

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION I  
CASE NO: 09-CI-0887

**FILED**  
MAY 28 2009  
FRANKLIN CIRCUIT COURT  
SALLY JUMP, CLERK

UNIVERSITY OF KENTUCKY

PETITIONER

vs.

**PETITION AND COMPLAINT  
FOR DECLARATORY JUDGMENT**

BILLY C. GILLISPIE

RESPONDENT

SERVE: 619 Burr Oak  
Nicholasville, KY 40356

\*\*\*\*\*

The Petitioner, University of Kentucky, by counsel, respectfully petitions this Court for a declaration of rights concerning an actual controversy with the Respondent, Billy C. Gillispie, and for its Petition and Complaint states the following:

1. The University of Kentucky ("UK") is a land grant university and part of the state system of public institutions of higher education of the Commonwealth under KRS Chapter 164.100, et seq., with the power to sue and be sued in this Court of Justice.

2. The Respondent, Billy C. Gillispie ("Gillispie") is and has been at all relevant times a resident of Jessamine County, Kentucky, and until March 27, 2009, Gillispie was the head men's basketball coach at UK.

3. This Court has jurisdiction and venue concerning any and all disputes arising from contracts or alleged contracts to which UK is a party, under KRS 45A.245(1).

4. This action seeks a declaration of rights to resolve an actual controversy between the parties, involving matters of law and an alleged contract, which KRS 418.040 and 418.045 authorize this Court to adjudicate by summary motion practice in order to make a binding declaration of rights, along with any other relief the Court deems just and proper.

5. On or about April 6, 2007, UK, acting through its Vice President and Director of Athletics, Mitch Barnhart, and Gillispie executed a certain Memorandum of Understanding Offer (“MOU”) in Lexington, Kentucky, a true copy of which MOU is attached and incorporated by reference as Exhibit A.

6. UK terminated its employment relationship with Gillispie on March 27, 2009.

7. An actual and justifiable controversy has arisen between the parties as to whether the MOU constitutes a long-term contract of employment, and specifically, with respect to Gillispie’s claim, asserted by letter from his counsel on March 27, 2009, that he was dismissed without “cause” and is therefore entitled to payment of \$6,000,000.00 from UK pursuant to his interpretation of the MOU.

8. UK asserts that the MOU was expressly intended by the parties to be only a letter of intent or agreement to agree, and does not constitute either a fully-integrated writing or a final expression of the parties’ entire agreement. The MOU specifically stated that it was to “be expanded and incorporated into an employment contract with University of Kentucky for execution at the earliest possible date.” Among other express conditions, the MOU stated that “a termination for cause provision mutually agreed upon by the parties,” was to be negotiated and included in the long-term employment contract, which was material to the determination of when and if UK might be required to pay Gillispie \$1.5 million per year (not to exceed 48 months) if terminated without cause before the end of his employment contract. Further, the MOU repeated at its conclusion, “while these terms are contingent upon our executing an employment contract...I trust that every reasonable effort will be made to mutually conclude that process within sixty calendar days of your start date.” Thus, there were material terms remaining to be

negotiated and agreed upon between UK and Gillispie after the MOU, without which terms and conditions precedent, there would be no long-term employment contract between the parties.

9. During the next 21 months, UK proposed at least six (6) offers of written employment contracts to Gillispie through his counsel, each of which was rejected by letter or counteroffer. Each time, counsel for Gillispie deleted or changed material terms contained in UK's latest offer, and added new and different terms not contained in the MOU or UK's last offer, making complete counteroffers on or about the following dates: (a) June 21, 2007, (b) July 23, 2007, (c) September 26, 2007, (d) April 3, 2008, and (e) February 17, 2009. In fact, the parties broke off negotiations in the Fall of 2007, and it was at the request of Gillispie by letter dated April 3, 2008 that negotiations were reopened to again attempt to agree on "the final terms".

10. The last such rejection/counteroffer by Gillispie was communicated by letter from his counsel dated February 17, 2009, received by UK on February 20, 2009. True copies of said letter and counteroffer are attached and incorporated by reference as collective Exhibit B. Among other things, Gillispie's February 17<sup>th</sup> counteroffer continued to reject and eliminate a number of UK's proposed grounds for termination for "cause," which included "(x) Failure to follow written Athletic Department or other University policies and procedures" and "(xii) Acts of misconduct including, but not limited to conviction of a felony...". (See pp. 15-16 of Exhibit B).

11. There being no long-term contract of employment, UK gave Gillispie timely notice on March 27, 2009, before the end of his second year of employment, that he would not be the head men's basketball coach for the 2009-2010 season.

12. UK has paid all incentive payments earned by Gillispie for the 2008 - 2009 basketball season in accordance with Attachment A of the MOU.

13. Due to the failure of the parties to agree to a definitive written long-term contract of employment, including, but not limited to, a definition of what kinds of misconduct would be “cause” for termination that would excuse UK from payment of any damages for breach of contract, the MOU is unenforceable in all future aspects. In *Walker v. Keith*, 382 S.W.2d 198, 201 (Ky. 1964), the Court stated, quoting from the Williston on Contracts (3<sup>rd</sup> ed.), § 45, p. 149:

“...if an essential element is reserved for the future agreement of both parties, the promise gives rise to no legal obligation until such future agreement. Since either party, by the very terms of the agreement, may refuse to agree to anything the other party will agree to, it is impossible for the law to fix any obligation to such a promise.”

Also drawing upon the holding in *Johnson v. Lowery*, 270 S.W.2d 943, 946 (Ky. 1954), the Court in *Walker* concluded:

Courts should not extend their powers to establish contract rights which the parties, with an opportunity to do so, have failed to define. *Id* at 204.

More recently, *Cinelli v. Ward*, 997 S.W.2d 474, 478 (Ky. App. 1998) exhaustively reviewed the above cases and other cases, and determined that Kentucky still takes the “all or nothing” approach, that where “an agreement leaves the resolution of material terms to future negotiations...we view it as simply an agreement to negotiate in good faith, and as such, without legal import.”

