



# **EXECUTIVE**

**August 12, 2022**

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

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**REQUEST:**

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

**FACTS:**

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

**BUDGETARY IMPLICATIONS:**

Todd Stewart's annual base salary will increase from \$274,776 to \$298,000. The increase has been generated through private funds and is being funded through the Hilltopper Athletic Foundation. None of this increase is coming from the athletics budget or state budget.

**RECOMMENDATION:**

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

**MOTION:**

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

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

This Third Addendum to the Athletics Director Employment Contract is made this \_\_\_\_ day of \_\_\_\_\_, 2022, between **WESTERN KENTUCKY UNIVERSITY** (the “**UNIVERSITY**”) and Todd Stewart (“**AD**”).

The parties agree that the following provisions of the Athletic Director Employment Contract dated August 1, 2012, the First Addendum dated March 8, 2016, and the Second Addendum dated February 19, 2019, to the extent applicable, is hereby amended to provide as follows:

Article III. **TERM OF EMPLOYMENT**

The term of the Employment Contract shall be a period beginning on the 1st day of August, 2022, and expiring on the 31<sup>st</sup> day of July, 2026.

Article IV. **COMPENSATION/BENEFITS/BONUSES**

4.01 **BASE SALARY AND BENEFITS**

As of the date of this Addendum, AD’s current base salary paid by the University to AD for services and satisfactory performance of the terms and conditions of the Employment Contract is \$274,776. Effective August 1, 2022, AD’s base salary shall be increased to \$298,000. AD and University agree that the increase in salary, including all benefits associated with the increase, will be funded in advance on August 1, 2022 for the University’s current fiscal year, and on July 1 of each subsequent fiscal year, and that payment of the increase (and associated benefits) shall be funded by the Hilltopper Athletic Foundation.

4.02 **SUPPLEMENTAL SALARY PAYMENTS**

AD shall be entitled to an annual \$50,000 retention bonus as additional supplemental salary for each year employed as AD by the University on October 1 during this Third Addendum’s contract

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term. The retention bonus shall be funded by the Hilltopper Athletic Foundation.

Article V. **TERMINATION**

5.05 **LIQUIDATED DAMAGES UPON TERMINATION BY AD WITHOUT CAUSE**

If the AD terminates this Contract without cause before July 31, 2026, the AD shall pay to the University, as liquidated damages, a sum equal to the AD's base salary as of the date of termination to be paid within thirty (30) days of AD's last date of employment with the University.

In addition, AD agrees to waive any right to supplemental salary payments earned or accrued during the fiscal year of the date of termination and as described in Article IV 4.02. Failure to timely pay such liquidated damages shall constitute a breach of this Contract and such sum shall be recoverable, together with reasonable attorney's fees, in any court of competent jurisdiction.

If the AD resigns or retires from intercollegiate athletics and thereafter does not accept employment as a Director of Athletics at a NCAA Division 1 college or university for at least one full calendar year following the date of his resignation or retirement, this liquidated damage provision shall not apply.

**All amendments to the Employment Contract dated August 1, 2012, are specifically noted and described in the First and Second Addendums and this Third Addendum, and the parties agree that all terms, conditions, agreements, and provisions of the Employment Contract dated August 1, 2012, not specifically modified by the First and Second Addendums or this Addendum shall continue in full force and effect as established therein. The parties further agree that this Third Addendum to the Employment Contract is contingent upon subsequent approval by the University's Board of Regents which will be sought by the University at the Board's next meeting, June 10, 2022.**

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

**WESTERN KENTUCKY UNIVERSITY**

**DIRECTOR, INTERCOLLEGIATE ATHLETICS**

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

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

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**APPROVAL OF ADDENDUM TO  
ATHLETIC EMPLOYMENT CONTRACT**

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**REQUEST:**

Approval of an Addendum to the Athletic Employment Contract between Western Kentucky University and Amy Tudor.

**FACTS:**

The University and Coach Tudor have negotiated an Addendum to the Athletic Employment Contract which outlines revised terms and conditions of her employment as head softball coach and extends her employment until June 30, 2026. A copy of the Addendum is included with this agenda material.

**BUDGETARY IMPLICATIONS:**

Amy Tudor will receive an increase of \$15,000 bringing her salary to \$94,456. If Coach Tudor remains as Head Softball Coach on October 1, 2024, she will receive a \$10,000 retention bonus.

**RECOMMENDATION:**

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

**MOTION:**

**Approval of the Addendum to the Athletic Employment Agreement between Western Kentucky University and Amy Tudor.**

**SECOND ADDENDUM  
TO  
WESTERN KENTUCKY UNIVERSITY  
ATHLETIC EMPLOYMENT CONTRACT**

This Addendum No. 2 to the Employment Contract between **WESTERN KENTUCKY UNIVERSITY** (the "University") and **AMY TUDOR** ("Coach") is entered into for the following purposes:

The parties agree that **ARTICLE III, "TERM OF EMPLOYMENT"** is hereby amended to read as follows:

The term of the Employment Contract most recently amended by the parties on July 17, 2018, shall be amended to provide for a period beginning on the day this Addendum No. 2 is fully executed by all parties and expiring on the 30<sup>th</sup> day of June, 2026, as follows. The parties agree that if circumstances do not exist that would justify dismissal for cause as defined in 5.01 of the Employment Agreement during any year of this Contract, the term of this Contract shall be extended under the same terms and conditions by one additional year at the end of each year, with the term of employment together with extensions not to extend beyond June 30, 2029. Provided, however, that this extension provision shall not be construed to create an employment term that exceeds four (4) years at any given time, in accordance with the provisions of KRS 164.360 (2).

**ARTICLE IV, COMPENSATION/BENEFITS - Revisions to existing contract:**

**4.01 Salary and Benefits**

- Total compensation beginning on July 1, 2022 becomes \$94,456 representing a net increase of \$15,000.
- If Tudor remains as Head Softball Coach on October 1, 2024, she will receive a \$10,000 retention bonus.

**4.02 Coach's Incentives**

Final Season Team RPI 50 or lower	\$5,000
Regular or Post Season win over an opponent ranked in the nation's top 25	\$2,500

**ARTICLE V, TERMINATION**

**5.03 Termination Without Cause by University or Coach**

The **UNIVERSITY** and **COACH** shall have the right to terminate this Employment Contract prior to its normal expiration on June 30, 2026 (or June 30, 2027, or June 30, 2028, or June 30, 2029 in the event of extension), without cause. Termination "without cause" shall mean termination of this Contract on any basis other than those set forth in Section 5.02. Termination by either party without cause shall be effectuated by delivering to the other party written notice of the terminating party's intent to terminate this Contract without cause.

Unless otherwise specifically amended herein, the parties agree that all terms, conditions, agreements, and provisions of the Employment Contract dated July 1, 2005, shall continue in full force and effect for the term as established herein. The parties agree that this Addendum No. 2 is contingent upon subsequent approval by the University's Governing Board of Regents which will be sought by the University on June 10, 2022.

**This Addendum entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by:**

\_\_\_\_\_  
**Todd Stewart**  
**Director of Athletics**  
**Western Kentucky University**

\_\_\_\_\_  
**Amy Tudor**  
**Head Coach**  
**Western Kentucky University**



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**PHILANTHROPIC NAMING REQUEST FOR THE  
ROTC PHYSICAL TRAINING FACILITIES – CENTURY PARK**

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**REQUEST:**

Approval of the philanthropic naming of the ROTC Physical Training Facilities, “Century Park” located at the Charles M. Ruter Track and Field Complex in recognition of generous gifts from a group of ROTC alumni.

**FACTS:**

For more than 100 years, Hilltopper Army ROTC at WKU has transformed hundreds of college students into leaders of character for our Army and our nation. The Army ROTC program at WKU is one of the oldest in the state and traces its origin to the National Defense Act of 1916 and the spring of 1917 when the United States entered World War I.

WKU offers students an opportunity to pursue coursework that can lead to a commission with the U.S. Army. The Army ROTC program is available on the WKU main campus and is administered through the Department of Military Science and Leadership in the College of Education and Behavioral Sciences. At WKU, more than 200 students take courses from the Military Science department each year, and students represent engineering, science, business, government, English, and nearly all other academic fields.

Each year, about 15 WKU students complete the Army ROTC program and earn commissions as U.S. Army officers. In the 2021-2022 academic year, the WKU Hilltopper Battalion commissioned the 100th class of 2nd Lieutenants.

This philanthropic naming request is recommended in honor of the 100th commissioned class and in recognition of generous gifts from dedicated ROTC alumni in support of the ROTC program.

**BUDGETARY IMPLICATIONS:**

The College of Education and Behavioral Sciences will cover the cost of the sign for the area.

**RECOMMENDATION:**

President Timothy C. Caboni recommends the philanthropic naming of the ROTC Physical Training Facility to Century Park.

**MOTION:**

Approval of the philanthropic naming of the ROTC Physical Training Facility to Century Park.

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**APPROVAL OF  
ATHLETIC EMPLOYMENT CONTRACT**

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**REQUEST:**

Approval of an Athletic Employment Contract between Western Kentucky University and Marc Rardin.

**FACTS:**

The University and Coach Rardin have negotiated an Athletic Employment Contract which outlines the terms and conditions of his employment as head baseball coach until June 30, 2026. A copy of the contract is included with this agenda material.

**BUDGETARY IMPLICATIONS:**

Marc Rardin will receive \$165,000 per year with the possibility of earning bonuses based on the team's performance.

**RECOMMENDATION:**

President Timothy C. Caboni requests approval of the Athletic Employment Contract between Western Kentucky University and Marc Rardin.

**MOTION:**

**Approval of the Athletic Employment Agreement between Western Kentucky University and Marc Rardin.**

**WESTERN KENTUCKY UNIVERSITY  
ATHLETIC EMPLOYMENT CONTRACT**

This Employment Contract is made this the 15th day of June, 2022, between **WESTERN KENTUCKY UNIVERSITY** (the "University") and **MARC RARDIN** ("Coach").

**ARTICLE I  
PURPOSE**

The **University** and **Coach** have entered into this Employment Contract because the **University** desires **Coach** to serve as Head Coach of the **University's** baseball program. The **University** and **Coach** agree that head coaches of intercollegiate athletic teams at Western Kentucky University conduct their professional activities under circumstances unique in the family of **University** employees, including evaluation and scrutiny of team performances by the public and the media and control by external rules and regulations. These circumstances justify job security and commitment by **Coach** longer than one year, but less than a continuous appointment. For these reasons, the **University** has agreed to employ and **Coach** has promised to be employed by the **University** upon the following terms and conditions.

**Coach** shall be a staff employee at the University, with the terms of his employment restricted solely to this Employment Contract. It is understood and agreed that **Coach's** sole grievance rights shall be as set forth in 5.07 herein and that **Coach** hereby waives any and all grievance rights under the University's internal employee grievance procedures; provided, however, that **Coach** shall be subject to the **University's** Policy No. 0.2040 Discrimination and Harassment, and Policy No. 0.2070, Sex and Gender-Based Discrimination, Harassment, and Retaliation. Furthermore, **Coach** understands and acknowledges that his employment with the **University** is not a tenure-track position and will not lead to tenure.

The parties agree that the provisions of this contract shall supersede and replace any and all other contracts or agreements entered into between the parties and such other contracts or agreements shall be null and void.

**ARTICLE II  
POSITION**

2.01 **DESCRIPTION OF DUTIES AND RESPONSIBILITIES**

A. **RECOGNITION OF DUTIES**

**Coach** agrees to be a loyal coach of the **University**. **Coach** agrees to devote his best-efforts full time to the performance of his duties for the **University**, to give proper time and attention to furthering

his responsibilities to the **University**, and to comply with and publicly support all rules, regulations, policies, and decisions established or issued by the **University**.

