

UNIVERSITY OF ARKANSAS HEAD BASEBALL COACH
EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made by and between THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS ("Board"), acting for and on behalf of THE UNIVERSITY OF ARKANSAS (collectively, "UA"), and Dave Van Horn ("Coach"). UA and Coach are sometimes collectively referred to hereinafter as the "Parties" and individually as a "Party".

1. **Term.** UA hereby employs Coach as Head Baseball Coach at UA, for the period beginning July 1, 2021, and ending June 30, 2026, ("Term") subject to the provisions contained herein and on the terms and conditions set forth herein. The Term of this Agreement shall be automatically extended on July 1 of each year of the Term for a period of one (1) year, subject to the same terms and conditions of this Agreement, unless this Agreement is terminated or notice of the UA's intent not to extend this Agreement further is provided to Coach in writing each year before an annual automatic extension on July 1. In no event shall the initial Term of the Agreement be extended by more than one (1) year in any given year of the Term or exceed a total Term of ten (10) years, including any extensions, without the written mutual agreement of the Parties.

2. **Salary and Compensation.** Coach shall be paid an annual salary based upon the line-item maximum salary established by legislative appropriation acts and shall be paid additional amounts over the line-item salary solely from private funds and funds generated by contracts with vendors of athletic apparel, shoes, equipment, 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.

(a) **Annual Salary.** Coach's annual salary as Head Coach of the Program shall be Eight Hundred Thousand and No/100 Dollars (\$800,000.00) ("Annual Salary"), subject to all applicable state and federal tax reporting and withholding requirements. These amounts shall be paid consistent with UA's policies and routine payroll cycle.

(b) **Other Compensation.** In addition to Coach's Annual Salary, Coach will receive additional compensation in the amount of Four Hundred and Fifty Thousand and No/100 Dollars (\$450,000.00) annually for performance of speaking engagements, television and radio appearances, sponsorship, and all other obligations as set forth in this Agreement ("Other Compensation"). Upon completion of each year of the Term, Coach's Annual Salary shall be increased by Fifty Thousand and No/100 Dollars beginning July 1, or in the event the Program competes in a NCAA College World Series Final Eight Tournament Game under Coach's direction as Head Coach during any year of the Term, Coach's Annual Salary shall be increased by One Hundred Thousand and No/100 Dollars (\$100,000.00) beginning July 1 following the postseason tournament, but in no case shall Annual Salary exceed a total increase of One Hundred Thousand and No/100 Dollars (\$100,000.00) during any year of the Term, without the written mutual agreement of the Parties. For purposes of this provision, a year of the Term is defined as the twelve-month period from July 1 through June 30. These amounts shall be paid consistent with UA's

routine payroll cycle.

(c) Incentive Compensation. Coach shall also be eligible to receive annual performance incentive compensation ("Incentive Compensation"), subject to provisions of applicable law and this Agreement, for the achievement categories set forth in Exhibit A attached hereto and incorporated herein by reference. UA Athletic Department will pay the Incentive Compensation attained by Coach at the time and in a manner consistent with UA's Athletic Department practice and/or policy for such payments. Except as provided in Exhibit A, Coach shall not be entitled to any other incentive compensation of any nature whatsoever. Further, any incentive compensation authorized by this Agreement is a one-time payment and shall not fall within the meaning of or result in an increase to Coach's Annual Salary or Other Compensation.

No increases to Annual Salary or Other Compensation, payment of Incentive Compensation, or Term extensions shall be awarded to Coach in any given year where any of the following circumstances occur, regardless of whether any other contingencies have already been met: (a) Level I or II NCAA violations attributable to Coach or for which Coach is responsible; (b) UA is on probation for any NCAA violations attributable to Coach or for which Coach is responsible; (c) Coach voluntarily resigns from Coach's UA employment; (d) Coach is placed on leave, suspended, or disciplined for a violation of UA policy or applicable law; (e) Coach is terminated from Coach's employment for cause; (f) Coach fails to timely report any alleged NCAA or Title IX violations; or (g) Coach has been notified by UA that Coach is in breach of this Agreement. If alleged significant NCAA violations against Coach, Coach's staff, or anyone acting on their behalf are under investigation, then Incentive Compensation, Annual Salary or Other Compensation increases, and extensions of the Term may be withheld by UA pending the outcome of the matter.

3. Benefits. Coach shall be entitled to the following benefits, and no others, then currently provided to other similarly situated non-classified, non-academic employees: major medical and employer furnished and optional life insurance; employer furnished and optional long-term disability insurance; UA contribution to an approved retirement program; sick leave; tuition reduction for Coach and Coach's legal dependents; and such other benefits currently provided for UA non-classified, non-academic employees (excluding annual leave). In the event of any conflict between this Agreement and UA's Staff Handbook or other policies this Agreement shall control and take precedence. UA will also provide Coach with the following:

(a) Automobiles. Coach shall receive a Car Allowance ("Car Allowance") in the amount of Eight Thousand and Four Hundred and No/100 Dollars (\$8,400.00) annually, subject to all applicable state and federal tax reporting and withholding requirements. Coach's Car Allowance shall be paid in equal monthly installments on the last working day of each month (with any partial month being prorated) and consistent with the UA's routine payroll cycle.

(b) Tickets. Subject to all applicable UA policies governing ticket use and state and federal tax reporting and withholding requirements, UA shall make available to Coach six (6) complimentary tickets to each home baseball game and four (4) complimentary tickets to each home game for all other UA sports, with seat locations to be determined in UA's discretion.

(c) Club Memberships. During the Term, Coach shall be entitled to club memberships at Fayetteville Athletic Club or Paradise Valley Country Club (“Clubs”) provided that such memberships are made available to UA for the benefit of its coaches and sufficient private funds are available to UA’s Athletic Department to cover the cost of any initial and monthly membership fees. The memberships shall be subject to any terms and conditions imposed by the Clubs, including, but not limited to, the right of each entity to revoke its membership. UA shall not be responsible for any monthly food minimums or purchases of goods and services at any club. As required by the law, UA shall withhold all applicable federal and state taxes on the cost of any such memberships.

4. Summer Camps. In accordance with Ark. Code Ann. § 6-62-401, Board Policy 1715.1, and subject to the execution of UA’s Sports Camp Agreement available upon request, UA grants Coach (and/or any corporate entity owned by Coach for the purpose of operating the summer camps) permission to conduct a summer Program camp for private compensation on and in campus facilities subject to UA’s scheduling requirements. Coach shall submit a written proposal through the Director of Athletics to the Board each year setting forth the proposal for the summer camp in sufficient detail to enable the Board to make the express findings of fact required by Ark. Code Ann. § 6-62-401. The charges paid to UA by Coach as the direct and indirect costs associated with operating and maintaining the facilities for the summer camp will be established by the Director of Athletics taking into consideration the cost of such facilities including, but not limited to, labor, food, maintenance, and utilities. UA shall have the right, at its sole expense, to audit all records, including, but not limited to all financial records, concerning or relating to the camp. Coach will furnish UA 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 Coach’s camp and any individual or company, unless the Director of Athletics approves such sponsorship or relationship in advance and in writing.

