

**EMPLOYMENT AGREEMENT BETWEEN**

**GARY WATERS**

*Head Men's Basketball Coach*

**-AND-**

**CLEVELAND STATE UNIVERSITY**

This Contract to be effective April 10, 2006 and entered into this 12<sup>th</sup> day of September 2006, by and between **Cleveland State University** ("CSU" or the "University") and **Gary Waters** ("Waters"). Waters and the University shall be collectively referred to herein as the "Parties."

WHEREAS, CSU agrees that Waters shall be employed by CSU as its Head Men's Basketball Coach; and

WHEREAS, the parties to this Contract desire to establish terms of employment not contained in the standard university employment Contract,

NOW, THEREFORE, in consideration of the above, the parties agree as follows:

**TERM OF EMPLOYMENT**

- 1.0. The term of this contract employing Waters as Head Men's Basketball Coach shall be for a period of five (5) years and shall expire on April 9, 2011, unless otherwise terminated by the Parties pursuant to Paragraphs 6.0-6.7 below.
- 1.1. This provision shall constitute the only notice to Waters of the non-renewal of his employment with the University. This section is an express exemption from the notice provisions for termination of employment contained in the University's Professional Staff Personnel Policies.

**DUTIES**

- 2.0. Waters shall faithfully and consciously perform the duties of Head Coach of the Men's Basketball Program, as may be assigned by the Director of Intercollegiate Athletics and the President of the University, within the budget allocated by the University.
- 2.1. Waters shall devote full-time attention and energy to the duties of Head Coach of the Men's Basketball Program and to the promotion of the University's Athletics Program. Waters shall avoid any business or professional activities or pursuits that would prevent him from devoting full-time to his duties under this Employment Agreement, or that would embarrass the University or detract, in any manner, from the duties outlined in this Employment Agreement. The University acknowledges Waters' right to earn additional income pursuant to Paragraphs 4.0-4.7 of this Employment Agreement. The University acknowledges that Paragraphs 4.0-4.7 do not conflict with or violate this Paragraph of the Employment Agreement.
- 2.2. Waters shall reasonably participate in Athletic Department fundraising efforts and corporate sponsorship sales, provided such participation will not otherwise conflict or interfere with his primary duties as Head Coach of the Men's Basketball Program.
- 2.3. Waters shall work in cooperation with and support of the University's faculty and administrative staff to ensure that all student-athletes' academic requirements are met. Waters shall encourage student athletes to perform to their highest academic potential, to obtain the highest grades possible, and to graduate.

- 2.4. Waters shall have primary recruiting, hiring, and dismissal authority for all assistant Men's Basketball coaches and the Director of Basketball Operations subject to the final approval of the Director of Intercollegiate Athletics and the University President.

**COMPENSATION, BENEFITS AND ECONOMIC CONSIDERATIONS**

- 3.0. Waters shall be paid a base salary of \$225,000.00 per year in twenty-four semi-monthly installments beginning June 1, 2006 and ending May 31 of the following year. Waters understands that this base salary does not cover the time spent by him operating or assisting in the operation of any camp that is not an Institutional Camp.
- 3.1. Waters shall be eligible to participate in the Ohio Public Employees Retirement System ("PERS") and all necessary PERS contributions and deductions shall be made by the University in accordance with Ohio law.
- 3.2. Waters will be eligible for annual increases in salary, starting with July 1, 2007, on the same terms and to the same extent as other professional staff employees of the University.
- 3.3. The University, as additional compensation to Waters, shall provide to Waters, on a loan basis, one automobile for Waters' use so long as he serves as Head Coach of the University's Men's Basketball Program and for no longer. The automobile provided shall be of the style, class and level no less than a full sized automobile comparable to that of other senior members of the University's administration and approved by the University's Director of Intercollegiate Athletics. The University shall be responsible to maintain liability and comprehensive automobile insurance in accordance with its standard policy and pursuant to its existing coverage and it shall provide Waters with a certificate of insurance to that effect. If Waters so desires, he shall be able to expand coverage at his own cost and expense. The University shall be responsible for maintenance of the automobile and shall reimburse Waters for all fuel expenses and similar charges for use in connection with his duties, in accordance with University policy. Such reimbursement shall be made after Waters' submission of expense reimbursement vouchers in accordance with University policy and procedure.
- 3.4. The University will provide Waters with employee benefits received by professional staff employees of the University.
- 3.5. The University shall be responsible for and shall reimburse all Waters' reasonable expenses, costs and charges incurred in the ordinary course of discharging his duties as Head Coach of the Men's Basketball Program. Reimbursement is subject to final approval by the University's Director of Intercollegiate Athletics and must be supported by appropriate receipts and vouchers.
- 3.6. The University will pay the costs of all reasonable moving expenses incurred by Waters and by his assistant coaches to relocate their homes into the area of the University, including any reasonable costs associated with Waters, his wife and his assistants visiting the University area to search for housing. For a period of six (6) months, the University will also reimburse Waters and his assistants the reasonable cost of any temporary housing in the University area while they are transitioning from their present residence to the University area. Reimbursement is subject to final approval by the University's Director of Intercollegiate Athletics and must be supported by appropriate receipts and vouchers. Waters acknowledges that the University will not reimburse him or his assistant coaches for any costs, fees, or expenses incurred by them in connection with the sale or purchase of a home or other dwelling.
- 3.7. Additionally, should Waters accomplish any of the following achievements, he shall receive, minus all payroll deductions, the following:
- 3.7(a) Horizon League Coach of the Year: \$5,000.00
  - NCAA District Coach of the Year: \$5,000.00
  - Horizon League Regular Season Champion: \$2,500.00
  - Horizon League Tournament Champion: \$5,000.00
  - Annual Academic Performance Review ("APR") Score of 925 or above: \$5,000.00

Any sums due to Waters under this provision (3.7(a)) shall be paid on or before May 1 of the year in which they are earned.

- 3.7(b) Appearance in the NCAA Tournament: \$25,000.00
- Appearance in the Sweet 16 of the NCAA Tournament: \$25,000.00
- Appearance in the Final 4 of the NCAA Tournament: \$25,000.00
- Appearance in the NCAA Tournament Championship Game: \$25,000.00

Any sums due to Waters under this provision (3.7(b)) shall be payable within thirty (30) days after the University receives its initial distribution of NCAA tournament revenues, but in no case later than 180 days after the end of the season. This additional compensation will not increase Waters' base salary. The amounts listed in Paragraph 3.7(b) shall be cumulative. For example, should Cleveland State's Men's Basketball Team appear in the Final Four and lose, Coach Waters will be paid a total of \$75,000.00 (\$25,000.00 for the Team's appearance in the NCAA Tournament; \$25,000.00 for the Team's appearance in the Sweet Sixteen and \$25,000.00 for the Team's appearance in the Final Four).

- 3.7(c) Appearance in the NIT Tournament: \$10,000.00
- Appearance in the NIT Final 4: \$15,000.00

Any sums due to Waters under this provision (3.7(c)) shall be payable within thirty (30) days after the University receives its initial distribution of NIT tournament revenues, but in no case later than 180 days after the end of each season. This additional compensation will not increase Waters' base salary.

- 3.7(d) If, at the end of the season, the average per-game paid attendance is between 3,000 and 4,999, Waters shall receive \$10,000.00.

If, at the end of the season, the average per-game paid attendance is between 5,000 and 7,999, Waters shall receive \$25,000.00.

If, at the end of the season, the average per-game paid attendance is between 8,000 and 9,999, Waters shall receive \$35,000.00.

If, at the end of the season, the average per-game paid attendance is 10,000 or above, Waters shall receive \$50,000.00.

For the purposes of this provision (3.7(d)), the Parties acknowledge that the average per game paid attendance figure will be based upon the number of tickets sold at regular ticket prices. Any sums due to Waters under this provision (3.7(d)) shall be paid on or before May 1 of the year in which they are earned. The amounts listed in Paragraph 3.7(d) shall not be cumulative. For example, if, at the end of the season, the average per-game paid attendance for Cleveland State's Men's Basketball Team is between 5,000 and 7,999, Waters shall only be paid \$25,000.00).

#### **OPPORTUNITIES TO EARN OUTSIDE INCOME**

- 4.0. While Waters is employed as the Head Coach of the University's Men's Basketball program, he shall have the opportunity to earn outside income as a result, but only upon the terms and conditions set forth in Paragraphs 4.0 through 4.7 of the Employment Agreement.

- 4.1. The following general conditions shall apply to agreements negotiated in accordance with Paragraphs 4.3 and 4.4 below, as well as any other agreement permitted by this Employment Agreement where Waters earns outside income as a result of being the Head Coach of the Men's Basketball Program.

- 4.1(a) Such outside activities shall not interfere with the full and complete performance by Waters of his duties as the Head Coach of the Men's Basketball Program. Waters acknowledges that his primary obligations lie with the University and with student-athletes in the Men's Basketball Program.
- 4.1(b) In no event shall Waters knowingly accept or receive directly or indirectly any monies, benefit or other gratuity whatsoever from any person, corporation, University booster club or alumni association, or other benefactor if such action would violate NCAA's legislation, constitution, bylaws, rules, or regulations. In addition, Waters shall not knowingly accept or receive directly or indirectly any monies, benefit or other gratuity whatsoever from any person, corporation, University booster club or alumni association, or other benefactor if such action would violate the legislation, constitution, bylaws, rules, or regulations of the Athletic Conference to which the University is a member. For the purposes of this provision (4.1(b)) the term knowingly shall mean that Waters "knew or reasonably should have known."
- 4.1(c) Waters shall obtain the advance written approval of the President of the University, through the Director of Intercollegiate Athletics, before entering into such agreements for outside income. Such approval will not be unreasonably withheld.
- 4.1(d) Any arrangements for outside income and the activities thereunder are independent of Waters' University employment and the University shall have no responsibility or liability for payment of any such income or for claims arising therefrom, under any circumstances whatsoever.
- 4.1(e) Upon execution of any agreement, Waters shall provide a copy of the agreement to the President through the Director of Intercollegiate Athletics.
- 4.1(f) All agreements shall be in writing, shall not extend beyond the term of this Employment Agreement, shall be coterminous with Waters' duties as Head Coach of the Men's Basketball Program and shall not conflict with any contracts executed by the University.
- 4.1(g) Any arrangements for outside income shall be of a nature consistent with the ethics, dignity and educational mission of the University.
- 4.2. For so long as Waters serves as the Head Coach of the University's Men's Basketball Program, and for no longer, the University will arrange for payment to Waters the sum of \$25,000.00 per fiscal year as consideration for Waters' performance of such television and radio appearances as are reasonably arranged by the University. This sum shall be paid no later than sixty (60) days after the conclusion of each season in which Waters serves as the Head Coach of the University's Men's Basketball Program.
- 4.2(a) Prior to agreeing to any public or guest appearance, public speech, endorsement or media interview that has not been arranged by the University, Waters agrees to first obtain the written approval of the Director of Intercollegiate Athletics, which such approval shall not be unreasonably withheld.
- 4.3. Waters may enter into agreements with shoe, apparel or equipment manufacturers or sellers in exchange for an agreement that the University's Men's Basketball Program and/or Waters shall wear/use its shoes, apparel and/or equipment during practice and competition or that Waters shall wear, promote, endorse or consult with the manufacturer or seller concerning the design and/or marketing of such shoes, apparel, or equipment. The net proceeds of any such agreements shall inure solely to Waters' benefit. Any compensation received by Waters in connection with such agreements shall be independent of and in addition to the specified compensation to be paid to Waters by the University. Under no circumstances may Waters commit or use University resources such as, but not limited to, schedule cards, logo, signage, marks, radio and television sponsorship, program advertisements, etc. without a contract for those items being executed by the University upon the written approval of the Director of Intercollegiate Athletics, which shall not be unreasonably withheld, with the appropriate compensation being paid to the University.

- 4.4. Waters will have the right to conduct a summer camp or camps on the grounds and premises of the University for up to three (3) weeks as follows:
- 4.4(a) The University shall make a good faith effort to provide Waters with on-campus housing, dining and playing facilities reasonably requested by Waters.
  - 4.4(b) The University may charge Waters reasonable fees for the use of on-campus lodging, dining and playing facilities by Camp participants. Such charges shall not exceed the least amount charged by the University for comparable facilities used by other camps, clinics, or seminars organized by the University or any of its coaches.
  - 4.4(c) With respect to the marketing and operation of the camps, Waters shall be entitled to identify himself as the University's Men's Head Basketball Coach and shall be entitled to reasonable use of the University's names, logos, and insignias without charge.
  - 4.4(d) Camps shall be conducted in accordance with University policies and procedures. Waters shall report the number of hours he spends conducting camps to the appropriate University personnel, and only such reported hours shall be deducted from Waters' vacation time. The University shall not be responsible for claims arising from Camp operations. Waters shall retain net revenue after all expenses associated with camp are paid. However, the University makes no guarantee of any compensation to Waters from Camp operations. Prior to the beginning of Camp, Waters, in accordance with University policy, will provide the University with a certificate of liability not less than \$1,000,000.00 as a co-insured covering camp activities.
  - 4.4(e) Camp must comply with NCAA regulations and University policy and must be conducted at no cost to the University.
- 4.6. Pursuant to the provisions of the NCAA Constitution and By-Laws, Waters shall file a written report to the University President, through the Director of Intercollegiate Athletics, whenever requested by the Director of Intercollegiate Athletics (but at least annually), identifying all athletically related income and benefits (as listed in the NCAA Governing Manual) received by Waters from sources outside the University. Waters shall use his best efforts to ensure that Assistant Coaches make a similar reporting.
- 4.7. Waters makes the representation and warranty that he is not the subject of an existing NCAA investigation or criminal investigation. Further, Waters warrants that he does not believe that he has violated any NCAA rule or bylaw which has not already been reported. Further, the Parties agree that the University will conduct a background check. If within thirty (30) days it is substantiated that Waters has committed any of the following acts: any felony conviction, misdemeanor (other than routine traffic violations), or driving under the influence of alcohol or other illegal substances, this Employment Agreement shall be immediately deemed null and void by both Parties.

#### **RULES AND COMPLIANCE**

- 5.0. Waters shall abide by and comply with the constitution, bylaws, and interpretations of the NCAA as well as all NCAA and University rules and regulations relating to the conduct and administration of the Men's Basketball Program, including recruiting rules, as now constituted or as may hereafter be amended. In addition, Waters shall abide by and comply with the applicable constitution, bylaws, rules and regulations of the Athletic Conference of which the University is a member, as now constituted or as may hereafter be amended. In the event that Waters becomes aware, or has reasonable cause to believe, that violations of such constitution, bylaws, rules, or regulations may have taken place, he agrees to report the same promptly to the University's Director of Intercollegiate Athletics.
- 5.1. