety of sports management topics throughout the country. He frequently serves as an expert in his field, appearing in the national media from *Sports Illustrated* and *USA Today* to *ESPN* and *CNN*, and speaking at colleges and universities such as Harvard Law School.

The Razorback Foundation

10. According to the records of the Arkansas Secretary of State, the Foundation was formed as a domestic non-profit corporation on October 17, 1980. The Foundation’s website identifies its mission “to support the athletic endeavors of the University of Arkansas Razorbacks,” ostensibly one of a handful of DI Athletic Departments “that is financially self-sustaining and requires no UA student fees revenue or taxpayer support.”
11. The mission of the Foundation is to support the athletic endeavors of the University of Arkansas Razorbacks (“Razorbacks”). The Foundation is so intertwined with every aspect of the University’s Athletics Department that it functions as an arm of the Athletics Department.

12. Scott Varady, a well-liked member of the Arkansas Bar, is the Executive Director and General Counsel of the Foundation. Mr. Varady was named Executive Director and General Counsel of the Foundation on or about October 6, 2015. Before his appointment, Mr. Varady spent nineteen years with the University of Arkansas' Office of the General. The Secretary of State's records reflect that Mr. Varady (hereinafter "Executive Director") is one of fourteen Arkansans who serve as officers and/or directors of the Foundation's Board of Directors.
13. In-depth knowledge about the intricacies of coaching contracts is not a prerequisite to being named Executive Director of the Foundation or being elected to its Board. Nor does anyone expect the Executive Director and Board members to be familiar with the career progression of college football coaches, standard accepted paths for assistant coaches to advance to head coach positions, standard accepted practices used by displaced head football coaches to transition from one head coach position to another, or the extraordinary challenges facing a head coach at the highest level of college football who has been fired for not winning enough games. Likewise, nobody expects the Executive Director and Board members to know anything about the average compensation paid to assistant coaches or administrative staff members for NFL head coaches: Those compensation arrangements are considered confidential, and the accuracy of published reports about average compensation for those positions is not easily verified.
14. As a practical matter, it is far more important to the success of the Foundation that its Board members have extensive backgrounds in business, be financially sophisticated and well connected, and have the ability to understand and analyze complex financial statements. In short, Board members are there to make sure the Foundation is in healthy financial

condition, that donations are in line with projections, and that the Foundation can afford its financial commitments to third parties. Whenever there is any doubt about all of these objectives being met, the Board faces significant external pressure, and sometimes criticism, from the Razorbacks' biggest donors to do whatever needs to be done to "right the ship."

15. On occasion, the Executive Director and the Board will also receive and respond to internal pressure from the Athletics Director ("AD") to take certain actions. Given that the Executive Director works closely with the AD, travels with the AD during the off-season, and is otherwise in frequent contact with him, pressure from the AD to have the Foundation take certain action carries more weight than external pressure from big donors.
16. The Foundation works hand-in-hand with the University's Athletics Department leadership to ensure that revenues from donations keep pace with or exceed the increase in spending on Razorback athletics. According to a report published by the Knight Commission, total spending on athletics just by schools in the Southeastern Conference ("SEC") exceeded \$1.7 billion in 2018. The same report reflected that compensation paid to SEC coaches in 2018 accounted for 18% of that amount, totaling more than \$320 million.
17. With respect to the Razorbacks, the Knight Commission observed that, between 2013 and 2018, the University's total expenses on athletics increased 38% while revenues increased by only 30%. Consistent with that observation, in May 2019, the *Arkansas Democrat-Gazette* reported that, during the twenty-four months from June 30, 2016 to June 30, 2018, the Foundation suffered a *\$20 million decrease* in annual revenues (from \$48.9 million to \$28.1 million) – a staggering decline by any measure. Razorback Foundation Sees Drop in Donations, *Arkansas Democrat-Gazette* (May 29, 2019). The Foundation's most recent publicly available financial report (IRS Form 990) reflects annual revenues increased by

only \$3 million during the last reporting period – adding back just a small percentage of the \$20 million revenue decline that began in 2016. The Foundation’s most recent Form 990 included an adjustment to its balance sheet of \$7.07 million that referenced a “change in guaranty payment” (to Coach Bielema, the Foundation has since confirmed). By removing this liability from the Foundation’s balance sheet, the Foundation was able to avoid reporting a year-to-year decline in the Foundation’s total net worth, which would have raised even more questions from journalists. The Foundation’s concern about its financial health and the appearance of its publicly available Form 990 provided a strong incentive to breach the terms of the Final Buyout Agreement on the premise that Coach Bielema would have no appetite for litigation and would eventually decide to settle for pennies on the dollar.

NATURE OF DISPUTE

18. This civil action, and Coach Bielema’s request for an award of compensatory and punitive damages, arises from the Foundation’s calculated, bad faith efforts to renege on its contractual obligations to Coach Bielema without cause by actively pursuing a strategy that involved: (a) declaring without any basis in law or fact that Coach Bielema was in breach of contract as a pretext to stop making monthly payments required by the terms of the Final Buyout Agreement; (b) embellishing and distorting key facts which could have easily been established through the exercise of due diligence; (c) surreptitiously providing false and misleading information to a sports journalist that portrayed Coach Bielema in a false light and lessened his chances of being selected to fill a head coach position in the months that followed; (d) consciously disregarding that Coach Bielema has followed standard, established practices of collegiate head football coaches who are fired without cause and are obliged by the terms of a buyout agreement to seek new employment; and (e) turning a

blind eye to other admissible evidence that is completely contrary to the Foundation's assertion that it "has no further payment obligation to Bret Bielema."³

FACTUAL BACKGROUND

Coach Bielema's Employment Agreement and the 2015 and Final Buyout Agreements

19. On August 20, 2013, the University and Coach Bielema entered into a 44-page Employment Agreement that was retroactively effective on December 4, 2012. *Exhibit 1*. This is the first of the five interrelated contracts referenced hereinabove. The Employment Agreement included what were then, and still are, standard components of compensation for Power Five head football coaches, *i.e.*, base salary, incentive bonuses, use of loaned automobiles, tickets to games, health insurance, outside income from media appearances and summer football camps, etc. Coach Bielema's Employment Agreement described his buyout compensation with reference to using a formula:

"The total amount of the Total Guaranty Payment owed to Coach as of the effective date of the termination shall be determined by the following formula: The numerator shall be the full amount of the Guaranty Payment identified in the foregoing chart depending upon the year of termination and shall be divided by the denominator, which shall be the total number of months of the Term of the Employment Agreement (with any partial months being pro-rated), to yield the "Monthly Value of the Total Guaranty Payment." The Monthly Value of the Total Guaranty Payment shall then be multiplied by the number of months remaining on the Term (with any partial months being prorated) as of the effective date of the termination to yield the "Total Guaranty Payment." The Total Guaranty Payment shall be paid to Coach in equal monthly installments on the last calendar day of each month (with any partial months being pro-rated) as determined from the effective date of the termination for convenience through the remaining balance of the Term. Notwithstanding any other term or condition in this Agreement, Coach *shall have an affirmative duty of mitigation to diligently seek and accept other employment in the event this Employment Agreement is terminated for convenience* as well as an obligation to comply

³ [\\$1M gifts roll in for UA athletics](#), *Arkansas Democrat-Gazette* (June 7, 2020).

with any mitigation and/or other conditions set forth in the Guaranty Agreement. . . .

* * * * *

<u>YEAR</u>	<u>AMOUNT</u>
First Contract Year (12/04/12-12/31/13)	\$12,800,000.00
Second Contract Year (1/1/14-12/31/14)	\$12,800,000.00
Third Contract Year (1/1/15-12/31/15)	\$12,800,000.00
Fourth Contract Year (1/1/16-12/31/16)	\$9,600,000.00
Fifth Contract Year (1/1/17-12/31/17)	\$6,400,000.00
Sixth Contract Year (1/1/18-12/31/18)	\$3,200,000.00

* * * * *

Further, Coach covenants and agrees that, in the event the University exercises its right to terminate this Agreement for convenience at any time, Coach will accept the guaranty of the Razorback Foundation, for the amounts set forth below, as provided in the Personal Services and Guaranty Agreement (“Guaranty Agreement”) and any amendments thereto as entered into between Coach and the Razorback Foundation or other financially responsible third party in full and complete satisfaction of any obligations of the University.”

Exhibit 1, at 24–26 ¶ 15(a) (reordered).

20. Coach Bielema’s Employment Agreement also included an “offset” clause, which is shown below in italics:

“Notwithstanding any other term or condition in this Agreement, Coach shall have an affirmative duty of mitigation to diligently seek and accept other employment in the event this Employment Agreement is terminated for convenience as well as an obligation to comply with any mitigation and/or other conditions set forth in the Guaranty Agreement.”

* * * * *

The parties covenant and agree that the Total Guaranty Payment paid to Coach paid by the University’s third-party guarantor shall be offset and reduced on a monthly basis by the gross compensation *earned by Coach personally or*

through business entities owned or controlled by Coach from employment as a head or assistant coach or as an administrator either at a college or university or with a professional sports organization (collectively referred to hereafter as a ‘Coaching Position’).”⁵

21. On October 23, 2013, Coach Bielema and the Foundation signed a closely related contract referenced in the original Employment Agreement as a third-party guaranty of the University’s buyout obligations. This contract is referred to herein as the 2012 Buyout Agreement and was intended to replace the buyout compensation language in the Employment Agreement, thus obligating the Foundation to pay the applicable amount listed on the above chart and relieving the University of this obligation. The 2012 Buyout Agreement was retroactively effective as of December 4, 2012, which was also the effective date of the Employment Agreement.
22. Consistent with standard practices, on February 6, 2015, after two winning football seasons, the University and Coach Bielema entered into a First Amendment of the Employment Agreement, which extended the term of his head coach contract by two years (until December 31, 2020). The amended employment agreement also increased Coach Bielema’s annual salary from \$2,950,000 to \$3,250,000, with annual increases thereafter of \$100,000. Furthermore, the amendment replaced the buyout compensation chart in the initial Employment Agreement with a new, more generous buyout compensation chart. For the next three years, the new chart added \$2.6 million to Coach Bielema’s buyout compensation, increasing it from \$12.8 million to \$15.4 million:

⁵ *Id.* at 28 ¶ 15(b) (reordered) (emphasis added). The phrase “college, university *or professional sports organization*” also appears in the section of the Employment Agreement that addresses Coach Bielema’s obligation to pay the University if he terminated the contract to accept another head coach position. *Id.* at 30 ¶ 16(a) (emphasis added).

<u>YEAR</u>	<u>AMOUNT</u>
Feb. 6, 2015 through Dec. 31, 2015	\$15,400,000.00
Jan. 1, 2016 through Dec. 31, 2016	\$15,400,000.00
Jan. 1, 2017 through Dec. 31, 2017	\$15,400,000.00
Jan. 1, 2018 through Dec. 31, 2018	\$11,700,000.00
Jan. 1, 2019 through Dec. 31, 2019	\$7,900,000.00
Jan. 1, 2020 through Dec. 31, 2020	\$4,000,000.00

23. On the same day the Amended Employment Agreement was signed by the University and Coach Bielema (February 5, 2015), the Foundation and Coach Bielema signed the 2015 Buyout Agreement, which was identical to the 2012 Buyout Agreement in all material respects and was intended to replace that agreement.
24. Like the initial Employment Agreement, the 2015 Buyout Agreement contained an “offset” clause regarding Coach Bielema’s obligation to seek new employment if he was terminated “for convenience.” However, the “offset” clause in both the 2012 and 2015 Buyout Agreements was worded differently than the “offset” clause in Coach Bielema’s Employment Agreement. In reference to the Foundation’s right of “offset” against any future income Coach Bielema might earn during the buyout period, the wording in the 2012 and 2015 Buyout Agreements was as follows:

“Bielema shall have the duty to mitigate his damages *by making reasonable efforts to gain re-employment*. The parties understand and agree that if Bielema is successful in gaining such re-employment, or alternative employment of any kind the Foundation’s Guaranty Payment obligations shall be reduced by the amount of compensation Coach earns from such employment (so long as such employment coincides with the Guaranty Payments).”

Exhibit 3 and 4 (emphasis added).

25. The 2015 Buyout Agreement included the new buyout compensation chart that was included in the First Amendment to the Employment Agreement. Notably, however, neither the 2012 nor the 2015 Buyout Agreement included the buyout-reducing formula that was part of the

initial Employment Agreement. The application of that formula would have reduced the total amount shown on the buyout compensation chart by dividing that amount by “the total number of months of the Term of the Employment Agreement,” multiplying that sum by the number of months that had elapsed in the term and then subtracting that product from the chart amount. Since there was no buyout-reducing formula in either the 2012 or 2015 Buyout Agreements, when Coach Bielema and the Executive Director of the Foundation signed the 2015 Buyout Agreement, Coach Bielema had every reason to believe the Foundation would be obligated to pay him \$15.4 million if he was terminated “for convenience” on or before December 31, 2017.

26. It has yet to be determined whether the buyout-reducing formula was omitted from the 2012 and 2015 Buyout Agreements intentionally or the result of negligence by whoever drafted and approved those two contracts on behalf of the Foundation. Either way, almost three years later it became publicly known that someone acting on behalf of the Foundation or the University had dropped the ball. The actions the Foundation took in an effort to recover from that fumble, including its decision to stop paying Coach Bielema, can all be traced back to the omission of the formula in the 2012 and 2015 Buyout Agreements.

Coach Bielema is Fired While Leaving the Field after a Loss to Missouri

27. The Razorbacks’ last couple of seasons under Coach Bielema did not go as well as the first two. When Coach Bielema’s fifth season at Arkansas wasn’t showing enough improvement, the Razorback fan base, the Athletics Department’s biggest donors, and certain local sports journalists started calling for his head – a Razorback tradition that would be repeated much sooner than anyone imagined at that time.

28. In mid-November 2017, the University fired AD Jeff Long, setting the stage for Coach Bielema to be fired as well. A few days later, *Whole Hog Sports* reported the amount of buyout compensation the Foundation thought it owed Coach Bielema based on internal University documents:

“Bielema received a new contract and an \$18 million buyout after beating a bad Texas team in a lower-tiered bowl. Using documents received through an FOIA request, it has been reported the buyout is not \$15.4 million but less than \$6 million, but you can bet your grandma's cornbread dressing recipe that will be disputed if Bielema is fired.”

Long's Firing Didn't Just Happen Overnight, *Whole Hog Sports* (Nov. 16, 2017).

29. Following a loss to Missouri on November 24, 2017, the University's Acting AD handed Coach Bielema a letter informing him that his employment was terminated, effective immediately. The letter made clear that Coach Bielema was being fired “for convenience.” At the same time, the University issued a press release announcing that Coach Bielema had just been fired. The firing of a DI head football coach always receives a lot of press attention. However, national sportswriters and fans were appalled by the way the University handled the situation, describing the University's administration as “cold” and low rent.”
30. The firing of Jeff Long and Coach Bielema in November 2017 had a substantial and detrimental impact on the Foundation's financial state. Head football coaches aren't the only people in a collegiate Athletics Department whose contracts promise buyout compensation: Having been “terminated for convenience,” Jeff Long's buyout agreement entitled him to receive \$4.625 million. Not long thereafter, it became apparent to the University and the Foundation leadership that the Foundation might owe Coach Bielema \$6 million more than the University and Foundation had assumed.

31. After Coach Bielema was fired, the *Arkansas Democrat-Gazette* made these observations about the absence of the buyout-reducing formula in the 2015 Buyout Agreement:

“The employment contract with the university included language saying that figure was to be plugged into a formula to determine the ‘total [buyout] payment,’ which equated to about \$5.9 million, the *Arkansas Democrat-Gazette* previously reported. But Bielema’s agreement with the Razorback Foundation does not mention a formula, instead saying ‘the amount specified in this paragraph shall be the total amount that will be paid.’ The nonprofit, funded by donors to support university athletics, is responsible for the final agreement with Bielema and for paying his severance.”

Bielema Buyout Terms Revealed After AG Opinion, *Arkansas Democrat-Gazette* (Dec. 29, 2017); see also Bret Bielema’s Buyout Document with Arkansas Says He Gets 15.4M, *The Associated Press* (Dec. 29, 2017).

32. Not long after Coach Bielema was fired, the Executive Director had a phone conversation with Mr. Cornrich (Coach Bielema’s agent) in which he informed Mr. Cornrich that the Foundation did not believe it owed Coach Bielema \$15.4 million. Without disclosing whether the omission of the buyout-reducing formula in the 2012 and 2015 Buyout Agreements was intentional or an oversight, the Executive Director told Mr. Cornrich that the “spirit” of the agreement called for the formula to be applied.⁶ Mr. Cornrich was left with the impression that the Foundation was either grasping at straws or attempting to unilaterally change the deal the Foundation and Coach Bielema had made three years earlier.
33. The Executive Director and the members of the Foundation Board knew that Coach Bielema, like any other DI head football coach who planned to coach again, would be

⁶ Among Arkansas lawyers, defending one’s interpretation of a contract by referring to the “spirit” of the agreement is regarded as a tacit admission that the contract doesn’t say what the lawyer wishes it said.

extremely hesitant to take legal action against a school he had coached for or that school's non-profit fundraising affiliate. They were right about that. Coach Bielema had no more appetite for litigation against the Razorbacks in late 2017 than he does now. For that reason, Coach Bielema took the high road and agreed to the Foundation's first settlement proposal, with no negotiation, resulting in a total buyout of \$11.935 million – roughly \$3.5 million less than he was owed under the contract.

34. The University's Board of Trustees apparently didn't share Coach Bielema's view that he had left money on the table. As reported by *ESPN* sportswriter Mark Schlabach when the \$11.935 million number became public, the new buyout compensation the Foundation had promised to pay Coach Bielema was *almost \$6 million more* than some members of the University Board of Trustees thought it should be:

Former Arkansas football coach Bret Bielema will receive an \$11.8 million buyout to pay off the final three years of his contract, a source familiar with the situation told ESPN on Friday. Some members of Arkansas' board of trustees tried to argue that it owed Bielema between \$5 million and \$6 million, and Bielema's attorney wanted a full \$15.4 million buyout, but the sides agreed on the negotiated settlement, which should be executed in the next few days, the source told ESPN.



Mark Schlabach, ESPN Senior Writer
2y ago

35. Following the announcement, it was common knowledge in the Fayetteville legal and business community that certain members of the University's leadership, as well as certain members of the Foundation's Board, were upset about the way Coach Bielema's buyout agreement had been handled.

The Ambiguous "Offset Clause" in the Final Buyout Agreement

36. The agreement between the Foundation and Coach Bielema regarding the \$11.935 million compromise was memorialized in the Final Buyout Agreement, dated January 30, 2018.

Exhibit 5. For reasons known only to the Foundation, the language used to define Coach Bielema’s mitigation and offset obligations did not track any previous one. The third and final version of the “offset” clause is set forth below:

“Bielema shall have an affirmative duty of mitigation to diligently seek and to obtain other employment. Every six (6) months during the life of this Agreement, Bielema shall provide a written summary to the Foundation of his efforts to find other employment.

* * * * *

Except as expressly excluded herein, the Foundation’s right to offset shall apply to all income earned or received, whether the type of such income is athletically related or not athletically related

* * * * *

Given Bielema’s duty of mitigation and the Foundation's right to offset, Bielema (including, but not limited to, any individual or entity acting on his behalf) agrees to use his best efforts to maximize his earning potential with any new employer(s) consistent with compensation rates for similar positions in the given industry at the time such Other Employment is obtained.”

Exhibit 5, at 4 ¶ B(i) & -(iii), 5 ¶ B(v) (reordered) (emphasis added).

37. Material terms in this provision defining Coach Bielema’s obligation to seek new employment are ambiguous and undefined – “affirmative duty to mitigate,” “diligently seek,” “best efforts,” the requirement to maximize his “earning potential” with an employer, and comparison to compensation rates for “similar positions in the given industry.”
38. The Final Buyout Agreement incorporates standards and customs in the unique setting of elite college football coaching. By those standards and customs, not only do Coach Bielema’s actions reflect precisely what he was expected to do, but the Foundation could never have concluded only one year into the agreement that he was not trying to mitigate.

39. The Foundation reserved the right to offset “the average annual value of all amounts required to be paid to Bielema during the term of any multi-year contracts” – including “*guaranteed payments to be paid over the life of any multi-year contract,*” Exhibit 5, at 5 (emphasis added), *i.e.*, buyout payments. The parties’ demonstrated willingness to offset the Foundation’s present payment obligation with sums that are not due for years reinforces the universal assumption in the DI college football industry that these contracts will be honored.
40. Though there are several ambiguities about how the offset amount in the Final Buyout Agreement would be calculated if Coach Bielema succeeded in entering a lucrative multi-year contract, the Foundation left itself room to claim that at least one averaged annual salary should be applied to the offset obligation even if the contract were entered in the last hours of the term of the Final Buyout Agreement. Coach Bielema’s efforts to maximize his eligibility for a multi-year contract was perfectly consistent with a good faith effort to mitigate.
41. Under Arkansas law, the interpretation of ambiguous language in a written contract may be determined by reference to any practice or method of dealing that is uniform, reasonable, and so well established in the trade as to justify an expectation that it will be observed with respect to the contract in question. Arkansas law also mandates that words or phrases associated with a particular trade or occupation be interpreted as experienced and knowledgeable members of that trade or occupation use them. Applying these rules of contract construction to the case at hand, Coach Bielema not only met – but, in fact, exceeded – his obligations under the “offset” clause in the Final Buyout Agreement.

Standard Established Practices in College Football for Displaced DI Head Coaches Seeking New Employment as a DI Head Coach

42. The NCAA Division I (“DI”) Football Bowl Subdivision (“FBS”) is the top level of college football in the United States. The FBS is the most competitive subdivision in DI, which itself consists of the largest and most competitive schools in the NCAA. As of 2018, there were 10 conferences and 130 schools in the FBS.⁷ The Football Championship Subdivision (“FCS”) is the other subdivision of DI. Head coach salaries at FCS schools are significantly lower than the salaries paid to head coaches at FBS schools. Publicly available data indicates that the average head coach annual salaries at FCS schools (less than \$300,000) pales in comparison to the average head coach salaries at FBS schools (\$2.67 million).
43. The term “Power Five” refers to five conferences whose members are part of the FBS. The “Power Five” conferences are the Atlantic Coast Conference, the Big Ten Conference, the Big 12 Conference, the Pac-12 Conference, and the Southeastern Conference (“SEC”). As a member of the SEC, the University is one of the 64 schools in the “Power Five” conferences.

The Process for Selecting a New Head Football Coach

44. Collegiate football is the only big business in the United States where nearly one-fifth of the people who occupy senior leadership positions are replaced every year. “In the BCS era, the annual turnover rate for coaches is at 17 percent.” How a College Football Program Conducts a Coaching Search, *bleacherreport.com* (Dec. 16, 2013). Generally speaking, the firing and replacement of head football coaches occurs during or shortly after the college football season. Because head coach vacancies are generally filled by coaches who leave

⁷ Wikipedia.

the same position at another school or previously held the same position at another school, the annual firing and hiring of head football coaches is commonly referred to as the “coaching carousel.”

45. The process a university goes through to hire a head football coach has been described as “detailed and evolving, confusing and mysterious, exhausting and frustrating.” How a College Football Program Conducts a Coaching Search, *bleacherreport.com* (Dec. 16, 2013). As one sportswriter recently observed: “A Division I college football . . . coaching search isn’t your normal apply for a job, interview in-person, get offered the vacancy type of situation.” Anatomy of a Coaching Search, *Toledo Blade* (May 17, 2019).
46. As a general rule, unless the head coach has a prior relationship with someone in a position of influence, candidates for head coach positions typically don’t express their interest in a position to the AD, members of the search committee, or a search firm that’s been retained by the university. The people in these roles know exactly who’s available and know which candidates have the type of experience, personality, and coaching style to be the right “fit” for their football program. As one prominent sports agent observed, the AD and other decision-makers usually “have a pretty decent list of coaches together for at least a couple of weeks before making a change.” How a College Football Program Conducts a Coaching Search, *bleacherreport.com* (Dec. 16, 2013).
47. The way a search is conducted varies from school to school based on various factors which include, among others: (a) the influence and autonomy of the AD, (b) whether the AD has a prior relationship with any of the candidates, (c) the level of influence of the school’s boosters, and (d) whether the school retains a search firm.

48. The assessment process for evaluating collegiate head coach candidates in the Power Five conferences involves the following criteria:
- a. Previous Head Coaching Experience,
 - b. Track Record of Supporting Academic Mission,
 - c. Win/Loss Record as Head Coach or Coordinator,
 - d. Strong Leadership and Role Model for Student-Athletes,
 - e. Role as Ambassador for Institution with Public Affairs/Development,
 - f. High Integrity & Character, Strong Recruiter, and
 - g. Connection to Institution, and Connection to Region where Institution is Located.⁸
49. Sixty four percent (64.29%) of Power Five ADs surveyed in 2017 ranked “High Integrity and Character” as *the most important criteria* in selecting a head football coach. *Id.*
50. The conventional wisdom among experienced sports agents is that, if your client is known to be available, it’s not wise to be pushy. As one seasoned agent has observed, “[y]ou have to be careful about aggressively overselling your clients.” An Agent Explains How a “Normal” Coaching Hire Goes Down, *Banner Society* (Aug. 15, 2019).
51. Head coach searches are conducted in secrecy to the extent possible. On occasion, an AD may attempt to create the appearance that they are seriously considering several candidates by hiring a search firm or by following certain candidates on Twitter when, in fact, the AD knew from the outset which head coach he intended to hire.

⁸ An Assessment of Hiring Practices for Head Football Coaches at the “Power 5” NCAA Division I FBS Level, *Zachery S. Saunders, Dissertation at the University of Pittsburgh* (Mar. 21, 2017).

Collegiate Head Football Coach Buyout Compensation

52. Standard practices for head football coach contracts include “buyout” compensation in the event the university decides to terminate the coach’s employment “for convenience”⁹ during the life of his multi-year contract. Buyout compensation allows the university to terminate the head coach’s employment without cause before the end of its term and to pay the former head coach an agreed upon amount of money as “liquidated damages,” which is typically paid in a lump sum followed by monthly installments. The amount of compensation head coaches in college football are entitled to under their buyout agreements can be staggering.
53. Buyout agreements usually include an “offset” clause. The purpose of an “offset” clause when a coach has been fired “for convenience” is to require the coach to seek new employment, entitling the school to reduce the amount of the coach’s total buyout with a dollar-for-dollar credit for any income the coach earns from his next employer. The general idea expressed in every “offset” clause is that the coach must make a good-faith effort to seek other employment and not go into voluntary retirement during the term of the buyout agreement. In some buyout agreements, such as the one at issue here, the “offset” credit can be applied to income not yet earned by allowing the school to recoup on an annual basis the average annual income from a multi-year contract with annual salary increases. While “offset” clauses have become standard in head coach buyout agreements, there is nothing standard about how a university defines the coach’s obligation to seek new employment. As here, the words used to describe the coach’s obligations are usually susceptible to more than one interpretation.

⁹ In a college football head coach contract, “for convenience” is a term of art that basically means “for not consistently winning enough football games as quickly as our boosters expected.”

Standard Industry Practices for Former Head Football Coaches Who are Seeking Another Head Coach Position

54. Currently employed college head coaches with winning programs are unquestionably the most attractive candidates in any college football head coach search. At the other end of the spectrum, a head football coach who was fired for not winning enough games is usually viewed by ADs and search firms as “damaged goods” until he proves otherwise. In the past twenty years, there have been very few exceptions to this general rule – no more than a dozen in total.
55. Displaced college football head coaches sometimes decide to coach in the NFL knowing that professional football coaching experience will serve them well when they return to coaching college football as a head coach. Notably, the second and third highest paid college football coaches in the country right now returned to college football after coaching in the NFL. LSU head coach Ed Orgeron is a recent example of how a tour of duty in the NFL can remove the “damaged goods” tag from a former head coach and restore his marketability as a candidate for a Power Five head coach vacancy. Shortly after being fired by Ole Miss with a buyout agreement after its first winless season in 25 years, Coach Orgeron joined the New Orleans Saints as its defensive line coach. He later worked as an assistant coach at Tennessee and USC. In what could be described as the ultimate comeback, Coach Orgeron became LSU’s head coach in 2016 and led the Tigers to win the 2020 College Football Playoff National Championship.
56. Other DI head coaches who have been fired “for convenience” with buyout agreements and want to make a comeback as a head coach have taken a step down and taken on far less significant roles, with little or no pay, before returning to a DI head coach position. A number of those former head coaches have successfully enhanced their marketability by spending

time with the head coach of another successful football program. Examples include former Houston head coach Major Applewhite (\$43,350 salary per media reports) and former Tennessee head coach Butch Jones, whose title was recently changed from “intern/analyst” to “special assistant.” (\$35,000 salary per media reports).

57. Experienced sports agents who represent head coaches have publicly explained why this standard practice satisfies the obligations of former coaches who are required to seek new employment and why their former schools don’t view this practice as a violation of the coach’s buyout agreement:

“Jones, 51, instead is apparently meeting his contractual duty to Tennessee by getting a job as an analyst at Alabama for \$35,000, leaving Tennessee on the hook. To some, it might look like Alabama and Jones have conspired to extract maximum blood from Tennessee, one of Alabama’s hated rivals. *But it generally doesn’t work that way*, said attorneys Russ Campbell and Patrick Strong of Balch Sports, a firm that negotiates coaches’ contracts. “Most coaches want to coach at the highest level possible and staying in an analyst position simply to take advantage of contractual guarantees is contrary to that innate desire,” Campbell and Strong said in response to an inquiry from *USA Today Sports*. ‘Some fired coaches end up as analysts because that was the best position available for them at that time. *The hiring carousel is an open market, coaches don’t often get to pick and choose where they land. Sometimes it’s an analyst position, sometimes it’s a media position, while other times it’s an on-the-field coaching position.*”

Here’s why former UC Bearcats coach Butch Jones took a job making only \$35K at Alabama, *USA Today* (Dec. 12, 2019) (emphasis added).

58. Former Tennessee head coach Butch Jones’ post-termination experience bears many similarities to Coach Bielema’s experience. Coach Jones and Coach Bielema were both fired by SEC schools “for convenience” within twelve days of each other in late 2017. Both of them made serious efforts to become candidates for the few head coach vacancies that occurred in the first quarter of 2018 and thereafter. Both of them were offered and accepted

positions in the first quarter of 2018 while they continued their efforts to become contenders for head coach positions. While Coach Bielema chose to take a position with the New England Patriots, Butch Jones took a position working for the University of Alabama (“Alabama”) where he reportedly gets paid an annual salary of only \$35,000. Notably, the language used in their buyout agreements to describe their obligation to seek new employment is almost identical. The wording used in Tennessee’s buyout agreement with Coach Jones is as follows:

“Coach Jones must ‘make reasonable *best efforts* to mitigate the University’s obligation to pay [the money owed under Coach Jones’ buyout] by making *reasonable and diligent efforts* as soon as practicable following termination to obtain another [sic] comparable employment or paid services position.”

Tennessee/Butch Jones Buyout Agreement, § 3.1.4 (emphasis added).