**Coach** also agrees that, notwithstanding any other provisions of this agreement, during the term of this Employment Contract, he will not engage, directly or indirectly, in any business which would detract from his ability to apply his best efforts to the performance of duties hereunder.

**Coach** agrees that his comments, actions and conduct, both in public and private forums, will at all times reflect positively upon the **University**, the **University's** athletic programs, and the **University's** administration.

**Coach** further agrees that the level of compensation and benefits provided to him in this Contract are dependent upon his performance as a Head Coach, including the quality of the student athletes he recruits and retains, the team's performance and/or success under his supervision, and the existence and extent of the marketability of the program and the fan base he develops and / or maintains as Head Coach.

B. **GENERAL DUTIES AND RESPONSIBILITIES**

During the period in which the **University** employs **Coach** as Head Coach, **Coach** agrees to undertake and perform all duties and responsibilities attendant to the position of head coach of men's baseball as set forth herein.

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

As of the beginning of this Employment Contract, the duties and responsibilities assigned to the **Coach** in connection with the position as head coach are as set forth below. The list of specific duties and responsibilities supplement, and is not exclusive of, the other general duties and responsibilities provided for elsewhere in this Employment Contract.

1. Provide the **University** with his most dedicated and conscientious service in carrying out the duties and responsibilities as set forth herein or as may be assigned by the Athletic Director and perform his duties and responsibilities in a manner consistent with state and **University** rules, regulations, and policies.
2. Be primarily responsible for all aspects of the men's baseball program including the budget, scheduling, the recruiting, training, supervision, evaluation, and performance of student

athletes, coaching staff, and men's baseball office clerical staff, subject to the approval of the Athletics Director.

3. Abide by and comply with the constitution, bylaws, and interpretations of the National Collegiate Athletic Association (NCAA) and Conference USA, or any other men's baseball conference the **University** may choose to enter, as well as all **University** rules and regulations relating to the conduct and administration of the men's baseball program. In the event that **Coach** becomes aware, or has a reasonable cause to believe, that violations of such constitution, bylaws, interpretations, rules, or regulations may have taken place, he shall report the same promptly to the Athletic Director of the **University**.
4. Use his best efforts to ensure that all academic standards, requirements, and policies of the **University** are observed by him and by members of his coaching staff at all times, including those in connection with the recruiting and eligibility of perspective and current student athletes for the men's baseball program, and ensure that said standards, requirements, and policies are not compromised or violated at any time.
5. Use his best efforts, in conjunction with the **University**, to ensure that all student athletes recruited for his men's baseball program are provided proper academic counseling and are encouraged to and given every opportunity to meet the degree requirements necessary to graduate from the **University**.
6. Recruit, coach, and train student athletes to compete successfully against major college competition in a quality men's baseball program.
7. Use his best efforts to ensure that his student athletes conduct themselves in a manner that will reflect a positive image for the **University** both on and off the baseball field.
8. Use his best efforts to preserve the **University's** reputation and dignity and shall keep his public and private statements and written communications complementary to the athletics program and to the **University** and its administration. **Coach** agrees that as a recognized and notable spokesperson about intercollegiate athletics and education, he shall support the **University** administration mission, policies, and decisions in all his dealings and activities with the public.

9. Use his best efforts to establish and maintain frequent, systematic, and personal communication concerning the University's academic mission and the Athletics Department mission to the University's student body, faculty, and staff.

2.02 **DISCIPLINARY ACTIONS FOR VIOLATIONS OF NCAA OR CONFERENCE RULES AND REGULATIONS OR UNIVERSITY POLICY**

If **Coach** is found to be in violation of NCAA or Conference rules and regulations, or in violation of any **University** policy or procedure, **Coach** shall be subject to disciplinary and/or corrective actions by the **University**.

2.03 **REPORTING RELATIONSHIPS**

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

- A. **Coach's** immediate supervisor for purposes of implementing the Contract shall be the Athletic Director of the **University**; all matters pertaining to the operation of the **University's** men's baseball program shall be subject to the direction and control of the Athletic Director. The Athletic Director shall support **Coach** in the performance of his duties as set out in this Contract.
- B. The overall policy of the entire athletics program shall remain the exclusive prerogative of the **University**. **Coach** shall administer the daily routine and organization of the program as he deems necessary to effectuate its success, provided such administration shall be in accordance with the policies established by the Athletic Director.
- C. **Coach** shall have primary responsibility for decisions relating to choice and scheduling of baseball opponents, means of travel to be employed, hotel, food accommodations, size and content of the travel squad and party, and all other matters pertaining to the operation of similar phases of the baseball program, but final decisions in such matters shall be with the Athletic Director. It is specifically agreed and understood that travel arrangements shall be made in conformance with any contractual agreements between the University and any travel agency.
- D. **Coach** shall have the right to release, hire, and retain assistant men's baseball coaches subject to the **University's** employment policies and procedures and subject to the approval of the Athletic Director, the President of the **University**, and the **University's** Board of Regents.

- E. Subject to the approval of the Athletic Director, **Coach** shall have primary responsibility for developing the budget annually for the men's baseball program and, upon his request, will be assisted by the Athletic Business Manager.
- F. Further, if the University at any time decides to change its competitive status under the NCAA rules, regulations, and/or constitution regarding competition, (e.g., the University's men's baseball program becomes Division II baseball) to any status lower than Division I, or if the entire Athletics Program of the University is placed on probation by the NCAA due wholly to reasons unrelated to the men's baseball program, **Coach** shall have the right to terminate this agreement immediately and all payment provisions or obligations of either party herein shall be null and void.

**ARTICLE III**  
**TERM OF EMPLOYMENT**

The initial term of this Employment Contract shall be for a period beginning on the day this document is fully executed by all parties and expiring on the 30th day of June 2026, as follows. If circumstances do not exist that would justify dismissal for cause under paragraph 5.01 of this Contract, the University shall extend this Contract by one additional year after the 2026, 2027 and 2028 seasons, which would extend contract through June 30, 2029.