14. In addition to Gillispie’s failure or refusal to agree to a definition of good “cause” for termination arising from any misconduct or breach he might commit—the absence of which could expose UK, a public university and state agency of the Commonwealth to large liquidated damages for early termination—there was another material element or term which Gillispie

rejected. UK requested a mitigation provision that if Gillispie were terminated without cause but he obtained a subsequent coaching job in college or professional basketball, the largest measurement or amount of his new compensation package (whether just salary or a combination of income sources like sponsorships, endorsements and camps) would be disclosed to UK and credited against the amount of liquidated damages to be paid, so as not to amount to double compensation and violate public policy. Gillispie consistently disagreed with such a mitigation provision on each date set forth in paragraph 9 above, and his February 17, 2009 counteroffer again struck the mitigation paragraph from UK's last offered contract of employment (*See* p. 14 of Exhibit B).

15. The MOU provided no mechanism to resolve disputes and/or resort to other means to supply missing material terms, hence there is no long-term contract of employment between UK and Gillispie.

16. Gillispie is claiming the right to damages from UK for breach of contract under the MOU, in an amount exceeding the \$4,000 minimum jurisdictional amount of this Court, and asserts that any missing terms or disagreements are not material, but only "supplementary."

17. UK contends that the MOU is not an enforceable long-term contract of employment, and that it owes no damages to Gillispie, having paid him for each basketball season in which he coached.

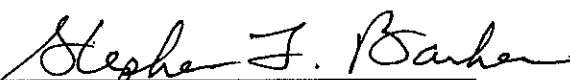
18. The above events are uncontroverted, and the attached documents (Exhibits A & B) are self-authenticating, speak for themselves, and require no parol evidence to explain them. The parties failed to agree. Accordingly, this Court should require a response from Gillispie, including any applicable legal citations, and then issue a declaratory judgment enunciating the

rights and obligations, if any, of the parties, and determining the status and effect, if any, of the MOU.

19. In particular, UK requests the Court to determine that (a) by its express terms, and the subsequent failure of the parties to agree in writing upon a long-term contract of employment, the MOU is unenforceable in all future respects, and (b) due to the failure of agreement between the parties on material terms, such as "cause" for termination and mitigation of damages, UK owes Gillispie nothing as damages for its decision not to continue his employment as head men's basketball coach.

WHEREFORE, the Petitioner, University of Kentucky respectfully asks the Court to enter a declaratory judgment binding upon the parties, providing that the MOU is not an enforceable contract, and that UK does not owe Gillispie any damages for its termination of his employment as head men's basketball coach; providing UK all other relief, legal or equitable, to which it may be entitled; its costs herein expended; and that the Court advance this matter on its docket, under KRS 418.050.

STURGILL, TURNER, BARKER & MOLONEY, PLLC

BY: 

STEPHEN L. BARKER  
KEVIN G. HENRY  
333 West Vine Street, Suite 1400  
Lexington, KY 40507  
(859) 255-8581  
COUNSEL FOR UNIVERSITY OF KENTUCKY



Athletics

Joe Craft Center • Lexington, KY 40506-0604  
(859)257-8000

April 6, 2007

Name: Billy C. Gillispie

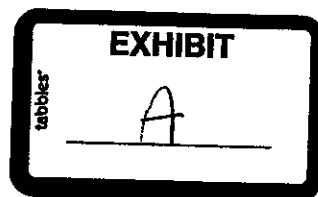
Re: Memorandum of Understanding Offer  
Head Men's Basketball Coach, University of Kentucky

Dear Coach Gillispie,

It is a great pleasure that I offer you the position of Head Men's Basketball Coach for the University of Kentucky, effective April 6, 2007. This Memorandum of Understanding, which presents the material terms of our offer, will be expanded and incorporated into an employment contract with the University of Kentucky for execution at the earliest possible date. The employment contract will be for a period of 7 years with an option for a 2-year extension after a 24 month review at the University's discretion.

Your compensation as Head Men's Basketball Coach will include the following:

- Annual base salary of \$400,000, with an annual escalator of \$25,000.
- Supplemental compensation of \$1,900,000 for Broadcasting and Endorsements, with an annual escalator of \$50,000.
- Supplemental compensation up to \$850,000 for achieving athletic and academic performance goals as identified in Attachment A.
- An additional total sum of \$250,000 will be contributed annually by the University to a deferred compensation plan that will vest 4 years after your initial date of employment if you remain continuously employed as Head Men's Basketball Coach through that date. The additional sum will continue to be contributed annually and vest annually for years 5 through 7 of the contract. The University will contribute a total of \$1,750,000 for the life of the contract.
- Full standard benefits on the same terms as provided by the University to administrative staff, with contributions and benefits amounts based upon the base salary where relevant.
- Reimbursement of your household moving expenses in accordance with University policy and state law.
- Use of one (1) vehicle provided by the University.
- A club membership will be provided.



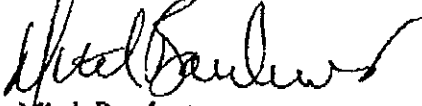
Among other terms, your employment contract will include the following:

- You shall be prohibited from receiving any benefits or compensation other than as described above from any other source without prior written agreement.
- If you terminate the contract, or if the contract is terminated for cause, the University shall not be liable for any payments or benefits after the date of termination.
- A termination for cause provision mutually agreed upon by the parties.
- A termination without cause by the University provision that will require payment of \$1,500,000 per year for the remainder of the term of the contract, provided the payment for termination without cause shall not exceed 48 months.
- If you are found by the University to be in violation of NCAA or SEC bylaws, rulings, regulations or policies, whether while employed by the University or during prior employment at another NCAA member institution, you shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedure, including suspension without pay or termination of employment for significant or repetitive University, Conference, or NCAA violations.
- A provision that you will agree not to seek or apply for other positions without prior notice and a buyout of \$3,000,000 in the first year on the contract, \$2,000,000 in the second year of the contract, \$1,500,000 in the third year of the contract, \$1,000,000 in the fourth year of the contract and \$0 for the fifth year of the contract and beyond.

While these terms are contingent upon our executing an employment contract, and are subject to the approval of the Board of Directors of the University of Kentucky Athletic Association and if necessary the Board of Trustees of the University of Kentucky, I trust that every reasonable effort will be made to mutually conclude that process within 60 calendar days of your start date.

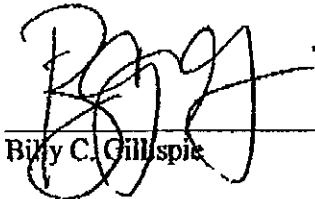
It is with great anticipation and enthusiasm that I offer you the position of Head Men's Basketball Coach at the University of Kentucky. Assuming you are amenable, please indicate your acceptance by signing below. I have every confidence that you will lead our basketball program with integrity and pride, and I look forward to welcoming you as a member of the Wildcat Family.