59. Despite all the striking similarities between these two “fired for convenience” SEC head coaches, there are equally striking differences as well. First, when Coach Bielema started working for the Patriots in 2018 at roughly the same time Coach Jones became an “intern/analyst” at Alabama, Coach Bielema’s annual earnings that year were more than three times the amount that Coach Jones was paid. In 2019, Coach Bielema’s annual earnings were more than seven times the amount Coach Jones was paid by Alabama. This year, Coach Bielema will earn more than eleven times what Coach Jones will be paid. That said, the most striking difference between Coach Jones’ and Coach Bielema’s experience is this: *While Coach Jones continues to make a small fraction of what Coach Bielema earns while having the same obligation to seek other employment, Tennessee hasn’t manufactured a baseless claim as a pretext to stop paying Coach Jones and to recoup all of his buyout payments.*

The Statistical Likelihood of Coach Bielema Being Hired as a DI Head Coach Soon After Being Fired Was Less Than Eleven Percent (11%)

60. An in-depth review of the last two annual “coaching carousels” creates a clear picture of the almost insurmountable obstacles facing Coach Bielema or any other former DI head coach who was fired “for convenience” in 2017-18. The Foundation could have conducted such an analysis on its own but elected not to do so because it knew, or should have known, that the results would thoroughly debunk its breach of contract claim. Indeed, an analysis of the hiring of FBS head coaches from 2018 to 2020 reveals that former head coaches who were recently fired “for convenience” accounted for less than eleven percent (11%) of the former coaches who were hired to fill head coach vacancies.

2018-19 “Coaching Carousel”

61. Of the 22 FBS head coach vacancies, only three head coaches who had recently been terminated “for convenience” were hired as a head coach at another FBS school.
62. Of the three exceptions to the general rule in 2018-19, only one displaced head coach was able to secure another head coach position quickly. That coach was Kevin Sumlin, who was hired by Arizona after being terminated “for convenience” by Texas A & M. (Notably, Coach Sumlin was fired after a winning season that apparently wasn’t winning enough for TAMU’s boosters.) Sonny Dykes took Chad Morris’s job at SMU about 11 months after being terminated “for convenience” by California. Coach Dykes spent the intervening time as an Offensive Analyst for TCU. Chip Kelly was hired by UCLA less than a year after he was fired by the San Francisco 49ers. He spent the intervening time as an analyst for *ESPN*.

2019-2020 “Coaching Carousel”

63. Of the 24 FBS head coach vacancies, only two head coaches who had recently been terminated “for convenience” were hired as a head coach at another FBS school.
64. The two coaches who were exceptions to the general rule in 2019-20 were Steve Addazio (who was hired by Colorado State after being fired by Boston College) and Willie Taggart (who was hired by Florida Atlantic after being fired by Florida State). Both of those hiring decisions occurred long after the Foundation accused Coach Bielema of breaching his contractual obligations. At the time the Foundation put Coach Bielema on notice of its breach of contract claim, not a single head coach who had recently been fired “for convenience” had been able to regain employment as an FBS head coach. Two coaches, Les Miles and Mack Brown, both of whom had been fired “for convenience,” had not coached for years. Notably, Coach Miles had a prior relationship with the AD who hired him, and Coach Brown was returning to a school where he had previously been the head coach.
65. Consolidating the number of vacancies in the last two seasons (46) and the number of coaches who landed another head coach job after being fired “for convenience” (5), less than eleven percent (11%) of the vacancies for which Coach Bielema might have been considered were filled with a former head coach who had recently been fired “for convenience.” Based on these statistics, it was highly improbable that Coach Bielema would have been hired as an FBS head coach in 2018-19 no matter what he had done. The undisputed facts show that Coach Bielema’s chances of being hired as an FBS head coach in 2019-20 improved considerably, as evidenced by the number of schools that expressed interest in him for the first time since he’d been fired at Arkansas. Even in 2019-20,

however, the statistics show that Coach Bielema still faced a significant challenge being hired as a head coach at an FBS school.

In 2018, Coach Bielema Accepted a Position with the New England Patriots that Allowed him to Remain on the Market for a DI Head Coach Position

66. After being approached by the New England Patriots in early 2018, Coach Bielema reached an agreement with the Patriots whereby he would serve as an independent contractor to assist the Patriots' coaching staff in assessing NFL draft prospects. The Patriots agreed to pay him a "fee" of \$25,000 for roughly seven weeks of work. This agreement (including the compensation terms) was memorialized in an independent contractor agreement dated March 1, 2018, that was signed by Coach Bielema at a later date. Before signing the agreement to perform assessments of draft prospects for the Patriots, Coach Bielema and the Patriots reached an understanding that Coach Bielema could end his independent contractor relationship with the Patriots at any time to accept a DI head coach position.
67. Following the 2018 NFL Draft, the Patriots' head coach approached Coach Bielema with an offer to become his "Special Assistant," a unique role in the Patriots organization. Considering that this unique role would afford Coach Bielema the opportunity to work closely with the head coach of the winningest NFL team in recent memory, Coach Bielema accepted the offer at an annual salary of \$100,000. This offer was presented to him with the understanding that it was in line with compensation for comparable positions in the Patriots organization. Before the signing of the employment agreement to become Special Assistant to the Head Coach, dated July 15, 2018, the Patriots reaffirmed their agreement that Coach Bielema could end his contractual relationship with the Patriots at any time to accept a DI head coach position.

68. Taking into account that Coach Bielema was occupying a unique position, his annual salary was both fair and reasonable when compared to the average annual salaries then being paid to NFL on-field assistant coaches. Coach Bielema's role as Special Assistant to the Head Coach would have been viewed by human resources ("HR") professionals in the NFL as a lesser role that would have called for a downward adjustment in his annual salary. Information about average salaries for typical on-field assistant coach's positions is readily available online, as evidenced by an excerpt from a news story published just three months ago: "[In 2017], the average salary for [typical on-field] assistant coaches was in the \$150,000-\$175,000 range." Wait, NFL Coaches Make How Much?, *Work and Money* (Feb. 2, 2020). Considering that Coach Bielema occupied a unique role as a Special Assistant, from an HR perspective, an annual salary of \$100,000 was completely in line with the most comparable, meaningful benchmarks.
69. Neither Coach Bielema nor anyone acting on his behalf has ever disclosed to Coach Belichick or anyone else in the Patriots organization that the first \$150,000 of income he earned in 2018 was exempt from repayment to the Foundation or that, for income he earned in 2019, the first \$125,000 would be exempt. Nor has Coach Bielema or anyone acting on his behalf ever given any hints about those contractual exemptions or attempted to convey that information to the Patriots organization surreptitiously. No one in the Patriots organization, including the head coach, has ever asked Coach Bielema about that subject or expressed any interest in Coach Bielema's contractual arrangements with the Foundation.
70. Based on his performance and contributions as "Special Assistant to the Head Coach," on April 22, 2019, Coach Bielema was promoted to the position of "Assistant Coach" and assumed additional responsibilities that included on-field coaching. Coach Bielema's annual

salary was set at \$250,000. For reasons related to unfounded claims asserted by the Foundation earlier in 2019, Coach Bielema asked that his ongoing agreement with the Patriots about his ability to leave without penalty to accept a DI head coach position be memorialized in his new employment agreement. The Patriots agreed to this request, and the following language was included in Section 5 (D) of Coach Bielema's Assistant Coach Employment Agreement with the Patriots:

(D) In the event the Employee is offered and elects to accept a Division 1 college head coaching position during the Term, the Employee may terminate this Agreement. In the event of such election by the Employee, the Club will thereafter have no obligations or liability of any kind to the Employee.

71. As a result of his extensive experience and success as a college head football coach, his advancement within the Patriots organization, and his experience working directly for the Patriots' head coach, Coach Bielema became an attractive candidate for DI head coach vacancies that were likely to occur during the 2019-20 "coaching carousel." In fact, not long after Coach Bielema joined the Giants, it was common knowledge among people who follow NFL and college football that Coach Bielema was still trying to return to college football as a head coach. As one example of this widespread belief, on February 22, 2020, a sportswriter who covers the Giants for *USA Today Sports*, wrote:

"[T]here's just something about senior defensive assistant/outside linebackers coach Bret Bielema's continued flirtation with the college ranks that bugs me. It's almost as though he "settled" for the Giants job and is just waiting for a more attractive suitor to come along."

Bret Bielema's Continued Flirtation with College Football; and More, *USA Today Sports* (Feb. 20, 2020).

72. What's more, before the 2019-20 "coaching carousel" was underway, prominent national sportswriters were observing that Coach Bielema was also well-positioned to become an NFL head coach – a position that commands annual salaries in the range of \$8-12 million.

"Bret Bielema, defensive line coach, New England Patriots

The former big-time college coach is moving up the ranks in New England at a time when the Patriots are touting an unstoppable defense. I like Bielema because he's been the head coach in high-pressure jobs before, has access to and knowledge of college offenses and has spent a few years in various roles under Bill Belichick. He is different from the slew of other Patriot assistants in that Bielema had success and his own persona before coming to New England."

NFL's Next Head Coaches? 15 Coordinators and Position Coaches to Watch, *Sports Illustrated* (Sept. 17, 2019).

"Bret Bielema, DL Coach, New England Patriots

The former Wisconsin and Arkansas coach is in his second season on Bill Belichick's staff, adding NFL coaching experience to his extensive college résumé. New England's defensive performance this season (and the latter part of 2018) is the kind of performance teams want to try to get a piece of, and the construction of the staff doesn't offer a lot of candidates. Belichick oversees the operation, and teams obviously can't get him. Inside linebackers' coach Jerod Mayo is in his first year of coaching. Secondary coach Steve Belichick is ... probably sticking around, you would think. Bielema is the most hireable of the bunch, and since he has 20-plus years of college coaching experience (including 12 as a head coach) before he was in New England, he doesn't necessarily carry the stigma of past Belichick assistants who couldn't hack it elsewhere."

13 NFL Assistants Who Could Get Head Coach Interviews: Get to Know These Names, *ESPN* (Oct. 11, 2019).

73. The same qualities and experience mentioned by *ESPN* and *Sports Illustrated* also made Coach Bielema an attractive candidate to other NFL teams that wanted to add coaches and coordinators to their staff. As someone who had decades of coaching experience and success

in various leadership roles, as well as a track record and reputation for leading with integrity, by the end of 2019, Coach Bielema had become a recruiting target for other NFL teams.

74. In January 2020, Coach Bielema was given the opportunity to join the Giants' coaching staff. After further conversations, Coach Bielema accepted a position with the Giants as "Outside Linebackers/Senior Assistant," an even larger role than the "Assistant Coach" role he had with the Patriots. Coach Bielema's annual salary with the Giants was set at \$400,000, an increase of \$150,000 compared to his salary with the Patriots. As he had done with the Patriots, Coach Bielema asked that his employment agreement include a provision that would allow him to leave the Giants at any time without penalty to accept a DI head coach position. The Giants agreed to do so, and language reflecting that agreement was included in Coach Bielema's Assistant Coach Employment Agreement, dated January 22, 2020.
75. When Coach Bielema joined the Giants, it was common knowledge both in college and professional football that he might soon leave the NFL to take another head coach position in one of the Power Five conferences. For example, less than a month after joining the Giants' coaching staff, sportswriters were mentioning Coach Bielema as a potential candidate to replace Coach Mark Dantonio at Michigan State University ("MSU") and reporting that Coach Bielema had a "definite" interest in that job. Giants assistant Bret Bielema could already be on way out, *New York Post* (Feb. 17, 2019); New York Giants' Bret Bielema has 'definite' interest in coaching at Michigan State, *Elite Sports NY* (Feb. 10, 2020).
76. Throughout his tenure with the New England Patriots and the New York Giants, Coach Bielema exercised his best efforts to be considered as a candidate and be hired as the head football coach at a DI school. ADs and search firms were fully aware that, during his time

with the Patriots, Coach Bielema was part of the coaching staff that won a Super Bowl and that he went on to be promoted as a defensive assistant on the team that led the NFL this past season. His employment by the Patriots and the Giants did not in any way impair his ability to obtain a DI head coach position and instead enhanced his candidacy for any such positions.

Coach Bielema Diligently and Faithfully Fulfilled His Obligations to the Foundation

77. On January 29, 2018 (the day before the Final Buyout Agreement was signed), sportswriter Andy Staples posted a *Sports Illustrated* story based on an interview he'd done with Coach Bielema about his future plans. Among other comments attributed to Coach Bielema in the story was the following statement about his desire to return to college coaching:

“I had a morning last week where I had to drop the dogs off to get groomed, pick up a UPS package, make a stop at the pharmacist to pick up a prescription for my daughter and pick the dogs back up,” said Bielema, who became a dad for the first time in July and who was fired in November after five seasons at Arkansas. ‘I said “I need to get back into coaching pretty quick. This is getting to be too much.”’

Offering his own commentary on Coach Bielema's future, Andy Staples wrote:

“More than likely, Bielema will wind up back in college as a head coach at some point. He went 29–34 at Arkansas, but he has three Big Ten titles on his résumé from Wisconsin. He'll get another chance.”

Lessons Learned from His Arkansas Tenure, Bret Bielema Has a Decision to Make, *Sports Illustrated* (Jan. 29, 2018).

78. As evidenced by numerous online sports news stories, podcasts, opinion columns, and other publicly available information that was easily accessible to ADs and search firms, from the date the Final Buyout Agreement was signed until the filing date of this Complaint, it has been common knowledge among ADs and search firms that Coach Bielema wanted to land

another head coach position at a DI school and was available to assume such a role. *See, e.g., Bret Bielema to Kansas makes sense – but so do these four schools, Sporting News* (July 6, 2018) (also mentioning Iowa, Illinois, and Colorado); *K-State AD on eventually replacing Bill Snyder: It’s a matter of finding the right one that fits here, College Football Talk* (April 7, 2018).

79. As further alleged below, Coach Bielema has done nothing to breach the terms of the Final Buyout Agreement. To the contrary, by adhering to standard established practices in college football, Coach Bielema continues to be well-positioned to obtain a multi-year head coach contract next season that will extinguish most, if not all, of what he is owed in buyout compensation. Although not intended to be exhaustive, the following examples of Coach Bielema’s efforts to be hired as a collegiate head coach in 2018 show the absurdity of the Foundation’s intentionally uninformed perspective.
80. Three days after Coach Bielema was fired, Mr. Cornrich sent him two e-mails that included media accounts about Nebraska’s head coach search which mentioned Coach Bielema’s name as a potential candidate. Coach Bielema promptly contacted Tom Osborne, who had been the head football coach at the University of Nebraska for many years and later served as Nebraska’s AD. Coach Bielema’s specific purpose in reaching out to Mr. Osborne was to express his interest in the vacant head coach position at Nebraska. A few days later, Nebraska announced that Scott Frost would become the new head football coach at his alma mater.
81. Within a few days of being fired, Coach Bielema placed a phone call to Jean Boyd, Deputy AD at Arizona State (“ASU”) and shared with him his interest in ASU’s vacant head coach

position. On December 3, 2017, ASU announced that Herm Edwards had been hired as the school's new head football coach.

82. Between January 5-8, 2018, Mr. Cornrich corresponded with Glenn Sugiyama of DHR International (a well-known search firm) to make sure that he was aware of Coach Bielema's interest in the vacant head coach position at the University of Arizona.

From: Neil Cornrich
Sent: Friday, January 5, 4:00 PM
Subject: Bret Bielema - University of Arizona
To: Glenn T. Sugiyama

Glenn,

Please see the articles below about Coach Bret Bielema, particularly the highlighted portions.

Bret is very interested in the position of Head Football Coach. I look forward to discussing this possibility with you at your convenience (office 216-514-9999, mobile 216-402-5555).

Thank you very much.

NC

83. Mr. Sugiyama replied with the following message:

☆ Glenn T. Sugiyama @
Re: Bret Bielema - University of Arizona
To: Neil Cornrich

I will call him....Arkansas is my client so I know the situation....
Please send me his cell.
Thanks Neil...I will keep you informed.
Best,
Glenn

A week after this e-mail exchange, Kevin Sumlin was named as Arizona's new head football coach.

84. On April 9, 2018, Mr. Cornrich sent an e-mail to Coach Bielema with a news story about the Kansas State AD eventually replacing Head Coach Bill Snyder, which mentioned Coach Bielema as a possible successor.

☆ Neil Cornrich @

K-State AD on eventually replacing Bill Snyder: It's a matter of finding the right one that fits here

To: JenBret Bielema

85. On April 10, 2018, Mr. Cornrich sent an e-mail to Coach Bielema with a news story about the next coaches to join the Alliance of American Football, mentioning Coach Bielema as one to watch.
86. On July 9, 2018, Mr. Cornrich sent an e-mail to Coach Bielema regarding potential head coach openings in the near future at Kansas, Kansas State, Iowa, Illinois, and Colorado.
87. On September 17, 2018, Mr. Cornrich forwarded an e-mail to Coach Bielema from a prominent search firm, with whom Mr. Cornrich had spoken about Coach Bielema's interest in potential college head coach openings.

From: Chad Chatlos <Chad@ventura-partners.com>
Sent: Monday, September 17, 2018 4:07 PM
To: Neil Cornrich <neil@ncsports.us>
Subject: Wed, Sept 19

NC,

Good to catch up quickly. As I mentioned on the phone, I will be in Boston this Wed and have the entire morning open. If Bret has any time to catch up, let me know and I will make it happen. If this is a bad week, then no worries. Will catch up with him another time.

Best,
Chad

88. On November 8, 2018, Mr. Cornrich sent an e-mail to Coach Bielema with a list of potential head coach openings in the NFL.
89. On November 11, 2018, Mr. Cornrich sent an e-mail to Coach Bielema with a news story concerning what Jeff Long, the AD at Kansas, was looking for in head coach candidates. (Subsequent events revealed that Les Miles was the only candidate who was seriously considered for that position.)
90. On November 14, 2018, Mr. Cornrich sent an e-mail to Coach Bielema with an attached voice message from Dan Graziano of *ESPN*, with Mr. Graziano confirming that Mr. Cornrich had mentioned Coach Bielema on the record as a candidate for potential college head coach openings.

Bret,

FYI - please see the attached message from Dan Graziano of ESPN. When I spoke to Dan, I mentioned you as a candidate. Dan also remarked that he saw you coming out of the locker room in Nashville (he was there to cover the game).

NC

91. At no time during 2018 did any AD, member of a search committee, or anyone associated with a search firm reach out to Coach Bielema or Mr. Cornrich inquiring about Coach Bielema's: (a) interest in a DI head coach position; (b) availability to assume such a role; or (c) willingness to be considered for a particular position.
92. The Foundation contends that, by accepting employment with the Patriots in 2018, Coach Bielema took himself off the market for any DI head coach positions for which he may have been considered. The foregoing evidence indisputably establishes the falsity of that assertion. Not only was Coach Bielema still on the market as a DI head football coach while working for the Patriots; throughout 2018, he and his agent were proactively expressing Coach Bielema's interest to search firms and schools that had DI head coach vacancies.
93. Coach Bielema's efforts to improve his marketability paid off during the 2019-20 "coaching carousel." Representatives of several universities contacted him during this time frame about his interest in a head coach position. Coach Bielema promptly and enthusiastically engaged with each and every one of them and expressed his interest in filling their vacant head coach position. Those schools included Florida Atlantic University, Boston College, the University of South Florida, Baylor, Rutgers, Michigan State, and Colorado. Coach Bielema was a finalist for the head coach positions at Rutgers and Colorado and was interviewed by the Athletics Directors at both those schools as part of the selection process. Coach Bielema was one of two or three finalists at both Rutgers and Colorado. Coach Butch Jones, now "Special Assistant" at a highly successful Power Five program, was also a

finalist for the head coach vacancy at Rutgers. At the end of the selection process, both Rutgers and Colorado selected another candidate.

94. The members of the Foundation's leadership who assessed and made decisions about whether Coach Bielema had met his obligations under the Final Buyout Agreement turned a blind eye to the easily verifiable reasonable pathways that displaced head coaches have taken to obtain high-paying multi-year head coach contracts at another DI school. They also ignored and/or made no effort to review highly relevant data about the odds of Coach Bielema being hired in 2018, 2019, or the early part of 2020. Nor did they take into account what's common knowledge among ADs and search firms: with rare exceptions, a head coach who has been fired for not winning enough games is considered "damaged goods" and drops to the bottom of the candidate pool until he proves he still has what it takes to run a winning program. Based on the foregoing, the Foundation's leadership knew, or should have known, that no matter how much effort Coach Bielema made to be hired as a head coach at another DI school, the chance of that happening anytime soon were less than eleven percent (11%).

The University's AD Appears to Have Been the Driving Force Behind the Foundation's Decision to Stop Paying Coach Bielema

95. Hunter Yurachek was introduced as the University's new AD at a press conference on December 4, 2017. In his first public appearance as the Razorbacks' AD and on numerous public occasions thereafter, Mr. Yurachek expressed in strong terms his disdain for large buyout payments being made to head football coaches who don't maintain a winning track record:

"To me, losing football games is [reason for being] terminated with cause. And the protection that coaches are provided with in their contracts to me is ludicrous."

New Arkansas AD: ‘Get a handle on coaching contracts and buyouts’, *Talk Business* (Dec. 6, 2017). It was clear to sportswriters who attended Mr. Yurachek’s first press conference that his strident criticism was aimed at Coach Bielema’s buyout agreement, among others:

“In the two years since Hunter Yurachek arrived in Arkansas, he’s talked about the need to halt the practice of paying obscene coaching buyouts for coaches who have failed to produce wins. Yurachek was almost surely talking about the ridiculous buyouts of *Bret Bielema*, Gus Malzahn, Jimbo Fisher and, of course, Chad Morris. The list goes on. Yurachek also admitted that the University of Arkansas couldn’t do it alone because it would put us at a competitive disadvantage.”

Hunter Yurachek, Sam Pittman, and Wall Street’s Gordon Gekko, *Best of Arkansas Sports* (Dec. 11, 2019) (emphasis added). During his nineteen-month tenure as the Razorbacks’ AD, Mr. Yurachek has continued to voice his strong opinion about “ludicrous” buyout agreements:

“Obviously, it’s a challenge for us to take that money from somewhere and apply it to a buyout. . . . Well, the buyout situation throughout college athletics I don’t think is great,’ Yurachek said. ‘I mean, there’s huge buyouts in all these contracts, and I did say I thought that -- and I said it in my opening press conference -- that losing football games should be condition for terms of your employment to be nullified.’”

Hogs’ AD Yurachek dislikes big-figure buyouts, *Arkansas Democrat-Gazette* (Nov. 13, 2019).

“I said from Day One at my press conference that I don’t think we should pay a full buyout to coaches who aren’t successful at the job we hire them for,” Yurachek told the media. “We’ve got to stop in this industry these huge buyouts.”

Arkansas AD Hunter Yurachek Fed Up with High Buyouts, Explains How Sam Pittman’s Buyout Will Work, *Saturday Down South* (Dec. 9, 2019).

96. As alleged above, the AD has considerable influence over the Executive Director of the Foundation. At a minimum, Mr. Yurachek exerted pressure on the Executive Director to find some justification for terminating the monthly buyout payments to Coach Bielema. If Mr. Yurachek was not the architect of the Foundation's strategy to accomplish that objective, he certainly approved it.

The Foundation Blindsided Coach Bielema with a Demand Letter on January 31, 2019

97. On January 31, 2019, without having made any inquiry of Coach Bielema, Mr. Cornrich, or the New England Patriots or conducting any investigation or research to determine the facts, the Foundation's outside counsel blindsided Coach Bielema by sending him a letter ("the Demand Letter") which made it appear that the Foundation's leadership had come completely unhinged. Among other things, the Demand Letter said it "seemed crystal clear" Coach Bielema was "well aware" of his "material breaches" and "made no efforts, diligent or otherwise, to obtain replacement employment of the same or similar character." Staying true to its reliance on baseless falsehoods, the Foundation went on to say; "[T]o the extent you did obtain employment, you did so only to maximize your personal income to the detriment of the Foundation and, at the same time, contractually bound yourself to avoid your obligations to the Foundation." The Demand Letter also included a litany of intentional or reckless misrepresentations that included: (a) false assertions based on mistaken assumptions that appeared to be the result of willful blindness, "perception bias," and erroneous interpretations and disregard of relevant contract provisions, or some combination of the foregoing; (b) an assertion about Coach Bielema's reporting obligations that was both inaccurate and squarely at odds with Arkansas law as well as the contractual requirement that any such claims be preceded by "notice and an opportunity to cure"; (c) a demand that

Coach Bielema pay the Foundation “not less than \$4,234,999.96” (*i.e.*, the full payments made to him under the Final Buyout Agreement); (d) notification that the Foundation would not make any further payments under the Final Buyout Agreement;¹² (e) an accusation that Coach Bielema manipulated his compensation arrangements with the New England Patriots to bring his salary just under the applicable exemption of \$150,000; (f) a statement of the Foundation’s intent to commence litigation against Coach Bielema in the Circuit Court of Washington County if he did not pay the Foundation \$4,234,999.96 on or before February 15, 2019. The Executive Director and the Foundation Board members knew, or in the exercise of reasonable diligence should have known, of the specific assertions set forth in the Demand Letter before it was sent to Coach Bielema. Given the long-term consequences for Razorback football of becoming known as the school that stiffes its former coaches,¹³ and considering the incestuous relationship between the Athletics Department and the Foundation, it is inconceivable that the Foundation would have stopped making the monthly buyout payments and threatened Coach Bielema with a multi-million dollar lawsuit unless Mr. Yurachek was either the architect of that plan or unequivocally expressed his support for it.

¹² Although the Foundation said in its Demand Letter that it would “cease all future payments,” the Foundation made another monthly buyout payment to Coach Bielema just a few days later. The Foundation has made no further payments to Coach Bielema since that time.

¹³ On November 18, 2019, with Mr. Yurachek’s approval, the University sued the Razorbacks’ former defensive line coach, John Scott, for \$187,863.32, alleging he had breached the terms of the buyout clause in his employment contract.

The Foundation Turned a Blind Eye to any Information that Might Reveal the Fallacy of its Legal Position

98. Prior to sending the Demand Letter to Coach Bielema on January 31, 2019, and continuing to the filing date of this Complaint, the Foundation deliberately failed to do any research or make any inquiries a reasonable, objective person would make under the circumstances before accusing Coach Bielema of failing to meet his obligation to seek new employment. Worse yet, after sending the Demand Letter to Coach Bielema, the Foundation intentionally took actions to remain uninformed despite the best efforts of Coach Bielema's lawyers to provide information that would reveal the legal significance of the truth and the glaring defects in the assumptions and reasoning that formed the basis for the Demand Letter. The Foundation's refusal to meet and confer with Coach Bielema's lawyers was not only evidence of the Foundation's bad faith. It was also a breach of section five (5) of the Final Buyout Agreement, which required the parties to "work in good faith to share any required information and make all permitted deductions or offsets required by this Agreement."
99. The Foundation's stubborn adherence to a position of willful blindness was based on a strategy to unlawfully reduce its buyout obligation to the amount the University and the Foundation had planned on paying when they became aware of the multi-million dollar gap between what Coach Bielema's Final Buyout Agreement actually said and what they wished it said. The methods used by the Foundation in seeking to accomplish this financial objective, and its conscious disregard of information that would have shown its legal position to be frivolous, exemplifies bad faith commercial behavior of the worst kind.

The Foundation Made Public Statements that Portrayed Coach Bielema in a False, Negative Light and Interfered with his Ability to Obtain a DI Head Coach Position During the 2019-20 “Coaching Carousel”

100. At the time the Foundation sent Coach Bielema the Demand Letter, it knew or should have known that it would be career-limiting for any former DI head coach to be characterized by his former employer as a person who can't be trusted to honor a contract. Knowing or having constructive knowledge of this truism, it was in the best interests of the Foundation and the University, and to a greater degree Coach Bielema, for the Foundation and the University to take steps to protect the confidentiality of any information that would suggest Coach Bielema had dishonored his agreement with the University. Instead of taking such steps, the Foundation made gratuitous public statements in 2019 and 2020 that interfered with Coach Bielema's efforts to obtain employment as a DI head coach.
101. On or about May 15, 2019, a journalist contacted the University and/or the Foundation seeking comment on information he had obtained from a reliable source who said that the Foundation had stopped making buyout payments to Coach Bielema. The Foundation could have referred the journalist to the University's media relations office or given the standard “we don't comment on personnel matters” response. Instead, with knowledge that it was about to create another obstacle for Coach Bielema to overcome in being hired as a DI head coach, the Foundation issued a carefully scripted statement that said:

“Consistent with normal practice, the Razorback Foundation is in communication with Coach Bret Bielema's representatives regarding our agreement. The Razorback Foundation is enforcing its agreement with Coach Bielema to protect the interests of our members and the organization.”

Razorback Foundation says negotiations ongoing with Bret Bielema, *katv.com* (May 15, 2019). By using the phrase “enforcing its agreement” in this statement, Foundation knew or should have known that the most casual observer would probably conclude that Coach

Bielema had dishonored his contractual obligations to the Razorbacks. In fact, it didn't take long for the local media to report that information. The very next day, quoting a "a source familiar with the situation," *Arkansas Business* reported that the Foundation had stopped making monthly buyout payments to Coach Bielema. Razorback Foundation Enforces Contract, No Payments to Bret Bielema in 2019, *Arkansas Business* (May 16, 2019).

102. Apparently not content with publicly discrediting Coach Bielema just once, the Foundation decided to repeat its self-serving public criticism of Coach Bielema when responding to an inquiry from the *Arkansas Democrat-Gazette*. Instead of declining to comment as Coach Bielema's representatives did, the Foundation replied to the reporter with the following statement that was published in the *Arkansas Democrat-Gazette* on June 7, 2020: "[B]ased upon inquiry, investigation and consultation with legal counsel, the Foundation concluded that it has no further payment obligation to Bret Bielema." \$1M gifts roll in for UA athletics, *Arkansas Democrat-Gazette* (June 7, 2020). At the time the Foundation made this statement, it knew or should have known that the vast majority of readers of the *Arkansas Democrat-Gazette* would interpret its statement to mean that Coach Bielema had dishonored his agreement with the Foundation.

The Foundation Secretly Leaked False Information to the Press that Portrayed Coach Bielema in a False, Negative Light and Interfered with his Ability to Obtain a DI Head Coach Position During the 2019-20 "Coaching Carousel"

103. Prior to October 24, 2019, the Foundation surreptitiously gave blatantly false and misleading information to a prominent Arkansas journalist which portrayed Coach Bielema in a false, negative light and called into question his integrity and character. The Foundation's manipulation of the local media, and the national republication of negative

commentary that was based on false information, lessened the chances of Coach Bielema being selected as a Power Five head coach during the 2019-20 “coaching carousel.”

104. On March 19, 2019, during an exchange of e-mails between outside lawyers representing Coach Bielema and the Foundation, Coach Bielema’s lawyer sent an e-mail to the Foundation’s lawyer to share additional details of the efforts Coach Bielema had made to seek a DI head coach position in 2018. One of the entries in the timeline that was included in that e-mail said:

“1/5/18 – 1/8/18: Correspondence with Glenn Sugiyama of DHR International (search firm) regarding Coach Bielema and the Head Coach position at the University of Arizona. See attached.”