**ARTICLE IV**  
**COMPENSATION / BENEFITS**

In consideration for the promises he has made in entering into this Employment Contract, **Coach** shall be entitled to the following forms of compensation: base salary payments, benefits, and bonuses.

4.01 **SALARY AND BENEFITS**

- A. Effective upon execution of this Contract, the base salary paid by the **University** to **Coach** for services and satisfactory performance of the terms and conditions of this Employment Contract shall be \$165,000.00, and shall be payable in equal monthly installments during the period of this Contract and paid in conformity with the payroll procedure of the **University**.
- B. **Coach** will be reviewed for his performance on an annual basis and, assuming satisfactory performance and available funds, he may be given an annual salary increase of his base salary as provided in paragraph 4.01(A) deemed appropriate by the Athletic Director, and in accordance with the **University** performance evaluation and compensation policies.

- C. **Coach** shall be eligible to participate in a group insurance, retirement, and voluntary payroll deduction program on the same basis and with the same **University** contributions that apply to the **University's** non-academic administrative staff.
- D. The **University** shall furnish to **Coach**, for his use on a loan basis during the term of his Employment Agreement, one (1) automobile and shall pay for automobile liability and comprehensive insurance and taxes, if applicable, upon said vehicle. **Coach** shall be solely responsible for all upkeep, maintenance, and / or repair of vehicle. If an automobile is not available, the **University** shall provide the **Coach** with a leased vehicle.

4.02 **COACH'S BONUS**

The Coach shall be entitled to the following bonuses:

- |                                                                                                                                                 |                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 1. Conference Regular Season Champion* or Tournament Champion<br>*overall league champion<br>(outright or as determined by league tie-breakers) | One month's salary |
| 2. NCAA Tournament Bid                                                                                                                          | One month's salary |
| 3. NCAA super-regional Bid                                                                                                                      | One month's salary |
| 4. Advance to College World Series                                                                                                              | One month's salary |
| 5. Win National Championship                                                                                                                    | One month's salary |
| 6. NCAA Coach of the Year                                                                                                                       | One month's salary |
| 7. Conference Coach of the Year                                                                                                                 | \$1,500.00         |
| 8. Maintain team GPA of 3/0 or higher<br>each semester                                                                                          | \$1,500.00         |
| 9. Maintain NCAA 940 APR standing                                                                                                               | \$2,500.00         |
| 10. Maintain NCAA 970 APR standing                                                                                                              | \$2,500.00         |

Retention Bonus: As an additional incentive for a long-term commitment on the part of the Coach, if the Coach is employed as of October 1 of each year and has received a "satisfactory" or better performance evaluation as of that date, the parties agree that the Coach shall be paid the sum of \$15,000 no later than October 31 of each year.



4.03 **OPPORTUNITIES TO EARN OUTSIDE INCOME**

While **Coach** is representing the **University** as head men's baseball coach, he shall have the opportunity to earn outside income as a result thereof, but only upon the following terms and conditions:

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

- A. University obligations are primary. Such outside activities shall not interfere with the full and complete performance by **Coach** of his duties and obligations as a University coach, recognizing always that **Coach's** primary obligations lie with the **University** and its students;
- B. NCAA rules control. In no event shall **Coach** accept or receive directly or indirectly any monies, benefit, or any other gratuity whatsoever from any person, group, corporation, Hilltopper Athletic Foundation, or Alumni Association if such action would violate NCAA legislation. The constitution, bylaws, rules, and regulations or interpretations thereof shall automatically apply to the agreement;
- C. University approval is required. **Coach** shall obtain the advance written approval from the Athletic Director of the **University** before entering into such agreements. Approval shall not be unreasonably withheld;
- D. University is not liable. Such activities are independent of **Coach's** employment at **University** and the **University** shall have no responsibility nor bear any liability for any claims arising therefrom;
- E. Revenues. Except for the limitations on such outside compensation as established by or set forth in this agreement and in the constitution, bylaws, rules and regulations, and interpretations thereof of the **University**; Conference USA, or any other conference the **University** may choose to enter; and the NCAA, **Coach** shall be entitled to retain all revenues generated by such outside activities (i.e., shoe contracts, speaking engagements, outside camps, etc.), subject to the provisions of paragraph 4.04(G)(1).
- F. Camps. **Coach** shall be entitled to conduct baseball camps using Western Kentucky University's athletic facilities and equipment. The operation of camp will be conducted under the auspices of Western Kentucky University Athletics Department and shall be conducted in accordance with

general policies of the University. Coach will be obligated to pay the University the sum of one-dollar (\$1) for the use of its intercollegiate athletic facilities and equipment for each of the camp, and said equipment and facilities shall be available for use for a minimum of three (3) weeks per year. A separate rate will be determined for the use of the Raymond B. Preston Health and Activities Center, which rate will not be unreasonable and which shall be determined by September 30 of the preceding year. Rates for room and meals to be charged by Western Kentucky University for such camp shall be rates normally charged for student camps generally by the University, which may vary from year to year. Coach agrees and understands that the University will place a \$5.00 surcharge on each camper enrolled in the camp, and University agrees to give Coach notice of any change in the amount of the surcharge on or before September 30 of the preceding year.

G. Other Income.

1. Commercial, Apparel, and Equipment Endorsements - **Coach** may undertake commercial endorsements of products and services in which he identifies himself as Coach of the **University's** intercollegiate baseball team and retain any and all income derived therefrom; provided, however, that such endorsements are in writing, do not conflict with existing University contracts, do not discredit or embarrass the University, do not extend beyond the term of this Employment Agreement, would be coterminous with **Coach's** termination of employment as Head Men's Baseball Coach at the University, and are subject to the University's trademark and licensing program, and the prior approval of the University's Athletic Director. Also, **Coach** may retain any monies offered by apparel or equipment manufacturers or sellers (other than shoes) in exchange for his endorsement of the apparel or equipment or his agreement to consult with the manufacturer or seller concerning the design and/or marketing of such apparel or equipment provided that such agreements are in writing, do not conflict with existing **University** contracts, do not extend beyond the term of the Employment Agreement, would be coterminous with **Coach's** termination of employment as Head Men's Baseball Coach at the **University**, and are subject to the **University's** trademark licensing program and the approval of the **University's** Athletic Director.