Best personal regards,



Mitch Barnhart  
Director of Athletics

Terms of the Memorandum of Understanding are accepted for position of Head Men's Basketball Coach for the University of Kentucky.



Billy C. Gillispie

4/6/07  
Date

**ATTACHMENT A****Athletic Incentives**

SEC Regular Season Championship	\$50,000
SEC Tournament Championship	\$50,000
NCAA Tournament Appearance	\$50,000
NCAA Tournament Sweet 16 Appearance	\$75,000
NCAA Tournament Final Four Appearance	\$150,000
National Championship	<u>\$375,000</u>
Total Maximum Available	\$750,000

**Academic Incentive**

Academic Progress Rate of 950+	\$50,000
Graduation Rate of 75%+	\$50,000

# SNEED LANG, P.C.

LAW OFFICES

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One West Third Street  
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(918) 583-3145

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Stuart D. Campbell  
Email: scampbell@sneedlang.com

February 17, 2009

Barbara W. Jones, Esq.  
General Counsel  
Office of Legal Counsel  
University of Kentucky  
301 Main Building  
Lexington, KY 40506-0032

Re: *Employment Agreement and Deferred Compensation Agreement  
By and Between Billy C. Gillispie and University of Kentucky*

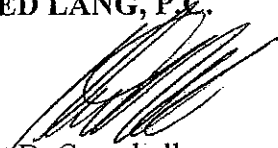
Dear Ms. Jones:

Attached please find the contract which you sent to us a few weeks ago with a few revisions. Coach Gillispie removed many of his requested insertions and deletions from the previous contract, but still felt a few items should be revised. The attached copy is a redlined version with such changes.

Once you have had a chance to review and go over with your athletic director, please give me a call to discuss.

Very truly yours,

SNEED LANG, P.C.

  
Stuart D. Campbell

SDC/scp

Enclosure

cc: Coach Billy Gillispie



RECEIVED

FEB 20 2009

Office of Legal Counsel

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (herein the "Agreement"), is made and entered into as of the 6<sup>th</sup> day of April, 2007, by and between the UNIVERSITY OF KENTUCKY (hereinafter the "University"), and Billy C. Gillispie (hereinafter "Coach" or "Employee").

1. Term. This Agreement shall be for seven (7) years beginning April 6, 2007 and ending April 5, 2014, unless terminated at an earlier date as provided herein. As used herein, "Contract Year" shall be that annual twelve month period beginning April 6 and ending April 5. However, the University and Coach agree that the term of this Agreement may be extended by the University, at the University's discretion, for an additional two years upon the completion of a performance review on or before April 5, 2009.

In the event the University does intend to extend the seven (7) year contract by an additional two (2) years, the University shall provide notice to the Coach between March 15, 2009 and April 1<sup>st</sup> 5, 2009. Coach shall have the right, but not the obligation, to accept the two (2) year contract extension and shall notify the University of such acceptance or refusal of such an extension within thirty (30) days after notice by University. In the event that Coach accepts such a two (2) year extension to this Agreement, then the term of this Agreement shall be extended through April 5, 2016 and all rights and obligations under this Agreement shall be determined as if the term expired on April 5, 2016.

2. Duties and Authority. Coach is hereby employed by the University as the Head Men's Basketball Coach. Subject to the supervision and authority of the Director of Athletics, Coach's duties, responsibilities and obligations shall be those normally associated with the

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position of head men's basketball coach at a National Collegiate Athletic Association (hereinafter "NCAA") Division I university, such as the University of Kentucky. Coach shall devote such time and attention necessary to satisfy the responsibilities for the position of head men's basketball coach, which shall include, in addition to the usual and customary activities associated with coaching, the authority and responsibility for the following:

(a) The employment, supervision, and discharge, subject to the approval of the Director of Athletics, of personnel associated with or related to the men's basketball program at the University including, but not limited to, the following:

- (i) Assistant basketball coaches;
- (ii) Administrative aides;
- (iii) Strength/conditioning coaches;
- (iv) Administrative Assistants;
- (v) Team trainers and managers
- (vi) Video Personnel

The employment and discharge of personnel mentioned in subparagraphs (ii), (iv), and (vi) above shall be subject to the approval of the Associate Vice-President of Human Resources and in accordance with University's Human Resources Policy and Procedures, Administrative Regulations, and any applicable provisions of the NCAA Manual and the Southeastern Conference (hereinafter "SEC") and Commissioner's Regulations Manual, as amended. Notwithstanding the foregoing obligations to obtain approval of personnel actions, Coach retains responsibility for employment decisions.

(b) In conjunction with the Director of Athletics, the scheduling (including dates, places and times) of all University men's basketball games and the selection of the

opponent for each such game, the means of travel to be employed, hotel accommodations and food service, size and content of the traveling squad and party, and all other matters pertaining to the operation of the University's basketball program.

(c) All matters concerning the recruiting of prospective basketball players for the University, including compliance with NCAA and SEC bylaws governing same.

(d) Preparation of a recommended budget for the basketball program for submission to the Director of Athletics. Upon approval of the budget for the basketball program, Coach shall administer that budget in accordance with applicable and appropriate regulations and policies of the University.

(e) Cooperation with and fulfillment of the requirements and commitments of the University in any of its athletically related agreements including, but not limited to, any agreements for radio and television broadcasting, athletic footwear, apparel and equipment, or other commercial endorsements.

3. Reporting Relationship. The Coach's immediate supervisor, for purposes of implementing this Agreement, shall be the Director of Athletics for the University, and all matters pertaining to the operation of the University's basketball program shall be subject to the ultimate direction and control of the Director of Athletics. On court matters shall remain the exclusive province of the Coach, provided Coach's conduct is not in violation of NCAA, SEC, or University bylaws, rules, regulations or policies.

4. University Policy.

(a) The establishment of policies for the entire athletic program shall remain the exclusive prerogative of the University. The Coach shall administer the daily routine and organization of the program as he deems necessary to effectuate its success, provided such

administration shall be in accordance with policies established by the Director of Athletics and the University. The terms and provisions of the University's Human Resources Policy and Procedure Administrative Regulations, as currently published and as may hereafter be revised or amended, are hereby incorporated herein by reference and made a part of this Agreement as though written herein. To the extent, however, that an actual conflict exists between the terms and provisions of said Regulations and this Agreement, this Agreement shall prevail as it affects the Coach, and no other person.