The referenced attachment was an e-mail from Mr. Cornrich to Mr. Suguyama, which said: “Bret Bielema - University of Arizona” in the subject header. The full text of the e-mail confirmed Coach Bielema’s interest in the vacant head coach position at the University of Arizona:

“Glenn,

Please see the articles below about Coach Bret Bielema, particularly the highlighted portions.

Bret is very interested in the position of Head Football Coach. I look forward to discussing this possibility with you at your convenience. [office and mobile phone numbers redacted.]

Thank you very much.

NC”

The e-mail exchange between Mr. Cornrich and Mr. Sugiyama was a private matter, and the subject of the e-mail exchange was never disclosed to anyone else by Coach Bielema, Mr. Cornrich, or anyone acting on their behalf.

105. In contrast to the Foundation’s approach of publicizing its decision to stop paying Coach Bielema, upon receipt of the Demand Letter, and continuing thereafter, Coach Bielema and Mr. Cornrich took measures to ensure that the existence and contents of the Demand Letter were known only to them and Coach Bielema’s legal representatives, none of whom shared that information with anyone. Coach Bielema and Mr. Cornrich were fully aware that the public disclosure of this contract dispute, to say nothing of the Foundation’s claim that Coach Bielema had not kept his word, would likely impede Coach Bielema’s ability to obtain a Power Five head coach position. Since January 31, 2019 and continuing until the filing of this Complaint, Coach Bielema, his agent, and his lawyers have treated the existence and contents of the Demand Letter as highly confidential.
106. On October 24, 2019, Wally Hall, the most widely read Arkansas sports columnist, wrote a column entitled “Arkansas Should be Free of Buyout Burden” that was published in the *Arkansas Democrat-Gazette*. In relevant part, Mr. Hall’s commentary is quoted below with italics added for emphasis:

“It has become fairly common knowledge that the Razorback Foundation, with the blessing of the University of Arkansas, decided former head coach *Bret Bielema was not living up to his end of the contract*. His contract called for him to actively pursue another job. Instead, *Bielema became a volunteer for the New England Patriots for more than a year*. Then it was announced he would become the defensive line coach for the Patriots in 2019. His Arkansas contract, approved by former athletic director Jeff Long, even allowed Bielema to *make \$50,000 a year* and it not count against his monthly payments from his buyout. *If the Patriots are sticking it to the Razorback Foundation and paying Bielema just \$50,000 a year, ... [implying that the Patriots were doing that]. And shame on Bielema for not seeking a full-time job within weeks of being fired. He was very hireable [sic] off his Wisconsin resume -- probably not in the SEC, but certainly in other conferences.*”

Arkansas Should Be Free of Buyout Burden, *Arkansas Democrat-Gazette* (Oct. 24, 2019).

107. Two weeks later, on November 6, 2019, Mr. Hall, wrote another column about Coach Bielema entitled “Breached Bielema buyout agreement could be costly” that was also published in the *Arkansas Democrat-Gazette*. In relevant part, the commentary from Mr. Hall’s column is quoted below with italics added for emphasis and bold text used to identify words that were copied straight from the Foundation’s Demand Letter and pasted into Mr. Hall’s column:

“In January, Bielema received an email from Ney, of the Friday firm, informing the former Arkansas coach he had breached the agreement in which he was required to:

- *Diligently seek and obtain other employment of the same or similar nature;*
- *Provide a written summary to the Razorback Foundation of his efforts to find other employment twice a year;*
- *Notify the Foundation in writing of other employment obtained and income received; and*
- *Use his best efforts to maximize earning potential with any new employer.*

It seems the Foundation and Ney felt Bielema failed all four of those requirements and therefore breached the agreement. Bielema's lawyer answered with a laundry list of ways Bielema had searched for head coaching jobs, but when studied there were several emails between Bielema and Cornrich about various subjects. There was a hint about Arizona, which was already looking at Kevin Sumlin. There were several media speculations that Bielema was in line for a job, but there were no quotes from him. Meanwhile, Bielema was an unpaid volunteer for the Patriots for an entire year, and of the 10 Power 5 openings, he sought none. He was quoted last year as saying he may not return to the college ranks.”

Breached Bielema Buyout Agreement Could Be Costly, *Arkansas Democrat-Gazette* (Nov. 6, 2019).

108. To better illustrate that Mr. Hall must have had a copy of the Demand Letter when he wrote his column, what follows is a verbatim excerpt from the Demand Letter. The italicized

sentence in the first bullet point and the italicized words in the other three bullet points are identical to the words used by Mr. Hall in his November 6, 2019 column. The changes in pronouns and the other insignificant differences are shown in bold print:

“As you are aware, the Agreement requires that you attempt to mitigate the Foundation’s continuing payments to you by diligently seeking new employment and then using your best efforts to maximize your earnings. More specifically, beginning in January 2018, you were required to:

- *Diligently seek and obtain other employment of the same or similar character;*
- *Provide a written summary to the Foundation of **your** [WH changed to “his”] efforts to find other employment **every six months** [WH changed to “twice a year”];*
- *Notify the Foundation in writing of other employment **you have** [WH deleted these two words] obtained and **the** [WH deleted this word] income **you have** [WH deleted these two words] received from such employment; and*
- *Use **your** [WH changed to “his”] best efforts to maximize **your** [WH deleted this word] earning potential with any new employer.*

You have failed to comply with each and every one of these requirements, and therefore, you materially have breached the Agreement. [Reworded by WH to say “The Razorback Foundation believes that Bret Bielema failed to meet the requirements for his buyout.”]

109. Given that Coach Bielema had no incentive to share any of that information with Mr. Hall and that no one other than people within the Foundation (and perhaps the Athletics Department) had knowledge of the March 19, 2019 e-mail with the reference to Arizona or the contents of the Demand Letter, the evidence leads to the inescapable conclusion that before Mr. Hall wrote his first column on October 24, 2019, a representative of the Foundation, or someone else acting on its behalf, provided Mr. Hall with a copy of: (a) the Foundation’s Demand Letter; and (b) the e-mail Coach Bielema’s lawyer sent to the Foundation on March 19, 2019 that included a reference to Arizona and a number of

attached e-mails corroborating the events in the timeline. The transmittal of false and derogatory information to Mr. Hall by or on behalf of the Foundation was done with knowledge of the falsity of the derogatory information, or with reckless disregard for the truth, and with the specific intent to harm Coach Bielema.

110. The false information provided to Mr. Hall formed the basis for the following statements to be published about Coach Bielema,¹⁴ none of which were true and all of which falsely portrayed him as a person who can't be trusted to honor his commitments:

- a. "Bret Bielema was not living up to his end of the contract."
- b. "[S]hame on Bielema for not seeking a full-time job within weeks of being fired."
- c. "He was very hireable [sic] off his Wisconsin resume -- probably not in the SEC, but certainly in other conferences."
- d. "Bielema became a volunteer for the New England Patriots for more than a year."
- e. "[Inferring that] the Patriots are sticking it to the Razorback Foundation and paying Bielema just \$50,000 a year."

111. Both of Mr. Hall's October 24 and November 6 columns were republished, in whole or in part, by various local and national media outlets and other online news platforms including NBC Sports and MSN. Within 24 hours of his first column, what Mr. Hall had referred to as "fairly common knowledge" in Northwest Arkansas was suddenly common knowledge

¹⁴ Nothing alleged herein is intended as criticism of Mr. Hall or the *Arkansas Democrat-Gazette*. Coach Bielema assumes that Mr. Hall had no reason to believe that his source was using the media in an attempt to pressure Coach Bielema into agreeing to accept roughly half of what he is owed.

on a national scale. *See, e.g., Arkansas has reportedly stopped paying Bret Bielema's buyout, NBC Sports (Oct. 25, 2019).*¹⁵

112. The Foundation's conduct, as described hereinabove, constitutes a violation of the "non-disparagement clause" in the Final Buyout Agreement:

"The Parties agree not to make disparaging remarks regarding Bielema, the Foundation, its directors, officers, and employees, or the University of Arkansas, its governing Board, or its officers, representatives and employees, and to state, if asked, that any differences between or among them were resolved on an amicable basis. The promises set forth in this Agreement, and the document itself, shall not be used by either Party in any manner, whether directly or indirectly, for any purpose other than to enforce their respective rights hereunder, unless otherwise compelled by law."

Exhibit 5, at 7 ¶ 11.

The Foundation Ignored the Final Buyout Agreement Dispute Resolution Process

113. The timing of the Foundation's Demand Letter was strange considering that the 2018-19 "coaching carousel" could still spin off one or two more DI head coach openings for which Coach Bielema could be a strong candidate. What made the timing even more perplexing was the Foundation's disregard of a provision in the Final Buyout Agreement that was intended to facilitate the resolution of any dispute about the amount of money the Foundation owed Coach Bielema. By sending the Demand Letter to Coach Bielema without making any reasonable inquiry to determine the facts, the Foundation deliberately disregarded section 5.B(v) of the Final Buyout Agreement. Moreover, the contractual dispute resolution procedure in the Final Buyout Agreement wasn't optional; beginning in

¹⁵ On June 9, 2020, another column written by Mr. Hall was published in the *Arkansas Democrat-Gazette* in which Mr. Hall said the Foundation's decision to stop paying Coach Bielema wasn't "new news."

2018, that provision in the Final Buyout Agreement *required* the parties to meet in person or confer by phone to resolve any disputes of the kind the Foundation abruptly revealed in its Demand Letter. More specifically, the parties had agreed in section 5.B(v) to the following *mandatory* dispute resolution procedure:

“Within 60 days after each calendar year ending on December 31, 2018, December 31, 2019, and December 31, 2020, the Parties will meet in person or via telephone to conduct a reconciliation meeting regarding any outstanding amounts owed to either of them. The Parties will cooperate in good faith and share all necessary records to conduct and complete the reconciliation process.”

Exhibit 5, at 6 ¶ B(v).

114. Even though the Final Buyout Agreement made the dispute resolution meeting mandatory, the Foundation never proposed such a meeting either before or after sending the Demand Letter of January 31, 2019.

The Foundation Placed Unreasonable Conditions on its Willingness to Meet with Coach Bielema’s Lawyers for the Purpose of Discussing the Disputed Facts and Applicable Law

115. During 2018, the Foundation declined several written requests by Coach Bielema’s counsel to meet with the Foundation’s outside legal counsel (with or without the Executive Director being present) to share information and discuss the disputed facts of this matter and the applicable law. The Foundation agreed to meet, but only on the condition that Coach Bielema first make what the Foundation would consider to be a “serious” settlement offer. With nothing more than preconceived opinions, mistaken assumptions, and a strong incentive to avoid its financial commitments to Coach Bielema, the Foundation’s idea of what a “serious” settlement offer looked like was, of course, vastly different than the more informed perspective of Coach Bielema and his lawyers. Therefore, Coach Bielema’s lawyers continued to press for a meeting that wouldn’t require a multi-million dollar down

payment. In response to each such request, the Foundation steadfastly stood its ground – further evidencing its desire that the truth not contaminate its “fact-free” assessment of whether Coach Bielema had committed a breach of contract.

116. On January 31, 2020, exactly one year after receipt of the Foundation’s Demand Letter, Coach Bielema’s legal team requested the Foundation to participate in the annual dispute resolution meeting required by section 5.B.(v) of the Final Buyout Agreement. Again, the Foundation refused to meet or engage in a fact-sharing discussion with Coach Bielema’s legal team, never budging from its position of “make a serious settlement offer first, then we’ll talk.” Therefore, no fact-sharing meeting or discussion ever occurred.

Coach Bielema Fulfilled his Reporting Obligations

117. The Foundation’s assertion that Mr. Cornrich’s constant updates to the Foundation did not satisfy the reporting requirement in the Final Buyout Agreement ignores indisputable facts and firmly established principles of Arkansas law. The reporting requirement, as set out in the agreement, is as follows:

“Every six (6) months during the life of this Agreement, Bielema shall provide a written summary to the Foundation of his efforts to find other employment.”

Exhibit 5, at 4 ¶ 5.B(i).

118. As is common in commercial contracts with large sums of money at stake, the Final Buyout Agreement included a requirement that neither the Foundation or Coach Bielema could take action based on an alleged breach of contract by the other party without first giving the other party “notice and a reasonable opportunity to cure”:

“The Parties agree that a violation on their part of any covenants contained in this Agreement, *following notice and reasonable opportunity to cure*, will give

rise to an action to enforce this Agreement to the extent permitted by Arkansas law.”¹⁶

119. Coach Bielema’s Employment Agreement included a similar provision that more specifically addressed the parties’ intention that the failure to timely deliver an adequate summary could not be used in a “gotcha” fashion to claim a breach of contract:

“If Coach fails or refuses either to notify the University or its third-party guarantor of Coach’s employment in a Coaching Position or to furnish the monthly Coaching Position gross compensation reports after receiving a formal, written request to do so from the University’s third-party guarantor, then *after giving Coach fourteen (14) days written notice*, the obligation of the University’s third-party guarantor to continue paying the total Guaranty Payment shall cease immediately.”

Exhibit 1, at 29 ¶ 15(b).

120. As further alleged below, not once did the Foundation express any concerns about the timing or substance of Coach Bielema’s reporting during the first two six-month reporting periods. Nor would it have had any grounds to do so. After all, Mr. Cornrich was reporting everything of substance far in advance of the end of each six-month reporting period.
121. Nor did the Foundation ever give Coach Bielema “notice and a reasonable opportunity to cure” any perceived deficiencies in Coach Bielema’s reporting – a contractual prerequisite for claiming that a failure of his reporting obligation is an actionable breach of contract. The first mention of any alleged deficiency in Coach Bielema’s reporting was in the Demand Letter dated January 31, 2019, in which the Foundation made the self-serving and erroneous determination that providing Coach Bielema an “opportunity to cure” the alleged deficiencies would be “futile.” Furthermore, the form, substance, and timing of the semi-

¹⁶ *Id.* at 7, ¶ 12. The significance of this clause will become readily apparent in a later section of this Complaint.

annual reports was not “material” and, for that additional reason, was not actionable. Finally, the irrefutable facts alleged below establish a sequence of conduct between the parties that involved repeated occasions for performance by Coach Bielema. With knowledge of the nature of his performance and the opportunity to object, the Foundation accepted and acquiesced in the form, substance, and timing of the reports Mr. Cornrich sent to the Executive Director, who not only accepted them without objection, but thanked Mr. Cornrich for the “update.” Therefore, by virtue of the “course of performance” doctrine, the Foundation has no legal basis to assert that the form, substance, and timing of the semi-annual reports constitutes a breach of contract. The e-mail communications between the parties plainly establishes a course of performance that was deemed acceptable to the Foundation for an entire year.

122. Coach Bielema’s independent contractor agreement became effective on April 22, 2018, but Mr. Cornrich did not receive a fully executed copy of the agreement until April 30, 2018. Two days later, on May 2, 2018, Mr. Cornrich sent an e-mail to the Executive Director with the independent contractor agreement attached:

From: Neil Cornrich
Sent: Wednesday, May 2, 2018 8:40 AM
To: Scott Varady <svarady@razorbackfoundation.com>
Subject: Coach Bielema

Scott,

For your records, please see the attached agreement between Coach Bielema and the New England Patriots (**please keep this confidential**). I will continue to keep you informed.

NC

123. Less than thirty minutes later, the Executive Director replied to Mr. Cornrich’s e-mail to Mr. Cornrich *thanking him for “keeping [the Foundation] informed”* and congratulating Coach Bielema on his new employment:

From: Scott Varady <svarady@razorbackfoundation.com>
Date: May 2, 2018 at 9:08:46 AM EDT
To: Neil Cornrich <Neil@ncsports.us>
Subject: Re: Coach Bielema

Dear Neil,

Thanks very much for keeping us informed. I wish Coach the best with this employment and hope it opens additional opportunities for him!

Sincerely,
Scott

124. Knowing that Mr. Cornrich was his point of contact for any questions regarding the Final Buyout Agreement, the Executive Director said nothing in his reply e-mail to suggest that Coach Bielema's new role with the Patriots did not satisfy his obligations under the Final Buyout Agreement. Nor did he inquire or express any concerns about Coach Bielema's compensation.
125. Neither the Executive Director or any other representative of the Foundation ever asked any questions or expressed any concerns about the independent contractor agreement, Coach Bielema's second contract with the Patriots, or anything else related to Coach Bielema's role with the Patriots or his compensation. The next e-mail from the Executive Director was a low-key inquiry about Coach Bielema's status with the Patriots that he sent on July 17, 2018:

From: Scott Varady <svarady@razorbackfoundation.com>
Sent: Tuesday, July 17, 2018 11:06 AM
To: Neil Cornrich <neil@ncsports.us>
Subject: Update

Dear Neil,

Good morning! I hope all is well, and you're having a great summer!

I wanted to touch base and inquire about Bret's current status with the Patriots. I know his initial contract was set to expire at the end of June.

Can you please give us an update at this point? Please tell coach hello for me as well.

Thanks,
Scott

Coach Bielema's second contract with the Patriots had not yet been finalized on July 17, 2018. Knowing the contract would be finalized soon, Mr. Cornrich replied to the Executive Director's e-mail less than thirty minutes after receiving it and said:

From: Neil Cornrich <neil@ncsports.us>
Date: Tuesday, July 17, 2018 at 11:33 AM
To: Scott Varady <svarady@razorbackfoundation.com>
Subject: RE: Update

Hi, Scott.

Hope all is well and that you are having a great summer too! I hope to have an update for you shortly regarding Coach Bielema and the Patriots. I will keep you informed.

Thank you.

NC

126. On July 25, 2018, the *Arkansas-Democrat Gazette* published a news story about Coach Bielema joining the staff of the New England Patriots. The reporter who wrote the story sought a comment from the Executive Director about the level of Coach Bielema's cooperation in keeping the Foundation informed of his obligation to seek new employment. The Executive Director's response to that question was squarely at odds with the wild accusations in the Foundation's January 31, 2019 Demand Letter. In fact, the Executive Director could not have been more complimentary in describing Coach Bielema's compliance with his contractual obligations:

"Scott Varady, executive director and general counsel of the Razorback Foundation, said Tuesday he has been in contact with Bielema's agent, Neil Cornrich, to determine what his compensation will be from the Patriots. 'I have inquired about their current agreement, and they've agreed to respond to me shortly,' Varady said. 'But I don't have anything yet.'

'There's no question they're cooperating and acting in good faith. I would never expect them to act otherwise based on their past conduct.'"

Former Razorbacks Coach Bret Bielema Hired to Consult for New England, *Arkansas-Democrat Gazette* (July 25, 2018) (emphasis added).

127. On August 10, 2018, without any further requests from the Executive Director, Mr. Cornrich e-mailed a copy of Coach Bielema’s “Special Assistant to the Head Coach Employment Agreement” to the Executive Director with a cover note that said:

From: Neil Cornrich
Sent: Friday, August 10, 2018 4:31 PM
To: Scott Varady <svarady@razorbackfoundation.com>
Subject: CONFIDENTIAL: Coach Bielema

Scott,

For your records, please see the attached agreement between Coach Bielema and the New England Patriots (**please keep this confidential**). I will continue to keep you informed.

NC

128. Oddly, the Executive Director never acknowledged receipt of Mr. Cornrich’s August 10, 2018 e-mail. For the next 198 days, until receipt of the Demand Letter, Coach Bielema and Mr. Cornrich didn’t hear a peep out of the Foundation.

The Foundation Recklessly Mischaracterized a *CBS Sports* Story

129. Another egregious example of the Foundation’s reckless disregard of the truth arises from the following false assertion in the Foundation’s Demand Letter:

“You publicly stated to multiple people, *including the media*, that you had no intention of returning to college football—clear evidence of your failure to mitigate.”

(emphasis added).

130. In another section of the Demand Letter, the Foundation went further and said that Coach Bielema had his “representative advise the Foundation that [he] intended to seek a college head coaching position after reportedly *stating to a reporter that [he] had no intention of returning to college coaching.*” (emphasis added). At the time the Foundation’s outside counsel received authority from the Foundation to send the Demand Letter, Mr. Yurachek, the Executive Director, and the Foundation Board of Directors knew, or in the exercise of

reasonable diligence should have known, that there was not a shred of evidence to support that assertion. Coach Bielema has never made such a statement to anyone. The only comment attributed to Coach Bielema by the media about his future plans are those mentioned above in a story authored by *ESPN* sportswriter Andy Staples. Those comments, and Mr. Staples' commentary, are completely at odds with the Foundation's baseless assertion: Coach Bielema said "I need to get back into coaching pretty quick." Adding his own commentary, Mr. Staples said, "More than likely, Bielema will wind up back in college as a head coach at some point."

131. The Foundation's reference to Coach Bielema's statements to "the media" most likely stems from its careless reliance on a copy writer's choice of words in a headline that went far beyond what the sportswriter who interviewed Coach Bielema had actually written. *See Bret Bielema is Enjoying the NFL So Much, He May Never Go Back to College Football, CBS Sports* (July 13, 2018). Other than the *ESPN* story, this *CBS Sports* story, and secondhand reports of those stories with no new information, a diligent search revealed no other media reference to whether Coach Bielema planned to return to coaching at the collegiate level or continue coaching in the NFL.
132. The *CBS Sports* story was written by veteran sportswriter Dennis Dodd. The *CBS Sports* story doesn't contain a single word attributed to Coach Bielema that supports the headline or the false allegation in the Foundation's Demand Letter. Instead, Mr. Dodd reported the following:

"Bret Bielema isn't going to Kansas. And he might not be returning to college football. Bielema's name has come up as a popular choice to replace David Beaty, Kansas' embattled coach. New Kansas athletic director Jeff Long hired Bielema at Arkansas in 2013. *Long ultimately may have lost his job in Fayetteville because he didn't fire his coach after five mostly-disappointing*

seasons. Bielema was finally let go Nov. 24 as he walked off the field following a loss to Missouri. That was nine days after Long was fired. ***While Bielema would not speak to the Kansas situation***, sources close to him said the 48-year-old coach would not be returning to college football with his former boss at KU.”

133. Had the Foundation conducted even the sketchiest due diligence, it would have known that:
- (a) Mr. Dodd did not write the headline accompanying his story; and (b) Coach Bielema said nothing to Mr. Dodd – on or off the record – to suggest he “had no intention of returning to college football.” All Coach Bielema said to Mr. Dodd was that he was enjoying coaching in the NFL. Enjoying one’s job is not inconsistent with a desire to do something else if given the opportunity. In July 2018, Coach Bielema enjoyed his job with the Patriots no less than he enjoys his job with the New York Giants. But as much as he enjoys coaching for the Giants, that didn’t stop him from interviewing with Colorado for its head coach position. Whether intentional or reckless, the Foundation’s mischaracterization of Mr. Dodd’s news story is inexcusable and provides further evidence of bad faith.

The Foundation Abandoned Critical Reasoning to Find a Non-Existent Conspiracy

134. An additional example of the ease with which the Foundation jumped to baseless conclusions and made career-limiting accusations against Coach Bielema is the Foundation’s groundless assertion that Coach Bielema manipulated his compensation arrangements with the New England Patriots to stay below the exempt amount. Not only do these accusations go against every tenet of critical reasoning. They also demonstrate a conscious decision not to make a reasonable inquiry and an inexcusable failure to apply basic math to what the Foundation knew about Coach Bielema’s compensation arrangements with the Patriots.

135. Having made no reasonable inquiry before sending its Demand Letter to Coach Bielema, the only information the Foundation had about Coach Bielema's July 15, 2018 employment agreement was the agreement itself, which Mr. Cornrich had sent to the Executive Director six months earlier. Although the Foundation has never explained its reasoning, it would appear that the Foundation jumped to the conclusion it wanted to reach by surmising that Coach Bielema's \$100,000 a year salary was suspiciously close to the "exempt income cap" in the Final Buyout Agreement. (For any income Coach Bielema earned in 2018, the "exempt income cap" prevented the Foundation from claiming any "offset" rights to the first \$150,000 Coach Bielema earned in 2018.) That's a pretty big assumptive stretch to make with nothing else to go on. What's more, the application of basic math shows the absurdity of the Foundation's conspiracy theory.
136. As alleged above, the Foundation never made any inquiry of Coach Bielema, his agent, or the New England Patriots about who decided Coach Bielema's compensation, how his compensation was established, and whether and to what degree his compensation aligned with comparable benchmarks in the Patriots organization. Furthermore, as alleged above, neither Coach Bielema nor anyone acting on his behalf have ever disclosed or even hinted to the Patriots' head coach or anyone else in the Patriots organization that the first \$150,000 of income he earned in 2018 was exempt from repayment to the Foundation or that, for income he earned in 2019, the first \$125,000 would be exempt. What's more, no one in the Patriots organization, including the head coach, ever asked Coach Bielema about that subject or expressed any interest in his contractual arrangements with the Foundation.
137. The compensation terms in Coach Bielema's employment agreement with the Patriots, dated July 15, 2018 ("2018 Patriots Contract") provided that the Patriots would pay Coach

Bielema “in installments at the rate of the gross annual sum of One Hundred Thousand Dollars (\$100,000) for the period commencing on the Effective Date [July 15, 2018] and ending on January 31, 2019.” As of July 15, 2018, there were twenty-five weeks remaining in 2018, 48% of the year. Therefore, while \$100,000 might have caught the reader’s eye during a superficial reading, applying basic math to those contract terms would have revealed that the Patriots would pay Coach Bielema roughly \$48,000 in 2018. Accounting for the \$25,000 he had been paid earlier in the year, if Coach Bielema had intended to maximize his income at the Foundation’s expense – and one were to assume (as did the Foundation) that he had the ability to decide or influence what his salary would be – he would have attempted to set his salary at \$250,000 or an amount very close to that, not \$100,000. Whether the Foundation simply overlooked this critical fact in its rush to judgment or turned a blind eye to the result of a simple math equation, the audacity it took to make such an accusation without a shred of evidence would constitute bad faith, in and of itself, were it not so remarkably cumulative.

The Ultimatum in the Foundation’s Demand Letter was an Empty Threat

138. In the seventeen months since the Foundation threatened to sue Coach Bielema if he didn’t pay back \$4.234 million within fifteen days, the Foundation hasn’t gone anywhere near a local courthouse. After doing nothing to follow through on its empty threat, it would appear the Foundation mistakenly thought it could coerce Coach Bielema into an unjustifiable compromise to avoid being sued or having to sue the Foundation. In any event, having exhausted every other avenue to resolve this dispute, Coach Bielema deeply regrets that the Foundation left him no choice but to commence this litigation.

CLAIMS FOR RELIEF

COUNT ONE

*Breach of Promise to Pay
in Final Buyout Agreement*

139. The allegations above are incorporated herein by reference.
140. Coach Bielema was in privity of contract with the Foundation. He has performed all conditions precedent to the Foundation's duty under the Final Buyout Agreement to make the buyout payments due in March 2019 and thereafter.
141. Without lawful excuse, the Foundation failed to comply in good faith with the terms of the Final Buyout Agreement governing its duty to pay Coach Bielema and engaged in a course of conduct that demonstrates the epitome of bad faith. Furthermore, the Foundation hindered Coach Bielema's attempts to demonstrate he had made the required effort to mitigate and materially broke its promise to make the buyout payments.
142. As a direct and proximate result of that breach, Coach Bielema is entitled to recover his actual and consequential damages.

COUNT TWO

*Breach of Non-Disparagement Promise
in Final Buyout Agreement*

143. The allegations above are incorporated herein by reference.
144. Coach Bielema was in privity of contract with the Foundation. He has performed all conditions precedent to the Foundation's duty under the Final Buyout Agreement not to make disparaging remarks about him.

145. With the intent to recover buyout payments made before the breach and avoid its obligation to make future payments, the Foundation and its agents republished false accusations in the Foundation's Demand Letter for wide circulation in the sports media.
146. For the reasons stated above, the Foundation knew, or should have known, that the accusation that Coach Bielema was in breach of a buyout obligation would be understood by ADs and search firms as an indication that he did not wish to be considered for vacancies.
147. As a direct and proximate result of that breach, Coach Bielema is entitled to recover his actual and consequential damages, including damages for loss of earning potential.

COUNT III

False Light Invasion of Privacy

148. The allegations above are incorporated herein by reference.
149. As alleged above, the Foundation unnecessarily gave publicity to a matter concerning Coach Bielema that placed him before the public in a false light.
150. The false light in which Coach Bielema was placed would cause a reasonable person to be justified in feeling seriously offended and aggrieved by the publicity.
151. The Foundation caused the publication of the false light information, knowing it was false or with a high degree of awareness of its probable falsity.
152. The publication of the false light information alleged above was the proximate cause of harm to Coach Bielema's reputation and hindered his ability to be hired as a DI head coach.

JURY DEMAND

153. Coach Bielema requests a jury trial.

* * * * *

WHEREFORE, Coach Bielema requests that he be awarded:

- a. Compensatory damages in an amount to be determined at trial by a jury empaneled to try the issues of fact in this case, but not less than \$7,025,000.03;
- b. Punitive damages;
- c. Pre- and post-judgment interest;
- d. Reasonable attorney fees;
- e. His costs and expenses in this action; and
- f. All other just and proper relief to which he may be entitled.

Respectfully submitted,

By: /s/ Thomas A. Mars

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ATTORNEYS FOR BRET BIELEMA, *Plaintiff*.

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made by and between the BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS ("the University" or "the Board"), acting for the University of Arkansas, Fayetteville's Athletic Department ("UAF"), and Bret Bielema ("Coach").

WITNESSETH

WHEREAS, the Athletic Department of the University is pleased to be only one of a handful of departments nationally that is self-supporting and does not rely upon appropriated tax dollars or student fees to operate, and the University will meet its obligations under this Agreement with the Athletic Department's self-generated revenues and private funds donated in support of the Athletic Department; and

WHEREAS, the Head Football Coach is an important leader, educator, and professional of the Razorback Football Program who plays a critical role in fulfilling the mission of the Athletic Department in assisting student-athletes achieve their full human potential academically and athletically and in becoming productive adults who make positive lifelong contributions to their communities and society; and

WHEREAS, the University wishes to employ Coach for the period set out below on the terms and conditions hereinafter contained; and

WHEREAS, Coach wishes to accept such employment for such period on the terms and conditions hereinafter contained;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises contained herein, the parties, intending to be legally bound, covenant and agree as

follows.

1. Employment Period. The University hereby employs Coach as Head Football Coach at UAF for the period beginning on December 4, 2012, and ending on December 31, 2018 (the “Term”), subject to the terms and conditions herein set forth. In the event this Agreement is extended upon the mutual written agreement of the parties, the period of the extension shall be included within the meaning of the word “Term” for purposes of this Agreement and subject to all terms and conditions herein set forth. Coach hereby accepts such employment for such period subject to the terms and conditions set forth herein. Coach understands and agrees that the position of Head Football Coach is not a tenured position under Board of Trustees Policy 405.1, and Coach’s employment is subject to the terms of this Agreement and the policies of the Athletic Department, the University and the Board of Trustees.