5. Duties and Authority. Coach will carry out the essential duties and responsibilities of the position of Head Coach under this Agreement to the satisfaction of the Director of Athletics and the Chancellor. Coach will direct the Program in keeping with its traditions and policies established by UA, the Chancellor, Director of Athletics, and the rules and regulations of the NCAA and the Southeastern Conference (“SEC”). Coach agrees to be a loyal employee of UA. Coach acknowledges and agrees that a specifically identified breach of this Agreement, refusal to perform Coach’s assigned responsibilities, or misconduct of any kind will result in appropriate disciplinary or corrective action, up to and including termination. Coach is responsible for using Coach’s best efforts to maintain good public relations and sound alumni relations and for promoting and participating in various alumni and other events that support the Program and/or Razorback Athletics at the request of the Chancellor or the Director of Athletics. Coach shall have the duty and responsibility for the planning, supervision, and coordination of all aspects of the Program, and the essential functions of Coach’s position shall include, but are not limited to, the following:

- (a) Performing all duties and responsibilities ordinarily associated with and performed

by a head coach at a member institution of the SEC or other major NCAA Division I institution, as well as all job responsibilities set forth in this Agreement and related duties as assigned by the Director of Athletics including, but not limited to, cooperating with the development and adhering to annual department budgets, fundraising activities for the benefit of the Program and/or UA Athletic Department, and such other duties which will help maximize all sources of athletically-related income for the benefit of UA or assist in achieving the goals and objectives of UA.

(b) Making recommendations to the Director of Athletics concerning the employment, termination, salaries, and bonuses of all personnel assigned to the Program ("Program Personnel"). Coach shall have the authority and responsibility to assign duties and supervise the performance of the Program Personnel and any other employees who report, directly or indirectly to Coach.

(c) Participating, as assigned by the Director of Athletics, in all other forms of programming in all media now existing or hereafter created, including, but not limited to, television shows, radio interviews, internet programming, podcasts, recorded pre-game public service announcements, and other special programming (collectively, the "Programming").

(d) Planning, supervising, and coordinating the recruitment and training of student-athletes for the Program.

(e) Complying with all current and future "Governing Athletic Rules" and work cooperatively with UA'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, the SEC, any successor of such association or conference, or by any other athletic conference or governing body hereafter having regulatory power or authority relating to UA's athletics programs as well as any applicable state and federal laws governing intercollegiate athletics. Coach 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 or banned substances, narcotics, chemicals, or steroids. In the event Coach has knowledge of, or has reason to believe, that violations of the Governing Athletic Rules, UA policies, or laws have taken place, Coach shall report the same immediately to the Director of Athletics and the Designated Compliance Officer. UA agrees to designate a UA Athletic Department employee as Compliance Officer, part of whose duties will be to assist Coach in fulfilling Coach's obligations under this provision and to respond to questions concerning compliance matters. Coach agrees to cooperate with such Compliance Officer in compliance matters.

(f) Coach shall serve as the leader of the Program and shall maintain a high standard of conduct to act as a role model for the Program's student-athletes. 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 Program. Coach agrees to recognize and respect the reporting relationships and the organizational structure of UA.

(g) Coach shall make recommendations to the Director of Athletics with respect to the scheduling (including dates, places, and times) of all the Program's games, meets, matches, or other competition and the selection of the opponent for each game, but the Director of Athletics shall have the sole responsibility and discretion to approve all opponents subject to any applicable requirements or approval rights of the SEC.

(h) Working in cooperation with and in support of UA's faculty and administrative officials in meeting academic requirements by the student-athletes, which shall include achieving goals for graduation and other academic achievement of student-athletes established by the Director of Athletics annually.

6. Outside Employment. In accordance with Board Policy 450.1, which is incorporated herein by reference, Coach may engage in outside employment that contributes to Coach's professional advancement or correlates usefully with Coach's UA work subject to the terms and conditions of this Agreement. Any outside employment shall not interfere with Coach's duties or responsibilities in this Agreement or as assigned by the Director of Athletics. Written approval of outside employment shall be obtained from the Director of Athletics and the Chancellor in advance. Outside employment shall comply with UA and Board policies, state and federal laws, and all applicable Bylaws, rules and regulations of the NCAA and SEC.

In accordance with Board Policy 450.1 and such other rules and policies adopted by the NCAA and UA, Coach shall annually report (or more frequently as required) all outside employment for compensation, including all income and benefits from sources outside UA through the Director of Athletics to the Chancellor. Coach shall effectively communicate to outside employers that any outside employment is Coach's own independent responsibility and that Coach is not an agent or representative of UA. UA facilities, property, logos, or images of student-athletes or teams shall not be used in outside employment or for other purposes except in compliance with UA and Board policies and prior written authorization of the Director of Athletics. Under no circumstances shall UA guarantee any such outside employment.

All outside employment shall be independent of Coach's employment at UA, and UA shall have no responsibility or liability for claims arising therefrom. In the event UA terminates this Agreement, regardless of the reason or timing of such action, Coach shall have no claim or cause of action against UA or its guarantors (if any) for loss of any contract or income Coach may have otherwise received from outside employment, including, but not limited to, consequential, incidental, punitive or any other types of damages of any nature. 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 Coach's own behalf as a consultant or may permit the use of Coach's name, voice, or image to advertise or endorse products that do not violate UA or Board policies, NCAA or SEC Bylaws, rules or regulations, or UA's existing or future agreements with its licensing agents, vendors, or sponsors. Coach agrees to be bound by and cooperate with UA, as requested, in fulfilling the terms and conditions of any existing or future UA agreements, including, but not limited to, contracts between UA and manufacturers or vendors of athletic apparel, shoes, beverages, or other products as well as any sports marketing agreements or arrangements.

(b) Speaking Engagements. 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 UA and are performed in a professional manner.

7. **Coach's Name, Image and Likeness.** Coach grants UA a perpetual, royalty-free license to use Coach's name, nickname, initials, facsimile signature, slogans, voice, likeness, image, derivatives thereof, and any resemblance and other indicia closely identified with Coach pursuant to the terms and conditions of this Agreement (the "License"). UA shall have the right to use the License in any and all forms of media (whether written, electronic, wireless, or any other medium), UA sponsorship agreements, and any other types of agreements for the promotion and development of UA, UA's Athletic Department, the Program, and as UA otherwise determines to be in the best interest of the UA; provided, any such use shall not be in poor taste or reflect negatively upon Coach.