(b) Coach agrees to conduct the University's basketball program in accordance with the bylaws and regulations of the University, NCAA and SEC and any subsequent amendments thereto, including but not limited to the duty to report known and suspected violations to the University Compliance Director or to the Director of Athletics. Pursuant to NCAA Bylaw 11.2.1, it is stipulated by the parties that if Coach is found in violation of NCAA regulations, he shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures.

5. Compensation. In consideration of Coach's services hereunder, the University shall pay Coach as follows:

(a) Salary. For each Contract Year during the term hereof, a base salary of Four Hundred Thousand Dollars (\$400,000.00), payable in equal monthly installments, in conformity with the payroll procedures of the University. The base salary shall be increased annually in an amount of Twenty-Five Thousand Dollars (\$25,000.00). By way of example, Coach's base salary shall be as follows:

April 6, 2007 – April 5, 2008	\$400,000.00
April 6, 2008 – April 5, 2009	\$425,000.00

April 6, 2009 – April 5, 2010	\$450,000.00
April 6, 2010 – April 5, 2011	\$475,000.00
April 6, 2011 – April 5, 2012	\$500,000.00
April 6, 2012 – April 5, 2013	\$525,000.00
April 6, 2013 – April 5, 2014	\$550,000.00

If the term of this Agreement is extended to April 5, 2016 pursuant to Paragraph 1, then the University will assure Coach's base salary from April 6, 2014 to April 5, 2015 of Five Hundred Seventy-Five Thousand Dollars (\$575,000.00) and payment from April 6, 2015 to April 5, 2016 of Six Hundred Thousand Dollars (\$600,000.00).

(b) Broadcasting and Endorsements. It is understood that the University has entered into an exclusive radio and television broadcasting contract and a contract with a supplier of athletic footwear, apparel and equipment. In consideration of the compensation set forth below for radio and television programs and all other endorsements, Coach hereby exclusively grants to the University his rights of endorsement, together with the exclusive right, license and privilege of soliciting, securing and/or authorizing all endorsements, publications and/or radio and television performance opportunities secured for or featuring Coach subject to prior approval by Coach. For purposes of clarification, the foregoing specifically includes any charitable or non-profit activity which offers payments of any type whether called an "honorarium" or other similar title.

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L.A.M.B.  
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(i) In compensation for Coach's participation in radio and television programs and athletically related endorsements, including endorsement of athletic footwear, apparel and equipment, the University will pay the sum of One Million Nine Hundred Thousand Dollars (\$1,900,000.00) for each Contract Year, payable in equal quarterly installments on April

1, July 1, October 1, and January 1, of each year. However, such amount will be owed on a per diem calculation in the event of termination of employment. This base sum for broadcasting and endorsements shall be increased annually in the amount of Fifty Thousand Dollars (\$50,000.00). Such compensation will be paid to the University for the benefit of Coach, pursuant to the University's exclusive radio and television broadcasting Agreements and any University Agreements with a supplier of athletic footwear, apparel and equipment. However, Coach may, in regards to national advertisement, negotiate directly with Host Communications for additional compensation paid directly to Coach. The University shall retain the sole and exclusive right to contract for radio and television broadcasting and with a supplier or supplier of athletic footwear, apparel and equipment for the University's athletic teams and any such endorsements/promotions by the Coach will be pursuant to the terms and conditions of such University Agreements. By way of example the University will assure Broadcasting and Endorsements payments as follows:

- April 6, 2007 – April 5, 2008 \$1,900,000.00
- April 6, 2008 – April 5, 2009 \$1,950,000.00
- April 6, 2009 – April 5, 2010 \$2,000,000.00
- April 6, 2010 – April 5, 2011 \$2,050,000.00
- April 6, 2011 – April 5, 2012 \$2,100,000.00
- April 6, 2012 – April 5, 2013 \$2,150,000.00
- April 6, 2013 – April 5, 2014 \$2,200,000.00

If the term of this Agreement is extended to April 5, 2016 pursuant to Paragraph 1, then the University will assure compensation for Coach's participation in radio and television programs and athletically related endorsements, including endorsement of athletic

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footwear, apparel and equipment, from April 6, 2014 to April 5, 2015 of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00) and payment from April 6, 2015 to April 5, 2016 of Two Million Three Hundred Thousand Dollars (\$2,300,000.00).

(ii) The University and Coach agree that the University's name, logos and trademarks may be associated with or utilized by the Coach in connection with such endorsements or contracts at no additional cost to Coach, provided that the use of such name, logos and trademarks shall be subject to approval by the University's licensing authority for the purpose of maintaining quality control standards. All such contracts shall be subject to the prior review and written approval of the Director of Athletics and the President of the University;

(iii) Such professional and commercial activities shall be performed at a time and in a way which will not interfere with the duties of the Coach's position as head men's basketball coach and due care shall be taken to assure that the name of the University is used properly in relation to such professional activities. Such activities including endorsements will require approval of the ~~Director of Athletics and Coach~~;

✓  
W<sup>o</sup>

(iv) Coach may conduct one or more basketball camps, using University athletic facilities and equipment, and retain the net income therefrom after payment of appropriate expenses incurred by the University and others. The University will contribute the amount of Thirty-Thousand Dollars (\$30,000) to Coach's basketball camp program per year for a total of two years, beginning May 1, 2008. The disbursements of said amount shall be in the form of three payments each fiscal year as follows:

ADD  
BENEFIT

- |     |                  |          |
|-----|------------------|----------|
| (a) | December 1, 2007 | \$10,000 |
| (b) | February 1, 2008 | \$10,000 |
| (c) | April 1, 2008    | \$10,000 |

- (d) December 1, 2008 \$10,000
- (e) February 1, 2008 \$10,000
- (f) April 1, 2009 \$10,000

Such camps will be conducted in accordance with general University policies.

Rates for rooms and meals shall not exceed those charged by the University's Housing and Dining System for other major sports camps generally; and

(v) In accordance with NCAA Bylaw 11.2.2 regarding athletically related income, Coach agrees to provide a written detailed account to the Director of Athletics and the President of the University at least once annually, or more frequently upon request, for all athletically related income, compensation, gratuities or benefits from any and all sources outside the institution or for the use directly or by implication of the University's name or logo in the endorsement of commercial products or services for personal gain; in addition, Coach agrees that the approval of all athletically related income and benefits shall be consistent with the University's policy related to outside income and benefits applicable to all full time employees.