2. Shoe and/or Equipment Contracts - **Coach** may retain any monies up to nine thousand, nine hundred and ninety-nine dollars (\$9,999.00) offered by shoe manufacturers or sellers in exchange for his endorsement of shoes and/or equipment, or his agreement to consult with the manufacturer or seller concerning the design and/or marketing of such items provided that such agreements are in writing, do not conflict with existing **University** contracts, do not extend beyond the term of the Employment Agreement, would be coterminous with **Coach**'s termination of employment as Head Men's Baseball Coach at the **University**, and are subject to the **University**'s trademark licensing program and the approval of the **University**'s Athletic Director. Any monies or revenues paid over this amount shall be paid to and be the sole property of the University. The University agrees that such monies shall be designated to the support of the men's baseball program, to be allocated / budgeted in consultation with **Coach** and in the Athletic Director's discretion.
3. Other Products: Products obtained in trade or other negotiations by **Coach** on behalf of the **University** will not require compensation by the University to Coach and shall remain the property of the University.
4. Income from Speeches, Appearances, and Written Materials - Any income derived by **Coach** from speeches, appearances, and /or written materials shall be his separate income. Any speech given pursuant to this paragraph must be given by **Coach** in his individual capacity, not his official capacity as a **University** Coach.

**ARTICLE V**  
**TERMINATION**

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

5.01 **TERMINATION BY UNIVERSITY FOR JUST CAUSE**

The **University** shall have the right to terminate this Employment Contract for just cause prior to its normal expiration date. The term "just cause" shall be defined as follows:

- A. Conviction of a felony or declared by a court of competent jurisdiction to be guilty of a crime involving moral turpitude.
- B. Intentional serious violation of any law, rule, regulation, or constitutional provision by the NCAA.
- C. Intentional serious violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of the **University**, the Conference USA, or the NCAA by a member of the men's baseball coaching staff or any other person under **Coach 's** supervision and direction, including student athletes in the men's baseball program for which **Coach** had prior actual knowledge.
- D. Any statement or behavior on the part of Coach which serves to bring disrepute upon or causes embarrassment to the **University**, the Athletics Department, its administration, or the men's baseball program.
- E. Failure to faithfully and conscientiously devote diligent efforts to perform the duties stated herein within the budget allocated to the men's baseball program in each particular fiscal year, and according to the policies and procedures established by the University.
- F. Deliberate violations of any duties or responsibilities outlined in this Employment Agreement or refusal or unwillingness to perform such duties or responsibilities in good faith and failure to cure such violations upon thirty (30) days written notice from the Athletic Director. With regard to the provisions of paragraph 5.01(D) herein, the

University agrees that Coach will be given the opportunity to correct violations of this provision; provided, however, that Coach agrees that the University shall have absolute discretion to approve, control, and direct all aspects of the nature of the “correction” (i.e., timing, content, audience, forum, etc.) and Coach agrees that he shall immediately comply with the University’s directives in this regard in accordance with the provisions of 5.01(F) and (G).

- G. It is agreed and understood that the thirty (30) day notice provisions provided for in 5.01 (F) shall not apply to repeat violations (repeated similar conduct), and in such instances, Coach shall be obligated to immediately correct and/or cure the violation. Failure to immediately correct and/or cure the conduct and throughout the remainder of the contract will constitute a breach of this Agreement and “just cause” for termination of the Agreement.

5.02 **UNIVERSITY’S OBLIGATIONS UPON TERMINATION FOR CAUSE**

Should the **University** determine that **Coach** has violated the provisions of Section 5.01, herein, notice of same and notice of the termination for cause shall be delivered to **Coach** by the Athletic Director, in writing, to the addresses provided in Section 6.07. In the event this Employment Agreement is terminated for cause in accordance with the provisions of Section 5.01 hereof, and at the time of such termination if there is more than one (1) month of unexpired term of this Contract, the "severance fee" shall be computed and paid as if the unexpired term of this Contract was only one (1) month. The "severance fee" will be calculated solely on the base salary shown in Section 4.01. **Coach** shall not be required or obligated to perform any further service or duties for the **University** to be entitled to the "severance fee." In any meeting between **University** official(s) and **Coach**, relating to termination for cause, both the **University** and **Coach** have the right to have representation by legal counsel present.

5.03 **TERMINATION BY UNIVERSITY WITHOUT CAUSE**

The **University** shall have the right to terminate this Employment Contract prior to its normal expiration date without cause. Termination "without cause" shall mean termination of this Contract on any basis other than those set forth in Section 5.01. Termination by the **University** without cause shall be effectuated by delivering to **Coach** written notice of the **University's** intent to terminate this Contract without cause on or before **June 1** of the year of termination.

5.04 **LIQUIDATED DAMAGES UPON TERMINATION BY UNIVERSITY WITHOUT CAUSE**

If the **University** terminates this Contract without cause prior to its expiration date in accordance with the provisions of Section 5.03 hereof, the **University** shall pay to **Coach**, as liquidated damages, the remaining balance of his base salary in monthly installments through June 30, 2026. Failure to timely pay such liquidated damages shall constitute a breach of this Contract and such sum shall be recoverable together with reasonable attorney fees, in any court of competent jurisdiction.

In no case shall the **University** be liable for the loss of any collateral business opportunities or any other benefits, perquisites, or income resulting from activities such as, but not limited to, camps, clinics, media appearance, apparel or shoe contracts, consulting relationships, or from any other sources that may ensue as a result of the **University's** termination of this Contract without cause, unless such termination is found to be in violation of any terms or provisions of this Contract.