8. **Use of UA Trademarks.** Nothing in this Agreement or any amendments hereto shall constitute permission or a license for Coach to use or to authorize third parties to use UA's trademarks, trade names, marks, symbols, mascots, trade dress, uniforms, images, facilities, landmarks, uniforms, service marks, logos, slogans, songs, or other indicia of intellectual property, including, without limitation, any derivative marks ("UA's Marks") in connection with any outside employment, third party or otherwise. Under all circumstances, a license to use UA's Marks must be obtained from and approved by the appropriate UA trademark and licensing officials or an agent of UA authorized to contract on behalf of the Board.

9. **Dismissal for Cause.** Coach agrees that UA has the right to dismiss Coach and terminate this Agreement for cause under this section at any time prior to the expiration of the Agreement. For purposes of this section, "for cause" shall include, without limitation, any one or more of the following as determined in the reasonable and good faith judgment of UA:

(a) Material violation of state or federal law, the duties set forth in this Agreement, UA and Board policies, or as assigned from time-to-time by the Director of Athletics.

(b) Violation of any state or federal laws or the policies of UA or the Board, or failure to cooperate fully and completely with the investigation of any alleged violation of federal or state laws, the policies of UA or the Board, or NCAA or SEC constitution, by-laws, rules, regulations, or interpretations thereof.

(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) Failure to cooperate fully and completely with any investigation of any alleged violation of federal or state law, or any of the provisions enumerated herein, conducted by any government entities, law enforcement agencies, or any other governing bodies or officials, including, but not limited to, UA, the NCAA, the SEC, or other officials or governing organizations with authority over UA's athletic programs or that may be required by law, UA or Board policies, or the Governing Athletic Rules.

(e) Failure to comply with NCAA Bylaw 11.1.1.1. as amended and/or conduct or omission(s) by Coach which constitute a Level I or II violation under the NCAA's enforcement structure, or one or more of the Governing Athletic Rules or UA's interpretation thereof, including, but not limited to, multiple Level III or IV violations of the Governing Athletic Rules considered collectively to be a Level I or II violation, whether the conduct occurred during Coach's employment with UA or another NCAA-member institution.

(f) Failure of Coach to report promptly to the Director of Athletics or UA Department of Athletics Compliance Office any actual knowledge of, or reasonable cause to believe that, violations of the Governing Athletic Rules or UA policies have been committed or are being committed by Coach 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 Director of Athletics.

(i) Failure to assure the fair and responsible treatment of the student-athletes in regard to their health, welfare, safety and discipline, including, but not limited to, all NCAA legislation and 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 Agreement, including, but not limited to, the preparation of, falsification of, or alteration of documents or records of UA, NCAA, or SEC; documents or records required to be prepared, kept, or maintained by UA policy, the Governing Athletic Rules, or 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 student-athletes, Program Personnel or other coaches.

(k) 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 UA's policies or the Governing Athletic Rules.

(l) Allowing or disregarding the sale, use, or possession by any coach or student-athletes of any illegal or banned substances, including, but not limited to, any narcotics, drugs, controlled substances, steroids, or the sale, use, or possession of any such substances that violate UA's policies or the Governing Athletic Rules.

(m) Encouraging, condoning, or instructing, whether directly or indirectly, any employee, student, donor, affiliate, 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 UA'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, UA, the NCAA, the SEC, or other officials or governing organizations with authority over UA's athletic programs or that may be required by law, UA or Board policies, or the Governing Athletic Rules.

(n) Providing false, misleading, or incomplete information relevant to the conduct of UA's business, if Coach knew or should have known the information was false, misleading, or incomplete.

(o) Failing to promptly report reasonable suspicion of child maltreatment pursuant to Ark. Code Ann. § 12-18-402(b)(23) or any violations of UA's sexual assault and harassment policies to UA's Title IX Coordinator that involve any student, faculty, or staff, or that is in connection with a UA sponsored event of which Coach is aware or has reasonable cause to believe has taken place or may have taken place.

(p) Otherwise engaging in conduct, as solely determined by UA, which is clearly contrary to the character and responsibilities of a person occupying Coach's position or which might negatively or adversely affect the reputation of UA, UA's Athletic Department, or its athletics programs in any way.

The procedures for dismissal for cause are attached hereto as Exhibit B and are incorporated herein by reference. In the event of dismissal for cause, all obligations of UA under this Agreement shall cease immediately, including, but not limited to, the duty to pay Coach any Annual Salary, Other Compensation, Incentive Compensation, or Liquidated Damages Payments; the duty of UA to pay any guaranteed amounts; or any other amount or sum whatsoever. UA shall, however, pay Coach any amount of the Annual Salary, Other Compensation, or Incentive Compensation earned and owed to Coach for work completed prior to the effective date of the termination for cause.

UA may take other disciplinary or corrective action short of dismissal for cause for an event which could be grounds for dismissal for cause under this Agreement, a violation of UA or Board policies, or for failing to timely report Level III or IV violations under the NCAA's enforcement structure, including without limitation, suspension for a period of time without pay; reduction of salary; reassignment; monetary sanctions; reprimand; or other disciplinary or corrective action authorized

by NCAA legislation or UA policy.

10. Termination for Convenience by UA.

(a) Liquidated Damages Payment to Coach. By giving written notice to Coach, UA shall have the unilateral right to terminate this Agreement for any reason at any time. In the event UA terminates this Agreement under the provisions of this section of the Agreement, UA agrees to provide, and Coach agrees and does hereby accept, the following liquidated damages as Coach's exclusive remedy in full and complete satisfaction of any and all obligations of UA of any nature whatsoever, and in lieu of any and all other legal remedies or equitable relief available to Coach ("Liquidated Damages Payment"):

An amount equal to seventy percent (70%) of Coach's remaining Annual Salary from the effective date of termination until the ending date of the Term, including any earned extensions thereof.

The Liquidated Damages 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 the foregoing, Coach shall be entitled to receive any Annual Salary, Other Compensation and Incentive Compensation earned, but not yet paid, under this Agreement, prior to the date of termination for convenience by UA.

No other amounts beyond the Liquidated Damages Payment shall be owed to Coach. The right to these amounts are non-assignable, non-transferable, and non-cumulative and terminate upon Coach's death. Notwithstanding any other term or condition in this Agreement, Coach shall have an affirmative duty to mitigate in good faith by diligently seeking, accepting and reporting other comparable employment in the event this Agreement is terminated for convenience, as well as an obligation to comply with any mitigation and/or other conditions set forth in this Agreement. The Liquidated Damages Payment shall be offset by any employment-related compensation received by Coach, whether from athletic-related or non-athletic-related sources, and as set out in subsection (b) below, and Coach shall have an affirmative duty to timely disclose all such earnings.

In consideration of the Liquidated Damages Payment, Coach shall, and does hereby recognize UA's immunity from suit, release and discharge UA, 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 UA, and Coach's termination for convenience of UA 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 agrees that he knowingly and voluntarily accepts the Liquidated Damages Payment, after consulting with Coach's legal counsel, in full and complete satisfaction of any and all obligations of UA and as an alternative to the time, expense, and trouble of any future litigation. Coach acknowledges and intends for UA 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 Liquidated Damages Payment, Coach agrees to sign a mutually agreeable release and waiver agreement consistent with the terms and conditions attached hereto as Exhibit C, discharging the Board, the UA, and their trustees, 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 Agreement, Coach's termination for convenience, any aspect of Coach's employment with UA 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 Agreement and UA would not enter into the Agreement without Coach's assurance to execute a release and waiver agreement in exchange for the Liquidated Damages Payment. Coach intends for the Board and the UA to rely upon this provision in entering into the Agreement.

Coach further 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 Liquidated Damages Payment (including, but not limited to, accepting or depositing any partial or complete payments of the Liquidated Damages 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 Agreement, Coach's employment at UA or communications thereabout, and Coach's termination for convenience of UA 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 Agreement; provided, however, Coach does not waive any rights with respect to any unpaid portions of the Liquidated Damages Payment that are owed to Coach.

If UA 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 Liquidated Damages 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 agrees to repay all of the Liquidated Damages 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 Liquidated Damages Payments as of the threat of litigation or the date a lawsuit is filed, whichever is earlier in time. This shall not apply where Coach is exercising a right in respect to any unpaid portion(s) of the Liquidated Damages Payment owed to him or any breach by the Released Parties of an applicable release and waiver agreement.

Without limiting the generality and applicability of the foregoing provisions, Coach agrees that the UA's offer and Coach's acceptance through continued performance after any extension of the Agreement or Coach's continued employment at UA following the expiration of the original 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 Agreement or Coach's continued employment at UA following the expiration of the Term; provided, however, this release shall not apply to any compensation earned, but not yet paid, prior to Coach's acceptance of any extension of the Term or Coach's employment beyond the Term.

a. Offset. The Parties agree that the gross amount of the Liquidated Damages Payment paid to Coach by UA 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. For purposes of this provision, "gross compensation" shall mean, without limitation, gross income from salary, commissions, bonuses, incentive payments, wages, talent fees, deferred or equity compensation, or any other types of compensation at the time it was earned by Coach (except for compensation attributable to legitimate employment related perks), including by a business entity owned by or controlled (in whole or in part) by Coach, consulting fees, honoraria, fees received by Coach as an independent contractor, whether from athletic or non-athletic-related sources, but excluding amounts Coach earns from passive investments or interest not associated with any new employment (collectively referred to hereafter as "Other Income"). Concurrent with Coach's execution of a release and waiver agreement as specified in Section 10(a) releasing The Released Parties and which shall also include all obligations set forth in Section 10(b), Coach shall execute an authorization for disclosure of Coach's employment compensation to UA for the remaining Term, and for the same time period, Coach shall furnish a copy of Coach's federal tax returns (including, but not limited to all schedules) each year to permit UA to verify all Coach's compensation. The Parties further understand and agree that Coach's duty of mitigation includes the obligation to maximize Coach's earning potential with a new employer by seeking, accepting, and reporting comparable employment for Coach's services at a rate of compensation not less than market value and consistent with compensation rates for similar positions in the given industry at the time such employment is obtained. Coach, or any individual or entity acting on Coach's behalf, shall not structure Coach's compensation or any compensation package with a new employer in any manner that avoids, diminishes, or denies UA's right of offset of the Liquidated Damages Payment. Accordingly, UA's right of offset shall include the right to offset the total economic value of any compensation package, employment agreement, or other compensation formula utilized with any new employer. UA's right to offset shall apply to the average annual value of all amounts to be paid to Coach during the term of any multi-year contracts and/or a series of one-year contracts with a single employer. For the avoidance of all doubt, the Parties understand and agree that the duty to make the Liquidated Damages Payment shall not be treated as a subsidy for any future employer to pay Coach less than market value for Coach's services.

While UA's obligation to pay the Liquidated Damages Payment remains in effect, within fourteen (14) calendar days after accepting any Other Income and within fourteen (14) calendar days after the end of each month thereafter, Coach shall furnish to UA an accounting or report of all gross compensation received by Coach during the immediately preceding month from the Other Income. UA shall reduce the gross amount of the monthly Liquidated Damages Payment due and payable to Coach based upon the gross compensation for the immediate

previous month as reflected in the Other Income gross compensation report. If Coach fails or refuses to notify UA of Coach's Other Income, misrepresents to UA the amount of gross compensation received from Other Income by Coach, structures Coach's compensation or any compensation package with a new employer in any manner in an attempt to reduce, avoid, or deny UA's right of offset of the Liquidated Damages Payment, or fails or refuses to furnish the monthly Other Income gross compensation reports or documentation of Coach's efforts to diligently seek and obtain Other Employment after receiving a formal, written request to do so, then, after giving Coach fourteen (14) days written notice, the obligation of UA to continue paying the Liquidated Damages Payment shall cease immediately. The Parties shall work in good faith to share any required information and make all permitted reductions or offsets required by this Agreement.

11. Termination by Coach – Coach's Payment. Subject to the terms and conditions of this provision, Coach may terminate this Agreement without cause by providing thirty days (30) written notice to the Director of Athletics. In the event Coach terminates this Agreement to accept another coaching position at any time prior to the final day of the Term, then Coach: (a) shall not be entitled to receive any previously unearned compensation or benefits of any nature whatsoever under this Agreement following the effective date of the termination; and (b) shall be liable to UA for the repayment of the amounts specified in the following schedule:

<u>YEARS</u>	<u>AMOUNT</u>
Effective Date – June 30, 2023	\$2,500,000.00
July 1, 2023 – June 30, 2025	\$1,250,000.00
July 1, 2025 – the ending date of the Term, including any earned extensions thereof	\$625,000.00

The foregoing amounts shall be paid on a non-cumulative basis beginning with the effective date of Coach's termination of this Agreement ("Coach's Payment"). The Coach's Payment amount shall be payable in full, without proration, to UA within thirty (30) days following the effective date of Coach's termination of this Agreement.