(c) Incentive Compensation.

(i) In the event the University's men's basketball team wins the SEC Regular Season Championship, Coach will, in any year in which the aforementioned event occurs, receive, in addition to the payment due under Paragraphs 5(a) and (b)(i), an additional performance supplement of Fifty Thousand Dollars (\$50,000.00);

(ii) In the event the University's men's basketball team wins the SEC Tournament Championship, Coach will, in any year in which the aforementioned event occurs, receive, in addition to the payment due under Paragraphs 5(a), 5(b)(i), and 5(c)(i), an additional performance supplement of Fifty Thousand Dollars (\$50,000.00);

(iii) In the event the University's men's basketball team qualifies for an NCAA Tournament Appearance, Coach will, in any year in which the aforementioned event occurs, receive, in addition to the payment due under Paragraphs 5(a), 5(b)(i), 5(c)(i) and (ii), an additional performance supplement of Fifty Thousand Dollars (\$50,000.00);

(iv) In the event the University's men's basketball team qualifies for an NCAA Tournament Sweet 16 Appearance, Coach will, in any year in which the aforementioned event occurs, receive, in addition to the payment due under Paragraphs 5(a), 5(b)(i), 5(c)(i), (ii) and (iii), an additional performance supplement of Seventy-Five Thousand Dollars (\$75,000);

(v) In the event the University's men's basketball team qualifies for a NCAA Tournament Final Four Appearance, Coach will, in any year in which the aforementioned event occurs, receive, in addition to the payment due under Paragraphs 5(a), 5(b)(i), 5(c)(i), (ii),(iii) and (iv), an additional performance supplement of One Hundred Fifty Thousand Dollars (\$150,000.00);

(vi) In the event the University's men's basketball team wins the NCAA Championship, Coach will, in any year in which the aforementioned event occurs, receive, in addition to the payment due under Paragraphs 5(a), 5(b)(i), 5(c)(i), (ii), (iii), (iv) and (v), an additional performance supplement of Three Hundred Seventy-Five Thousand Dollars (\$375,000.00);

(vii) In the event the men's basketball team achieves a .950 Academic Progress Rate for men's basketball student athletes in any academic year, Coach will, in any year in which the aforementioned event occurs, receive, in addition to the base salary, broadcast and endorsement supplemental salary and tournament incentive compensation, a performance supplement of Fifty Thousand Dollars (\$50,000.00);

(viii) In the event the men's basketball team achieves a seventy-five percent (75%) Graduation Rate or better for men's basketball student athletes in each class/cohort, the Coach will, in any year in which the aforementioned event occurs, receive, in addition to the base salary, broadcast and endorsement supplement and tournament incentive compensation, and Academic Progress Rate incentive compensation, a performance supplement of Fifty Thousand Dollars (\$50,000.00).

These incentives are intended to reward the achievement of each event in turn and are cumulative. All payments due under this Paragraph 5(c) shall be due and payable to Coach within thirty (30) days from the date the achievement has been reached.

(d) Retention Incentive. In addition to the above stated competitive and academic based incentives, a retention incentive to encourage Coach to remain with the University shall be provided. The University makes available to Coach Two Hundred Fifty Thousand Dollars (\$250,000.00) in funds per year, entitlement to which is hereby deferred until April 6, 2011. University agrees to pay Coach an annual retention bonus of Two Hundred Fifty Thousand Dollars (\$250,000.00), if Coach remains in the employment of the University on each of the following dates April 6, 2012, April 6, 2013 and April 6, 2014. If the term of this Agreement is extended to April 6, 2016 pursuant to Paragraph 1, then the University will continue to pay the annual retention bonus of Two Hundred Fifty Thousand Dollars (\$250,000) if Coach remains in the employment of the University on the following dates: April 6, 2015; April 6, 2016.

6. Additional Obligations of the University. In the discharge of Coach's obligations, the University may require Coach's participation to promote and enhance University's athletic

program. In this regard and for the University's convenience during the term of this Agreement, the University agrees to provide Coach as follows:

*1 more year  
1/12/11*

(a) Automobiles. Coach shall be provided with the use of two (2) late-model, quality automobiles for his official and personal use. In addition, the University shall reimburse Coach for all business related automobile mileage.

(b) Expense Account. The University shall fully reimburse Coach for all reasonable and necessary expenses on behalf of the University in connection with the performance of his duties and in accordance with the University's customary expense practices, provided Coach substantiates such expenses. Transportation expenses for a guest of the Coach to occasionally travel to regular season away games may be approved by the Director of Athletics upon receipt of Coach's request. Post season travel for Coach's guests may be approved by the Director of Athletics upon receipt of Coach's request. Certain of these guest expenses shall be considered a taxable fringe benefit to the Coach in accordance with state and federal Internal Revenue Code and Regulations.

(c) Benefits. During the term of this Agreement, University agrees to offer to Coach and his eligible dependents, the standard employee benefits offered to University administrative staff. Standard benefits include, but are not limited to health plan, life insurance, dental insurance, accidental death and dismemberment insurance, and long term disability. The base salary as provided in Paragraph 5(a) shall determine benefits that are based upon salary.

*+ see 1/12/11*

(d) Tickets. Coach shall receive, without charge, twenty (20) prime, lower level basketball tickets for each University men's home basketball game, each away basketball game and each post season tournament game and the option to purchase up to 20 additional tickets. Eight (8) football tickets, without charge, will also be made available for each University

home football game. Such tickets may not be resold or exchanged for anything of value by Coach. Coach shall be allowed to request additional tickets, if he deems it necessary, and such request shall be fulfilled, if possible.

(e) Retirement. It is agreed that the funded retirement benefits usually paid to University administrative staff will apply to the employment of Coach under this Agreement, as follows: The University will contribute an amount equal to ten percent (10%) of the annual base salary compensation stipulated in Paragraph 5(a) hereof and the Coach will contribute five percent (5%) of said annual base salary compensation for this purpose. The Coach may, at his election, contribute additional amounts to the University retirement plans subject to Internal Revenue Service and University limitations.