2. Duties and Authority. Coach will carry out the essential duties and responsibilities of the position of Head Football Coach, and he will direct the intercollegiate football program of UAF in keeping with its traditions and policies established by the University, the President, Chancellor, Vice Chancellor and Athletic Director (“Athletic Director”) and the rules and regulations of The National Collegiate Athletic Association (“NCAA”) and the Southeastern Conference (“SEC”). Coach covenants and agrees to be a loyal employee of the University. Coach acknowledges and agrees that his specifically identified unsatisfactory job performance, refusal to perform his assigned responsibilities, or misconduct of any kind will result in appropriate disciplinary or corrective action. Coach is responsible for using his best efforts to maintain good public relations and sound alumni relations, and for promoting and participating in various alumni events at the request of the

Chancellor or the Athletic Director.

Coach shall have the duty and responsibility for the planning, supervision and coordination of all aspects of the intercollegiate football program at UAF, and the essential functions of his position shall include, but are not limited to, the following:

- (a) Coach shall perform his duties and responsibilities under this Agreement to the reasonable satisfaction of the Athletic Director and Chancellor, including, but not limited to, all responsibilities ordinarily associated with and performed by a head football coach at a member institution of the SEC or other major NCAA Division I institution. Coach shall perform all job responsibilities set forth in this Agreement and assigned by the Athletic Director, including, without limitation, planning, developing, teaching, and supervising student-athletes in practices, games, and in off-field and off-season training and activities; assisting in the development and implementation of recruiting plans and strategies; and in developing and leading a stable and successful football program. Coach shall be responsible for evaluating, recruiting, training, conditioning, instructing, supervising, disciplining, and coaching student-athletes to prepare them to compete successfully in the SEC and against major college competition on a national level.
- (b) Subject to the budgetary limitations of the Athletic Department, the policies and procedures of the Board and UAF, and the consent and prior written approval of the Athletic Director, which shall not be unreasonably withheld, Coach shall have authority to select, employ, and terminate assistant football coaches (which shall include, without limitation, offensive and defensive

coordinators), football strength coaches, the Director of Football Operations, the Assistant Director of Football Operations, the Director of High School Relations, the Director of Football Student Athlete Development, and graduate assistants. In the event the Athletic Director declines to accept Coach's recommendation to terminate any assistant football coach (including, without limitation, the offensive and defensive coordinators), the University agrees to reassign the assistant coach to a non-coaching position within the Athletic Department and that individual's compensation shall be removed from the budget of the football program; provided, however, that this reassignment provision shall only apply in cases in which the University has employed the individual in an assistant coaching position for at least 24 full calendar months. In all other instances, the Athletic Department shall not be required to reassign any assistant football coach if the Athletic Director declines Coach's termination recommendation.

With regard to all other personnel, including, but not limited to, support staff, equipment managers, and trainers, Coach shall be responsible for making recommendations to the Athletic Director regarding the selection, employment and termination of all such personnel. No person shall be employed as an assistant football coach (including, without limitation, offensive and defensive coordinators), football strength coach, Director of Football Operations, Assistant Director of Football Operations, Director of High School Relations, Director of Football Student Athlete Development, or as a graduate assistant until the Athletic Director first has received a favorable clearance for that

person from the NCAA and the SEC. Coach shall be responsible to notify the Athletic Director of a candidate for any such position, and the Athletic Director, in turn, shall be responsible to contact the NCAA and the SEC promptly to obtain the required clearance. Coach shall not personally supplement, directly or indirectly, the salary or compensation of any assistant football coaches (including, without limitation, offensive and defensive coordinators), football strength coaches, the Director of Football Operations, the Assistant Director of Football Operations, the Director of High School Relations, the Director of Football Student Athlete Development, any graduate assistants or any other personnel assigned to work with the football program without the prior written approval of the Athletic Director. Coach shall not violate the rules of the NCAA, the SEC, the University or any applicable state ethics laws by permitting, encouraging, or condoning the solicitation or acceptance by any assistant football coaches (including, without limitation, offensive and defensive coordinators), football strength coaches, the Director of Football Operations, the Assistant Director of Football Operations, the Director of High School Relations, the Director of Football Student Athlete Development, any graduate assistants, any other personnel in the Athletic Department assigned to work with the football program, or any current or prospective student-athletes of gifts of cash or of substantial value or accepting hospitality other than reasonable and permissible hospitality from any person, including, but not limited to, a person who is a “representative of the institution’s athletics interest” as defined by NCAA and/or SEC legislation and

as the same may be amended during the life of this Agreement.

- (c) Coach shall have the authority and responsibility to assign duties and supervise the performance of the assistant football coaches (including the offensive and defensive coordinators) and all other personnel assigned to the football program. Coach shall promote an atmosphere of compliance within the football program, and he shall monitor the activities of all assistant football coaches (including the offensive and defensive coordinators) and non-coaching football administrators and staff members who report, directly or indirectly to him.
- (d) Coach shall: (i) serve as a host of the University's weekly coach's television show during football season (including serving as a host for any pre-season, post-season or other special shows as determined by the Athletic Department); (ii) conduct all radio interviews as requested by the Athletic Department, including, but not limited to, pre-game, post-game, and weekly radio interviews; (iii) serve as the host of a one-hour radio program each week during the football season; and (iv) participate, as assigned by the Athletic Director, in all other forms of programming in all media now existing or hereafter created, including, but not limited to, Internet programming, podcasts, recorded pre-game public service announcements, and other special programming (collectively, the "Programming").
- (e) Coach shall abide by and comply with all current and future "Governing Athletic Rules" (as defined herein) and work cooperatively with the University's Faculty Athletics Representative and compliance personnel on compliance

matters and NCAA and SEC rules education. For purposes of this Agreement, the term “Governing Athletic Rules” shall mean and refer to any and all current and future legislation, rules, regulations, directives, written policies, bylaws and constitutions, and official or authoritative interpretations thereof, and any and all amendments, supplements, or modifications thereto promulgated hereafter by the NCAA or the SEC or any successor of such association or conference, or by any other athletic conference or governing body hereafter having regulatory power or authority relating to the University’s athletics programs as well as any applicable laws enacted by the State of Arkansas and/or the federal government governing intercollegiate athletics. Coach covenants and agrees to personally comply with, and to exercise due care that all personnel and students subject to Coach’s control or authority comply with the Governing Athletic Rules, including, but not limited to, any rules relating to recruiting and furnishing unauthorized extra benefits to recruits and student-athletes, including, but not limited to, the purchase and sale of game tickets and furnishing unauthorized transportation, housing, and meals, and with laws and the Governing Athletic Rules relating to sports agents, gambling, betting, and bookmaking, and the illegal sale, use, or possession of controlled substances, narcotics, or other chemicals or steroids. In the event Coach has knowledge of, or has reasonable cause to believe, that violations of the Governing Athletic Rules, University policies or laws have taken place, Coach shall report same immediately to the Athletic Director and the Senior Associate Athletic Director for Compliance. The University covenants and agrees to designate an Athletic Department

employee as Compliance Officer, part of whose duties will be to assist Coach in fulfilling his obligations under this provision and to respond to questions concerning compliance matters. Coach covenants and agrees to cooperate with such Compliance Officer in compliance matters. If Coach is found to be in violation of the Governing Athletic Rules while employed by the University, Coach shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures and subject to other disciplinary action and/or termination as permitted under this Agreement.

- (f) Coach shall exercise due care to avoid inappropriate involvement by himself or any individual (including, but not limited to, student-athletes) under his supervision with non-employee “representatives of the institution’s athletic interests,” which is contrary to the Governing Athletic Rules. The University shall notify Coach of any concerns that it may have regarding such involvement.
- (g) Coach recognizes and acknowledges the importance of the maintenance and observance of the principles of institutional control as contemplated by the Governing Athletic Rules over every aspect of the football program. Coach agrees to recognize and respect the reporting relationships and the organizational structure of the University.
- (h) Coach shall make recommendations to the Athletic Director with respect to the scheduling (including dates, places and times) of all UAF’s football games and the selection of the opponent for each game. The Athletic Director shall give serious consideration to Coach’s recommendations, but the Athletic Director shall have the sole responsibility and discretion to approve all opponents subject to any

applicable requirements or approval rights of the SEC.

- (i) Coach shall work in cooperation with and in support of the University's faculty and administrative officials, in meeting academic requirements by the student-athletes who are members of the UAF's football team, which shall include achieving goals for graduation and other academic achievement of student-athletes established by the Athletic Director annually.
- (j) Coach shall assist, as reasonably requested by the Athletic Director, in fundraising activities for the benefit of the Razorback football program. In the event that Coach believes that any such athletically-related duties conflict with Coach's other duties and responsibilities, Coach shall notify the Athletic Director, and the Coach and Athletic Director shall cooperate in good faith to resolve any conflicts.
- (k) Coach shall perform other athletically-related duties that the Athletic Director may assign from time to time including, but not limited to, such duties which will help maximize all sources of athletically-related income for the benefit of UAF, and shall cooperate with the development and adherence to annual department budgets. In the event that Coach believes that any such athletically-related duties conflict with Coach's other duties and responsibilities, Coach shall notify the Athletic Director, and the Coach and Athletic Director shall cooperate in good faith to resolve any conflicts.
- (l) Coach shall serve as the leader of the Razorback Football Program and shall maintain a high standard of conduct to act as a role model for the football student-athletes.

- (m) Coach shall assist the Athletic Director in achieving the goals and objectives of the Athletic Department and UAF.
- (n) Notwithstanding any other provision of this Agreement, Coach acknowledges that Board Policy 410.1, which is incorporated herein by reference, provides that one family member should not participate in decisions to retain, promote, determine the salary, or make other personnel decisions affecting another family member. Accordingly, Coach covenants and agrees that the Athletic Director shall be responsible for all personnel decisions concerning and/or relating to any member of Coach's family who may be employed in the University's Athletic Department during the Term of this Agreement, including decisions to hire, retain, promote, grant a salary increase or any other matter affecting any such individual's employment, including, without limitation, performing or having the Athletic Director's designee perform an annual evaluation; provided, however, that Coach shall have the right to make recommendations regarding all such matters to the Athletic Director subject to the condition precedent that the person's assigned duties and responsibilities are within the football program.

3. Salary and Incentive Compensation. For each year during the Term of this Agreement, Coach shall be paid a salary based upon the line-item maximum salary established by legislative appropriation acts and shall also be paid an additional amount over the line-item salary solely from private funds and funds generated by contracts with vendors of athletic apparel, shoes, and multimedia rights. By entering into this Agreement, the Board shall be deemed to have approved all payments due Coach which shall be in excess of the line-item salary, and to the extent required by law, the Board shall review and approve all payments due

Coach as required under this Agreement which shall be in excess of the line-item salary and derived on an annual basis solely from private funds and funds generated by contracts with vendors of athletic apparel, shoes, and multimedia rights.

Specifically, Coach shall be paid an annual salary from public and private funds in the total amount of Two Million Nine Hundred Fifty Thousand and No/100 Dollars (\$2,950,000.00) payable in twelve (12) equal monthly installments on the last day of each calendar month (the "Annual Salary"). Coach shall also be entitled to incentive compensation, subject to provisions of applicable law or to the extent not prohibited by law, for: (a) Athletic Achievements as set forth in Exhibit A; and (b) Academic Achievements as set forth in Exhibit B. Exhibits A and B are each attached hereto and incorporated herein by reference.

4. Benefits. During the Term of the Agreement, the University will provide Coach with the employment benefits described in this provision and no others. Coach shall be entitled to the following benefits then currently provided to other similarly situated non-classified, non-academic employees: major medical and life insurance; basic coverage under a long-term disability insurance policy at no cost (with employee option to purchase additional coverage); University contribution to TIAA/CREF, Fidelity or other approved retirement program; sick leave; tuition reduction for himself and his dependents; travel allowances; and such other benefits currently provided for non-classified, non-academic employees of the University as may be approved from time-to-time by the Board of Trustees of the University. In the event of any conflict between the terms and provisions of this Agreement and the University's Staff Handbook or other policies, the terms and provisions of this Agreement shall control and take precedence.

5. Automobiles. Coach will be furnished with the use of two (2) loaned vehicles which are similar in terms of make and model to the types of vehicles loaned to other head

coaches, and if possible, are acceptable to Coach's reasonable requests and which are provided to UAF by supporters of UAF's athletics programs. UAF shall withhold from Coach's compensation applicable federal and state taxes on the use of such vehicles as required by the IRS and applicable law.

Coach shall be responsible for following the departmental policy for loaned vehicles, including providing periodic reports of vehicle information as requested by the Athletic Department. Coach shall be required to pay expenses of maintenance, operation and insurance of the loaned vehicles. Upon the expiration or termination of this Agreement, Coach shall return any vehicles to the University or to the dealer at the date and time requested by the University. In the event the loaner vehicle program ends, the University shall no longer be responsible to provide these vehicles; provided, however, that in the event the loaner vehicle program ends, the University shall provide an annual or monthly vehicle stipend to Coach in an amount at least comparable to the fair market value of the vehicle Coach utilized as part of the loaner vehicle program prior to its end. In such event, Coach shall be responsible for all applicable state and federal taxes, and the University shall withhold any such amounts required by law.

6. Tickets. To assist Coach with the duties, responsibilities and obligations of promoting and enhancing the University's football program, for each home football game the University shall make available to Coach, at no cost to him: (a) a skybox suite with twelve (12) seats to all home football games; and (b) twenty (20) complimentary tickets for each home game with seat locations to be determined in the University's discretion. As required by the law, the University shall withhold all applicable federal and state taxes arising under the benefits provided in this provision.

7. Club Memberships. During the Term of this Agreement, Coach shall be entitled

to club memberships at The Blessings and the Fayetteville Country Club provided that such memberships are made available to the University for the benefit of its coaches. The memberships shall be subject to any terms and conditions imposed by The Blessings or the Fayetteville Country Club, including, but not limited to, the right of each entity to revoke its membership. In the event such club memberships are not made available to the University for the benefit of its coaches, Coach shall be entitled to one comparable club membership at his choice and discretion; provided, however, that the club is located in Washington County, Arkansas or Benton County, Arkansas and provided further that sufficient private funds are available to the University to cover the cost of any initial and monthly membership fees. The University shall not be responsible for any monthly food minimums or purchases of goods and services at any club. As required by the law, the University shall withhold all applicable federal and state taxes on the cost of any such memberships.

8. Summer Football Camps. In accordance with Ark. Code Ann. § 6-62-401 (Repl. 2003), Board of Trustees Policy 1715.1, and subject to the execution of the Sports Camp Agreement, each of which is respectively attached hereto and incorporated herein by reference as Exhibits C, D, and E, UAF hereby grants Coach (and/or any corporate entity owned by Coach for the purpose of operating the summer camps) permission to conduct a summer football camp for private compensation on and in campus facilities. If requested, Coach shall provide all information necessary to enable the Board to make the express findings of fact required by Ark. Code Ann. § 6-62-401. The charges paid to UAF by Coach as the direct and indirect costs associated with operating and maintaining the facilities or the summer football camp will be established by the Athletic Director taking into consideration the cost of such facilities, including, but not limited to, labor, food, maintenance, and utilities.

As part of any summer camp, Coach shall ensure that his camp complies with all applicable policies of the Athletic Department and the University, including, but not limited to, the Protection of Minors on Campus Policy and the Background Checks and Substance Abuse Testing Policy, and the Athletic Department Business Office shall provide information and guidance on the relevant policies to Coach. Additionally, Coach's camp shall furnish UAF such reports or information as it might require concerning these camps. Coach shall not be entitled to utilize or receive funds or payments from any outside or corporate sponsors for any camp, to grant any sponsorship or naming rights to any individual or company for any camp, or to create any marketing or business relationships between his camp and any individual or company, unless the Athletic Director grants advance written permission for any such sponsorship or relationship.

Alternatively, at Coach's request and upon the mutual agreement of the parties, the University may operate the summer camp. In such event, the Athletic Department shall provide administrative and organizational support services for the Camp, and Coach shall be responsible to provide teaching and instruction to the campers. The parties will meet and put their respective responsibilities for the camp in writing.

9. Outside Employment. Coach shall devote his entire productive time, ability, and attention to his University duties and responsibilities during the Term of this Agreement. Coach shall not directly or indirectly render any services or work of a business, commercial, or professional nature to any other person, business or organization whether for compensation or otherwise except as specifically permitted under this Agreement. In accordance with Board of Trustees Policy 450.1, which is attached hereto as Exhibit F and incorporated herein by reference, Coach may engage in outside employment that will affirmatively contribute to his

professional advancement or correlate usefully with his University work subject to the terms and conditions set forth in this Employment Agreement. Any such outside employment shall not interfere in any way with Coach's duties or responsibilities as set forth in this Agreement or as assigned by the Athletic Director. Prior to accepting any outside employment, Coach shall first disclose and obtain written approval from the Athletic Director and the Chancellor. Outside employment of Coach shall comply with applicable rules or regulations of the NCAA and the SEC.

In accordance with NCAA Rule 11.2.2 and Board Policy 450.1, as the same may be amended hereafter, and such other rules and policies adopted by the NCAA or the University, Coach shall annually report outside employment for compensation, including all athletically-related income and benefits from sources outside the University, and the time spent on all outside employment, through the Athletic Director to the Chancellor. The report shall include a detailed accounting of all income over Five Hundred Dollars (\$500) received by Coach for participation in any athletically-related activities. The University shall be responsible to provide Coach with the Athletic Department's standard form for such reports and to set the due date to complete and return the form, and Coach agrees to cooperate and to provide timely and complete information in the form.

Coach shall effectively communicate to outside employers that any outside employment is his own independent responsibility and that he is not acting as an agent or representative of the University in such work. University facilities, property, or images of student-athletes and any teams shall not be used in such outside employment except with the prior permission of the Athletic Director or his designee, and payment of appropriate fees may be required. Under no circumstances shall the University guarantee any such outside employment, and any

compensation derived from such outside employment shall not be considered part of Coach's Annual Salary as defined in this Agreement.

All outside employment shall be independent of Coach's employment at UAF, and the University shall have no responsibility or liability for claims arising therefrom. In the event the University dismisses Coach or terminates this Employment Agreement, regardless of the reason or timing of such action, Coach shall have no claim or cause of action against University or its guarantors for loss of any contract or income he may have otherwise received from outside employment, including, but not limited to, consequential, incidental, punitive or any other types of damages of any nature whatsoever.

Without limiting the generality of the foregoing and subject to receiving prior written approval as specified, such outside employment may include, but is not limited to, the following:

- (a) Consulting or Endorsements. Coach may serve on his own behalf as a consultant or may permit the use of his name, voice or image to advertise or endorse products or services (whether or not athletically related) under the following conditions:
 - (i) The company, product or service must be national as opposed to regional in scope; and
 - (ii) The company, product or service may not be in direct competition at the retail (consumer) level with any firm incorporated or based in Arkansas; and
 - (iii) The company may not provide a service or product which competes with a service, product or benefit for which the University, the Athletic Department, its supporting foundation, approved marketing contractor or multi-media rights holder has a contract for the benefit of the Athletic Department or the University, unless a written waiver of this provision is granted by the Athletic Director or his designee; and
 - (iv) The endorsement or advertisement must not conflict with any University, Athletic Department, its supporting foundation, approved marketing contractor

or multi-media rights holder contracts, including, but not limited to, any qualified sponsorship agreements and/or any sports marketing agreements or arrangements; and

- (v) The exposure must not be detrimental to the University or the Athletic Department in any way and must be in good taste; and
- (vi) Approval of such consulting or endorsements must be obtained in advance from the Athletic Director or his designee in advance of the agreement and/or the provision of such services; and
- (vii) Any consulting or endorsements (whether written, verbal or otherwise) shall not violate any SEC or NCAA rules, including, but not limited to, NCAA Bylaw 11.3.2.4 or other applicable NCAA or SEC rules and regulations.

Notwithstanding any other provision of this Agreement, Coach acknowledges that UAF has contracted with and entered into qualified sponsorship agreements with manufacturers and/or vendors of athletic apparel, shoes, beverages and other products, and Coach will not contract directly as a consultant for such products and services or for the endorsement of such products and services unless granted advance written permission by the Athletic Director or his designee. Coach further agrees that UAF may, in the future and during the life of this Agreement, seek to modify, extend or enter into new contracts (including, but not limited to, qualified sponsorship agreements) with manufacturers and/or vendors of athletic apparel, shoes and other products and, if permitted by applicable law, may utilize all or a part of the cash proceeds from such contracts to pay part of Coach's Annual Salary hereunder or for the benefit of the Athletic Department, and Coach covenants and agrees to cooperate with the University. Coach agrees to be bound by and cooperate with the University in fulfilling the terms and conditions of any existing or future Athletic Department related agreements, including, but not limited to, contracts between the University and manufacturers or vendors of athletic apparel, shoes, beverages or other products as well as any sports marketing agreements or arrangements.

(b) Speaking Engagements. With the University's prior written approval for outside employment, Coach may agree to make appearances and/or speeches for a fee, so long as such appearances or speeches are not inconsistent with the interests of the University. Coach shall use his best efforts to perform such speaking engagements in a professional way and manner.

10. University's Right to Use or Authorize the Use of Coach's Name, Image, and Likeness. Coach hereby grants, and the University accepts, a perpetual, royalty-free license anywhere in the universe to use Coach's name, likeness and image (the "License"). The scope of the License shall include, but not be limited to, the right: (a) to promote and develop the Razorback brand, the Razorback Football Program, the Athletic Department, and the University; and (b) to comply with any contracts or sponsorship agreements entered into between the University and any sponsor, manufacturer or vendor of athletic apparel, shoes, beverages or other products and services; and (c) to advance the best interests of the University, including, but not limited to, the right to authorize, sublicense, or grant any sponsor, manufacturer or vendor the right to use Coach's name, likeness or image for the purpose of promoting the athletic apparel, shoes, beverages or other products and services supplied to the University; provided, however, that any such use of Coach's name, likeness or image is in good taste and does not reflect negatively upon Coach or the University. Coach agrees that he shall not have the right to enter into any endorsement or consulting agreements with any competitors of the University's exclusive sponsors, manufacturers, vendors and/or suppliers of athletics apparel, shoes, beverages or other products and services. Following the expiration or termination of this Employment Agreement, the University shall have the continued right to use the name, likeness, and image of Coach in connection with promoting and preserving the

history of the Razorback Football Program and to comply with any legal obligations then existing upon the expiration or termination of the Agreement.

Additionally, the scope of the license granted to the University shall include the perpetual right to use Coach's name, likeness and image in all Programming created, in any medium, at any time during the life of this Agreement, including, but not limited to, the right to sell game footage or videos containing images of Coach after the expiration or termination of the Agreement for any reason. Except as expressly permitted herein, however, the University shall not have the right to use Coach's name, likeness and image following the expiration or termination of this Agreement for purposes of marketing any new products or items (exclusive of any products or items in existence prior to the termination or expiration of this Agreement) without Coach's prior written approval. The parties agree to cooperate in good faith to resolve any issues of concern regarding the use of Coach's name, likeness or image following the termination or expiration of this Agreement.

11. Use of University Trademarks. Nothing in this Employment Agreement or any amendments hereto shall constitute permission or a license for Coach to use or to authorize third parties to use the University's trademarks, logos or other indicia of intellectual property in connection with any outside employment or otherwise, including, without limitation, any derivative marks. Under all circumstances, a license to use the University's trademarks, logos and/or other indicia of intellectual property must be obtained from and approved by the appropriate University trademark and licensing officials or an agent of the University authorized to contract on behalf of the Board of Trustees.

12. Annual Evaluation. On an annual basis, the Athletic Director shall evaluate Coach, either verbally or in writing, within thirty (30) days following the conclusion of the team's

regular season or post-season play, whichever is later, or as soon as reasonably possible thereafter and will discuss the evaluation with the Coach. The failure to comply with this provision, however, shall not be construed or interpreted to extend the Term of this Employment Agreement or as a violation of this Employment Agreement.

13. Dismissal For Cause. Coach agrees that UAF has the right to dismiss Coach and terminate this Employment Agreement for cause under this section at any time prior to the expiration of the Employment Agreement. For purposes of this section, “for cause” shall include, but not be limited to, any one or more of the following as determined in the reasonable and good faith judgment of UAF:

- (a) Material and adverse neglect or inattention by Coach of the standards, duties or responsibilities expected of University employees, including, but not limited to, all duties set forth in this Employment Agreement and assigned from time-to-time by the Athletic Director, after written notice of any such neglect or inattention has been given to Coach, and Coach fails to cure the identified deficiencies within seven (7) calendar days after receiving the written notice.
- (b) Any material or intentional or reckless breach by Coach of the terms and conditions of this Employment Agreement, including, but not limited to, failure to comply with all NCAA and SEC rules and regulations if Coach fails to cure the identified deficiencies within seven (7) calendar days after receiving the written notice from UAF; provided, however, that such notice and opportunity to cure shall be provided to the extent that any such material or intentional or reckless breach by Coach of the terms and conditions of this Employment Agreement are capable of being cured.
- (c) Knowing participation in significant or repetitive violations of the NCAA or SEC constitution, by-laws, rules, regulations, or interpretations thereof by the NCAA or SEC.
- (d) Failing to comply with NCAA Bylaw 11.1.2.1. as the same may be amended from time to time.
- (e) Conduct or omission(s) by Coach which constitute a Level I or Level II violation under the NCAA’s enforcement structure effective August 1, 2013 (or major violation under the NCAA’s pre-August 1,

2013 enforcement structure), or may lead to an NCAA finding of a Level I or Level II violation (or major violation), of one or more of the Governing Athletic Rules or the University's interpretation thereof, including, but not limited to, multiple Level III or Level IV violations of the Governing Athletic Rules considered collectively to be a Level I or Level II violation (or multiple secondary violations of the Governing Athletic Rules under the NCAA's pre-August 1, 2013 enforcement structure considered collectively to be a major violation), whether the conduct occurred during Coach's employment with the University or another NCAA-member institution.

- (f) Failure of Coach to report promptly to the Athletic Director or Athletic Department Compliance Office any actual knowledge of or reasonable cause to believe that violations of the Governing Athletic Rules or University policies have been committed or are being committed by himself or others.
- (g) Conviction of a crime under federal or state law, excluding minor traffic offenses not involving the alleged use of alcohol or drugs.
- (h) Prolonged absence from duty without the consent of the Athletic Director or his designee.
- (i) Engaging in unreasonable conduct in willful disregard or deliberate indifference for the welfare and safety of the University's football student-athletes, including failure to adhere to the NCAA principle of student-athlete well being.
- (j) Committing one or more acts of fraud in the performance of Coach's duties and responsibilities under this Employment Agreement, including, but not limited to, the preparation of, falsification of, or alteration of documents or records of the University, NCAA, or SEC, or documents or records required to be prepared, kept, or maintained by University policy, the Governing Athletic Rules, law or other documents or records pertaining to any prospective student-athlete, student-athlete, including, for example and without limitation, expense reports, transcripts, eligibility forms, or compliance reports or permitting, encouraging, or knowingly disregarding any fraudulent or dishonest acts by other coaches, student-athletes, or any individuals, if any, under Coach's control or authority.
- (k) Soliciting, placing or accepting by Coach of any bet or wager on any intercollegiate or professional athletic contest whether through a bookmaker, a pool or any other individual or means.
- (l) Providing any information or data regarding the football program, any

other athletic program at the University or any information concerning or relating to any University student-athletes to any person or entity known to Coach or that should have reasonably been known to Coach to be a gambler, bettor, bookmaker or any agent or runner for such individuals or entities or associating with such individuals and/or entities.

- (m) Selling, using or possessing by Coach of any illegal substances, including, but not limited to, narcotics, drugs, controlled substances, steroids or the sale, use or possession of any such substances that violate the University's policies or the Governing Athletic Rules.
- (n) Knowingly allowing or disregarding the sale, use or possession by any coach or student-athletes of any illegal substances, including, but not limited to, any narcotics, drugs, controlled substances, steroids or the sale, use or possession of any such substances that violate University's policies or the Governing Athletic Rules.
- (o) Encouraging, condoning or instructing, whether directly or indirectly, any assistant football coach, football staff member, prospective student-athlete, student-athlete, or any individual or entity not to cooperate, be forthcoming, or truthful in any inquiries or information gathering activities concerning any matters that are relevant to the University's athletic programs or another institution's athletic programs that are conducted by any governmental entities, law enforcement agencies or any other governing bodies or officials, including, but not limited to, the University, the NCAA, the SEC or other officials or governing organizations with authority over the University's athletic programs or that may be required by law, University policies, or the Governing Athletic Rules.
- (p) Engaging in any act that constitutes a prohibited conflict of interest by Coach under the policies of the Board of Trustees and UAF or under applicable law, including, for example and without limitation, failing to obtain prior approval to engage in outside employment or endorsing a product, good or service for a company in direct competition with a sponsor of the Athletic Department.
- (q) Providing false, misleading, or incomplete information relevant to the conduct of UAF's business, including, but not limited to, information provided by Coach to UAF during the interviewing and hiring process, if Coach knew or should have known the information was false, misleading, or incomplete.
- (r) Otherwise engaging in conduct, as solely determined by the University, which is clearly materially and adversely contrary to the

character and responsibilities of a person occupying Coach's position or which materially and adversely affects the reputation of the University or UAF's athletics programs in any way.

The procedures for dismissal for cause are attached hereto as Exhibit G and are incorporated herein by reference. In the event of dismissal for cause, all obligations of the University under this Employment Agreement shall cease immediately, including, but not limited to, the duty to pay Coach any Annual Salary, the duty of the University's third-party guarantor to pay any guaranteed amounts, any incentive compensation owed pursuant to athletic department policy or any other amount or sum whatsoever; provided, however, that the University shall pay Coach any amount of the Annual Salary earned and owed to Coach for work completed prior to the effective date of the termination for cause.

14. Other Disciplinary Action. The University may take other disciplinary or corrective action short of dismissal for cause in the event of the occurrence of any act or event which could be grounds for dismissal for cause under this Employment Agreement or for failing to report a Level III or Level IV violation under the NCAA's enforcement structure effective August 1, 2013 (or secondary violation under the NCAA's pre-August 1, 2013 enforcement structure) under the NCAA or SEC constitution, by-laws, rules, regulations or interpretations thereof by the NCAA or SEC, within a reasonable amount of time of his learning of such violations. Other disciplinary or corrective action may include, but is not limited to, the following: suspension for a period of time without pay; reduction of salary; monetary sanctions; public or private reprimand or other disciplinary or corrective action which may be authorized by the provisions of any NCAA legislation or University policy.

15. Termination for Convenience by the University.

(a) The Total Guaranty Payment. By giving written notice to Coach, the University

shall have the unilateral right to terminate this Agreement for any reason at any time. In the event the University terminates this Agreement under the provisions of this Section 15, the University covenants and agrees to provide, and Coach covenants, agrees and does hereby accept, the guaranty of The Razorback Foundation, Inc. (“Razorback Foundation”), or other financially responsible third party arranged by the University, for the amounts set forth below as full and complete satisfaction of any obligations of the University of any nature whatsoever; provided, however, that Coach shall be entitled to receive any compensation earned, but not yet paid, under this Agreement (including, but not limited to, any incentive compensation), prior to the date of termination. Further, Coach covenants and agrees that, in the event the University exercises its right to terminate this Agreement for convenience at any time, Coach will accept the guaranty of the Razorback Foundation, for the amounts set forth below, as provided in the Personal Services and Guaranty Agreement (“Guaranty Agreement”) and any amendments thereto as entered into between Coach and the Razorback Foundation or other financially responsible third party in full and complete satisfaction of any obligations of the University.

If the University terminates Coach for its convenience, then the sums owed to Coach under the Guaranty Agreement shall be based upon the following sums:

<u>YEAR</u>	<u>AMOUNT</u>
First Contract Year (12/04/12-12/31/13)	\$12,800,000.00
Second Contract Year (1/1/14-12/31/14)	\$12,800,000.00
Third Contract Year (1/1/15-12/31/15)	\$12,800,000.00
Fourth Contract Year (1/1/16-12/31/16)	\$9,600,000.00
Fifth Contract Year (1/1/17-12/31/17)	\$6,400,000.00
Sixth Contract Year (1/1/18-12/31/18)	\$3,200,000.00

The foregoing amounts shall be paid on a non-cumulative basis beginning with the effective date of the termination for convenience in accordance with the foregoing schedule and subject to the terms and conditions of this provision (the "Total Guaranty Payment" as defined herein). The total amount of the Total Guaranty Payment owed to Coach as of the effective date of the termination shall be determined by the following formula: The numerator shall be the full amount of the Guaranty Payment identified in the foregoing chart depending upon the year of termination and shall be divided by the denominator, which shall be the total number of months of the Term of the Employment Agreement (with any partial months being pro-rated), to yield the "Monthly Value of the Total Guaranty Payment." The Monthly Value of the Total Guaranty Payment shall then be multiplied by the number of months remaining on the Term (with any partial months being prorated) as of the effective date of the termination to yield the "Total Guaranty Payment." The Total Guaranty Payment shall be paid to Coach in equal monthly installments on the last calendar day of each month (with any partial months being pro-rated) as determined from the effective date of the termination for convenience through the remaining balance of the Term. Notwithstanding any other term or condition in this Agreement, Coach shall have an affirmative duty of mitigation to diligently seek and accept other employment in the event this Employment Agreement is terminated for convenience as well as an obligation to comply with any mitigation and/or other conditions set forth in the Guaranty Agreement. No other amounts beyond the Total Guaranty Payment shall be owed to Coach.

In consideration of the Total Guaranty Payment to be paid by the University's third-party guarantor, Coach shall, and does hereby, release and discharge the University, its Trustees, officers and employees from and against any liability of any nature whatsoever related to or arising out of this Agreement and/or any amendments hereto, Coach's employment at

UAF, and Coach's termination for convenience of the University hereunder, including, but not limited to, the following: any and all claims arising under or relating to any Federal or state constitutions, laws, regulations, common law, or any other provision of law. Coach further covenants and agrees that he knowingly and voluntarily accepts the guaranty, after consulting with his legal counsel, in full and complete satisfaction of any and all obligations of the University and as an alternative to the time, expense, and trouble of any future litigation. Coach acknowledges and intends for the University to rely upon this provision in entering into this Agreement.

Without limiting the foregoing release and as a condition precedent to receiving any portion of the Total Guaranty Payment, Coach covenants and agrees to sign a release and waiver agreement discharging the Board of Trustees of the University of Arkansas and its Trustees, officials, representatives, and employees in their individual and official capacities, the University of Arkansas, Fayetteville and its officials, representatives, and employees in their individual and official capacities as well as The Razorback Foundation, Inc. and its officers, directors and employees (collectively, "The Released Parties") from and against any and all claims, causes of action or liabilities of any nature whatsoever in any way arising out of or related to the Employment Agreement, Coach's termination for convenience, any aspect of Coach's employment with the University or any other issue that Coach raises, might raise or might have raised against any and/or all of The Released Parties, including, but not limited to, the following: any and all claims arising under or relating to any Federal or state constitutions, laws, regulations, common law, or any other provision of law. Coach acknowledges that this provision is a material term of the Employment Agreement and the University would not enter into the Employment Agreement without Coach's assurance to execute a release and waiver

agreement in exchange for the Total Guaranty Payment. Coach intends for the University to rely upon this provision in entering into the Employment Agreement.

Coach further covenants and agrees that, regardless of whether Coach has executed a written release and waiver agreement, any exercise of ownership or control by Coach over any partial or total payment of the Total Guaranty Payment (including, but not limited to, accepting or depositing any partial or complete payments of the Total Guaranty Payment) shall constitute an act of ratification and/or sufficient and valuable consideration which absolutely and unconditionally forever releases, discharges and waives any and all alleged liability of any of The Released Parties from and against any and all claims of any nature whatsoever (including, but not limited to, any and all claims arising from or relating to any Federal or state constitutions, laws, regulations, common law, or any other provision of law) relating to or arising out of the Employment Agreement, Coach's employment at UAF, and Coach's termination for convenience of the University for any and all such claims which arise or may have arisen between the period beginning on the date of Coach's initial employment and the date of Coach's termination for convenience during the initial Term or any extension of the Employment Agreement; provided, however, that Coach does not waive any rights with respect to any unpaid portions of the Total Guaranty Payment that are owed to him.

If the University terminates Coach for convenience and Coach files a lawsuit against any or all of The Released Parties, then Coach shall not be entitled to any of the Total Guaranty Payment, including any amount previously paid or scheduled to be paid in the future. If Coach or any person acting for Coach makes any threat or initiates any litigation against any of The Released Parties, then Coach covenants and agrees to repay all of the Total Guaranty Payment actually received by Coach as of the date of the threat or the initiation of such litigation and to

waive all further payments of the Total Guaranty Payments as of the threat of litigation or the date a lawsuit is filed, whichever is earlier in time.

Without limiting the generality and applicability of the foregoing provisions, Coach covenants and agrees that the University's offer and his acceptance of any extension of the Term of the Employment Agreement or Coach's continued employment at the University following the expiration of the Term shall be sufficient and valuable consideration which shall operate as an automatic, absolute and unconditional release, discharge and waiver of any and all claims of any nature whatsoever (including, but not limited to, any and all claims arising from or relating to any Federal or state constitutions, laws, regulations, common law, or any other provision of law) which Coach has or might have asserted against any of The Released Parties prior to accepting any extension of the Term of the Employment Agreement or Coach's continued employment at the University following the expiration of the Term; provided, however, that this release shall not apply to any compensation earned, but not yet paid, prior to Coach's acceptance of any extension of the Term of this Employment Agreement or his employment beyond the Term.

(b) Offset. The parties covenant and agree that the Total Guaranty Payment paid to Coach paid by the University's third-party guarantor shall be offset and reduced on a monthly basis by the gross compensation earned by Coach personally or through business entities owned or controlled by Coach from employment as a head or assistant coach or as an administrator either at a college or university or with a professional sports organization (collectively referred to hereafter as a "Coaching Position"). For purposes of this provision, "gross compensation" shall mean, without limitation, gross income from base salary or wages, talent fees, or other types of compensation paid to Coach by an employer, including by a business entity owned by

or controlled by Coach, consulting fees, honoraria, fees received by Coach as an independent contractor, or other income of any kind whatsoever from a Coaching Position. While the University's third-party guarantor's obligation to pay the Total Guaranty Payment remains in effect, within fourteen (14) calendar days after accepting any employment in a Coaching Position and within fourteen (14) calendar days after the end of each month thereafter, Coach shall furnish to the University and its third-party guarantor an accounting or report of all gross compensation received by Coach during the immediately preceding month from the Coaching Position. The University's third-party guarantor shall reduce the amount of the monthly Total Guaranty Payment due and payable to Coach based upon the gross compensation for the immediate previous month as reflected in the Coaching Position gross compensation report. If Coach fails or refuses either to notify the University or its third-party guarantor of Coach's employment in a Coaching Position or to furnish the monthly Coaching Position gross compensation reports after receiving a formal, written request to do so from the University's third-party guarantor, then after giving Coach fourteen (14) days written notice, the obligation of the University's third-party guarantor to continue paying the total Guaranty Payment shall cease immediately.

16. Termination By Coach.

(a) Termination Without Cause by Coach – Salary Repayment. Subject to the terms and conditions of this provision, Coach may terminate this Employment Agreement without cause by providing written notice to the Athletic Director one (1) day prior to the effective date of the termination. In its sole discretion, the University may waive or consent to shorter notice periods. In the event Coach terminates this Employment Agreement without cause, then Coach shall not be entitled to receive any compensation or benefits of any nature whatsoever under this Employment

Agreement following the effective date of the termination, and Coach shall be obligated to repay the amounts herein set forth. Due to disruption and harm that would be caused to the football student-athletes, the Razorback Football Program, the Athletic Department and the University, Coach covenants and agrees that the right to terminate this Employment without cause shall not apply during the Razorback football team's regular season. For purposes of this provision, the term "regular season" shall mean the period of time beginning one month prior to the first game of the season and ending at the conclusion of the final regular season game each year during the life of this Employment Agreement. For clarity, any post-season competition, including, but not limited to, any bowl games, shall not be included within the meaning of the "regular season."

In the event Coach terminates this Agreement to accept a coaching or administrative position with a college, university or professional sports organization at any time prior to the final day of the Term of this Agreement on December 31, 2018, other than due to Coach's death, disability or illness that prevents him from fulfilling his duties as Head Football Coach, then Coach: (i) shall not be entitled to receive any compensation or benefits of any nature whatsoever under this Employment Agreement following the effective date of the termination; and (ii) shall be liable to the University for the re-payment of the amounts specified in the following schedule:

<u>YEAR</u>	<u>AMOUNT</u>
First Contract Year (12/04/12-12/31/13)	\$3,000,000.00
Second Contract Year (01/01/14-12/31/14)	\$2,500,000.00
Third Contract Year (01/01/15-12/31/15)	\$2,000,000.00
Fourth Contract Year (01/01/16-12/31/16)	\$1,500,000.00
Fifth Contract Year (01/01/17-12/31/17)	\$1,000,000.00
Sixth Contract Year (01/01/18-12/31/18)	\$500,000.00

The foregoing amounts shall be paid on a non-cumulative basis beginning with the effective date of Coach's termination of this Agreement (the "Coach's Payment") and any partial years shall be prorated. The Coach's Payment amount shall be payable in full to the University within 90 days following the effective date of Coach's termination of this Agreement.

Coach covenants and agrees that the University will commit substantial financial resources to the success of the Razorback Football Program (including, but not limited to, hiring and paying offensive and defensive coordinators and other assistant football coaches) and that if Coach terminates this Employment Agreement, to accept other employment as set forth hereinabove, the University will suffer damages the amount, nature and extent of which is difficult to determine and which may include, but not be limited to, additional expenses to search for and employ another Head Football Coach, salary or other compensation to hire another Head Football Coach, tangible and intangible detriment to the Razorback Football Program and the support of its fans and donors. Accordingly, the parties covenant and agree that the amount of salary repayment to the University hereunder is fair and reasonable. In consideration of payment of the foregoing amounts, the University will release Coach from any further obligations under this Agreement and will also release Coach's new employer, from any claims or actions that the University might have against such employer. Likewise, Coach will release the University, its employees, officers, trustees and any third-party guarantor from any obligations hereunder or under any guaranty agreement.

(b) Termination for Cause by Coach. Coach reserves the right to terminate this Agreement for cause for the following reasons without the necessity of his payment of amounts contemplated in Section 16(a), above:

- i. If the University fails to pay or to provide for the payment of any portion Coach's Annual Salary or any other compensation, when due, as required under this Agreement. In the event of the University's failure to make any payment due and owing under this Agreement, the University shall have thirty (30) days to cure such non-performance after Coach notifies the University of its failure to make a payment when due. If the University fails to cure, the University shall be in default of this Agreement, and Coach may, in his sole discretion, terminate this Agreement for cause.
- ii. In the event that the University changes its status as a member of the Division I Football Bowl Subdivision of the NCAA to a lesser divisional status; provided, however, that this provision shall not apply if the NCAA changes its divisional classifications, and the University remains in a divisional status that is similar to or greater than its current status as a member of the NCAA Division I Football Bowl Subdivision.
- iii. In the event the University changes its conference affiliation from the SEC to another conference, other than a conference of similar stature as the SEC, such as the ACC, Big 10, PAC 12, or Big 12.
- iv. In the event that the NCAA Division I Committee on Infractions finds the University responsible for a major violation (or a Level I or Level II violation in the new rules enforcement structure) of NCAA legislation and reduces the number of scholarships and/or imposes a post-season bowl ban based upon rules violations that solely occurred prior to December 4, 2012, and for which Coach and/or his staff are found not to have any responsibility, then Coach may

terminate this Agreement for cause if any such sanctions are not overturned upon the completion of the NCAA appellate process and/or any legal actions.

17. Disability of Coach. The University provides a long-term disability insurance policy for basic coverage to all benefits-eligible employees, including Coach, at no charge to the employees. All benefits-eligible employees, including Coach, have the option to purchase additional long-term disability coverage at their own expense. In the event Coach becomes disabled and unable to perform the essential functions of his position, with or without reasonable accommodations, during the Term of this Employment Agreement, the University shall continue to provide Coach's Annual Salary and all benefits required by this Employment Agreement until such time as an eligibility determination for Coach to receive basic coverage benefits (or additional coverage purchased by Coach) is made; provided, however, that the following conditions are met: (a) the University continues to provide basic coverage under the long-term disability policy to all benefits-eligible employees; and (b) Coach and/or his personal representatives shall cooperate and take all necessary steps to receive the basic coverage (or additional coverage purchased by Coach). During the waiting period (expressed as a period of days or months) under such disability insurance policy, Coach covenants and agrees that the University may reassign and/or place Coach on paid administrative leave in a non-coaching position at the same Annual Salary and benefits. The University's obligation to pay Coach his Annual Salary and provide benefits as required by this Employment Agreement shall cease on the last working day of the month immediately preceding the month of Coach's initial payment under the long-term disability policy. If Coach's application for coverage is denied, Coach shall exercise all of his appeal rights under the policy. If Coach is not deemed eligible under the disability insurance policy, then the appropriate University officials and Coach shall meet to discuss the

matter and Coach's employment status, including, but not limited to, all issues under the Americans with Disabilities Act and any other applicable law.

Additionally, for the avoidance of any doubt, if Coach terminates this Agreement due to a disability or illness that prevents Coach from fulfilling his obligations, then Coach shall not be responsible to repay any portion of the Coach's Payment as provided in this Employment Agreement ("Repayment Exception"); provided, however, if Coach invokes this provision and terminates this Agreement due to a disability or illness but accepts another coaching or administrative position with a college, university or professional coaching organization at any time within 12 months thereafter, then the Repayment Exception shall not apply, and Coach shall be responsible to comply fully with the Coach's Payment obligation of this Employment Agreement.

18. Death of Coach. This Employment Agreement and any amendments hereto shall terminate automatically in the event of Coach's death before the end of the Term or any extensions of the Term. In the event of his death, Coach directs the University to pay any final compensation owed to Coach prior to his death to his estate.

19. Covenant Not to Compete. The parties covenant and agree that the University is a member of the SEC and competes against other SEC member institutions for students, faculty, and staff. Additionally, the parties covenant and agree that the University's football program competes against other SEC member institutions for prospective student-athletes, financial support, and prestige. The parties further covenant and agree that the competitiveness and success of the University's football program affects the overall financial health and welfare of the Athletic Department and that the University maintains a vested interest in sustaining and protecting the well-being of its football program, including, but not limited to, the recruitment

of prospective student-athletes to the institution and the financial integrity of its athletics programs. To avoid harming the University's interests, Coach covenants and agrees that this covenant not to compete shall be in full force and effect during the period of time beginning on December 4, 2012, and ending on December 31, 2018, and shall survive Coach's termination of the Agreement prior to the expiration of the Term or any mutually agreed upon extensions of the Term for any reason whatsoever. Coach and/or any individual or entity acting on Coach's behalf, shall not seek or accept employment in any coaching capacity with any other member institution of the SEC. For purposes of this covenant not to compete, the University and Coach agree that it shall apply only to the 14 member institutions of the SEC existing as of December 4, 2012. This covenant not to compete, however, shall not apply if the University exercises its right to terminate this Agreement for convenience or if Coach terminates this Agreement for cause based upon the University's material breach of this Agreement.

Nothing contained in this Agreement shall be deemed, construed or operate as a waiver of any immunities to suit available to the University or the members of the Board of Trustees or any University officials, representatives or employees. In the event of a breach or threatened breach of this provision, the University shall be entitled to injunctive relief as well as any other applicable remedies at law or in equity. Coach understands and agrees that without such protection, the University's interests would be irreparably harmed, and that the remedy of monetary damages alone would be inadequate. This covenant not to compete shall be independent of any other provision of this Agreement, and the existence of any claim or cause of action by Coach against the University, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement of this provision by the University.

20. Covenant Not to Disclose Trade Secrets. By virtue of his position, Coach

covenants and agrees that non-public information, which provides a competitive advantage to the Razorback Football Program, will be created, developed and entrusted to him during the course of his paid employment with the University. Coach covenants and agrees that such information includes, but is not limited to, the following: the Razorback Football Program's methods; processes; operations; recruiting programs; computer and video programs; future plans; prospective student-athlete contact lists; coaching contact lists; current student-athlete contact lists; playbooks; signals; recruiting techniques; player development programs (including, but not limited to, nutrition programs, strength-building, and position coaching); coaching and leadership philosophies and practices; practice drills; training techniques; offensive and defensive schemes; game plans and game plan techniques; prospect and player evaluation systems; and pre-game, in-game, and post-game coaching practices and strategies; training sequences and methodologies; (collectively, "Trade Secrets"). Individually and collectively, Coach acknowledges and agrees that all such information constitutes Trade Secrets under Arkansas law and has an independent economic value to the University's competitors throughout the SEC. Coach agrees that he may create and learn of information constituting Trade Secrets while employed and paid as the Head Football Coach of the Razorback Football Program.

Coach further covenants and agrees that such information and Trade Secrets give the University's Razorback Football Program a competitive advantage over its competitors, and Coach, therefore, covenants and agrees to treat such information confidentially under this Agreement and to protect the University. Coach covenants and agrees not to misappropriate, use, share or disclose any such information and/or Trade Secrets to any other member institutions comprising the SEC or any of their respective personnel, including, but not limited

to, any coaches, for the period of time comprising the Term (including any extensions) of this Employment Agreement (regardless of whether Coach remains employed for the length of the Term). Coach further agrees that, because Coach's services under this Agreement are of a special, unique, unusual, extraordinary and intellectual character which gives those services special value, the loss to the University of which cannot be reasonably or adequately compensated in damages in an action at law, and because disclosing any such confidential information or Trade Secrets would place the University at significant competitive disadvantage, the University shall have the right to obtain from any court such equitable, injunctive, or other relief as may be appropriate, including a decree enjoining Coach from sharing or disclosing any Trade Secrets with any Division I Football Bowl Subdivision college or university.

21. Prior Notification to Athletic Director. Without limiting any of the foregoing provisions of the Employment Agreement, during the Term of this Employment Agreement, Coach and/or any individual or entity acting on Coach's behalf shall not communicate, whether directly or indirectly, with any prospective employer (or any person or entity acting, whether directly or indirectly, on behalf of any prospective employer) regarding any coaching position without first receiving permission from the Athletic Director. Moreover, once Coach and/or any individual or entity acting on Coach's behalf receives permission to communicate, whether directly or indirectly, with any prospective employer (or any person or entity acting, whether directly or indirectly, on behalf of any prospective employer) regarding any coaching position, the Coach (or anyone or any entity acting on his behalf, whether directly or indirectly) must wait at least 24 hours from the time he receives permission until the time any such communications may begin. The failure to comply with this provision shall be a material

breach of this Employment Agreement entitling the University to terminate Coach for cause.

22. Indemnification. Coach covenants and agrees to indemnify and hold the University harmless from and against any and all claims of any nature whatsoever which Coach's former employers have asserted, might assert or might possibly assert against the University with regard to the University's hiring and employment of Coach. The University shall give Coach reasonable notice of any demands, claims or the filing of any litigation as soon as possible. The indemnification required under this provision shall be limited to the amount of any judgment actually rendered against the University. With respect to any such claims, demands or litigation, the University and Coach will cooperate and participate jointly in the defense of any such action. Further, the University and Coach shall each be responsible for their respective attorneys' fees and costs in the defense of any such action. The fact that this indemnification provision is included in this Agreement shall not be deemed, construed, interpreted or operate as an admission of liability by the University or Coach, and any such alleged liability is expressly denied by each of the parties.

23. Severability. If any provision of this Employment Agreement or any amendment hereto is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. The unenforceability or invalidity of any provision, however, shall not affect any other provision of this Employment Agreement or any amendment hereto, and this Employment Agreement and any amendments hereto shall continue in full force and effect, and be construed and enforced as if such provision had not been included, or had been modified as above provided, as the case may be.

24. Non-Assignment. Neither party may assign this Employment Agreement without the prior written consent of the non-assigning party, except that the University may

assign this Agreement in the event of a merger or reorganization of the University.

25. Applicable Law and Immunities. This Employment Agreement shall be governed, construed and enforced in accordance with the laws of the State of Arkansas without regard to its choice of law principles. Nothing contained in this Agreement shall be deemed, construed or operate as a waiver of any immunities to suit available to the University and/or its Trustees, officials and employees (in both their official and individual capacities).

26. Binding Effect. This Employment Agreement binds and is for the benefit of the University and its successors, assigns and legal representatives and of Coach and his heirs, assigns, and personal representatives.

27. Notices. All notices, requests, demands, and other communications permitted or required by this Agreement will be in writing, and either (a) delivered in-person; (b) sent by overnight delivery service providing receipt of delivery; or (c) mailed by certified mail, postage prepaid, return receipt requested, restricted delivery to the other party. Any notice sent by hand delivery or by overnight courier will be deemed to have been received on the date of such delivery. Any notice sent by mail will be deemed to have been received on the third business day after the notice will have been deposited in the mail. All such notices and communications, unless otherwise designated in writing, will be sent to:

If to University:

Vice Chancellor and Director of Athletics
P.O. Box 7777
University of Arkansas
Fayetteville, AR 72702

With copies to:

Office of the General Counsel
421 Administration Building
University of Arkansas
Fayetteville, AR 72701

If to Coach:
Bret Belinema
Fred W. Smith Football Center
270 North Razorback Road
FBAC 242
University of Arkansas
Fayetteville, AR 72701

or

Bret Belinema
P.O. Box 7777
Fayetteville, AR 72702

With copies to:
Neil M. Cornrich
NC Sports, LLC
One Chagrin Highlands
2000 Auburn Drive, Suite 315
Beachwood, Ohio 44122

Either party may amend his or its address for giving notice by providing written notice of any new address to the other party.

28. Headings. The paragraph headings contained in the Employment Agreement or any amendment thereto are for reference purposes only and shall not affect in any way the meaning or interpretations of the Employment Agreement. The Recital Clauses set forth at the beginning of this Employment Agreement are substantive provision that shall be given full meaning and effect and construed in harmony with all other provisions of this Employment Agreement.

29. Authority. Each party warrants and represents that he or it has the full right, power and authority to enter into this Employment Agreement and make the agreements in this Employment Agreement.

30. Entire Agreement and Amendment. This Employment Agreement contains the

entire agreement between the parties and supersedes any prior or contemporaneous agreement or representation, oral or written, between them. This Employment Agreement may not be modified or changed, nor may the Term of this Employment Agreement be extended, except by a written instrument signed by both parties and agreed to by the Athletic Director, the Chancellor, and the President. Each party represents and warrants that it has not been influenced by any person to enter into this Agreement, nor relied on any representation, warranty, or covenant of any person except for those representations, warranties, and covenants of the parties set forth in this Agreement. The failure of either party to require performance by the other party of any provision of this Employment Agreement or any amendment hereto shall not be deemed to subsequently affect the party's rights to enforce a provision hereof. A waiver of a breach of any provision of this Employment Agreement or any amendment hereto is not a waiver of any other breach of the provision or waiver of the provision. Each party covenants and agrees as follows: (a) that it will be unreasonable for either party to have or rely on any expectation not contained in the provisions of this Agreement; (b) that if either party has or develops an expectation contrary to or in addition to the provisions of this Employment Agreement, such party shall have a duty to immediately give notice to the other party; and (c) that if either party fails to obtain an amendment to this Employment Agreement after having developed an expectation contrary to or in addition to the provisions of this Employment Agreement, such failure will be an admission for evidentiary purposes in any litigation that the expectation was not reasonable and was not part of the final binding agreement between the University and Coach. The course of dealing between the University and Coach will not modify or amend this Employment Agreement or any amendment hereto in any respect.

31. Time. Time is of the essence with regard to the performance of all aspects of this

Agreement.

32. Mutual Drafting. The parties covenant and agree that the rule of construction that any ambiguity is construed against the drafting party shall have no application in any dispute over the interpretation or any other dispute with regard to this Agreement.

33. Independent Judgment. The parties represent and warrant to one another that this Employment Agreement is entered into based on each party's independent analysis, with the advice of counsel if so desired, of the facts and legal principles relevant to the terms and conditions of this Agreement.

34. Counterparts. This Employment Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but all such counterparts shall together constitute one and the same Employment Agreement. Faxed or PDF signature pages shall be binding upon the parties, and the parties agree to exchange original signature pages within a reasonable period of time after their execution; provided, however, that the failure to exchange original signature pages shall have no impact on the validity or enforceability of this Agreement.

35. Disclosure of Employment Agreement. Coach agrees that the University may release, without prior notice to Coach, a copy of this Employment Agreement and any amendments to the Employment Agreement, to any individual requesting a copy under the Arkansas Freedom of Information Act. As soon as practical after releasing the Employment Agreement and/or any amendments to the Employment Agreement, the University shall provide Coach with a copy of the request.

36. Taxes. To the extent required by applicable law, Coach agrees that the University shall deduct and withhold all required state and federal taxes on any and all

compensation and benefits provided to Coach in this Employment Agreement.

37. Return of University Property. All property, materials, and information (whether in hard copy or electronic format), including, but not limited to, all personnel records, recruiting records, team information, films, videos, statistics, or any other items or data, provided to Coach by the University (including, but not limited to, the Razorback Football Program), for use as part of the Razorback Football Program or otherwise provided to Coach in connection with or relating to his University employment under this Agreement are at all times and shall remain the sole and confidential property of the University. Upon the expiration or earlier termination of this Agreement for any reason whatsoever, Coach shall return, within seven (7) calendar days, any such University owned property described in this provision as well as all other University-owned equipment, including, but not limited to, keys, credit cards, cellular telephones, pagers, computers, computer tablets, pagers and any other property in Coach's possession, custody or control. Coach shall further be responsible to return any funds advanced to Coach for business travel. If Coach fails to comply with this provision, then the University shall have the right to offset the total value of any such property from any final payment owed to Coach or other sums held by the University.


38. Survival. Notwithstanding anything to the contrary, Sections 5, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 shall survive the expiration or termination of this Employment Agreement.

39. Approval of Chancellor and Athletics Director. The signatures of the Chancellor and Athletic Director of UAF indicate their concurrence with the terms of this Employment Agreement.

IN WITNESS WHEREOF, the parties hereto set their hands on this 20th day of
August, 2013, to be effective as of December 4, 2012.

BOARD OF TRUSTEES OF THE
UNIVERSITY OF ARKANSAS, acting
for the UNIVERSITY OF ARKANSAS,
FAYETTEVILLE'S ATHLETIC
DEPARTMENT

HEAD FOOTBALL COACH

By: 
Donald R. Bobbitt
President
University of Arkansas

By: _____
Bret Bielema
Head Football Coach, UAF

By: _____
G. DAVID GEARHART
Chancellor, UAF

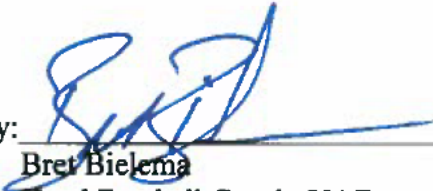
By: _____
JEFFREY P. LONG
Vice Chancellor and
Director of Athletics, UAF

IN WITNESS WHEREOF, the parties hereto set their hands on this 20 day of August, 2013, to be effective as of December 4, 2012.

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HEAD FOOTBALL COACH

By: _____
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President
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Bret Bielema
Head Football Coach, UAF

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Chancellor, UAF

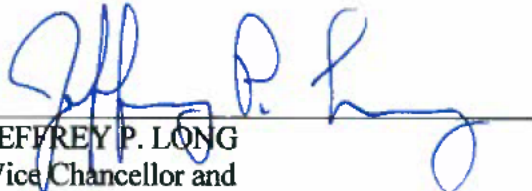
By:  _____
JEFFREY P. LONG
Vice Chancellor and
Director of Athletics, UAF

EXHIBIT LIST

Exhibit A	Athletic Achievements
Exhibit B	Academic Achievements
Exhibit C	Ark. Code Ann. § 6-62-401 (Repl. 2003)
Exhibit D	Board of Trustees Policy 1715.1
Exhibit E	Sports Camp Agreement
Exhibit F	Board of Trustees Policy 450.1
Exhibit G	Procedures for Dismissal of Head Coach for Cause

EXHIBIT A**ATHLETIC ACHIEVEMENT INCENTIVES**

Coach shall be eligible to receive the following performance incentives for each of the following athletic achievements on a non-cumulative basis, except as otherwise indicated:

<u>ATHLETIC ACHIEVEMENT</u>	<u>INCENTIVE PAYMENT</u>
Win SEC Championship Game	\$100,000.00
Win National Championship Game	\$350,000.00++
Appear in National Championship Game	\$300,000.00++
Appear in Semifinal Playoff Game (beginning in 2014 Season)	\$200,000.00++
Appear in Non-Title BCS Bowl Game (or Sugar Bowl beginning in 2014 Season)	\$150,000.00
Appear in any of the following Bowl Games (Capital One Bowl, Cotton Bowl)	\$100,000.00
Appear in any other Bowl Game	\$50,000.00
Coach of the Year in the SEC	\$25,000.00
Coach of the Year Nationally	\$25,000.00##

++These incentive payments are non-cumulative. In the event that Coach and the football team appear in a Semifinal Playoff Game (beginning in the 2014 Season), Coach shall receive an incentive payment of \$200,000.00. In the event that Coach and the football team appear in a Semifinal Playoff Game and advance to appear in the National Championship Game, Coach shall receive an incentive payment of \$300,000.00. In the event that Coach and the football team appear in a Semifinal Playoff Game, advance to appear in the National Championship Game and win the National Championship Game, Coach shall receive an incentive payment of \$350,000.00. Accordingly, Coach will receive the highest applicable incentive for the corresponding athletic achievement.

##As awarded by an organization determined by the University.

As applicable, certain incentive payments will be paid cumulatively. For example, if Coach and the football team win the SEC Championship Game, advance to and win the National Championship Game, and Coach is named both the SEC Coach of the Year and the National

Coach of the Year, then coach will receive incentive payments for a cumulative total of \$500,000.00. This is the maximum amount that may be earned in a year for athletic achievements.

Any incentive payment due to Coach shall be paid within 30 days following the conclusion of the football season consistent with Athletic Department and University payment policies. In the event the University terminates Coach for any reason, the University shall pay Coach all earned, but yet unpaid, incentive compensation that accrued prior to the date of termination.