Coach agrees that UA will commit financial resources to the success of the Program (including, but not limited to, hiring and paying assistant coaches) and that if Coach terminates this Agreement, to accept other employment as set forth hereinabove, UA 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 Coach, salary or other compensation to hire another Head Coach, and tangible and intangible detriment to the Program and the support of its fans and donors. Accordingly, the Parties agree that the amount of damages to be paid to UA hereunder is fair and reasonable. In consideration of payment of the foregoing amounts, UA will release Coach from any further obligations under this Agreement and will also release Coach's new employer, from any claims or actions that UA might have against such employer. Likewise, Coach will release UA, its employees, officers, trustees, and any third-party guarantor from any obligations hereunder or under any guaranty agreement, if any.

12. Disability of Coach. All benefits-eligible employees, including Coach, have the option to

purchase additional long-term disability coverage at their own expense. If Coach terminates this Agreement due to a serious disability or illness that prevents Coach from fulfilling Coach's obligations, which is medically verified by a qualified and licensed physician in good standing within this State, then Coach shall not be responsible to repay the Coach's Payment as provided in this Employment Agreement ("Repayment Exception"); provided, Coach does not accept another coaching or administrative position with another college, university, or professional organization before the date the Agreement would have expired had the Agreement not been earlier terminated by Coach.

13. Death of Coach. This 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 Coach's death, Coach directs UA to pay any final and earned compensation owed to Coach prior to Coach's death to Coach's estate.


14. Prior Notification to Director of Athletics. Without limiting any of the foregoing provisions of the Agreement, during the Term, 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, Coach (or anyone or any entity acting on Coach's behalf, whether directly or indirectly) must wait at least twenty-four (24) hours from the time Coach, and/or any individual or entity acting on Coach's behalf, receives permission until the time any such communications may begin. The failure to comply with this provision shall be a material breach of this Agreement entitling UA to terminate Coach for cause.

15. Covenant Not to Compete. The Parties agree that UA is a member of the SEC and competes against other SEC member institutions for students, faculty, and staff. Additionally, the Parties agree that the Program competes against other SEC member institutions for prospective student-athletes, financial support, and prestige. The Parties further agree that the competitiveness and success of UA's Program affects the overall financial health and welfare of UA and that UA maintains a vested interest in sustaining and protecting the well-being of its Program, including, but not limited to, the recruitment of prospective student-athletes to the institution and the financial integrity of its athletics programs. The Parties further agree that the UA has protectable business interests and provides Coach trade secrets, knowledge of business practices, and other confidential information that an employer would reasonably seek to protect from its competitors. To avoid harming UA's interests, Coach covenants and agrees that 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 the period of time comprising the Term (including any extensions) regardless of whether Coach remains employed by UA for the full length of the Term or any extension thereof. The Parties agree that the limitations of this non-compete agreement are reasonable in time and scope and are no greater than necessary to defend the protectable interests of the UA. In the event of a breach or threatened breach of this provision, UA 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, UA's interests would be irreparably harmed and that the

remedy of monetary damages alone would be inadequate. This non-complete agreement shall be independent of any other provision of this Agreement, and the existence of any claim or cause of action by Coach against UA, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement of this provision by UA.

16. Governing Law. The Parties irrevocably and unconditionally agree that any legal proceeding against the UA shall be brought in the State of Arkansas's administrative or judicial forums, and the place of execution for this Agreement and any amendments thereto, shall be Arkansas, and shall be subject to its sole jurisdiction and governed by, construed and enforced pursuant to the laws of Arkansas without regard to its choice of law principles (including without limitation any and all disputes, claims, counterclaims, causes of action, suits, rights, remedies, promises, obligations, demands, and/or defenses related thereto that may be asserted by the Parties). The Parties waive any objection to the laying of venue of any claim, action, suit or proceeding arising out of this Agreement, or any transaction contemplated hereby, in Arkansas, and hereby further waive and agree not to plead or assert that any claim, action, suit, or proceeding has been brought in an inconvenient forum. Nothing contained in this Agreement shall be deemed, construed, or operate as a waiver of any immunities to suit available to UA and/or its trustees, officials, and employees (in both their official and individual capacities).

17. Notices. All notices, requests, demands, and other communications permitted or required by this Agreement shall be in writing, and: (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, to the following:

<u>If to UA:</u> Vice Chancellor and Director of Athletics P.O. Box 7777 Fayetteville, AR 72702 <u>With copies to:</u> Office of the General Counsel 421 Administration Building Fayetteville, AR 72701	<u>If to Coach:</u> Dave Van Horn 
--	--

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

19. Taxes. Coach shall be solely responsible for all tax liability, reporting, record keeping, consequences, and payments, if any, which are determined to be required or owed (including any penalties and interest related thereto) to any taxing authority as a result of any payment made by UA and agree that neither UA nor its officials has made any representations regarding the tax treatment of these sums. Coach agrees that UA shall deduct and withhold all required state and federal taxes on any and all compensation and benefits provided to Coach in the Agreement.

20. Return of UA Property. All property, materials, and information (whether in hard copy

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

21. Entire Agreement and Amendment. This Agreement contains the entire agreement between the Parties and supersedes all prior or contemporaneous agreements, amendments, or representations, oral or written, between them. This Agreement may not be modified or changed, nor may the Term be extended except as provided in Section 1 of this Agreement or by a written instrument signed by both Parties and agreed to by the Director of Athletics, the Chancellor, and the President. Each Party represents and agrees that it has not been influenced by any person to enter into this Agreement, nor relied on any representation, warranty, agreement, or covenant of any person except for those representations, warranties, agreements, 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 a waiver or otherwise subsequently affect the Party's rights to enforce a provision in this Agreement. 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 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 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 Agreement 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 UA and Coach. The course of dealing between UA and Coach will not modify or amend this Agreement or any amendment hereto in any respect. The Parties 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. The Parties represent and agree 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.

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, and the Parties agree to exchange original signature pages within a reasonable period of time after their execution; provided, however, the failure to exchange original signature pages shall have no impact on the validity or enforceability of this Agreement.


22. **Miscellaneous.** The paragraph headings contained in the Agreement or any amendment thereto are for reference purposes only and shall not affect in any way the meaning or interpretations of the Agreement. The Recital Clauses set forth at the beginning of this Agreement are substantive provisions that shall be given full meaning and effect and construed in harmony with all other provisions of this Agreement. Time is of the essence with regard to the performance of all aspects of this Agreement. 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. Neither Party may assign this Agreement without the prior written consent of the non-assigning Party, except that UA may assign this Agreement in the event of a merger or reorganization of UA. Notwithstanding anything to the contrary, Sections 7-22 shall survive the expiration or termination of this Agreement.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]


IN WITNESS WHEREOF, the Parties have cause this Agreement to be executed by their duly authorized representatives effective as of July 1, 2021 ("Effective Date").