(f) Vacation. Coach shall be entitled to one (1) month (i.e.: twenty (20) working days) of paid vacation leave each contract year, subject to approval of the Director of Athletics. Vacation leave does not accrue.

(g) The University agrees to reimburse Coach for all reasonable and legitimate relocation expenses.

(h) The University agrees to provide Coach a membership in a local golf and country club of his choice and pay the monthly dues associated therewith.

7. Termination by University.

(a) If the University terminates this Agreement for "cause," as defined herein, University shall be obligated to pay Coach all amounts owing up to the date of termination only. Coach shall not be entitled to receive any benefits or payments that become due after the date of termination. Health insurance however shall continue in full force and effect at University's

+ ADDED

expense for ninety (90) days thereafter or until Coach becomes employed, whichever occurs first.

(b) The University shall have the right at any time to terminate this Agreement without cause and for its convenience prior to its expiration. Termination by the University without cause shall be effectuated by delivering written notice not less than thirty days prior to the effective date of said termination. Termination shall be effective upon the date specified in the notice. If the University terminates this Agreement any time, without cause (which shall be defined as any reason not specifically set out as "for cause"), the University shall pay, and Coach agrees to accept as liquidated damages, One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) per year for each year remaining on the contract, but in no event shall the University pay more than the value of four (4) Contract Years. In the event that the number of years remaining on the Agreement exceed four (4) Contract Years, the University shall pay and Coach shall accept Seven Million Dollars (\$7,000,000.00). Such liquidated damages which shall be payable within ninety (90) days of such termination. Coach will be entitled to continue such benefits at Coach's own expense as required or permitted by law, but Coach will not otherwise be entitled to any employment or other benefit described herein. Health insurance however shall continue in full force and effect at University's expense for ninety (90) days after date of termination or until Coach is employed, whichever occurs first. The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that termination of this Agreement by the University without cause prior to its expiration may cause the Coach to lose certain benefits and incentives, supplemental compensation, or other athletically-related compensation associated with Coach's employment at the University, which damages are extremely difficult to determine with certainty or fairly or

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C. L. 11/11/11

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adequately. The parties further agree that the payment of such liquidated damages by the University and acceptance thereof by the Coach shall constitute adequate and reasonable compensation to the Coach for the damages and injuries suffered by the Coach because of such termination by the University. The foregoing shall not be, nor construed to be, a penalty.

~~Notwithstanding any other provisions contained in this Agreement, Coach agrees to mitigate the University's obligation to pay liquidated damages under this Agreement and to make reasonable and diligent efforts to obtain employment as soon as possible after termination of this Agreement by the University. Upon Coach's acceptance of any college or professional coaching position, the University's obligation to pay the full amount of liquidated damages shall be reduced by the amount of the minimum guaranteed annual salary of Coach's new position or the reasonable market value of the position, whichever is greater. Coach agrees to notify the University within (14) days of the date Coach accepts new employment and the minimum salary of the new employment.~~

*MOH*

The word "cause," as used herein, shall mean the occurrence of any of the following:

*NO*

- (i) Refusal or intentional failure to furnish information relevant to an investigation of a possible violation or an NCAA or SEC bylaw or regulation;
- (ii) Refusal to cooperate with the NCAA, SEC or University staff in the investigation or violations of NCAA or SEC bylaws or regulations;
- (iii) Knowing involvement in arranging for academic fraud by or for prospective or enrolled student-athletes;
- (iv) Knowing involvement in offering or providing prospective or enrolled student athletes improper inducements or extra benefits;

(v) Knowingly furnishing the NCAA, SEC or the University false or misleading information concerning the Coach or any staff member's or athletics' involvement in or knowledge of a violation of an NCAA or SEC bylaw or regulation;

(vi) Knowingly providing information to individuals involved in organized gambling activities concerning intercollegiate athletics competition;

(vii) Knowingly soliciting a bet on any inter-collegiate team or accepting a bet on any team representing the University;

(viii) Knowingly participating in any gambling activity that involves intercollegiate athletics through a bookmaker, a parlay card or any other method employed by organized gambling;

(ix) ~~Knowingly~~ Receiving benefits for facilitating or arranging a meeting between a student athlete and an agent, financial advisor or a representative of an agent or advisor.

~~(x) Failure to follow written Athletics Department or other~~

~~(xi) University policies and procedures;~~

~~(xii) Acts of misconduct including, but not limited to conviction~~

~~(xiii) of a felony or, a conviction for any alcohol or drug related offense;~~

~~(xii)(x) Misconduct shall also extend to such in~~ Major violations of

NCAA or University rules or policies if committed by any personnel described in Paragraph 2(a)(i)-(vii) or by any student athlete or other "representative of the University's athletic interests" (as defined by the NCAA), where the Coach consented to such violation, had prior knowledge of the violation and did not prevent the violation, or

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concealed or failed to report the violation, or where the Director of Athletics and President determine that the Coach reasonably knew or should have known of the violation;

It is not the intention of the parties that this Agreement be terminable for minor, technical or otherwise insignificant University regulations or NCAA or SEC violations which do not entail the risk of major institutional penalties. It is not the intention of the parties that this Agreement be terminable if "secondary violations" occur after Coach has properly exercised institutional control under the Principles of Institutional Control as prepared by the NCAA Committee on Infractions. In order to properly maintain institutional control Coach shall be notified by the Compliance Office of any and all alleged "secondary violations" committed by Coach, any assistant men's basketball coach or any men's basketball staff member for whom Coach is responsible. Coach shall then report to the Director of Athletics any corrective or disciplinary action taken to remediate the alleged violations.

However, a "major violation" by Coach or by a staff member described above or by a student athlete or representative of the University's athletic interests where the Coach knew or should have known of the violation of said bylaws of either the NCAA or SEC are "cause" for termination of this Agreement by the University. Anything in this Agreement to the contrary notwithstanding, it is hereby stipulated pursuant to NCAA Bylaw 11.2.1 that the Coach may be suspended for a period of time, without pay, or that the Coach's employment may be terminated if the Coach is found to be involved in deliberate and serious violations of NCAA or SEC bylaws or regulations as defined therein. It is further stipulated that pursuant to NCAA Bylaw 11.2.1 that if the Coach is found to be in violation of NCAA regulations, then the Coach shall be subject

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to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures.