EXHIBIT B**ACADEMIC ACHIEVEMENT INCENTIVES**

Coach shall be entitled to receive the following performance incentives for each of the following academic achievements:

<u>ACADEMIC ACHIEVEMENT</u>	<u>INCENTIVE PAYMENT</u>
Academic Performance Rate (APR)	
940	\$ 25,000.00
960	\$ 25,000.00
980	\$ 25,000.00
<u>990</u>	<u>\$ 25,000.00</u>
CUMULATIVE TOTAL	\$100,000.00
Graduation Success Rate (GSR)	
60%	\$ 25,000.00
65%	\$ 25,000.00
70%	\$ 25,000.00
<u>75%</u>	<u>\$ 25,000.00</u>
CUMULATIVE TOTAL	\$100,000.00

Each of the foregoing amounts for each academic achievement shall be cumulative and shall be paid within 30 days following any such achievement(s) or consistent with the payment policies of the Department of Athletics and the University. The maximum amount that may be earned in a year for academic achievements is \$200,000.00. In the event the University terminates Coach for any reason, the University shall pay Coach all earned, but yet unpaid, incentive compensation that accrued prior to the date of termination.

Exhibit C

6-62-401. Use by employees to conduct work for private compensation.

(a) The boards of trustees of the state institutions of higher learning are authorized to grant permission to employees of those institutions to conduct, on and in campus facilities, certain outside work for private compensation as described below which are to be engaged in only after they have discharged fully their employment responsibilities to those institutions.

(b) However, in each instance where permission is granted, the governing board shall have the nondelegable duty to make express findings of fact that:

(1) The activity in question involves no conflict of interest with the mission and purpose of the institution itself; and

(2) The activity proposed would bring to the campus a significant number of persons who are potentially future students who might tend to enroll on that campus as a result of their exposure to its facilities and its personnel while engaged in this activity; and

(3) The contemplated activity will, as a part thereof, generate funds to be paid to the state institution for housing, meals, and for the use of other institutional resources which will produce significant revenues in support of the auxiliary functions of the particular campus serving its enrolled students.

(c) (1) Each permission granted by a board of trustees pursuant to the findings of fact stated in subsection (b) of this section shall, with those findings of fact, be reduced to writing by the board of trustees and shall include a statement of charges to be paid to the state institution by the employee as the direct and indirect costs associated with operating and maintaining the facilities which will be temporarily devoted to the particular activity conducted by that employee.

(2) The charges shall be paid promptly, by the employee or by the participants at the direction of the employee, to the state institution.

(d) In conducting an activity permitted under this section, the employee shall make known in all advertising and other publicity involving the activity that participants are contracting with that employee and not with the institution and that the institution and the State of Arkansas do not assume any contractual obligations for the conduct of the employee's activity.

(e) (1) Each employee who is authorized under the provisions of this section to engage in outside work for private compensation on or in campus facilities shall, within a reasonable period of time after completion of the employment, submit a complete financial report relating to the employment to the chief financial officer of the institution.

(2) On an annual basis, the chief financial officer of the institution shall submit to the governing board a summary of all such financial reports received by him or her.

History. Acts 1981, No. 707, §§ 1-4;
A.S.A.1947, §§ 80-3390 – 80-3390.3.

EXHIBIT D

BOARD POLICY

1715.1

EXTRACURRICULAR CAMPS

Act 707 of 1981 authorizes the Board of Trustees of the University of Arkansas to grant permission to employees to conduct, on and in campus facilities, certain outside work for private compensation, which is to be engaged in only after their employment responsibilities to the institution have been fully discharged. The Board of Trustees will determine that:

- (a) The activity in question involves no conflict of interest with the mission and purpose of the institution itself;
- (b) The activity proposed would bring to the campus a significant number of persons who are potential future students who might tend to enroll on that campus as a result of their exposure to its facilities and its personnel while engaged in the activity; and,
- (c) The activity will generate funds to be paid to the institution for housing, meals, and for the use of other institutional resources which will produce significant revenues in support of the function.

When such a camp receives the Board of Trustees' approval, the minutes of the meeting at which the approval is granted must include a statement of charges to be paid to the particular campus of the University of Arkansas by the employee as the direct and indirect costs associated with operating and maintaining such facilities which will be used for the camp. Such charges shall be paid promptly by the employee, or by the participants at the direction of the employee, to the University.

In conducting a camp which has been approved by the Board of Trustees, the employee shall make known in all advertising and other publicity involving the activity that participants are contracting with that employee and not with the institution, and that the institution and the State of Arkansas do not assume any contractual obligations for the conduct of the employee's activity. Each camp director will furnish liability insurance for all participants in an amount and with provisions recommended by the Vice Chancellor for Finance and Administration at the campus where the camp director is employed.

After the camp is completed, the employee shall, within a reasonable period of time, submit a complete financial report relating to such employment to the Vice Chancellor for Finance and Administration at the campus employing the camp director in a format and content acceptable to the Vice Chancellor for Finance of each campus.

The Vice Chancellor for Finance and Administration shall submit to the Chancellor, on an annual basis, a summary of all such financial reports received. This information shall be given to the President for submittal to the Board of Trustees for its review annually.

March 5, 1993 (Revised)
September 18, 1981 (Revised)

1715.1

May 6, 1977

EXHIBIT E

SPORTS CAMP AGREEMENT

This Sports Camp Agreement (“Agreement”) is entered into by and between the Board of Trustees of the University of Arkansas, acting for the University of Arkansas, Fayetteville (“University”), and the undersigned sports camp (“Camp”) subject to the following terms and conditions.

WITNESSETH

WHEREAS, the Camp meets all requirements under University policy and Arkansas law to conduct a sports camp for students on the campus of the University of Arkansas, Fayetteville; and

WHEREAS, individuals will benefit by participating in the activities offered at the camp, and the University will benefit by permitting prospective students to visit campus;

NOW, THEREFORE, in consideration for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows.

1. **Limited License to Use Facilities.** As set forth herein and in Exhibit A, which is attached hereto and incorporated herein by reference, the University hereby grants, and the Camp hereby accepts, a limited use license to use the Facilities for the Term (as defined in Exhibit A) in exchange for the License Fee (as defined in Exhibit A) for the purpose of conducting instructional sports camps. The “Term” of this Agreement shall be comprised of the Dates of Use authorized in Exhibit A.

2. **Duties of the Camp.** The Camp covenants and agrees to comply with the following duties and obligations under this Agreement:

- A. **Release.** Prior to the start of any camp activities, the Camp shall obtain a properly executed “Release, Indemnification, and Hold Harmless Agreement,” a copy of which is attached hereto as Exhibit B and incorporated herein by reference (the “Release”), from each person attending the camp. The Camp shall retain the Release from each camper for a minimum period of three (3) years, and furnish copies of any and all releases to the University upon its request.
- B. **Camp Report.** As set forth herein and in Exhibit C, within 30 days following the end of each authorized camp, the Camp shall fill out a Camp Operations Report (“Report”) on a form that the Athletic Department Business Office will furnish to the Camp. As required by Ark. Code Ann. § 6-62-401(e)(1), Camp shall submit the completed Report to the Athletic Department Business Office

and the Vice Chancellor for Finance and Administration. For each camp session, the Report shall detail all charges and expenses incurred and paid or to be paid by the Camp, including, but not limited to: (i) housing; (ii) campus dining services; (iii) charges for the use of other institutional resources; and (iv) all other direct or indirect costs incurred based upon the Camp's activities. The Camp shall maintain a complete set of records, including financial statements, lists of attendees, lists of Camp staff and other Camp personnel, and such other records as might reasonably be required by the University. The University shall have the right to audit all Camp records.

- C. **Camp's Duty of Indemnification.** The Camp shall forever indemnify and hold harmless the Board of Trustees of the University of Arkansas as well as all current and former Trustees, officers, agents, representatives and employees (both in their official and individual capacities) from all damages of any kind or nature whatsoever, losses, costs, attorney's fees or expenses (whether arising at any level of any legal proceedings) arising out of any liability, or claim of liability, for injury or damages of any kind or nature to persons (including, without limitation, death) or to property sustained or claimed to have been sustained by any one whomsoever, by reason of: (i) any breach of this Agreement by Camp or anyone acting on behalf of Camp or anyone under the supervision of the Camp (including, but not limited to, any paid employees, volunteers or campers); or (ii) the use or occupation of the Facilities, whether such use is authorized or not; or (iii) any act or omission of the Camp of any person or entity acting for or with the authority of the Camp or in connection with the Camp, or any of the Camp's officers, agents, employees, guests, patrons, or invitees, and, in addition, the Camp shall be solely responsible to pay for any and all damage to the property of the University, or loss or theft of such property, done or caused by such persons. These duties of indemnification shall survive the expiration or termination of this Agreement.
- D. **Camp Brochure and Information.** The Camp shall publish a camp brochure or other information on the Camp's web site (or through other media) setting forth the terms and conditions of the camp, including, but not limited to, camp fees and refunds, required medical insurance information, conduct expectations, and grounds for dismissing any individual from the camp. The camp brochure or any on-line information shall be provided in advance to each prospective attendee. The mailing of camp brochures and other literature shall be accomplished at the Camp's sole expense. The Camp shall ensure that University letterhead stationery shall not be used in camp brochures and materials. The Camp may use University telephone numbers subject to receiving the prior approval of the Athletic Director or his designee and subject to paying any charges relating to the use of the telephone.

As required by Ark. Code Ann. § 6-62-401(d), Camp shall make known in all advertising and other publicity involving the camp that participants are

contracting with the Camp and *not* contracting with the University and that the University and the State of Arkansas do not assume any contractual obligations for the conduct of the Camp and its activities. Accordingly, Camp shall include the following statement or words of similar effect on its web site and all promotional materials: “Participants are not contracting with the University of Arkansas or the State of Arkansas with regard to participating in this camp, and the University of Arkansas and the State of Arkansas do not run or have any responsibility for the camp.”

- E. **Camp Expenses.** All camp related expenses of any kind or nature, including, but not limited to, mailing and copying, shall be the sole and exclusive responsibility of the Camp and not the University. The Camp shall be responsible to ensure that no University resources are used to organize and conduct the Camp except as approved by the University.
- F. **Vehicles.** University Vehicles shall not be used for camp operations unless approved by the University.
- G. **No Corporate Sponsorships or Advertisers.** The Camp shall not have corporate sponsors or advertisers underwriting the various camps except as approved in advance by the Athletic Director or his designee. No sponsors, however, may conflict with the University’s current sponsors.
- H. **Insurance.** The Camp covenants and agrees to purchase, at Camp’s sole expense, an occurrence form Commercial General Liability policy with minimum limits of \$1,000,000 each occurrence and \$2,000,000 aggregate as well as sexual abuse and molestation coverage with minimum limits of \$1,000,000 each occurrence and \$2,000,000 aggregate. The University shall be named as an additional insured in any insurance policy required hereunder as follows: Board of Trustees of the University of Arkansas and its current and former Trustees, officers, representatives and employees. The Camp agrees that the insurance purchased hereunder shall be primary coverage and will contain no terms allowing the insurer to be subrogated to the rights of any injured or damaged person or entity. The Camp shall provide a copy of the certificate of insurance to the University prior to the start of the camp(s). If the insurance is cancelled for any reason, the Camp shall notify the University immediately and the University reserves the right to terminate this Agreement in such an event or to purchase such insurance and charge the costs to the Camp.

With regard to the foregoing insurance requirements and independent of the Report, Camp shall submit a complete list of campers/coaches to the Office of Risk Management at the end of each camp session. Camp shall: (i) enclose a check made payable to the University of Arkansas for the cost of the insurance; or (ii) make payment within one week after receiving an invoice

from the Office of Risk Management; or (iii) provide proof of insurance that is acceptable to the University consistent with the terms of this provision.

- I. **Trademarks, Logos and Intellectual Property.** Camp acknowledges and agrees that the University is sole and exclusive owner of all University and Razorback logos, trademarks, service marks, word marks and other indicia of intellectual property identified in Exhibit D, which is attached hereto and incorporated herein by reference (the "Indicia"), including any derivatives thereof. Coach shall have the right to use the Indicia for the Camp provided that the Camp fully complies with the Office of Trademark Sports Camp License Policy and pays the required license fees (the "Sports Camp License Policy"). A copy of the Sports Camp License Policy is attached hereto as Exhibit D and incorporated herein by reference. Nothing contained in this Agreement shall be deemed, construed or operate to grant Camp any title or ownership in the Indicia. Camp shall not be permitted to create any derivative marks from the Indicia or to combine the University's Indicia with any of the Camp's intellectual property to form a unitary mark. Any approved usage of the Indicia shall end upon the termination or expiration of this Agreement.
- J. **Licensed Merchandise.** The Camp may operate a camp store for the sale of licensed merchandise, snacks and other items at the camp. The Camp shall be responsible for all applicable taxes, if any, on items sold at the Camp.
- K. **Camp Housing and Dining.** The Camp will contract separately with University Housing for all necessary housing facilities and will contract with University Dining Services for all food service. The Camp shall ensure that a Camp staff member is present on each floor of each residence hall where any campers are located to supervise the campers.
- L. **Trainers.** The Camp shall have at least one (1) licensed trainer, approved by the University of Arkansas Sports Medicine Staff, present for each camp session. The Camp shall be responsible for compensating the trainer.
- M. **Escorting Campers on Campus.** The Camp shall provide proper escorts and supervision of campers while they are walking to and from various points of the campus, including dining halls and residence halls. Any additional security or manning of control of control desks, not provided by the University in its normal housing or facility arrangements, must be provided and paid for by the Camp.
- N. **Background Checks.** Camp shall be responsible to obtain and to pay for background checks (including, but not limited to, checks for registered sex offenders) for *all* individuals who work, whether on a paid or volunteer basis, for the Camp in a manner requested by the University and consistent with procedures established by the University for its background checks. If a Camp staff member is employed by a school district, then the Camp may

accept a letter from the Superintendent or Athletic Director on official school district letterhead certifying that a satisfactory background check has been conducted within one year prior to the beginning of Camp provided that the background check included a check for registered sex offender status. No person may perform any duties or services for the Camp under any circumstances whatsoever until a satisfactory background check has been completed on each individual.

O. Camper Safety and Well Being.

- (i) Minors must have adult supervision at all times while on campus and during all Camp activities. At least one Camp staff member must **reside** on each floor where minors are housed, and be readily available to respond in the event of an emergency. Based upon the number of registrations and anticipated campers, Camp shall use its best efforts to hire Camp staff to ensure that there are sufficient numbers of Camp staff to supervise the campers. Camp, for example, should seek to have a minimum ratio of **one** adult staff member to every **15** minors participating in the Camp or to operate the Camp in a manner to ensure sufficient supervision.
- (ii) Camp must provide training/information to all Camp staff in preventing and reporting child maltreatment, as required under Ark. Code § 12-18-402 and by University of Arkansas policy. At a minimum, Camp shall instruct, in person or in writing, all workers, whether paid or volunteers, that in the event that any individual reasonably suspects or observes child maltreatment, the person shall: (1) immediately contact the Arkansas Child Abuse Hotline at 1-800-482-5964 to report the issue; (2) contact UAPD and report the issue; and (3) tell Camp director of any child maltreatment. In the event the Camp becomes aware of or receives any reports of any child maltreatment, the Camp director shall report the information to the Athletic Director or his designee immediately after making the foregoing required notifications. Camp shall instruct its staff members that no staff member may be retaliated against for making a report of child maltreatment. Camp understands and agrees that the protection of minors at the Camp is essential and will take all necessary measures to maintain a safe and secure environment.
- (iii) Camp staff should not be alone with minors, especially in locations that are not easily visible to others. Camp staff will take prompt and appropriate actions in the event of any problems with discipline (including harassment or abuse of any camper, or sexual contact involving any camper), noise or destructive behavior.

Camp shall be responsible to report any such incidents to the Athletic Director or his designee.

- (iv) Camp staff members are expected to follow University rules, regulations, and procedures. However, Camp staff members are not agents or employees of the University of Arkansas.

P. Behavior of Camp Staff and Participants.

- (i) All Camp staff and participants are expected to abide by the University of Arkansas policies and state laws.
- (ii) Individuals (including Camp staff members, volunteers or campers) must be immediately removed for possession or use of illegal substances, possession of and/or use of alcoholic beverages, and/or theft or destruction of property or disruptive behavior.
- (iii) The University of Arkansas is a tobacco-free campus, and requires that all persons refrain from tobacco use. Additionally, state law prohibits smoking on campus.
- (iv) Possession of any type of weapon on campus is prohibited.
- (v) The University reserves the right to remove any person from campus for non-compliance with any University policy.

3. Obligations of the University.

- A. **Facilities.** The University shall provide Facilities and equipment for camp operations as specified in this Agreement. Any special equipment or set-up will be paid for by the Camp.
- B. **Camp Activities.** It is understood that the University will make every effort to accommodate all legitimate activities of the camp, and scheduling of camp sessions shall be accomplished in a manner calculated to enable the Camp to accommodate all camp activities.

4. Miscellaneous Terms and Conditions.

- A. **Independent Parties.** The University and Camp covenant and agree that no employment relationship, partnership or joint venture exists between the parties, and they are independent parties for all purposes. The Camp is solely responsible for setting, charging, and collecting fees for the instruction and is solely responsible for the payment of all taxes due on any compensation received from the sports instruction.

- B. **Severability**. If any provision of this Agreement or any amendment hereto is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. The unenforceability or invalidity of any provision, however, shall not affect any other provision of this Agreement or any amendment hereto, and this Agreement and any amendments hereto shall continue in full force and effect, and be construed and enforced as if such provision had not been included, or had been modified as above provided, as the case may be.
- C. **Non-Assignment**. Neither party may assign this Agreement without the prior written consent of the non-assigning party, except that the University may assign this Agreement in the event of a merger or reorganization of the University.
- D. **Applicable Law**. This Agreement shall be governed, construed and enforced in accordance with the policies of the Board of Trustees of the University of Arkansas and the laws of the State of Arkansas without regard to its choice of law principles. Notwithstanding any other provision of this Agreement, nothing contained in this Agreement shall be deemed, construed or operate as a waiver of the sovereign immunity of the University or any immunities to suit available to the members of the Board of Trustees or any University officials, employees or representatives.
- E. **Binding Effect**. This Agreement shall be binding upon the University and the Camp.
- F. **Headings and Recitals**. The paragraph headings contained in this Agreement or any amendment hereto are for reference purposes only and will not affect in any way the meaning or interpretations of this Agreement. The Recitals set forth at the beginning of this Agreement shall be treated as substantive provisions of this Agreement and construed in harmony with the other terms and conditions herein contained.
- G. **Authority**. Each party warrants and represents that he or it has the full right, power and authority to enter into this Agreement and make the agreements in this Agreement.
- H. **Entire Agreement and Amendment**. This Agreement contains the entire agreement between the parties and supersedes any prior or contemporaneous agreement or representation, oral or written, between them. This Agreement may not be modified or changed except by a written instrument signed by both parties and agreed to by the Athletics Director and the Chancellor. Each party represents and warrants that it has not been influenced by any person to enter into this Agreement, nor relied on any representation, warranty, or covenant of any person except for those representations, warranties, and

covenants of the parties set forth in this Agreement. The failure of either party to require performance by the other party of any provision of this Agreement or any amendment hereto shall not be deemed to subsequently affect the party's rights to enforce a provision hereof. A waiver of a breach of any provision of this Agreement or any amendment hereto is not a waiver of any other breach of the provision or waiver of the provision. Each party agrees: (i) that it will be unreasonable for either party to have or rely on any expectation not contained in the provisions of this Agreement or any amendments hereto; (ii) that if either party has or develops an expectation contrary to or in addition to the provisions of this Agreement as the same may be amended from time to time, such party shall have a duty to immediately give notice to the other party; and (iii) that if either party fails to obtain an amendment to this Agreement, as the same may be amended from time to time, after having developed an expectation contrary to or in addition to the provisions of this Agreement, such failure will be an admission for evidentiary purposes in any litigation that the expectation was not reasonable and was not part of the final binding Agreement between the University and the Camp. The course of dealing between the University and the Camp will not modify or amend this Agreement or any amendment hereto in any respect.

- I. **Time.** Time is of the essence with regard to the performance of all aspects of this Agreement.
- J. **Mutual Drafting.** The parties covenant and agree that the rule of construction that ambiguity is construed against the drafting party shall have no application in any dispute over the interpretation of this Agreement.
- K. **Independent Judgment.** The parties represent and warrant to one another that this Agreement is entered into based on each party's independent analysis, with the advice of counsel if so desired, of the facts and legal principles relevant to the terms and conditions of this Agreement.
- L. **Counterparts.** This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement. Faxed or PDF signature pages shall be binding upon the parties provided that the original signature pages are exchanged within a reasonable period of time after their execution
- M. **Disclosure of Agreement.** Camp agrees that the University may release, without prior notice to Camp, a copy of this Agreement and any amendments to the Agreement, to any individual requesting a copy under the Arkansas Freedom of Information Act.
- N. **Force Majeure.** In the event that one or more camp sessions shall not be held upon the dates specified in Exhibit A, or on some alternate dates mutually

agreeable to the parties, by reason of war, insurrection, strikes, riots, destruction of facilities, act of God, or other force beyond the control of the parties, then this Agreement shall be mutually canceled and of no further force and effect, and neither party shall be liable to the other.

- O. **Terminate for Cause.** The University may terminate this Agreement for cause at any time by giving Camp 15 days notice in writing and stating the grounds for such termination.

IN WITNESS WHEREOF, the parties hereto set their hands on this ____ day of _____, 20__.

BOARD OF TRUSTEES OF THE
UNIVERSITY OF ARKANSAS, acting
for the UNIVERSITY OF ARKANSAS,
FAYETTEVILLE'S ATHLETICS
DEPARTMENT

CAMP

By: _____
G. DAVID GEARHART
Chancellor, UAF

By: _____

Print Name: _____

Title: _____

Legal Entity: _____

By: _____
JEFFREY P. LONG
Vice Chancellor and
Athletic Director

EXHIBIT A

Subject to the terms and conditions of the Agreement, Camp is authorized and licensed to use the following Facilities to conduct the camp sessions on the following Dates of Use (collectively, the "Term") at the following License Fee and Facility Fee.

APPROVED FACILITIES AND EQUIPMENT:

Football Facilities, Weight Room, HPER, Broyles Center, University Housing and Food Services

THE "TERM" SHALL BE COMPRISED OF THE FOLLOWING APPROVED DATES OF USE:

- Youth Camp June 8, 2013
- Senior High School Camp June 9-11, 2013
- Junior High School Camp June 13-14, 2013
- Specialist Camp June 15, 2013
- Prospect Camps June 8-22, 2013 (daily)
- Prospect Camps July 17-31, 2013 (daily)

LICENSE FEE:

\$60. Fee is based on number of approved camps. Fee will be adjusted based on number of prospect camps hosted. Fee is \$10 per camp session.

FACILITY FEE:

Lesser of \$250 or 5% per session for athletic department facilities

EXHIBIT B

RELEASE, INDEMNIFICATION, AND HOLD HARMLESS AGREEMENT

In consideration for the Camper being permitted to participate in the [insert camp or instruction] from [insert dates] ("Activity"), the undersigned, acting on behalf of ourselves and our child, and any heirs or assigns, hereby waive and release forever any and all rights for claims and damages we and/or our child/guardian may have against the Board of Trustees of the University of Arkansas, its current and former Trustees, officers, agents, employees, and the Camp, and the Camp's owners, officers, agents and employees, from and against any and all liability for any harm, injury, damage, claims, demands, actions, costs, and expenses of any nature which we or our child may have or which may hereafter accrue to our child, arising out of or related to any loss, damage, or personal injury (including, without limitation, death), that may be sustained by our child at any Activity, or to any property belonging to child, whether caused by negligence or carelessness on the part of the Board of Trustees of the University of Arkansas, its current and former Trustees, officers, agents, employees, or the Camp, and the Camp's owners, officers, agents and employees or otherwise, while our child is in, on, upon, or in transit to or from the premises where the Activity, or any adjunct to the Activity, occurs or is being conducted.

We accept, understand, and assume that there is a risk of injury in this Activity, due to the physical and athletic nature of the Activity, including, but not limited to, falls, contact with other participants, and running drills. The Camper agrees to follow all instructions and to wear all necessary, recommended, and appropriate protective gear and equipment.

We understand that this Activity is neither administered nor sponsored by the Board of Trustees of the University of Arkansas and that the Camp is providing the instruction and camp Activities outside the scope of any affiliation with the University of Arkansas. We agree on behalf of ourselves, our Camper, and any heirs or assigns to release, hold harmless, and indemnify the Board of Trustees of the University of Arkansas, its current and former Trustees, officers, agents, employees, or the Camp, and the Camp's owners, officers, agents and employees from and against any and all claims and liability or damages of any kind or nature whatsoever arising out of or relating to the Activity.

Printed Name of the Camper: _____

Signature of Camper: _____

If the Camper is a minor under the age of eighteen (18), signature of Parent(s) or Guardian(s) is required:

Signature of Parent or Guardian: _____

Address & Telephone Number:

EXHIBIT C

CAMP REVENUE & EXPENSE REPORT

Report on all camp dates from September 1, 2012 – August 31, 2013

Name of Camp: _____ Total # of Campers: _____
 Dates of Camp: _____

A. NET INCOME (LOSS) CARRIED FWD
 FROM PREVIOUS YEAR STATEMENT: \$ _____

B. CAMP REVENUES

Registration Fees \$ _____
 Concessions and Merchandise Sales \$ _____
 Miscellaneous \$ _____
Total Revenues \$ _____

C. CAMP EXPENSES

Wages – University Coaches \$ _____
 Wages – University Staff \$ _____
 Wages – Student-Athletes \$ _____
 Wages – All Other \$ _____
 Facility Rental \$ _____
 Housing and Meals \$ _____
 Equipment \$ _____
 Insurance \$ _____
 Awards \$ _____
 Background Checks \$ _____
 Printing, Supplies & Postage \$ _____
 Travel Expenses \$ _____
 Merchandise & Concession Inventory \$ _____
 Licensing Fee \$ _____
 Miscellaneous Expenses \$ _____
Total Expenses \$ _____

NET INCOME (LOSS) (A+B-C) \$ _____

EXHIBIT D

**UNIVERSITY OF ARKANSAS, FAYETTEVILLE'S
ATHLETIC DEPARTMENT'S
OFFICE OF TRADEMARK LICENSING
SPORTS CAMP LICENSING POLICY**

I. Purpose

The Office of Trademark Licensing of the University of Arkansas, Fayetteville ("University"), adopts this Sports Camp Licensing Policy to govern the licensing and use of the University's indicia, including its name, team name, logos, mascot and other symbols (collectively, the "Indicia"). For ease of reference, the rights authorized under this licensing policy shall be referred to as the "Sports Camp License."

II. Eligibility

The Sports Camp License authorized under this policy only applies to coaches (or any business entity established and owned by the coach for purposes of conducting camps) (collectively, "Coach") of the NCAA Division I varsity sports administered by the University's Athletic Department who are approved to conduct camp(s) at the Fayetteville campus consistent with all requirements as set forth herein and as established by the Athletic Department, the University, and state law. The Coach must be currently employed by the University and in good standing with the Athletic Department to exercise any rights under the Sports Camp License at any time.

III. Terms and Scope of the Sports Camp License

By exercising any rights granted in the Sports Camp License, the Coach covenants, agrees, and warrants as follows:

A. **Ownership of Rights.** The University is the sole and exclusive owner of all rights, title and interest in and to its Indicia as shown on Appendix A, as well as any derivatives of the Indicia, and all rights relating thereto are expressly reserved by University and its authorized agent. The Coach does not acquire any ownership rights in the Indicia by exercising any rights granted in the Sports Camp License authorized by this policy. Subject to the terms of this policy, the policies of the Athletic Department, the University, the Board of Trustees of the University of the University of Arkansas and state law, Coach accepts the Sports Camp License and is authorized to use the Indicia listed in Appendix A solely in connection with the Coach's approved camps and for no other purposes (the "Sports Camp License"). Coach, nor any individual or entity acting on Coach's behalf, shall be authorized or permitted to modify, alter or create any derivative or unitary marks with the Indicia. Upon the completion of all camps approved by the Board of Trustees, the rights granted in the Sports Camp License shall automatically expire.

B. **License Fee of \$10 Per Camp Session.** In consideration for the rights granted under the Sports Camp License, Coach agrees to pay a License Fee of Ten and

No/100 Dollars (\$10.00) per camp session (the "License Fees"). The Athletic Department's Office of Trademark Licensing or Business Office shall include the License Fee as part of any required charges for the camps, and Coach covenants and agrees to pay the License Fees. In its sole discretion, the University shall have the right to increase the License Fees by providing written notice to Coach.

C. Quality Control, Good Will and Indemnification. All merchandise with logos must be purchased through a licensed manufacturer, and the correct designations must be added to the logos on the merchandise, advertising pamphlets or brochures, etc. The University shall charge its standard royalties for merchandise produced by the licensed manufacturer consistent with any applicable licensing agreements then in effect. Coach shall not use non-licensed manufacturers for any reason whatsoever unless such usage is approved by the Office of Trademark Licensing. Coach covenants and agrees that the use of the Indicia, including, but not limited to any good will, inures solely to the benefit of University. The University shall not have any liability arising out of the Coach's use of the Indicia at any time, and Coach agrees to indemnify and hold harmless the University, and its trustees, officers, employees and agents from any and all liability which arises in connection with Coach's use of the Indicia. This duty of indemnification shall survive the expiration or termination of the Sports Camp License.

D. Miscellaneous. The University's waiver of violation of this policy or Coach's failure to abide by the terms of the Sports Camp License shall not be deemed a waiver of any future violations of the Sports Camp License or this policy. In the event that any term or provision of this policy shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision, and this policy shall be interpreted and construed as if such term or provision, to the extent the same shall have been held to be invalid, illegal or unenforceable, had never been contained herein. Coach's rights in the Sports Camp License are fully set forth in this policy, and there are no other rights conveyed by the University. The Sports Camp License is governed by the laws of the State of Arkansas without regard to its choice of law principles as well as all policies of the Athletic Department, the University, and the Board of Trustees. Nothing contained in this Sports Camp License shall be deemed, construed or operate as a waiver of any immunities to suit of any nature whatsoever. Any violation of the terms and conditions of this policy shall automatically terminate the Sports Licensing Agreement.

APPENDIX A

Pursuant to the Sports Camp License, Coach is authorized to use the following words and/or designs containing the Indicia:

Verbiage: Razorback®
 Razorbacks®
 Arkansas Razorbacks®
 University of Arkansas®
 Go Hogs™
 Hogs™
 HawgBall®
 Arkansas®
 Wooo Pig Sooie™

Design: “Razorback logo”
 “Football Helmet logo”

EXHIBIT F

BOARD POLICY

450.1

OUTSIDE EMPLOYMENT OF FACULTY AND ADMINISTRATIVE STAFF MEMBERS
FOR COMPENSATION

While emphasizing the fact that full-time faculty and non-classified administrative staff members of the University are obligated to devote their working time and efforts primarily to University activities, the University recognizes that a limited amount of outside work for private compensation may be advantageous to all concerned. Deans, department heads, directors, vice chancellors, chancellors, vice presidents, and the president are included as administrative staff. Such persons are therefore encouraged to engage in outside employment which will affirmatively contribute to their professional advancement or correlate usefully with their University work. This employment shall not interfere in any substantial way with the employee's University duties nor conflict with his/her University assignments. Written approval from department head and/or dean shall be obtained in advance of such outside employment. Each dean or similar officer shall keep records on outside employment by personnel in his/her college or administrative unit. The report should include actual time spent during the reporting period. Such records shall be reviewed by the appropriate administrator and submitted to the Chancellor or Vice President for Agriculture by September 30 of each year and such records shall be reviewed periodically by the appropriate administrator. The employee shall always make it clear the outside employment is his/her own responsibility and that in it he/she does not act as an agent or representative of the University. University facilities or property shall not be used except with permission of the department head or dean, and the payment of appropriate fees may be required.