BOARD OF TRUSTEES OF THE
UNIVERSITY OF ARKANSAS, acting
for and on behalf of the UNIVERSITY OF
ARKANSAS, DEPARTMENT OF ATHLETICS


UNIVERSITY OF ARKANSAS
HEAD BASEBALL COACH

 7/28/2021


Dr. Donald R. Bobbitt Date
UA System President

 7-21-21

Dave Van Horn Date

 7/27/2021

Bill Kincaid, Date
UA Acting Chancellor

 7.26.21

Hunter Yurachok, Date
UA Vice Chancellor and
Director of Athletics

EXHIBIT A

SECTION 2(c)—INCENTIVE COMPENSATION

In addition to Coach's Annual Salary and Other Compensation, Coach shall be eligible to receive a one-time, annual payment for the annual performance Incentive Compensation described below for the following athletic and academic achievement categories, subject to all applicable state and federal tax reporting and withholding requirements. Unless a specific amount is otherwise designated, Incentive Payments are based on the amount of Annual Salary being paid to Coach by UA at the time the achievement was attained. Incentive Compensation may be earned for the SEC Program Achievement Category, and for the NCAA Program Achievement Category, and for the Career Program Achievement Category. However, Incentive Compensation for each achievement within the NCAA Program Achievement Category is non-cumulative. In any one year of the Term, Coach will only be eligible to receive a sum equal to the highest applicable incentive payment for the listed achievements within each category listed. Incentive Payments are only available for Program achievements.

<u>ACHIEVEMENT CATEGORY</u>	<u>INCENTIVE PAYMENT</u>
<u>SEC Program Achievement Category</u>	
▪ Win SEC Regular Season Championship	\$25,000
▪ Win SEC Tournament Championship	\$25,000
<u>NCAA Program Achievement Category</u>	
▪ NCAA Regional Participation	\$50,000
▪ NCAA Super Regional Participation	\$75,000
▪ NCAA College World Series Participation	\$100,000
▪ Win NCAA College World Series Championship	\$250,000
<u>Individual Achievement Category</u>	
▪ SEC Coach of the Year*	\$25,000
▪ NCAA Coach of the Year**	\$50,000

Incentive compensation for the Individual Achievement Category shall be awarded on a cumulative basis. Accordingly, if Coach is named SEC Coach of the Year and NCAA Coach of the Year, the UA shall pay Coach \$75,000.00 as well as the incentive compensation for the highest team achievement. *The SEC Coach of the Year shall be awarded based on the selection of this award by the SEC. **The NCAA Coach of the Year shall be awarded based on the selection of this honor by the American Baseball Coaches Association (or its successor organization if approved by the UA).

<u>Academic Achievement Category</u>	
▪ Graduate 90% or more of student-athletes in same academic year (or earlier) in which they exhaust their athletic eligibility.	\$5,000
▪ Graduate 80% to 89% of student-athletes in same academic year (or earlier) in which they exhaust their athletic eligibility.	\$2,500

EXHIBIT B

PROCEDURES FOR DISMISSAL OF HEAD COACH FOR CAUSE

1. When the Vice Chancellor and Director of Athletics ("Director of Athletics") has reason to consider a decision to dismiss a Coach for cause, the Director of Athletics 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 Director of Athletics is to dismiss the Coach, then the Director of Athletics 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 Director of Athletics' decision to dismiss Coach for cause, then Coach shall, within five (5) days after receipt of the statement of dismissal from the Director of Athletics, submit a written response to the statement of grounds for dismissal to the Chancellor with a copy to the Director of Athletics.

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 the Office of General Counsel 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 Director of Athletics and the Coach to the Committee, with a copy being provided to the Coach and the Director of Athletics, 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 an attorney from the Office of General Counsel, only the Coach and his or her attorney or representative, the Director of Athletics and his or her attorney or representative, 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 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

charges. The Committee shall determine the order of presentations by the parties and shall supervise the questioning of witnesses. The Coach and the Director of Athletics 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 or representative and the Director of Athletics or his or her attorney or representative shall have the right within reasonable limits to question all witnesses who testify orally. The Committee shall arrange for the hearing to be tape-recorded.

6. The Committee will use best efforts to provide an opportunity for the Coach and the Director of Athletics, 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 Director of Athletics 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 Director of Athletics 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 Director of Athletics 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 Director of Athletics 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 final in all respects.

EXHIBIT C

RELEASE AND WAIVER AGREEMENT

THIS RELEASE AND WAIVER AGREEMENT ("Release") is entered into on the last date of execution by all undersigned parties, by and among: (1) the Board of Trustees of the University of Arkansas, acting for the University of Arkansas, Fayetteville's Athletic Department ("UA"); and Dave Van Horn ("Coach") to be effective as of _____ ("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 UA entered into an Employment Agreement (as amended) to hire Coach as UA's Head Baseball Coach on [DATE]; and

WHEREAS, the [UA accepted Coach's resignation of employment on [DATE] / UA terminated Coach's employment for convenience on [DATE]; and

WHEREAS, the Parties mutually desire to enter into this Release subject to all terms and conditions of this Release;

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. Mutual Release. In exchange for the good and valuable consideration set forth in this Release, the parties agree to the following:

a. Coach hereby irrevocably and unconditionally releases, waives, acquits forever discharges, and agrees to hold harmless the following: (i) the UA (as defined above); (ii) the current and former Trustees of the Board of Trustees of the University of Arkansas; (iii) the UA's officers, representatives, volunteers, and employees; (iv) The Razorback Foundation, Inc. ("Foundation"); (v) the Foundation's current and former directors, officers, and employees; (vi) any and all of the UA's and Foundation's members, predecessors, successors, assigns, agents, directors, trustees, officers, employees, representatives, divisions, subsidiaries, affiliates (and agents, directors, trustees, officers, volunteers, employees, representatives and attorneys of such divisions, subsidiaries, affiliates and limited liability corporations), 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 UA's rights to terminate employees, or any federal, state or other governmental statute, regulation, or ordinance, including, without limitation: (A) Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991; (B) the Americans with Disabilities Act, as amended; (C) 42 U.S.C. § 1981; (D) the Age Discrimination in Employment Act; (E) the

Older Workers Benefit Protection Act; (F) the Equal Pay Act; (G) the Coach Retirement Income Security Act; (8) Section 503 of the Rehabilitation Act of 1973, as amended; (H) the False Claims Act (including the qui tam provision thereof); (I) the Consolidated Omnibus Budget Reconciliation Act of 1986; (J) intentional or negligent infliction of emotional distress or "outrage"; (K) defamation; (L) interference with employment and/or contractual relations; (M) wrongful discharge; (N) invasion of privacy; (O) breach of contract, express or implied (including breach of employment contract); (P) Title IX of the Education Amendments of 1972, as amended; (Q) the Arkansas Whistle-Blower Act; (R) the Arkansas Civil Rights Act; (S) fraud, misrepresentation or any other claim of reliance; and (T) any other basis in law, including, without limitation, any constitutions, federal or state statutes (including, without limitation, any form of retaliation), federal or state regulations, common law or any other basis (collectively, the "Claim" or "Claims"), which Coach now has, owns or holds, or claims to have, own or hold, or which Coach 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 Release, 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." Coach grants this Release voluntarily and in exchange for the valuable consideration contained in this Release. The Release shall survive indefinitely and may not be revoked for any reason.