(c) In the event of Coach's death, the University shall produce a final payment for the appropriate rate of pay in accordance with the number of days the Coach actually worked. Dependents' continued eligibility for benefits shall be in accordance with the standard eligibility of dependents of administrative staff. All deferred compensation money set forth in the Deferred Compensation Agreement shall accelerate and immediately vest and become payable to the designated beneficiaries.

(d) In the event Coach shall become disabled during the term of this Agreement, the University shall continue to provide all salary and benefits to Coach provided for pursuant to Paragraphs 5(a) and (b) and 6(a), (c), (d) and (e) of this Agreement as if Coach were fully performing such duties until the expiration of 18 months the Contract Year in which the disability occurs, and upon such expiration date this Agreement shall terminate; provided, however, if by reason of Coach's disability, Coach shall receive disability insurance payments from any disability insurance policy paid for by the University, the University's obligations to Coach to pay salary pursuant to Paragraph 5(a) and (b) shall be reduced by the amount of disability payments received by Coach; and provided further that any such termination of this Agreement shall not effect Coach's right to continue to receive all disability insurance payments provided pursuant to the disability insurance policy referenced in Paragraph 6(c). The definition set forth in the University's group disability insurance policy for "disability" shall govern the determination of disability for purposes of this subparagraph. In addition, all deferred compensation money set forth in the Deferred Compensation Agreement shall accelerate and immediately vest and become payable to Coach.

*NO*  
*NOT*  
*COMPLIANT*  
*WITH*  
*POLICY*

8. Termination by Coach. Coach agrees to not seek or apply for any other basketball coaching position without prior written notice to the Director of Athletics. In the event Coach terminates this Agreement Coach shall make the payment of liquidated damages within ninety (90) days as follows:

(a) Three Million Dollars (\$3,000,000.00) if the termination occurs any time within the first (1<sup>st</sup>) year of this Agreement;

(b) Two Million Dollars (\$2,000,000.00) if the termination occurs any time within the second (2<sup>nd</sup>) year of this Agreement;

In the event and only in the event the University extends this Contract in accordance with paragraph 1. herein, the following shall apply.

*MASON  
Chambers*

(c) One Million Five Hundred Thousand Dollars (\$1,500,000.00) if the termination occurs anytime within the third (3<sup>rd</sup>) year of this Agreement;

(d) One Million Dollars (\$1,000,000.00) if the termination occurs anytime within the fourth (4<sup>th</sup>) year of this Agreement;

(e) If the termination occurs anytime during the fifth (5<sup>th</sup>) year of this Agreement or thereafter Coach will not be required to pay the University any liquidated damages.

Termination as provided in this section does not include termination by reason of death, disability, or breach by the University during the term of this Agreement.

The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the termination of the Agreement by the Coach prior to the expiration may cause the University to incur programmatic and financial harm, damages which are extremely difficult to determine with certainty or fairly or adequately. The

parties further agree that the payment of such liquidated damages by the Coach and acceptance thereof by the University shall constitute adequate and reasonable compensation to the University for damages and harm suffered by the University because of such termination by the Coach. The foregoing shall not be, nor be construed to be, a penalty.

9. Notices. All notices, claims, requests, demands and other communications hereunder shall be made in writing and shall be deemed given if delivered or mailed (registered or certified mail, postage prepaid, return receipt requested) as follows:

To Coach: Billy C. Gillispie  
Joe Craft Center  
University of Kentucky  
Lexington, Kentucky 40506-0019

With a Copy to: Stuart D. Campbell, Esq.  
SNEED LANG, P.C.  
1700 Williams Center Tower I  
One West Third Street  
Tulsa, Oklahoma 74103-3522

To the University: Mitch Barnhart  
Director of Athletics  
Joe Craft Center  
University of Kentucky  
Lexington, Kentucky 40506-0019

With a copy to: President Lee T. Todd, Jr.  
Office of the President  
University of Kentucky  
Room 101, Main Building  
Lexington, Kentucky 40506-0032

10. Severability. If any term, clause or provision of this Agreement shall be deemed to be illegal, invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the legality, validity or enforceability or any other term, clause or provision of this Agreement, and this Agreement shall be construed and enforced as if such term, clause or provision had not been included.

11. Governing Law and Venue. This Agreement shall be governed by, construed and enforced under the laws of the Commonwealth of Kentucky. Any action arising from or relating to this Agreement shall only be brought in the Franklin Circuit Court of the Commonwealth of Kentucky.

12. Binding Effect. This Agreement binds and is for the benefit of the University and its successors, assignees and legal representatives and of the Coach and his heirs, assignees, administrators and personal representatives.

13. Amendment. No amendment, change, waiver, discharge, or modification of any provision of this agreement shall be valid unless it is evidenced by a written instrument signed by both parties hereto.

14. Waiver. The failure of either party to require strict performance by the other party of any provision of this Agreement shall not be deemed to affect that party's right to subsequently enforce a provision hereof. A waiver of a breach of any provision of this Agreement is not a waiver of any other breach or a waiver of the provision.

15. Headings. The paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretations of this Agreement.

16. Assignment. Neither party may assign its duties or obligations hereunder, in whole or in part, without the prior express written agreement of the other party.

17. Entire Agreement. This Agreement incorporates any and all prior oral agreements and understandings of the parties with respect to its subject matter and supersedes all prior written contracts between the parties.

18. Authority. Each party warrants and represents that it has the full right, power and authority to enter into and perform this Agreement and to make the covenants set forth herein.

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

THE UNIVERSITY OF KENTUCKY

By: \_\_\_\_\_  
Lee T. Todd, Jr.  
President

ATTEST:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Mitch Barnhart  
Director of Athletics

COACH

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Billy C. Gillispie

6/08; 1/09

EXHIBIT "A" TO THE EMPLOYMENT AGREEMENT

DEFERRED COMPENSATION AGREEMENT FOR

**Billy C. Gillispie**

THIS AGREEMENT made and entered into the \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the University of Kentucky (the "University"), a Kentucky governmental institution of higher education, whose official office address is 101 Main Building, University of Kentucky, Lexington, Kentucky 40506-0032, and Billy C. Gillispie (the "Employee"), whose official office address is Joe Craft Center, University of Kentucky, Lexington, Kentucky 40506.

WITNESSETH:

WHEREAS, the University is an organization exempt from federal income tax under Section 115 of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Employee, as Men's Head Basketball Coach, is a key and valuable employee to the University; and

WHEREAS, the University is desirous of providing the Employee with an opportunity to defer a portion of the Employee's salary so as to permit the Employee flexibility in the planning for his retirement benefits; and

WHEREAS, the Employee has indicated a desire to defer a portion of his salary in excess of the amounts permitted by Section 457(b) of the Code.