5.05 **LIQUIDATED DAMAGES UPON TERMINATION BY COACH**

A. If **Coach** terminates this Contract prior to its expiration date, **Coach** shall pay to the **University**, as liquidated damages, a sum equal to \$200,000 to be paid in equal installments over 12 months. Failure to timely pay such liquidated damages shall constitute a breach of this Contract and such sum shall be recoverable together with reasonable attorney fees, in any court of competent jurisdiction. The parties agree that the contract extension provided for in Article III shall be included in the calculation of the remaining years of the contract.

B Should **Coach** decide to retire from collegiate men's baseball and thereafter does not accept employment as either a head men's baseball coach for at least one full year following the date of his retirement, these provisions shall not apply.

C Should the **Coach** terminate this contract under the provisions of paragraph 5.05 in addition to the obligations agreed upon in paragraph 5.05(A) herein, **Coach** agrees to guarantee a (4) four-year home / home game series between the men's baseball team of the college/university which employs his and the University's men's baseball team, with no requirement for financial remuneration on the part of that college / university or the University. Said series must start during the second competitive season following the date of **Coach's** termination of this Contract.

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

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

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

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

5.08 **TERMINATION BY DISABILITY OR DEATH**

It is expressly understood and agreed that this Contract constitutes a personal service agreement between the **University** and **Coach**. In the event a disability prevents **Coach** from performing the duties and responsibilities specified in this Contract, as certified by two (2) physicians selected or approved by the **University**, or in the event of **Coach's** untimely demise, this Employment Contract shall terminate and neither party, including **Coach's** estate, shall have any further rights or obligations hereunder, the same as though termination were by the Coach pursuant to Paragraph 5.05(B) above; provided, however, that in the event of a disability as set forth herein, **Coach** shall be entitled to apply for and, if eligible, participate in the Kentucky Teacher's Retirement System disability retirement program and the University's Long-Term Disability Insurance Program.

**ARTICLE VI  
MISCELLANEOUS**

6.01 **AMENDMENTS TO AGREEMENT**

This Employment Agreement can only be altered or amended by written agreement between **Coach** and the **University's** designated representative.

6.02 **UNIVERSITY RETAINS ALL MATERIALS AND RECORDS**

All materials or articles of information, including, without limitations, personnel records, team information, films, tapes, statistics, office equipment, inventory, office or departmental decorations or furnishings, or any other material or data furnished to **Coach** by the **University** or developed by **Coach** on behalf of the **University** or at the **University's** direction or otherwise in connection with **Coach's** employment, if said items were purchased with state, **University**, donor, or private **University** enhancement funds, are and shall remain the sole and confidential property of the **University**. Within thirty (30) days of the expiration of the term of this agreement or its earlier termination as provided herein, **Coach** shall immediately cause any such materials in his possession or control to be delivered to the **University**.

6.03 **TAX LIABILITIES**

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

6.04 **LAWS OF THE COMMONWEALTH OF KENTUCKY**

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

6.05 **ACKNOWLEDGMENT/ NO PRESUMPTIONS**

**Coach** acknowledges that he has read and understands the foregoing provisions of this Agreement, that he has been afforded and has exercised the opportunity to consult with personal legal counsel, that the provisions are reasonable and enforceable, and he agrees to abide by this Agreement and the terms and conditions set forth herein.

Furthermore, because each party acknowledges that they have reviewed and negotiated this Agreement with their individual legal counsel, both parties hereby agree that the rule of construction to the effect that any ambiguities are resolved against the drafting party will not be employed in the interpretation of this Agreement. Its terms and provisions shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this Agreement.

6.06 **TIME IS OF THE ESSENCE**

Time is of the essence with respect to the obligations of the parties hereto.



6.07 **NOTICES**

All notices, requests, consents, and other communication under this Agreement shall be in writing and shall be mailed first class, registered, or certified mail, postage prepaid, to the following:

If to **University:**

Todd Stewart  
Director of Athletics  
E.A. Diddle Arena  
1605 Avenue of Champions  
Bowling Green, KY 42101-6412

With a copy to:

General Counsel  
Office of the President  
Western Kentucky University  
1906 College Heights Blvd. #11001  
Bowling Green, Kentucky 42101-1001

If to **Coach:**

\_\_\_\_\_  
Baseball Office  
E.A. Diddle Arena  
1605 Avenue of Champions  
Bowling Green, KY 42101-6412

or to such other address of which the addressee shall have notified the sender in writing.

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

**WESTERN KENTUCKY UNIVERSITY**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Todd Stewart, Director of Athletics

**COACH**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Marc Rardin, Head Baseball Coach

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**APPROVAL OF LEASE OF REGENT'S HALL DINING SPACE**

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**REQUEST:**

The President requests that the Board authorize the University to lease dining space in Regent's Hall at 1717 Normal Street within the First Year Village, owned by the WKU Student Life Foundation, Inc.

**FACTS:**

The First Year Village houses roughly 2,600 students or half of the resident population living on campus at full occupancy. These students had access to only The Den (by Denny's) and the Pit Stop (convenience store) in that area of campus. To enhance the First Year Village collaborative experience, dining options were developed within Regent's Hall to include *Java City Coffee* and *The Spread: Wicked Good Subs*.

**BUDGETARY IMPLICATIONS:**

Similar to the lease agreement for the Hilltopper Hall dining space, *Hilltopper Hub*, Western Kentucky University will lease the dining space in Regent's Hall from the WKU Student Life Foundation, Inc. for \$692,522.63, the total rent due for the lease period of June 30, 2022, through June 30, 2037. Total rent due represents the balance of \$1 million earmarked by Aramark for this facility after purchasing dining equipment for these restaurants. Exercise of any of the five 5-year renewal options will incur a single one-time payment of \$100 for each renewal option.

**RECOMMENDATION:**

President Timothy C. Caboni requests approval of the lease of dining space in Regent's Hall at 1717 Normal Street within the First Year Village.