b. Except for the obligations in this Release, UA hereby irrevocably and unconditionally releases, waives, acquits, forever discharges, and agrees to hold harmless Coach 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, known or unknown, suspected or unsuspected, arising out of (A) alleged violations or breaches of the Employment Agreement; and (B) any acts of negligence attributable to Coach related to Coach's employment with UA, which UA now has, owns or holds, or claims to have, own or hold, or which UA at any time heretofore had, owned or held, or claimed to have, owned or held, against Coach at any time up to and including the Effective Date of this Release, which is stated above. UA grants this Release voluntarily and in exchange for the valuable consideration contained in this Release. 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 Release, Coach 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 accruing on or before the execution of this Release) or join as a Party with others who may sue on any such Claims (or any other matter whatsoever relating to any matter accruing on or before the execution of this Release). Coach hereby agrees to indemnify and hold each and all of the Releasees harmless from and against any and all losses, costs, damages, or expenses, including, without limitation, attorneys' fees and costs (including, without limitation, all costs incurred in litigation such as, for example and without limitation, expert witness fees) incurred by the Releasees, or any of them, arising out of any breach of this Release by Coach or the fact that any representation made herein by Coach was false when made.

3. Representations and Warranties; Dismissal. Coach 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 Coach 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 Release, 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, Coach 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 any state or federal court, agency or department or other tribunal of any nature whatsoever. Coach 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 Coach fails to take the required actions under this provision, then Coach appoints the UA as his attorney-in-fact for the sole purpose of executing any and all necessary documents to dismiss any such proceeding. Coach 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 Release by all Parties. In the event Coach initiates litigation concerning the subject matter of this Release, Coach covenants and agrees that this Release shall entitle the Releasees to a stipulation that all claims identified in this Release 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. Coach acknowledges and represents that he has no knowledge of any acts or omissions by any of the Releasees, by Coach or by any UA employee that he believes could possibly constitute a 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 ("SEC"), or any other administrative body. Coach agrees to cooperate fully and completely, with any investigation of any alleged violation of federal or state law, NCAA or SEC bylaws, rule or regulations related to Coach's employment with the UA, whether conducted by law enforcement officials, the UA, NCAA, or SEC.

5. Release Payment. In consideration of the irrevocable release and waiver of any and all Claims granted by Coach in this Release (including, but not limited to, the Release) as well as his performance of all other terms and conditions in this Release, the UA shall pay Coach, from public, private, or other legally permissible funds, the monthly sum of _____ Dollars (\$_____) for the period beginning on [DATE], and ending on [DATE] ("Release Payment"). Accordingly, the total amount of the Release Payment to be paid to Coach shall be _____ (\$_____) and shall be paid in equal monthly installments on the UA's last working day of each calendar month with any partial months being prorated. The UA shall withhold all applicable federal and state taxes on all payments to Coach as required by law. Coach covenants and agrees that the UA and any other Releasees shall not owe him any other amount of any kind or nature whatsoever.

6. Coach's Duty of Mitigation and the UA's Right of Offset. Coach shall have an affirmative duty of mitigation to diligently seek and to obtain other employment. The Parties covenant and agree that the Release Payment to Coach shall be offset and reduced (i.e., offset) dollar-for-dollar on a monthly basis by the amount of gross compensation earned by Coach personally or through business entities owned or controlled by Coach (collectively referred to hereafter as "Other Employment"). For purposes of this provision, "gross compensation" shall mean, without limitation, gross income from salary, commissions, bonuses, stipends, wages, talent

fees, deferred or equity compensation, or any other types of compensation at the time it was earned (except for compensation attributable to legitimate employment related perks) by Coach, including by a business entity owned by or controlled (in whole or in part) by Coach, consulting fees, honoraria, fees received by Coach as an independent contractor, whether from athletic or non-athletic-related sources, but excluding amounts Coach earns from passive investments or interest not associated with any new employment (collectively referred to hereafter as "Other Income"). The Parties further understand and agree that Coach's duty of mitigation includes the obligation to maximize his earning potential with any new employer(s) by seeking, accepting, and reporting comparable employment for his services at a rate of compensation not less than market value and consistent with compensation rates for similar positions in the given industry at the time such employment is obtained. Coach or any individual or entity acting on his behalf shall not structure or allow Coach's compensation or any compensation package with any new employer(s) to be structured in any manner that avoids, diminishes, or denies the UA's right of offset of the Release Payment. Accordingly, the UA's right of offset shall include the right to offset the total economic value of any compensation package, employment agreement, or other compensation formula utilized with any new employer(s). The UA's right to offset shall apply to the average annual value of all amounts to be paid to Coach during the term of any multi-year contracts and/or a series of one-year contracts with a single employer. For the avoidance of all doubt, the Parties understand and agree that the duty to make the Release Payment shall not be treated as a subsidy for any future employer to pay Coach less than market value for his services.

Concurrent with the execution of this Release, Coach shall execute the attached *Authorization for Disclosure of Employment Compensation* for the period beginning [DATE], and ending on [DATE] and shall furnish a copy of his federal tax returns (including, but not limited to all schedules) to permit the UA to verify all Coach's compensation. While the UA's obligation to pay the Release Payment remains in effect, within fourteen (14) calendar days after accepting any Other Income and within fourteen (14) calendar days after the end of each month thereafter, Coach shall also furnish to the UA an accounting or report of all gross compensation received by Coach during the immediately preceding month from Other Income. The UA shall reduce the amount of the monthly Release Payment due and payable to Coach based upon the gross compensation for the immediate previous month as reflected in the Other Income gross compensation report. If Coach fails or refuses to notify the UA of Coach's Other Income, misrepresents to the UA the amount of gross compensation received from Other Income by Coach, structures Coach's compensation or any compensation package with a new employer in any manner in an attempt to reduce, avoid, or deny UA's right of offset of the Release Payment, or fails or refuses to furnish the monthly Other Income gross compensation reports or furnish documentation of his efforts to diligently seek and obtain Other Employment after receiving a formal, written request to do so, then, after giving Coach fourteen (14) days written notice and an opportunity to cure, the obligation of the UA to continue paying the Release Payment shall cease immediately. The Parties shall work in good faith to share any required information and make all permitted reductions or offsets required by this Release.