September 26, 1997 (Revised)
June 11, 1993 (Corrected)
April 30, 1993 (Revised)
June 15, 1990 (Revised)
January 15, 1988 (Revised)
June 19, 1958 (Revised)
June 5, 1916

EXHIBIT G

PROCEDURES FOR DISMISSAL OF HEAD COACH FOR CAUSE

1. When the Vice Chancellor and Athletic Director ("Athletic Director") has reason to consider a decision to dismiss a Coach for cause, the Athletic Director shall discuss the matter with the Coach to inform the Coach of the proposed action and the reasons for the action. The discussion should be in person unless circumstances require otherwise. The Coach shall be given an opportunity to respond to the reasons for dismissal. After the discussion, if the decision of the Athletic Director is to dismiss the Coach, then the Athletic Director shall prepare a statement of the grounds constituting the cause for dismissal and forward it to the Chancellor with a copy to the Coach. In the event that Coach decides to seek a review of the Athletic Director's decision to dismiss Coach for cause, then Coach shall, within five (5) days after receipt of the statement of dismissal from the Athletic Director, submit a written response to the statement of grounds for dismissal to the Chancellor with a copy to the Athletic Director.
2. Within five (5) days after receipt of the Coach's statement, either the Chancellor or the Coach may request an ad hoc committee to serve as a Hearing Committee to consider the matter and make a recommendation to the Chancellor. The Committee shall be composed of the Vice Chancellor for Finance and Administration, the Vice Chancellor for Academic Affairs and the Chairperson of the Faculty Committee on Athletics. The Committee shall meet and designate one of its members to serve as chair. Upon receipt of a request from either the Chancellor or the Coach that a hearing be conducted, the Committee shall conduct a hearing as provided hereinafter and submit its recommendation to the Chancellor. If neither the Chancellor nor the Coach requests that the matter be heard by the Committee, then a hearing shall be conducted by the Chancellor alone. (All references hereinafter to the Committee shall be deemed to refer to the Chancellor if the matter is being heard by him or her alone.)
3. The Committee, if it so requires, may utilize the services of an advisor to assist it in conducting the hearing. The Committee shall proceed by considering, before the time of the hearing, the statement of grounds for dismissal and the Coach's written response. The hearing date shall be set by the Committee and the written notice of hearing shall provide that relevant documentation and a list of anticipated witnesses be presented by both the Athletic Director and the Coach to the Committee, with a copy being provided to the Coach and the Athletic Director, at least two days in advance of the hearing. The Committee shall have the discretion to receive or reject additional documentation at the hearing and hear or reject witnesses not contained in the list submitted in advance of the hearing.
4. In addition to the members of the Committee and any advisor it may require, only the Coach and his or her attorney(s) or representative(s), the Athletic Director and his or her attorney(s) or representative(s), and witnesses called by the Committee are permitted to attend the hearing.
5. Charges contained in the initial statement of grounds for dismissal may be supplemented at the hearing by evidence of new events occurring after the initial communication to the Coach, which constitute new or additional cause for dismissal, or by new evidence further

substantiating the cause for dismissal, which was not reasonably obtainable prior to the hearing. If supplementary charges or new evidence further substantiating the cause for dismissal, which was not reasonably obtainable prior to the hearing, are introduced at the hearing, the Committee shall provide the Coach, at his or her request, with sufficient additional time to prepare his or her defense and to respond to such supplementary charges or new evidence. The Committee shall determine the order of presentations by the parties and shall supervise the questioning of witnesses. The Coach and the Athletic Director shall have the aid of the Committee when needed in securing the attendance of witnesses, but the attendance of witnesses cannot be guaranteed by the Committee and will remain the responsibility of the respective parties. The Coach or his or her attorney(s) or representative(s) and the Athletic Director or his or her attorney(s) or representative(s) shall have the right within reasonable limits to question all witnesses who testify orally. The Committee shall arrange for a court report to create a written transcript of the hearing.

6. The Committee will use best efforts to provide an opportunity for the Coach and the Athletic Director, or their attorneys or representatives, to question all witnesses but where this cannot be achieved despite the efforts of the Committee, the identity of any such witnesses not appearing in person or by telephone conference, and any written evidence they may have furnished, shall be disclosed to the Coach and the Athletic Director during the hearing. Subject to these safeguards, written statements may, when necessary, be taken outside the hearing and reported to the Committee. These shall be given due weight in light of the fact that the witnesses will not be available for questioning by the parties.

7. Formal rules of court procedure are not to be followed but the Committee shall exercise reasonable efforts to protect the rights of the parties in the reception of evidence and the conduct of the hearing. The Committee may restrict witnesses, written statements or documentary evidence of the Coach or the Athletic Director if it determines such witnesses, written statements and documents are repetitive, cumulative, or not relevant to the issues being considered.

8. After the hearing, the Committee shall arrive at its recommendation (or, in the case of the Chancellor, decision) in private on the basis of the written record, documents, statements and witnesses at the hearing and other matters from the hearing. Before convening in private session to arrive at its recommendation, it shall furnish the Coach and the Athletic Director or their attorneys or representatives the opportunity to make oral statements before the Committee. The Committee may request written arguments if it so desires. The Committee shall proceed to arrive at a recommendation promptly without having the record of the hearing transcribed when it is believed that a fair decision can be reached by this means; or the Committee may await the availability of a transcript of the hearing. The Committee shall make explicit findings with respect to each of the grounds for dismissal presented.

9. Where the matter has been considered by a Committee, the Chancellor shall be notified of the recommendation of the Committee in writing and a copy of the recommendation shall be furnished at the same time to the Athletic Director and the Coach. The Chancellor shall promptly render a decision in writing after receipt of the Committee's recommendation. If the Chancellor alone has heard the matter, he or she shall make explicit findings with respect to each

of the grounds for dismissal presented after the conclusion of the hearing. The decision of the Chancellor shall be the final decision of the University in all respects and shall not be subject to appeal to the President or the Board of Trustees of the University of Arkansas. Nothing contained in these procedures shall be deemed, construed or operate as a waiver of any immunities to suit available to the Board of Trustees or any current or former Trustees, officials, representatives or employees of the University of Arkansas.

FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

This First Amendment to Employment Agreement (“First Amendment” or “Amendment”) is made by and between the BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS (“the University” or “the Board”), acting for the University of Arkansas, Fayetteville’s Athletic Department (“UAF”), and Bret Bielema (“Coach”).

WITNESSETH

WHEREAS, Coach and the University previously entered into an Employment Agreement that was effective as of December 4, 2012 (the “Employment Agreement”); and

WHEREAS, Coach and the University now desire to amend the Employment Agreement subject to the terms and conditions herein set forth; and

WHEREAS, the Athletic Department of the University is pleased to be only one of a handful of departments nationally that is self-supporting and does not rely upon appropriated tax dollars or student fees to operate, and the University will meet its obligations under this Amendment with the Athletic Department’s self-generated revenues and private funds donated in support of the Athletic Department; and

WHEREAS, the Head Football Coach is an important leader, educator, and professional of the Razorback Football Program who plays a critical role in fulfilling the mission of the Athletic Department in assisting student-athletes achieve their full human potential academically and athletically and in becoming productive adults who make positive lifelong contributions to their communities and society;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises herein set forth, the sufficiency of which is hereby acknowledged, the parties covenant and agree to amend the Employment Agreement as follows.

1. Employment Period. The “Term,” as defined in Section 1 of the Employment Agreement, shall be extended by amending the existing language to delete the ending date of “December 31, 2018,” and inserting the date “December 31, 2020” in lieu thereof. All other text, terms, and conditions set forth in Section 1 of the Employment Agreement shall remain the same and shall not be modified in any way by this First Amendment.

2. Salary and Incentive Compensation. Section 3 of the Employment Agreement is hereby amended by deleting the existing text in its entirety and substituting the following text in lieu thereof:

“3. Salary and Incentive Compensation. For each year during the Term of this Agreement, Coach shall be paid a salary based upon the line-item maximum salary established by legislative appropriation acts and shall also be paid an additional amount over the line-item salary solely from private funds and funds generated by contracts with vendors of athletic apparel, shoes, and multimedia rights. By entering into this Agreement, the Board shall be deemed to have approved all payments due Coach which shall be in excess of the line-item salary, and to the extent required by law, the Board shall review and approve all payments due Coach as required under this Agreement which shall be in excess of the line-item salary and derived on an annual basis solely from private funds and funds generated by contracts with vendors of athletic apparel, shoes, and multimedia rights.

Specifically, Coach shall be paid an Annual Salary (with any partial years being prorated) from public and private funds in the total amounts as follows:

<u>Employment Period</u>	<u>Annual Salary</u>
February 6, 2015 through December 31, 2015	\$3,250,000.00

January 1, 2016 through December 31, 2016	\$3,350,000.00
January 1, 2017 through December 31, 2017	\$3,450,000.00
January 1, 2018 through December 31, 2018	\$3,550,000.00
January 1, 2019 through December 31, 2019	\$3,650,000.00
January 1, 2020 through December 31, 2020	\$3,750,000.00

The Annual Salary shall be payable to Coach in twelve (12) equal monthly installments on the last day of each calendar month (the “Annual Salary”). Coach shall also be entitled to incentive compensation, subject to provisions of applicable law or to the extent not prohibited by law, for: (a) Athletic Achievements as set forth in Exhibit A; and (b) Academic Achievements as set forth in Exhibit B. Exhibits A and B are each attached hereto and incorporated herein by reference.”

3. Exhibits A and B to the Employment Agreement. The Employment Agreement, as amended by this First Amendment, is hereby further amended by deleting the current Exhibits A and B to the Employment Agreement and replacing them with Exhibits A and B attached to this First Amendment, which are incorporated herein by reference into this First Amendment and into the Employment Agreement.

4. Retention Compensation. In addition to the Annual Salary, the University seeks to retain Coach throughout the life of this Agreement and therefore agrees to pay Coach an aggregate amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) (the “Retention Payment”) each contract year of the Term subject to the following conditions. The Retention Payment shall be made to Coach in two equal payments of One Hundred Twenty Five Thousand and No/100 Dollars (\$125,000.00) each on February 15th and August 15th of each contract year (less all applicable state and federal tax withholdings) subject to the condition precedent that Coach is employed by the University on the date that each payment is due. For the avoidance of all doubt, the parties agree that if Coach ceases to be employed as Head Football Coach at the University at any time or for any reason prior to a scheduled payment date (February 15

and August 15 of each contract year), then the University shall not owe any portion (whether in whole or in part) of the Retention Payment to Coach for that contract year or any remaining contract years during the Term. The Retention Payment shall be paid solely from private funds and/or funds generated by contracts with vendors of athletic apparel, shoes, and multimedia rights subject to the provisions of applicable law or to the extent not prohibited by law and subject to Board approval for all amounts over line-item maximum. The Retention Payment shall not be part of Coach's "Annual Salary," as defined above, or subject to any guaranty agreement.

5. Termination for Convenience by the University. Section 15 of the Employment Agreement is hereby amended by deleting the existing chart set forth at the bottom of page 24 of Section 15(a) of the Employment Agreement and inserting the following chart in lieu thereof:

<u>YEAR</u>	<u>AMOUNT</u>
Feb. 6, 2015 through Dec. 31, 2015	\$15,400,000.00
Jan. 1, 2016 through Dec. 31, 2016	\$15,400,000.00
Jan. 1, 2017 through Dec. 31, 2017	\$15,400,000.00
Jan. 1, 2018 through Dec. 31, 2018	\$11,700,000.00
Jan. 1, 2019 through Dec. 31, 2019	\$7,900,000.00
Jan. 1, 2020 through Dec. 31, 2020	\$4,000,000.00

All other text, terms, and conditions set forth in Section 15 of the Employment Agreement shall remain the same and shall not be modified in any way by this First Amendment.

6. Termination By Coach. Section 16 of the Employment Agreement

(“Termination Without Cause by Coach – Salary Repayment”) is hereby amended by deleting the second paragraph of Section 16(a) in its entirety and inserting the following new second paragraph in lieu thereof:

“In the event Coach terminates this Agreement to accept a coaching or administrative position with a college, university or professional sports organization at any time prior to the final day of the Term of this Agreement on December 31, 2020, other than due to Coach’s death, disability or illness that prevents him from fulfilling his duties as Head Football Coach, then Coach: (i) shall not be entitled to receive any compensation or benefits of any nature whatsoever under this Employment Agreement following the effective date of the termination; and (ii) shall be liable to the University for the re-payment of the amounts specified in the following schedule:

<u>YEAR</u>	<u>AMOUNT</u>
Feb. 6, 2015 - Dec. 31, 2015	\$4,000,000.00
Jan. 1, 2016 – Dec. 31, 2016	\$3,000,000.00
Jan. 1, 2017 – Dec. 31, 2017	\$2,000,000.00
Jan. 1, 2018 – Dec. 31, 2018	\$1,000,000.00
Jan. 1, 2019 – Dec. 31, 2019	\$500,000.00
Jan. 1, 2020 – Dec. 31, 2020	\$250,000.00

The foregoing amounts shall be paid on a non-cumulative basis beginning with the effective date of Coach’s termination of this Agreement (the “Coach’s Payment”) and any partial years shall be prorated. The Coach’s Payment amount shall be payable in full to the University within 90 days following the effective date of Coach’s termination of this Agreement.”

All other text, terms, and conditions set forth in Section 16 of the Employment Agreement shall remain the same and shall not be modified in any way by this First Amendment.

7. Covenant Not to Compete. Section 19 of the Employment Agreement is hereby amended by deleting the first paragraph of Section 19 in its entirety and inserting

***Bret Bielema v. The Razorback Foundation, Inc.
First Amendment to Employment Agreement***

Exhibit 2

the following new first paragraph in lieu thereof:

“The parties covenant and agree that the University is a member of the SEC and competes against other SEC member institutions for students, faculty, and staff. Additionally, the parties covenant and agree that the University’s football program competes against other SEC member institutions for prospective student-athletes, financial support, and prestige. The parties further covenant and agree that the competitiveness and success of the University’s football program affects the overall financial health and welfare of the Athletic Department and that the University maintains a vested interest in sustaining and protecting the well-being of its football program, including, but not limited to, the recruitment of prospective student-athletes to the institution and the financial integrity of its athletics programs. To avoid harming the University’s interests, Coach covenants and agrees that this covenant not to compete shall be in full force and effect during the period of time beginning on February 6, 2015, and ending on December 31, 2020, and shall survive Coach’s termination of the Agreement prior to the expiration of the Term or any mutually agreed upon extensions of the Term for any reason whatsoever. Coach and/or any individual or entity acting on Coach’s behalf, shall not seek or accept employment in any coaching capacity with any other member institution of the SEC. For purposes of this covenant not to compete, the University and Coach agree that it shall apply only to the 14 member institutions of the SEC existing as of February 6, 2015. This covenant not to compete, however, shall not apply if the University exercises its right to terminate this Agreement for convenience or if Coach terminates this Agreement for cause based upon the University’s material breach of this Agreement.”

All other text, terms, and conditions set forth in Section 19 of the Employment Agreement shall remain the same and shall not be modified in any way by this First Amendment.

8. Construction of Amendment. Unless specifically modified or otherwise expressly amended by this First Amendment, all of the text, provisions, duties, obligations and rights of the parties set forth in the Employment Agreement shall remain the same. In the event of a conflict of terms between the Employment Agreement and this First Amendment, the terms of this First Amendment shall prevail.

9. Entire Agreement. The Employment Agreement and this First
Bret Bielema v. The Razorback Foundation, Inc.
First Amendment to Employment Agreement

Exhibit 2

Amendment to Employment Agreement contain the entire agreement between the parties and supersede any prior or contemporaneous agreements or representations, whether oral or written, between them. The Employment Agreement, as amended by this First Amendment, may not be modified or changed except by a written instrument signed by both parties. Each party represents and warrants that it has not been influenced by any person or entity to enter into the Employment Agreement or this First Amendment, nor relied upon any representations, warranties, or covenants of any person or entity except for those representations, warranties, and covenants set forth in the Employment Agreement or this First Amendment. Each party agrees: (a) that it will be unreasonable for either party to have or rely on any expectation not contained in the provisions of the Employment Agreement or this First Amendment to Employment Agreement; (b) that if either party has or develops an expectation contrary to or in addition to the provisions of the Employment Agreement or this First Amendment to Employment Agreement, such party shall have a duty to immediately give notice to the other party; and (c) that if either party fails to obtain an amendment to the Employment Agreement, as amended by this First Amendment, after having developed an expectation contrary to or in addition to the provisions of the Employment Agreement or this First Amendment to Employment Agreement, such failure will be an admission for evidentiary purposes in any litigation that the expectation was not reasonable and was not part of the final binding agreement between the University and Coach; provided, however, nothing contained in this First Amendment shall be deemed, construed or operate as a waiver of any immunities to suit available to the University, its Trustees or any officers, representatives or employees.

10. Counterparts. This First Amendment may be executed concurrently in one


or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. This First Amendment shall become effective as of February 6, 2015, upon its execution by Coach and the President of the University. The signatures of the Chancellor and the Vice Chancellor and Athletics Director signify their concurrence with this First Amendment. Signatures provided by PDF copy or by facsimile shall be binding.

IN WITNESS WHEREOF, the parties hereunto set their hands unto this First Amendment to Employment Agreement to be effective as of February 6, 2015.

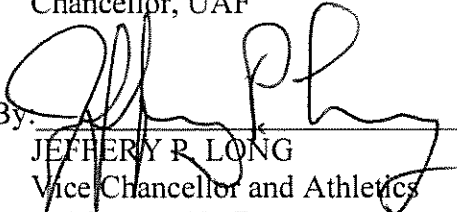
BOARD OF TRUSTEES OF THE
UNIVERSITY OF ARKANSAS,
ACTING FOR THE UNIVERSITY OF
ARKANSAS, FAYETTEVILLE

HEAD FOOTBALL COACH

By: _____
DONALD R. BOBBITT
President
University of Arkansas

By: 
BRET BIELEMA
Head Football Coach, UAF

By: 
DANIEL E. FERRITOR
Chancellor, UAF


By: 
JEFFERY R. LONG
Vice Chancellor and Athletics
Director, UAF


or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. This First Amendment shall become effective as of February 6, 2015, upon its execution by Coach and the President of the University. The signatures of the Chancellor and the Vice Chancellor and Athletics Director signify their concurrence with this First Amendment. Signatures provided by PDF copy or by facsimile shall be binding.

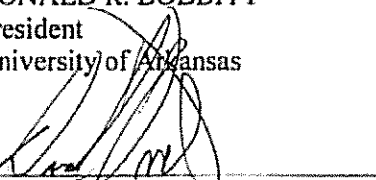
IN WITNESS WHEREOF, the parties hereunto set their hands unto this First Amendment to Employment Agreement to be effective as of February 6, 2015.

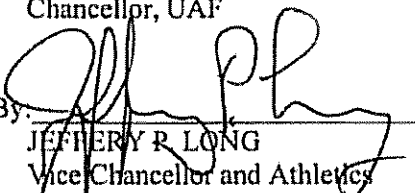
BOARD OF TRUSTEES OF THE
UNIVERSITY OF ARKANSAS,
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ARKANSAS, FAYETTEVILLE

HEAD FOOTBALL COACH

By: 
DONALD R. BOBBITT
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University of Arkansas

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BRET BIELEMA
Head Football Coach, UAF

By: 
DANIEL E. FERRITOR
Chancellor, UAF

By: 
JEFFERY R. LONG
Vice Chancellor and Athletics
Director, UAF

PERSONAL SERVICES AND GUARANTY AGREEMENT

THIS PERSONAL SERVICES AND GUARANTY AGREEMENT (this "*Agreement*") is made and entered into on this 23rd day of October, 2013, to be effective December 4, 2012, by and between THE RAZORBACK FOUNDATION, INC., an Arkansas non-profit corporation, (the "*Foundation*"), and Bret Bielema ("*Bielema*"), to-wit:

INTRODUCTORY PROVISIONS

A. The Foundation is involved in the raising of funds from donors for the furtherance of the athletic program including, but not limited to, scholarships, gifts to the University of Arkansas at Fayetteville for the Athletic Department, improving and/or building facilities, etc.

B. The Foundation relies heavily and extensively upon known coaches and athletic personalities in addition to its own staff to make speeches before various booster groups, Razorback Club meetings, public appearances before other organizations, and various fund-raising activities on behalf of the Foundation.

C. The Foundation desires to obtain the services of Bielema for speaking engagements before the Razorback Club, other service clubs, television and radio appearances, public appearances, and fund-raising efforts for promotion and advancement of Razorback athletics and the Foundation due to his well known, respected, and recognized name.

D. The Foundation acknowledges that Bielema currently has a six (6) year agreement with the University of Arkansas which unless extended pursuant to its terms ends on December 31, 2018 (the "*Employment Agreement*"). The Employment Agreement provides that the University of Arkansas will provide a Third Party Guarantor of the Employment Agreement and the Foundation desires to be such Third Party Guarantor. The Employment Agreement is attached hereto as Exhibit "A" and is incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties heroby agree as follows:

1. The Foundation desires to obtain the services of Bielema and Bielema desires to provide to the Foundation his services by speaking at Razorback Club meetings, fund-raising, making public appearances before service clubs, appearing on radio and television shows, granting interviews to the media, making public appearances for promotion and advancement of Razorback athletics and the Foundation and any and all other public appearances requested by the Foundation beginning on December 4,

2012, and continuing through December 31, 2018. The Foundation agrees to pay all reasonable expenses incurred by Bielema in making said appearances.

2. Both the Foundation and Bielema agree that the Foundation will assign the speaking engagements that Bielema is to perform for the Foundation. The Foundation, however, acknowledges that it will first clear all appearances, speaking events, or fund-raising activities with Bielema so as to coordinate those engagements with Bielema's schedule, and the Foundation further agrees that any scheduling that it does for Bielema shall not in any way interfere with his duties and responsibilities as head coach of the University of Arkansas football program, and that said duties and job responsibilities of Bielema to the University of Arkansas Athletic Department will take priority over the services that are to be performed for the Foundation. Further, Bielema may refuse any engagement if he has a reasonable basis for failure to accept the engagement.

3. Bielema further acknowledges that all services that he renders on behalf of the Foundation will be on his own time and not time which is being paid by the University of Arkansas Athletic Department or the State of Arkansas.

4. The Foundation and Bielema both acknowledge that the relationship between the Foundation and Bielema is that of an independent contractor arrangement.

5. The Foundation shall pay to Bielema and Bielema shall accept from the Foundation the sum of Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00) per year for speaking engagements and the other obligations required for each year of this Agreement. Such sum shall be paid in eight (8) monthly installments of Twenty Nine Thousand One Hundred Sixty-Six and 67/100 Dollars (\$29,166.67) each and four (4) monthly installments of Twenty Nine Thousand One Hundred Sixty-Six and 66/100 Dollars (\$29,166.66).

6. If at any time during the term of this Agreement, Bielema is terminated for cause by the University of Arkansas and the same is not overturned by an administrative committee or judicial body, then this Agreement shall become null and void upon the termination date and the Foundation shall not be required to honor any additional terms of this Agreement except for the proration of any amounts already earned and not paid to Bielema up until the date and time of the termination of this Agreement. Termination for cause shall be defined the same as termination for cause by the Employment Agreement between Bielema and the University of Arkansas.

7. If Bielema voluntarily terminates his position with the University of Arkansas, then this Agreement shall become null and void on the date and time that Bielema voluntarily terminates his Employment Agreement. Bielema will not be entitled to any additional benefits under the terms of this Agreement except for the proration of

any amounts due Bielema up until the date and time of the termination of this Agreement.

8. If Bielema is terminated for the convenience of the University of Arkansas, the Foundation shall pay to Bielema the amounts specified below:

YEAR	AMOUNT
First Contract Year (12/04/12 - 12/31/13)	\$12,800,000
Second Contract Year (1/01/14 - 12/31/14)	\$12,800,000
Third Contract Year (1/01/15 - 12/31/15)	\$12,800,000
Fourth Contract Year (1/01/16 - 12/31/16)	\$9,600,000
Fifth Contract Year (1/01/17 - 12/31/17)	\$6,400,000
Sixth Contract Year (01/01/18 - 12/31/18)	\$3,200,000

The foregoing amounts shall be paid on a non-cumulative basis beginning with the effective date of the termination for convenience in accordance with the foregoing schedule (the "Guaranty Payment"). The Guaranty Payment shall be paid in equal monthly installments on the last calendar day of each month with any partial months being prorated over the remaining balance of the Term as of the effective date of the termination for convenience. The Guaranty Payment shall be subject to the duty of mitigation as set forth in this Guaranty Agreement and/or other conditions set forth in this Guaranty Agreement. This payment to Bielema shall be in full satisfaction of the guarantee by a third party that is required under the Employment Agreement. The amount specified in this paragraph shall be the total amount that will be paid by the Foundation to Bielema and Bielema shall be entitled to no additional funds from the Foundation of any kind or nature except for the amounts already earned and not paid to Bielema up until the date and time of any termination of the Employment Agreement.

9. Bielema further hereby agrees to waive any obligations of the University of Arkansas and the Foundation in exchange for the sum to be paid under paragraph 8 of the Agreement. Additionally, if Bielema is terminated for the convenience of the University of Arkansas and the Foundation makes the payments as required by paragraph 8, the Foundation shall be relieved of any of its other obligations under this Agreement regarding personal services and Bielema shall be entitled to no additional amounts from the University of Arkansas and/or the Foundation except for the amounts already earned and not paid to Bielema up until the date and time of any termination of the Employment Agreement.

10. If Bielema is terminated for the convenience of the University of Arkansas in consideration of the amount specified in paragraph 8, in addition to any agreement to pay compensation with the Razorback Foundation, Bielema shall release and discharge the Foundation, its officers, trustees, and employees from and against any liability of any nature whatsoever related to or arising out of this Agreement and/or any amendments hereto, Bielema's employment at the University of Arkansas, and Bielema's termination for convenience of the University of Arkansas, including, but not limited to, the following: any and all claims arising under or relating to any Federal or state constitutions, laws, regulations, common law, or any other provision of law. Bielema further covenants and agrees that he knowingly and voluntarily accepts this guaranty, after consulting with his legal counsel or after voluntarily choosing not to consult legal counsel, in full and complete satisfaction of any and all obligations of the Foundation and as an alternative to the time, expense, and trouble of any future litigation. Bielema acknowledges and intends for the Foundation to rely upon this provision in entering into this Agreement.

Bielema further covenants and agrees that any exercise of ownership or control by him over any partial or total payment under paragraph 8 of this Agreement shall constitute an act of ratification and/or sufficient and valuable consideration which absolutely and unconditionally forever releases, discharges and waives any and all alleged liability of the Foundation, its officials, representatives, and employees, in both their official and individual capacities, from and against any and all claims of any nature whatsoever (including, but not limited to, any and all claims arising from or relating to any Federal or state constitutions, laws, regulations, common law, or any other provision of law) relating to or arising out of this Agreement, Bielema's employment at the University of Arkansas, and Bielema's termination for convenience of the University of Arkansas for any and all such claims which arise or may have arisen between Bielema's initial date of employment, and the date of Bielema's termination for convenience; provided, however, that the scope of the release, discharge and waiver granted by Bielema herein shall not include a release, discharge, or waiver of any claims arising from the failure to pay all sums due under this Agreement.

11. If Bielema is terminated by the University of Arkansas for its convenience and the Foundation is obligated to pay the amounts specified in paragraph 8 herein, Bielema agrees that those payments shall be subject to the following mitigation provisions. Bielema shall be required to do the following: Bielema shall have the duty to mitigate his damages by making reasonable efforts to gain re-employment. The parties understand and agree that if Bielema is successful in gaining such re-employment, or alternative employment of any kind the Foundation's Guaranty Payment obligations shall be reduced by the amount of compensation Coach earns from such employment (so long as such employment coincides with the Guaranty Payments). The Foundation's right to

reduce its obligations shall not include amounts Coach may earn from passive investments or interest not associated with new employment.

12. If Bielema is discharged under paragraph 8 herein above and institutes litigation concerning anything against the University of Arkansas or the Foundation except for nonpayment under this Agreement then all amounts specified in paragraph 8 herein will be waived by Bielema and he will not be entitled to any compensation as specified herein. If subsequent to discharge Bielema has already received a portion of or all of the amount specified in paragraph 10 and then institutes litigation, he shall immediately repay said amounts and if he does not repay said amounts then the Foundation shall be entitled to a judgment for the amounts he has received plus interest at the highest rate allowed by Arkansas law.

13. Bielema agrees that the Foundation's act of entering into this agreement on behalf of the University of Arkansas guarantying its obligations to Bielema will be consideration to Bielema for his agreement to pay back to the University of Arkansas a certain amount as set forth in his employment agreement with the University of Arkansas (for purposes of this Agreement, Paragraph 16 "Termination by Coach – Salary Repayment" of Bielema's employment agreement with the University of Arkansas is incorporated herein as it relates to the amount Bielema is required to pay back to the University of Arkansas). In addition to his agreement to pay that amount to the University of Arkansas, he agrees that all obligations of the Foundation shall cease upon the date of his resignation, except for the Foundation's obligation to provide amounts earned but not yet paid at the time of Bielema's resignation.

The payments required pursuant to Paragraph 16 "Termination by Coach – Salary Repayment" of Bielema's employment agreement with the University of Arkansas will be paid by Bielema to the University of Arkansas in accordance with his Employment Agreement entered into on the 20th day of August, 2013.

14. If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. Notwithstanding, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect and be construed and enforced as if such provision had not been included, or had been modified as above provided, as the case may be.

15. This Agreement is governed by and shall be construed and enforced under the laws of the State of Arkansas, and venue for this Agreement shall lie solely with the Circuit Court of Washington County, Arkansas.

16. This Agreement binds and is for the benefit of the Foundation, its

successors, assigns and legal representatives.

17. No waiver, discharge, or modification of a provision of this Agreement is valid unless it is evidenced by a writing signed by or on behalf of the party against whom the waiver, discharge or modification is sought to be enforced. The failure of any party to require performance by the other party of any provision of this Agreement shall not be deemed to subsequently effect the parties' rights to enforce a provision hereof. A waiver of a breach of any provision of this Agreement is not a waiver of any other breach of the provision or waiver of the provision.

18. Each party warrants and represents that they have the full right, power and authority to enter into this Agreement and make the agreements in it.

19. Time is of the essence.

20. In further consideration for the Guaranty Payment set forth in Paragraph 8 of this Agreement, Bielema covenants and agrees that all release and waiver provisions under this Agreement, including, but not limited to, Paragraph 10, shall apply with equal force to the Board of Trustees of the University of Arkansas, the University of Arkansas, Fayetteville, and the University's Trustees as well as all officials, representatives and employees, each in his or her individual and official capacity (collectively, the "Board"). The Foundation and Bielema agree that the Board is an express third-party beneficiary of this Agreement and entitled to enforce all release and waiver provisions, including, but not limited to, Paragraph 10, of this Agreement. This provision shall survive the termination of this Agreement for any reason.

21. This Agreement contains the entire agreement between the parties with respect to the subject matter contained herein and supersedes any prior contemporaneous agreements or representations, oral or written, between them. This Agreement may not be modified or changed, nor may the terms of this Agreement be extended except by a written instrument signed by both parties.

IN WITNESS WHEREOF, this Agreement is made and entered into on the date and year first written above in original duplicates, to be effective as of December 4, 2012.

RAZORBACK FOUNDATION, INC.

By: 
Sean Rochelle - Executive Director

BRET BIELEMA


Bret Bielema

PERSONAL SERVICES AND GUARANTY AGREEMENT

THIS PERSONAL SERVICES AND GUARANTY AGREEMENT (this “*Agreement*”) is made and entered into on this 6th day of February, 2015, to be effective December 4, 2012, by and between THE RAZORBACK FOUNDATION, INC., an Arkansas non-profit corporation, (the “*Foundation*”), and Bret Bielema (“*Bielema*”), to-wit:

INTRODUCTORY PROVISIONS

A. The Foundation is involved in the raising of funds from donors for the furtherance of the athletic program including, but not limited to, scholarships, gifts to the University of Arkansas at Fayetteville for the Athletic Department, improving and/or building facilities, etc.

B. The Foundation relies heavily and extensively upon known coaches and athletic personalities in addition to its own staff to make speeches before various booster groups, Razorback Club meetings, public appearances before other organizations, and various fund-raising activities on behalf of the Foundation.

C. The Foundation desires to obtain the services of Bielema for speaking engagements before the Razorback Club, other service clubs, television and radio appearances, public appearances, and fund-raising efforts for promotion and advancement of Razorback athletics and the Foundation due to his well known, respected, and recognized name.

D. The Foundation acknowledges that Bielema currently has a eight (8) year agreement with the University of Arkansas which unless extended pursuant to its terms ends on December 31, 2020 (the “*Employment Agreement*”). The Employment Agreement provides that the University of Arkansas will provide a Third Party Guarantor of the Employment Agreement and the Foundation desires to be such Third Party Guarantor. The Employment Agreement is attached hereto as *Exhibit "A"* and is incorporated herein by reference.

E. This Personal Services and Guaranty Agreement replaces all previous Personal Services and Guaranty Agreements entered into between the parties and all previous Personal Services and Guaranty Agreements are hereby null and void.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

1. The Foundation desires to obtain the services of Bielema and Bielema desires to provide to the Foundation his services by speaking at Razorback Club

meetings, fund-raising, making public appearances before service clubs, appearing on radio and television shows, granting interviews to the media, making public appearances for promotion and advancement of Razorback athletics and the Foundation and any and all other public appearances requested by the Foundation beginning on December 4, 2012, and continuing through December 31, 2020. The Foundation agrees to pay all reasonable expenses incurred by Bielema in making said appearances.

2. Both the Foundation and Bielema agree that the Foundation will assign the speaking engagements that Bielema is to perform for the Foundation. The Foundation, however, acknowledges that it will first clear all appearances, speaking events, or fund-raising activities with Bielema so as to coordinate those engagements with Bielema's schedule, and the Foundation further agrees that any scheduling that it does for Bielema shall not in any way interfere with his duties and responsibilities as head coach of the University of Arkansas football program, and that said duties and job responsibilities of Bielema to the University of Arkansas Athletic Department will take priority over the services that are to be performed for the Foundation. Further, Bielema may refuse any engagement if he has a reasonable basis for failure to accept the engagement.

3. Bielema further acknowledges that all services that he renders on behalf of the Foundation will be on his own time and not time which is being paid by the University of Arkansas Athletic Department or the State of Arkansas.

4. The Foundation and Bielema both acknowledge that the relationship between the Foundation and Bielema is that of an independent contractor arrangement.

5. The Foundation shall pay to Bielema and Bielema shall accept from the Foundation the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) per year for speaking engagements and the other obligations required for each year of this Agreement. Such sum shall be paid in eleven (11) monthly installments of Forty-One Thousand Six Hundred Sixty-Six and 66/100 Dollars (\$41,666.66) each and one (1) monthly installments of Forty One Thousand Six Hundred Sixty-Six and 74/100 Dollars (\$41,666.74).

6. If at any time during the term of this Agreement, Bielema is terminated for cause by the University of Arkansas and the same is not overturned by an administrative committee or judicial body, then this Agreement shall become null and void upon the termination date and the Foundation shall not be required to honor any additional terms of this Agreement except for the proration of any amounts already earned and not paid to Bielema up until the date and time of the termination of this Agreement. Termination for cause shall be defined the same as termination for cause by the Employment Agreement between Bielema and the University of Arkansas.

7. If Bielema voluntarily terminates his position with the University of Arkansas, then this Agreement shall become null and void on the date and time that Bielema voluntarily terminates his Employment Agreement. Bielema will not be entitled to any additional benefits under the terms of this Agreement except for the proration of any amounts due Bielema up until the date and time of the termination of this Agreement.

8. If Bielema is terminated for the convenience of the University of Arkansas, the Foundation shall pay to Bielema the amounts specified below:

YEAR	AMOUNT
December 4, 2012 - December 31, 2015	\$15,400,000
January 1, 2016 - December 31, 2016	\$15,400,000
January 1, 2017 - December 31, 2017	\$15,400,000
January 1, 2018 - December 31, 2018	\$11,700,000
January 1, 2019 - December 31, 2019	\$7,900,000
January 1, 2020 - December 31, 2020	\$4,000,000

The foregoing amounts shall be paid on a non-cumulative basis beginning with the effective date of the termination for convenience in accordance with the foregoing schedule (the "Guaranty Payment"). The Guaranty Payment shall be paid in equal monthly installments on the last calendar day of each month with any partial months being prorated over the remaining balance of the Term as of the effective date of the termination for convenience. The Guaranty Payment shall be subject to the duty of mitigation as set forth in this Guaranty Agreement and/or other conditions set forth in this Guaranty Agreement. This payment to Bielema shall be in full satisfaction of the guarantee by a third party that is required under the Employment Agreement. The amount specified in this paragraph shall be the total amount that will be paid by the Foundation to Bielema and Bielema shall be entitled to no additional funds from the Foundation of any kind or nature except for the amounts already earned and not paid to Bielema up until the date and time of any termination of the Employment Agreement.

9. Bielema further hereby agrees to waive any obligations of the University of Arkansas and the Foundation in exchange for the sum to be paid under paragraph 8 of the Agreement. Additionally, if Bielema is terminated for the convenience of the University of Arkansas and the Foundation makes the payments as required by paragraph 8, the Foundation shall be relieved of any of its other obligations under this Agreement regarding personal services and Bielema shall be entitled to no additional amounts from

the University of Arkansas and/or the Foundation except for the amounts already earned and not paid to Bielema up until the date and time of any termination of the Employment Agreement.

10. If Bielema is terminated for the convenience of the University of Arkansas in consideration of the amount specified in paragraph 8, in addition to any agreement to pay compensation with the Razorback Foundation, Bielema shall release and discharge the Foundation, its officers, trustees, and employees from and against any liability of any nature whatsoever related to or arising out of this Agreement and/or any amendments hereto, Bielema's employment at the University of Arkansas, and Bielema's termination for convenience of the University of Arkansas, including, but not limited to, the following: any and all claims arising under or relating to any Federal or state constitutions, laws, regulations, common law, or any other provision of law. Bielema further covenants and agrees that he knowingly and voluntarily accepts this guaranty, after consulting with his legal counsel or after voluntarily choosing not to consult legal counsel, in full and complete satisfaction of any and all obligations of the Foundation and as an alternative to the time, expense, and trouble of any future litigation. Bielema acknowledges and intends for the Foundation to rely upon this provision in entering into this Agreement.

Bielema further covenants and agrees that any exercise of ownership or control by him over any partial or total payment under paragraph 8 of this Agreement shall constitute an act of ratification and/or sufficient and valuable consideration which absolutely and unconditionally forever releases, discharges and waives any and all alleged liability of the Foundation, its officials, representatives, and employees, in both their official and individual capacities, from and against any and all claims of any nature whatsoever (including, but not limited to, any and all claims arising from or relating to any Federal or state constitutions, laws, regulations, common law, or any other provision of law) relating to or arising out of this Agreement, Bielema's employment at the University of Arkansas, and Bielema's termination for convenience of the University of Arkansas for any and all such claims which arise or may have arisen between Bielema's initial date of employment, and the date of Bielema's termination for convenience; provided, however, that the scope of the release, discharge and waiver granted by Bielema herein shall not include a release, discharge, or waiver of any claims arising from the failure to pay all sums due under this Agreement.

11. If Bielema is terminated by the University of Arkansas for its convenience and the Foundation is obligated to pay the amounts specified in paragraph 8 herein, Bielema agrees that those payments shall be subject to the following mitigation provisions. Bielema shall be required to do the following: Bielema shall have the duty to mitigate his damages by making reasonable efforts to gain re-employment. The parties understand and agree that if Bielema is successful in gaining such re-employment, or

alternative employment of any kind the Foundation's Guaranty Payment obligations shall be reduced by the amount of compensation Coach earns from such employment (so long as such employment coincides with the Guaranty Payments). The Foundation's right to reduce its obligations shall not include amounts Coach may earn from passive investments or interest not associated with new employment.

12. If Bielema is discharged under paragraph 8 herein above and institutes litigation concerning anything against the University of Arkansas or the Foundation except for nonpayment under this Agreement then all amounts specified in paragraph 8 herein will be waived by Bielema and he will not be entitled to any compensation as specified herein. If subsequent to discharge Bielema has already received a portion of or all of the amount specified in paragraph 10 and then institutes litigation, he shall immediately repay said amounts and if he does not repay said amounts then the Foundation shall be entitled to a judgment for the amounts he has received plus interest at the highest rate allowed by Arkansas law.

13. Bielema agrees that the Foundation's act of entering into this agreement on behalf of the University of Arkansas guarantying its obligations to Bielema will be consideration to Bielema for his agreement to pay back to the University of Arkansas a certain amount as set forth in his employment agreement with the University of Arkansas (for purposes of this Agreement, Paragraph 16 "Termination by Coach – Salary Repayment" of Bielema's employment agreement with the University of Arkansas is incorporated herein as it relates to the amount Bielema is required to pay back to the University of Arkansas). In addition to his agreement to pay that amount to the University of Arkansas, he agrees that all obligations of the Foundation shall cease upon the date of his resignation, except for the Foundation's obligation to provide amounts earned but not yet paid at the time of Bielema's resignation.

The payments required pursuant to Paragraph 16 "Termination by Coach – Salary Repayment" of Bielema's employment agreement with the University of Arkansas will be paid by Bielema to the University of Arkansas in accordance with his Employment Agreement entered into on the _____ day of _____, 2015.

14. If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. Notwithstanding, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect and be construed and enforced as if such provision had not been included, or had been modified as above provided, as the case may be.

15. This Agreement is governed by and shall be construed and enforced under the laws of the State of Arkansas, and venue for this Agreement shall lie solely with the

Circuit Court of Washington County, Arkansas.

16. This Agreement binds and is for the benefit of the Foundation, its successors, assigns and legal representatives.

17. No waiver, discharge, or modification of a provision of this Agreement is valid unless it is evidenced by a writing signed by or on behalf of the party against whom the waiver, discharge or modification is sought to be enforced. The failure of any party to require performance by the other party of any provision of this Agreement shall not be deemed to subsequently effect the parties' rights to enforce a provision hereof. A waiver of a breach of any provision of this Agreement is not a waiver of any other breach of the provision or waiver of the provision.

18. Each party warrants and represents that they have the full right, power and authority to enter into this Agreement and make the agreements in it.

19. Time is of the essence.

20. In further consideration for the Guaranty Payment set forth in Paragraph 8 of this Agreement, Bielema covenants and agrees that all release and waiver provisions under this Agreement, including, but not limited to, Paragraph 10, shall apply will equal force to the Board of Trustees of the University of Arkansas, the University of Arkansas, Fayetteville, and the University's Trustees as well as all officials, representatives and employees, each in his or her individual and official capacity (collectively, the "Board"). The Foundation and Bielema agree that the Board is an express third-party beneficiary of this Agreement and entitled to enforce all release and waiver provisions, including, but not limited to, Paragraph 10, of this Agreement. This provision shall survive the termination of this Agreement for any reason.

21. This Agreement contains the entire agreement between the parties with respect to the subject matter contained herein and supersedes any prior contemporaneous agreements or representations, oral or written, between them. This Agreement may not be modified or changed, nor may the terms of this Agreement be extended except by a written instrument signed by both parties.

IN WITNESS WHEREOF, this Agreement is made and entered into on the date and year first written above in original duplicates, to be effective as of December 4, 2012.

RAZORBACK FOUNDATION, INC.

By: 
Sean Rochelle - Executive Director

BRET BIELEMA


Bret Bielema

RELEASE AND WAIVER AGREEMENT

THIS RELEASE AND WAIVER AGREEMENT (the "Agreement") is entered into on this 30th day of January, 2018 between The Razorback Foundation, Inc., an Arkansas nonprofit corporation (the "Foundation"), its successors and assigns, and Bret Bielema ("Bielema") to be effective November 24, 2017 ("Effective Date"). The parties identified above may be referred to herein collectively as the "Parties," and any individual party identified above may be referred to herein as a "Party."

WITNESSETH

WHEREAS, the Board of Trustees of the University of Arkansas, acting for the University of Arkansas, Fayetteville's Athletic Department (the "University") and Bielema entered into an Employment Agreement ("Employment Agreement") that was effective as of December 4, 2012, and was amended on or about February 6, 2015; and

WHEREAS, the Foundation and Bielema entered into a "Personal Services and Guaranty Agreement" ("Guaranty Agreement") on February 6, 2015 (that became effective as of December 4, 2012), that incorporated the Employment Agreement by reference and also operates as a third-party guaranty agreement and full release and waiver of any and all liabilities, debts, obligations and amounts owed to Bielema by the University; and

WHEREAS, the University terminated the Employment Agreement (as amended) with Bielema for convenience on November 24, 2017; and

WHEREAS, the Foundation and Bielema mutually desire to enter into this Agreement subject to all terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the terms and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby covenant and agree as follows:

1. Release. In exchange for the good and valuable consideration set forth in this Agreement, Bielema hereby irrevocably and unconditionally releases, waives, acquits, forever discharges, and agrees to hold harmless the following: (a) the University (as defined above); (b) the current and former Trustees of the Board of Trustees of the University of Arkansas; (c) the University's officers, representatives, volunteers and employees; (d) the Foundation ("as defined above"); (e) the Foundation's current and former directors, officers, volunteers and employees; (f) any and all of the University's and Foundation's members, predecessors, successors, assigns, agents, directors, trustees, officers, employees, representatives, divisions, subsidiaries, affiliates (and agents, directors, trustees, officers, employees, representatives and attorneys of such divisions, subsidiaries and affiliates), and all persons acting by, through, under or in concert with any of them (collectively, the "Releasees"), from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses of any nature whatsoever, known or

unknown, suspected or unsuspected, including, but not limited to, rights arising out of alleged violations or breaches of any contracts, express or implied, or any tort, or any legal restrictions on the Foundation's or the University's rights to terminate employees, or any federal, state or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991; (2) the Americans with Disabilities Act, as amended; (3) 42 U.S.C. § 1981; (4) the Age Discrimination in Employment Act; (5) the Older Workers Benefit Protection Act; (6) the Equal Pay Act; (7) the Employee Retirement Income Security Act; (8) Section 503 of the Rehabilitation Act of 1973, as amended; (9) the False Claims Act (including the qui tam provision thereof); (10) the Consolidated Omnibus Budget Reconciliation Act of 1986; (11) intentional or negligent infliction of emotional distress or "outrage"; (12) defamation; (13) interference with employment and/or contractual relations; (14) wrongful discharge; (15) invasion of privacy; (16) breach of contract, express or implied (including, but not limited to, breach of Bielema's Employment Agreement, as amended, with the University of Arkansas or any other contract); (17) Title IX of the Education Amendments of 1972, as amended; (18) the Arkansas Whistle-Blower Act; (19) the Arkansas Civil Rights Act; and (20) any other basis in law, including, without limitation, any constitutions, federal or state statutes (all as amended, and including, but not limited to, any form of retaliation), federal or state regulations, common law or any other basis, including but not limited to, any liability of any nature related to or arising out of the Guaranty Agreement, Bielema's employment at the University of Arkansas, Bielema's termination for convenience at the University of Arkansas (collectively, the "Claim" or "Claims"), which Bielema now has, owns or holds, or claims to have, own or hold, or which Bielema at any time heretofore had, owned or held, or claimed to have, owned or held, against each or any of the Releasees at any time, up to and including the Effective Date of this Agreement, which is stated above. The foregoing provision shall be referred to as the "Release," and any person or entity falling within the scope of the Release shall be referred to as a "Releasee" or "Releasees." Bielema grants this Release voluntarily and in exchange for the valuable consideration contained in this Agreement and as required pursuant to the terms and conditions of the Employment Agreement, as amended, with the University as well as the Guaranty Agreement. The Release shall survive indefinitely and may not be revoked for any reason.

2. Prohibition Against Litigation. In consideration of the benefits conferred in this Agreement, Bielema hereby covenants and agrees not to sue any of the Releasees on any of the released Claims (or any other matter whatsoever relating to any matter occurring on or before the execution of this Agreement) or join as a Party with others who may sue on any such Claims (or any other matter whatsoever relating to any matter occurring on or before the execution of this Agreement).

3. Representations and Warranties; Dismissal. Bielema hereby represents and warrants that he has not filed, nor has he assigned to others the right to file, any complaints, charges, or lawsuits against any of the Releasees with any governmental agency, any court, or judicial body, and that Bielema will not file, nor will he assign to others the right to file, or to make any further Claims against the Releasees at any time hereafter for actions taken up to and including the Effective Date of this Agreement, which is stated above. To the extent there is any such litigation, administrative complaint or any other action of any nature whatsoever currently ongoing, about to be initiated, or authorized to be asserted against the Releasees, Bielema

covenants and agrees to immediately dismiss with prejudice any lawsuit, claims, or charges of any kind whatsoever under any law or theory, any federal or state constitution, statute, regulation or common law, that he has filed or authorized for filing against the Releasees in any state or federal court, agency or department or other tribunal of any nature whatsoever. Bielema shall execute any and all motions or other documents and pleadings necessary or take any other necessary actions requested by the Releasees to effectuate the same. In the event Bielema fails to take the required actions under this provision, then Bielema appoints the Foundation as his attorney-in-fact for the sole purpose of executing any and all necessary documents to dismiss any such proceeding against any of the Releasees. Bielema hereby covenants and promises that he will not file any charges, claims, or lawsuits against the Releasees for any alleged acts, omissions and/or events, whether now known or unknown, that have or may have occurred prior to the execution date of this Agreement by all Parties. In the event Bielema initiates litigation concerning the subject matter of this Agreement, Bielema covenants and agrees that this Agreement shall entitle the Releasees to a stipulation that all claims identified in this Agreement have been forever released and discharged, and this document shall serve as the stipulation and consent to the dismissal of the litigation.

4. Representations Regarding Existing Claims. Bielema acknowledges and represents that he has no knowledge of any acts or omissions by any of the Releasees or by any employee of the University or the Foundation that he believes could possibly constitute any basis for a claimed violation of any federal, state, or local law, any common law, or any rule, regulation or bylaw promulgated by the NCAA, the Southeastern Conference, or any other administrative body.

5. Guaranty Payment, Duty of Mitigation, and the Foundation's Right of Offset.

A. Guaranty Payment. In consideration of the irrevocable release and waiver of any and all Claims granted by Bielema in this Agreement (including, but not limited to, the Release) as well as his performance of all other terms and conditions in this Agreement and the Employment Agreement with the University (as amended), the Foundation shall pay Bielema the first monthly sum of Sixty-Four Thousand One Hundred Sixty-Six and 67/100 Dollars (\$64,166.67) for the pro-rata period of November 25, 2017 through November 30, 2017, and all remaining monthly payments will be in equal amounts of Three Hundred Twenty Thousand Eight Hundred Thirty-Three and 33/100 Dollars (\$320,833.33) for the period beginning on December 1, 2017, and ending on December 31, 2020, subject to Bielema's duty of mitigation and the Foundation's right of offset, with each such payment being paid on the final working day of each calendar month. Accordingly, subject to Bielema's duty of mitigation and a possible reduction due to the Foundation's right of offset specified herein, the maximum total amount of the payment owed to Bielema shall not exceed a maximum of Eleven Million Nine Hundred Thirty-Five Thousand and No/100 Dollars (\$11,935,000.00) (the "Guaranty Payment"). Given that the Guaranty Payment may be adjusted to reflect any offsets permitted under this Agreement, the Parties understand and agree that the term "Guaranty

Payment” shall refer to the actual amount owed to Bielema as adjusted for any offsets and thus may be less than \$11,935,000.00, as specified, but in no event shall it exceed that sum. Bielema covenants and agrees that the Foundation, the University and the other Releasees shall not owe him any other sums or amounts of any kind or nature whatsoever other than those expressly set forth in this Agreement.

B. Bielema’s Duty of Mitigation and the Foundation’s Right of Offset.

- (i) Bielema shall have an affirmative duty of mitigation to diligently seek and to obtain other employment. Every six (6) months during the life of this Agreement, Bielema shall provide a written summary to the Foundation of his efforts to find other employment.
- (ii) The Parties understand and agree that if Bielema is successful in gaining such re-employment, or alternative employment of any kind by Bielema personally or through business entities owned or controlled by Bielema (“Other Employment”), Bielema shall notify the Foundation in writing of his Other Employment and his total Other Income (as herein defined). Upon the Foundation’s written request, Bielema shall cooperate and provide records verifying such Other Income (as defined herein).
- (iii) The Foundation shall have the following right of offset. The Foundation’s obligation to make the monthly payments of the Guaranty Payment shall be reduced (*i.e.*, offset) dollar-for-dollar by the amount of compensation (including, the dollar value of any benefits packages) Bielema earns from Other Employment as specified herein. The Foundation’s right to reduce (*i.e.*, offset) the Guaranty Payment shall be ongoing beginning on November 25, 2017, and ending on December 31, 2020. Except as expressly excluded herein, the Foundation’s right to offset shall apply to all income earned or received, whether the type of such income is athletically related or not athletically related, including, without limitation, gross income from base salary or wages, talent fees, or any other types of compensation paid to Bielema or any business entity owned by or controlled by Bielema, including but not limited to, the following: consulting fees, honoraria, fees received as an independent contractor, or any other income or compensation of any kind whatsoever (collectively referred to as “Other Income”).
- (iv) The Foundation’s right to offset shall have the following exclusions. The Foundation’s right to offset shall not include: (a) amounts Bielema earns from passive investments or interest not associated with any new employment; and (b) shall not include the amounts specified in the following schedule for each individual year:

<u>Time Period</u>	<u>AMOUNT</u>
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Nov. 25, 2017 to Dec. 31, 2017	\$150,000.00
Jan. 1, 2018 to Dec. 31, 2018	\$150,000.00
Jan. 1, 2019 to Dec. 31, 2019	\$125,000.00
Jan. 1, 2020 to Dec. 31, 2020	\$100,000.00

The foregoing amounts are non-cumulative and apply solely to exclude income earned by Bielema during each specific year. For convenience, the foregoing amounts shall be referred to as "Excluded Income." The Foundation's right to offset shall not apply to Excluded Income.

- (v) For purposes of this Agreement, the name "Bielema" shall mean Bret Bielema, individually, and shall also mean and include, but not be limited to, any business or legal entity, trust, financial vehicle or other structure of any kind or type that is paid, receives or holds Other Income from Other Employment in any amount for Bielema, whether directly or indirectly, or as designated by Bielema to be paid to any other person, entity or third-party. Given Bielema's duty of mitigation and the Foundation's right to offset, Bielema (including, but not limited to, any individual or entity acting on his behalf) agrees to use his best efforts to maximize his earning potential with any new employer(s) consistent with compensation rates for similar positions in the given industry at the time such Other Employment is obtained. Except for Excluded Income, the Foundation's right to offset shall apply to the following amounts, whichever is greater, on a dollar-for-dollar reduction basis: (i) any and all Other Income paid to Bielema for the period beginning on November 25, 2017, and ending on December 31, 2020; or (ii) the "Average Annual Compensation" (as defined herein) to be paid to Bielema over the term of any multi-year contracts (for purposes of this Agreement, a series of one-year contracts with a single employer shall be treated as a multi-year contract).

For purposes of this Agreement, the term "Average Annual Compensation" shall mean the average annual value of all amounts required to be paid to Bielema during the term of any multi-year contracts (multi-year contracts shall include a series of one-year contracts with a single employer), including, but not limited to, the following elements: the average annual value of all salary, benefits, speaking fees, coaching shows (via radio, television, Internet, or any other form of media such as podcasts or streaming services), the average annual value of any deferred compensation, other forms of compensation, and/or guaranteed payments to be paid over the life of any multi-year contract. The term "Average Annual Compensation" shall not include the annual value of any prospective, but unrealized bonus or other incentive compensation payments (collectively, "Incentive Compensation"); provided, however, the Foundation shall have the right to offset against any Incentive Compensation earned by Bielema during the period between November

25, 2017, and December 31, 2020 (regardless of the timing of any such payments), including, but not limited to, any Incentive Compensation earned for bowl game participation or wins, victories, conference or national championships, or other performance objectives arising from the 2020 football season, including any bowl games played in January, 2021.

Within 60 days after each calendar year ending on December 31, 2018, December 31, 2019, and December 31, 2020, the Parties will meet in person or via telephone to conduct a reconciliation meeting regarding any outstanding amounts owed to either of them. The Parties will cooperate in good faith and share all necessary records to conduct and complete the reconciliation process. In the event the Foundation's right to offset is applied to the compensation set forth in Paragraph 5(B)(v)(ii), the Parties agree to reconcile the difference between the following amounts: (a) the value of the Average Annual Compensation (as defined above) to which the Foundation applied its offset; and (b) the value of all combined annual compensation actually earned by Bielema during the preceding year, including, but not limited to, the value of all salary, benefits, bonuses, speaking or appearance fees, Incentive Compensation, other payments or compensation, the annual average value of any deferred compensation, and/or any guaranteed payments. If the difference in these two values establishes that the Foundation offset more income than Bielema actually earned as part of his Average Annual Compensation (as defined above), then the Foundation shall make a payment to Bielema within 30 calendar days to cover this differential. Similarly, if the difference in these two values establishes that the Foundation offset less income than Bielema actually earned as part of his Average Annual Compensation (as defined above), then Bielema shall issue a refund payment for this differential to the Foundation within 30 calendar days or the Parties, for convenience and upon their mutual agreement, may include any such amount in future offsets.

- (vi) The Parties shall work in good faith to share any required information and make all permitted reductions or offsets required by this Agreement.

6. Governing Law. This Agreement shall be governed by the laws of the State of Arkansas without regard to its choice of law principles. Washington County, Arkansas, shall be the exclusive venue for any action arising under or relating to this Agreement. Nothing contained in this Agreement shall be deemed, construed or operate as a waiver of any immunities to suit available to the Board of Trustees of the University of Arkansas or its trustees, officers, representatives and employees.

7. Counterparts; Digital Copies, and Facsimiles. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of executing the Agreement, a document signed and transmitted by facsimile machine, electronic mail, or other

commercially accepted electronic or mechanical means is to be treated as an original document and shall make this Agreement binding upon the Parties.

8. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the matters contained herein, and there are no other agreements, whether oral or written, between the Parties concerning the subject matter of this Agreement. Notwithstanding the foregoing, this Agreement does not cancel or limit any release and waiver provisions contained in the Employment Agreement (as amended) or Guaranty Agreement.

9. Severability. Each provision of this Agreement is severable from all other provisions of the Agreement. If any governmental authority having jurisdiction over the matters herein determines, during or at the conclusion of any litigation, that any provision of the Agreement is invalid or unenforceable, the provision will be deemed modified only to the extent necessary to render it valid and enforceable, and all remaining provisions of the Agreement will remain in full force and effect.

10. Third-Party Beneficiaries. For the avoidance of all doubt, the Foundation and Bielema covenant and agree that the Board of Trustees of the University of Arkansas, its Trustees, and the University of Arkansas, Fayetteville, its officers, representatives, and employees (all in their individual and official capacities) are express third-party beneficiaries under this Agreement, are covered by the term "Releasees" as defined in this Agreement, and each and all of whom shall have the legal right to enforce each and every term of this Release.

11. Non-Disparagement. The Parties agree not to make disparaging remarks regarding Bielema, the Foundation, its directors, officers, and employees, or the University of Arkansas, its governing Board, or its officers, representatives and employees, and to state, if asked, that any differences between or among them were resolved on an amicable basis. The promises set forth in this Agreement, and the document itself, shall not be used by either Party in any manner, whether directly or indirectly, for any purpose other than to enforce their respective rights hereunder, unless otherwise compelled by law.

12. Enforcement of Agreement. The Parties agree that a violation on their part of any covenants contained in this Agreement, following notice and reasonable opportunity to cure, will give rise to an action to enforce this Agreement to the extent permitted by Arkansas law. Such remedy shall be cumulative and nonexclusive of any other remedies the Parties may have, including, but not limited to, the recovery of any sums paid to Bielema and any remaining obligations owed to the Foundation by Bielema pursuant to this Agreement. Nothing contained in this provision or this Agreement, however, shall be construed, interpreted or operate as a waiver of any immunities to suit available to any of the Releasees (including in their official or individual capacities), and all immunities to suit are affirmatively reserved.

13. No Implied Waiver. The waiver by any Party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party, nor shall any such waiver operate or be construed as a rescission of this Agreement.

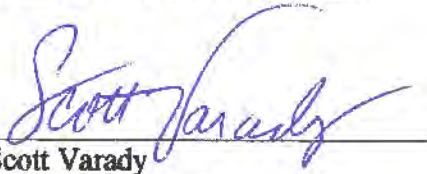
14. Construction. The Parties agree that the rule of construction that ambiguity is construed against the drafting Party shall have no application in any dispute over the interpretation of this Agreement. By entering into this Agreement, the Parties do not admit any liability with regard to any matter relating to Bielema's employment and termination of employment at the University, and the Parties expressly deny all such liability. Moreover, the fact that the Parties entered into this Agreement shall not be used to establish any such liability.

15. Taxes and Costs. The Parties shall each be responsible for their own taxes and attorney's fees and costs incurred in connection with all matters giving rise to this Agreement.

16. Headings and Recitals. The headings in this Agreement are for convenience purposes only and shall not be assigned any substantive meaning in the interpretation and application of this Agreement. The Recital Clauses set forth at the beginning of this Agreement are substantive provisions of this Agreement and shall be treated as such and construed in harmony with all other provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, as of the day and year first above written.

The Razorback Foundation, Inc.

By: 
Scott Varady
Executive Director

By: 
Bret Bielema