NOW THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. Purpose of Agreement. The purpose of this Agreement is to offer the Employee deferred compensation benefits under Section 457(f) of the Internal Revenue Code. This Agreement is intended to be an unfunded deferred compensation plan maintained for the Employee who is a member of a select group of management or highly compensated employees pursuant to Sections 201(2), 301(a)(3) and 401(a)(1) of the Employee Retirement Income Security Act of 1974.
2. Attainment Date. The Attainment Date shall be April 15, 2010 (the "Attainment Date"). Employee acknowledges and agrees that he shall have no rights to any of the funds deferred under this Agreement or to the earnings thereon, if any, until the Attainment Date. Notwithstanding anything herein to the contrary, if Employee is terminated prior to the Attainment Date, for cause as described in his Employment Agreement or by voluntary acts of Employee, no funds will be payable by University. In the event Employee is terminated prior to the Attainment Date without cause, or due to his death or

disability, then all funds which would be owed herein through April 15, 2010, shall vest and be immediately due and payable.

3. Deferral Agreement. The Employee hereby agrees to defer, prior to earning or having any entitlement to the same, Two Hundred Fifty Thousand Dollars (\$250,000.00) of his total potential annual salary for each of calendar years 2007, 2008, ~~and 2009~~ and 2010, said amount to be deferred in an annual lump sum on April 15, 2007 and on each successive April 15. This deferral Agreement made by the Employee shall be irrevocable with respect to any and all compensation covered by such Agreement.
4. Deferred Compensation Account. Any compensation deferred pursuant to Paragraph 3 hereof shall be recorded by the University in a deferred compensation account (the "Deferred Compensation Account") maintained in the name of the Employee, which Deferred Compensation Account shall be credited on each date of payment of compensation with a dollar amount equal to the total amount of compensation deferred. All such earnings shall be deemed to be deferred compensation to be distributed in accordance with the terms and in the manner set forth in this Agreement. The University shall not be liable for any losses or damages of any kind relating to the investment of the Employee's Deferred Compensation Account. Except as otherwise provided for herein, the Deferred Compensation Account shall be payable to Employee in a lump sum upon the Attainment Date or such earlier date as may be appropriate pursuant to this Agreement.
5. Investment Income on Deferred Compensation Account. Annually, on April 5, after the close of each fiscal year (~~March 30~~) immediately before the Attainment Date, the Deferred Compensation Account will be credited with investment income calculated on the average monthly balance of the account for the preceding fiscal year at the percentage set forth in Attachment A, which is attached hereto and incorporated herein.
6. Substantial Risk of Forfeiture. If the Employee terminates employment with the University prior to the Attainment Date for any reason other than 1) the Employee's death, 2) total and permanent disability or 3) he is terminated without cause, the Employee will forfeit the right to receive any payments made under this Agreement.
7. Noncompetition and Substantial Services. The payment of any Deferred Compensation under Paragraph 4 is conditioned upon the Employee continuing in employment as Men's Head Basketball Coach and not engaging in any activity in competition with the University. The Employee will forfeit the right to receive payments under this Agreement, if the Employee fails to observe this or any other terms of this Agreement prior to funds vesting.
8. Employee's Rights Unsecured. The rights of the Employee under this Agreement will be solely those of an unsecured creditor of the University. Any assets acquired or accumulated by the University in connection with its liabilities under this Agreement will not be held for the benefit of the Employee or any beneficiary or as collateral security for the performance of any obligation of the University under this Agreement, but will be

generally unpledged and unrestricted assets of the University so far as this Agreement is concerned.

9. Additional Rights of Employee. Any payment under this Agreement will be independent of and in addition to those under any other Agreement which may be in force between the University and the Employee or any other compensation which may be payable by the University to the Employee.
10. Nontransferable. Neither the Employee nor any beneficiary will have any right to commute, sell, assign, transfer, or otherwise encumber or convey the right to receive any payments under this Agreement.
11. Benefit. This Agreement is solely between the University and the Employee, and the Employee and any beneficiary will have recourse under it only against the University. This Agreement will be binding upon any beneficiary, heirs, personal representatives and administrators of the Employee and upon the successors and assigns of the University.
12. Amendment. This Agreement may be amended only by written Agreement signed by the University and the Employee.
13. Compliance with Law. This Agreement is intended to accomplish the authorized deferral of the incidence of federal income taxes on the Employee's compensation and the earnings thereon until such time as the Employee, his beneficiary or his estate received actual payment of the same, as authorized by the Internal Revenue Code and applicable law, and this Agreement shall be construed in accordance with such intended purpose.
14. Effect of Payment of Benefits. The payment of benefits under this Agreement to the Employee or his beneficiary shall fully and completely discharge the University and the Board of Directors from all further obligations under this Agreement with respect to Employee, and any outstanding deferral elections shall terminate upon such full payment of benefits.
15. Governing Law and Venue. This Agreement will be governed by the laws of the Commonwealth of Kentucky. Any action arising from or relating to this Agreement shall only be brought in Franklin Circuit Court of the Commonwealth of Kentucky.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

\_\_\_\_\_  
Billy C. Gillispie

UNIVERSITY OF KENTUCKY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary

Attachment A

1. Beneficiary Designation.

I hereby designate \_\_\_\_\_ as my Primary Beneficiary and \_\_\_\_\_ as my Contingent Beneficiary(ies) to receive any amounts payable under the Deferred Compensation Agreement in the event of my death.

2. Acknowledgement.

I hereby acknowledge that (i) my election to defer my annual salary under the Deferred Compensation Agreement is irrevocable with respect to amounts which are deferred under the Agreement and shall remain in effect until terminated or modified, (ii) the Agreement is maintained primarily for the purpose of providing deferred compensation to me as a key employee and that I have no rights or claims to receive amounts credited to my Deferred Compensation Account other than those specifically granted by the terms of the Agreement, and (iii) I am solely responsible for ensuring that the University's files contain my current mailing address and that of my Beneficiary(ies).

3. Investment Earnings on Deferred Compensation Account.

The Deferred Compensation Account will be credited annually with the investment income calculated at the annual rate of earnings or loss of the University endowment.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Billy C. Gillispie