7. Section 409A of the IRC. If an amount to be paid under this Release is payable in two or more installments, each installment shall be treated as a separate payment for purposes of Section 409A. It is intended that this Release will comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and the interpretive guidance thereunder, including the exemptions for short-term deferrals, separation pay arrangements, reimbursements, and in-kind distributions, and this Release shall be administered accordingly, and interpreted and construed on a basis consistent with such intent. To the extent that any provision of this Release

would fail to comply with the applicable requirements of Code Section 409A, the UA may, in its sole and absolute discretion and without requiring Coach's consent, make such modifications to the Release and/or payments to be made thereunder to the extent it determines necessary or advisable to comply with the requirements of Code Section 409A; provided, however, that the UA shall in no event be obligated to pay any interest, compensation, or penalties in respect to any such modifications. Coach acknowledges that the UA is authorized to amend this Release, solely to void or amend any election made by Coach under this Release, and/or delay the payment of any amount or benefit under this Release, in each case, in such manner as may be determined by the UA, in its sole and absolute discretion, to be necessary and appropriate to comply with Code Section 409A. Coach hereby releases and holds harmless the Releasees from any and all claims that may arise from or relate to any tax liability, penalties, interest, costs, fees, or other liability incurred by Coach as a result of the application of Code Section 409A. Nothing in this Release shall be construed as a guarantee of any particular tax effect for the Release Payment (in whole or in part) and the UA does not guarantee that any Release Payments provided under this Release will satisfy the provisions of Code Section 409A.

8. Governing Law. The Parties irrevocably and unconditionally agree that any legal proceeding against the UA shall be brought in the State of Arkansas' administrative or judicial forums, and the place of execution for this Release and any amendments thereto, shall be the State of Arkansas, and shall be subject to its sole jurisdiction and governed by, construed and enforced pursuant to the laws of the State of Arkansas without regard to its choice of law principles (including without limitation any and all disputes, claims, counterclaims, causes of action, suits, rights, remedies, promises, obligations, demands, and/or defenses related thereto that may be asserted by either Party). The Parties waive any objection to the laying of venue of any claim, action, suit or proceeding arising out of this Release or any transaction contemplated hereby, in the State of Arkansas, and hereby further waive and agree not to plead or assert that any claim, action, suit or proceeding has been brought in an inconvenient forum. Nothing contained in this Release shall be deemed, construed or operate as a waiver of any immunities to suit available to the UA and/or its Trustees, officials and employees (in both their official and individual capacities).

9. Counterparts; Facsimiles. This Release 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 Release, 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 Release binding upon the Parties.

10. Entire Agreement. This Release 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 Release.

11. Severability. Each provision of this Release is severable from all other provisions of the Release. If any governmental authority having jurisdiction over the matters herein determines, during or at the conclusion of any litigation, that any provision of the Release 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 Release will remain in full force and effect.

12. Third-Party Beneficiaries. For the avoidance of all doubt, the UA and Coach

covenant and agree that The Razorback Foundation, Inc. and The University of Arkansas Foundation, Inc., their respective members, directors, officers, representatives, and employees are express third-party beneficiaries under this Release, are covered by the term "Releasees" as defined in this Release, and each and all of whom shall have the legal right to enforce each and every term of this Release.

13. Disclosure of Release and Non-Disparagement. The disclosure of this Release shall be governed by Arkansas law, including, without limitation, Ark. Code Ann. § 25-18-401 and the Arkansas Freedom of Information Act ("FOIA"). The Parties agree not to make disparaging remarks regarding each other and to state, if asked, that any differences between them were resolved on an amicable basis. The promises set forth in this Release, 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.

14. Enforcement of Release. The Parties agree that a violation on their part of any covenants contained in this Release, following notice and reasonable opportunity to cure, will give rise to an action to enforce this Release to the extent permitted by Arkansas law. Such remedy shall be cumulative and nonexclusive of any other remedies the Parties may have. Nothing contained in this provision or this Release, however, shall be construed, interpreted or operate as a waiver of any immunities to suit available to the Board and/or any of the Releasees, in their official or individual capacities, and all immunities to suit are affirmatively reserved.

15. No Implied Waiver. The waiver by any Party hereto of a breach of any provision of this Release 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 Release.

16. 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 Release. By entering into this Release, the Parties do not admit any liability with regard to any matter relating to Coach's employment and [resignation/termination] of employment at the UA, and the Parties expressly deny all such liability. Moreover, the fact that the Parties entered into this Release shall not be used to establish any such liability.

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

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

19. Older Workers Benefit Protection Act Notice. With regard to any rights or claims that may be asserted under the Age Discrimination in Employment Act, shall have twenty-one (21) days from the date this Release was delivered to him to consider, sign, and return it. If Coach wishes, he may elect to sign and return the Release before the end of the twenty-one (21) day period. Following Coach's signature on the Release, he shall have seven (7) calendar days to revoke his agreement if he wishes to do so. To make an effective revocation, Coach must deliver notice of revocation, in writing, to the Office of General Counsel, 421 Administration Building, University of

Arkansas, Fayetteville, Arkansas, 72701, no later than 5:00 p.m. on the seventh calendar day after he has signed the Release. The Release will not become effective or enforceable until the seven (7) day revocation period has expired without revocation. If Coach does not revoke the Release, it will be effective at the conclusion of the seven-day period.

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

**Board of Trustees of the University
of Arkansas, acting for the University
of Arkansas**

By: _____
Dr. Donald R. Bobbitt
UA System President

By: _____
Dave Van Horn

By: _____
Bill Kincaid
Acting UA Chancellor

By: _____
Hunter Yurachek
UA Vice Chancellor and Director of Athletics

**AUTHORIZATION FOR DISCLOSURE OF
EMPLOYMENT COMPENSATION**

Re: NAME:
DOB:
SS#:

I, _____, do hereby authorize my past and present employers to release any and all payroll or earnings statements, documents, correspondence, agreements and records reflecting any amounts of payment, compensation or income accrued, earned, paid, or otherwise received, by me personally or through business entities owned or controlled by me during the period beginning on [DATE], and ending on [DATE], including without limitation, gross income from base salary or wages, talent fees, benefits, bonuses, and other types of compensation paid to me by an employer, including by a business entity owned by or controlled by me, consulting fees, honoraria, fees received by me as an independent contractor, or other income of any kind whatsoever, to the following:

**Chief Financial Officer
Department of Athletics
University of Arkansas
P.O. Box 7777
Fayetteville, AR 72702**

The purpose of access to and release of my employment compensation records is at my request in connection with an employment release executed by myself and the Board of Trustees of the University of Arkansas, acting for the University of Arkansas, Department of Athletics.

Any reproduction or photocopy of this authorization shall be valid as the original and shall remain in effect through [DATE].

Signature

Date