**MOTION:**

**Approval for WKU to lease the dining area within Regent's Hall.**





## LEASE

**THIS LEASE** (the "Lease"), made and entered into on August 12, 2022, but made effective June 30, 2022 (the "Effective Date"), between **WKU STUDENT LIFE FOUNDATION, INC.**, a nonprofit Kentucky corporation ("Landlord") and **WESTERN KENTUCKY UNIVERSITY**, ("Tenant"),

### **WITNESSETH:**

In consideration of and the mutual covenants contained herein, and intending to be legally bound hereby, Landlord and Tenant hereby agree with each other as follows:

Section 1. **Premises:** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord a portion of the Building known as Regents Hall (the "Building"), such leased portion being described or shown on Exhibit A attached hereto (such leased area, the "Leased Premises"), subject to the terms and conditions more particularly hereinafter set forth.

Section 2. **Term.**

- (a) The term of this Lease shall commence on June 30, 2022.
- (b) The term of this Lease shall be for the period of fifteen (15) years beginning on June 30, 2022, and ending on June 30, 2037.
- (c) Upon mutual agreement, Landlord and Tenant shall have up to five (5) options to five-year renewal terms exercisable as provided herein at the conclusion of the then existing term so long as Tenant is not then in default. Tenant shall be deemed to have exercised the next available renewal option, if Tenant is not then in default, unless Tenant shall have, no sooner than nine months, and no later than six months, prior to the end of the then-existing term, notify Landlord, in writing, of its intention NOT TO RENEW.

(d) Each period under this Lease beginning on the 30th day of June and ending on the 30th day of June of the following year is referred to herein as a "Lease Year."

Section 3. **Rent.** As consideration for the lease of the Leased Premises, the Tenant will prepay unto the Landlord for rent of said Leased Premises the sum Six hundred ninety two thousand dollars, five hundred twenty two dollars and 63 cents (\$692,522.63) in lawful money of the United States payable, on or before the 30<sup>th</sup> of September, 2022. Landlord and Tenant agree that the prepayment sum is the total rent due for the initial term of this Lease period (June 30, 2022, through June 30, 2037). In the event that Tenant exercises any of the five (5) five-year renewal options provided for in Section 2, then Tenant shall make a single one-time payment of One Hundred Dollars (\$100.00) for each respective renewal option so exercised by Tenant, which shall be the entirety of rent owed by Tenant for such exercised renewal option period. Additionally, Tenant is responsible for reimbursing Landlord for Tenant's metered utilities, including electricity and natural gas. The Landlord will provide water and sewer utilities at no cost to the Tenant.

Section 4. **Use of Leased Premises.** It is understood and agreed between the parties hereto that the Leased Premises shall only be used to conduct the business of Food Services and activities related thereto and that the Tenant will not use the Leased Premises for any purpose in violation of any law, municipal ordinance or regulation, and that on any breach of this Agreement the Landlord shall have the option to terminate this Lease forthwith and re-enter and retake possession of the Leased Premises.

Section 5. **Erection of Improvements.** The Tenant shall be solely responsible to pay for the erection of all improvements on the Leased Premises, subject to Landlord's right to review and approve Tenant's plans for improvements. Tenant shall submit Tenant's construction plans to Landlord at least 90 days before Tenant plans to begin construction of

improvements and Landlord shall have 30 days after such submittal within which to approve Tenant's proposed improvements.

Section 6. **Improvements, Repairs, Additions, Replacements.** All maintenance and repair of the structures located upon the Leased Premises (including maintenance, repair and replacement, without limitation, of all heating and cooling systems, electrical, plumbing, plate glass, floors, painting and interior decoration of the buildings), shall be the sole obligation of the Tenant. Tenant further covenants and agrees that it will, at its own expense, during the continuation of this lease, keep the Leased Premises and every part thereof in good repair and at the expiration of the term yield and deliver up the same in like condition as when taken, reasonable use and wear thereof and casualty loss excepted. All alterations, additions or improvements made by either of the parties hereto upon the Leased Premises, except movable office furniture and fixtures and equipment put in at the expense of the Tenant, shall be the property of the Landlord, and shall remain upon and be surrendered with the Leased Premises at the termination of this Lease, without molestation or injury.

Section 7. **Assignment and Subletting.** Tenant may not assign or sublease its interest in this Lease upon without Landlord's consent, which consent Landlord may withhold in Landlord's discretion. Landlord shall be entitled to assign this Lease to any person or entity taking fee simple title to the Leased Premises, and upon such assignment by Landlord and provided that such assignee agrees in writing to assume all obligations under the Lease from and after assignment, Landlord shall have no further obligations under the Lease from and after the date of assignment.

Section 8. **Insurance.**

(a) Landlord agrees that it will, at all times during the term of this Lease, insure and keep insured all buildings, building equipment and improvements located at any

time upon the premises in an amount which equals the replacement cost of all buildings, building equipment and improvements approved by Landlord, against loss or damage caused by or resulting from fire, windstorm, the perils covered by standard extended coverage insurance, and such other perils as may be reasonably designated by Landlord. All policies shall be payable in the event of loss, to Landlord as insured, with standard "mortgage" clauses for the benefit of any mortgagees of Landlord, and memoranda of such policies shall be delivered to Landlord when issued and when renewed. Landlord may cause such insurance policies to contain waivers of subrogation against Landlord or Tenant in connection with any loss or damage covered by such policies. In the event of damage or destruction the net proceeds of the insurance payable by reason thereof, after deduction of any expense of collecting the same, shall be deposited to the account of Landlord.

(b) Tenant shall be responsible for maintaining, at Tenant's expense, insurance for the Tenant's owned equipment and/or contents related to the operations described in Section 1. Notwithstanding any provision hereof to the contrary, Landlord shall not be liable for any damage to any leasehold interest of Tenant, or be liable for any loss of or damage to, or for the expenses of any repair or replacement of, improvements or betterments of Tenant to the Leased Premises or trade fixtures, equipment, appliances, inventory, or other personal property placed upon the Leased Premises from time to time by Tenant caused by fire, windstorm, flood, theft, vandalism, or other hazards.

Section 9. **Destruction.** In the event the improvements located on the Leased Premises shall be totally or partially destroyed or rendered untenable by fire, wind, lightning or other casualty, this Lease shall immediately terminate, unless the Landlord, within thirty (30) days thereafter, elects to proceed with all reasonable speed and dispatch to repair or rebuild the destroyed or damaged Leased Premises, in which event this Lease shall continue in force.



Section 10. **Quiet Enjoyment.**

(a) Tenant, upon paying the rent and all other sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Leased Premises during the term of this Lease, without hindrance or molestation by anyone.

(b) Landlord represents and warrants to Tenant that it owns the Leased Premises and has the power and authority to execute and deliver this Lease and to carry out and perform all covenants to be performed by it hereunder. Landlord further represents and warrants to Tenant that at all times Tenant shall have unobstructed and adequate means of ingress and egress to the Leased Premises from all abutting streets, roads and highways.

Section 11. **Net Lease.** This Lease is an absolute net lease and Tenant assumes and agrees to pay and perform all payments, expenses and obligations in connection with the Leased Premises and the use, maintenance and operation thereof, whether such duties and obligations would otherwise be construed to be those of Landlord or Tenant, so that no matter what source arising, if anything shall be required to be done in, upon or about the Leased Premises, the same shall be done and fulfilled at the sole expense and responsibility of Tenant without any expense, liability or obligation whatsoever to or on Landlord. Landlord will promptly deliver to Tenant any notices which Landlord may receive, which in any way relate to obligations to be performed by Tenant as above provided.

Section 12. **Defaults / Termination.**

(a) In the event any one or more of the following events shall have occurred and shall not have been remedied as hereinafter provided: (1) Tenant failure to pay any installment of rent when the same shall be due and payable and the continuance of such failure for a period of ten (10) days; or (2) Tenant's failure to perform any of the other

covenants, conditions and agreements herein contained on Tenant's part to be kept or performed and continuance of such failure for a period of thirty (30) days, then, Landlord may, at its option, give to Tenant a notice of election to end the term of this Lease upon a date specified in such notice, and upon the date specified in said notice, the term and estate hereby vested in Tenant shall cease without further notice or lapse of time, as fully and with like effect as if the entire term of the Lease had lapsed, but Tenant shall continue to be liable to Landlord as hereinafter provided.

(b) Lease may be terminated by either Tenant or Landlord with 30 days written notice to the other party.

(c) Landlord and Tenant agree that nothing herein shall be construed as a waiver of the Tenant's right to terminate this lease under the provisions of KRS 45A.210 and 200 KAR 5:312, Section 3.

(d) Upon any termination of this lease, Landlord and Tenant agree:

- 1) Tenant will be entitled to a refund of the prepaid rent paid provided in Section 3, prorated for the remaining term of the lease as of the date of termination.
- 2) Landlord may, in addition to and without prejudice to any other rights and remedies Landlord shall have at law or in equity, re-enter the Leased Premises, and recover possession thereof and dispossess any or all occupants of the Leased Premises in the manner prescribed by the statute relating to summary proceedings, or similar statutes.

Section 13. **Waivers.** Failure of Landlord or Tenant to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed at any time, expressed or implied, of any breach of any provision of this Lease or

a consent to any subsequent breach of the same or any other provisions. No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on account.

Section 14. **Force Majeure.** In the event that Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, the act, failure to act or default of the other party, or other reason beyond their control, then performance of such act shall be excused for the period of the delay and the period of the performance of any such act shall be extended for a period equivalent to the period of such delay.

Section 15. **Notices.** Every notice, approval, consent or other communication authorized by this Lease shall not be effective unless same shall be in writing and sent postage prepaid by United States registered or certified mail, return receipt requested, directed to the other party at the address set out below, or such other addresses either party may designate, or such other address as either party may designate by notice given from time to time in accordance with this Section. The rent payable hereunder by Tenant hereunder shall be paid to Landlord at the same place where a notice to Landlord is herein required to be directed.

Notice to Landlord: WKU Student Life Foundation, Inc.  
c/o Executive Director  
1906 College Heights Blvd #8051  
Bowling Green, KY 42101-1041

Notice to Tenant: Executive VP for Strategy, Operations & Finance  
Western Kentucky University  
1906 College Heights Blvd.  
Bowling Green, KY 42101

With a copy to: Office of the General Counsel  
Western Kentucky University  
1906 College Heights Blvd.

Bowling Green, KY 42101

Section 16. **Governing Law.** This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Kentucky.

Section 17. **Partial Invalidity.** If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 18. **Interpretation.** Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The terms "Landlord" and "Tenant" whenever used herein shall mean only the owner at the time of Landlord's or Tenant's interest herein, and upon any sale or assignment of the interest of either Landlord or Tenant herein, their respective successors in interest and/or assigns shall, during the term of their ownership of their respective estates herein, be deemed to be Landlord or Tenant, as the case may be.

Section 19. **Entire Agreement.** No oral statement or prior written matter shall have any force or effect. Tenant agrees that it is not relying on any representations or agreements other than those contained in this Lease. This Agreement shall not be modified or canceled except by writing subscribed by all parties.

Section 20. **Parties.** Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective successors and assigns.

Section 21. **Authorization.** Landlord certified to Tenant that execution and delivery of this Lease is dully authorized by a resolution of its Board of Directors.

[Remainder of page left blank; signature page(s) follow]

**IN TESTIMONY WHEREOF**, the parties hereto have caused their names to be hereunto subscribed on this the date first above written.

**LANDLORD:**

**WKU STUDENT LIFE FOUNDATION, INC.**

BY: \_\_\_\_\_

Name: Brian W. Kuster

Title: Interim Executive Director, WKU Student Life Foundation, Inc.

**TENANT:**

**WESTERN KENTUCKY UNIVERSITY**

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

Name: Susan Howarth

Title: Executive Vice President for Strategy, Operations, and Finance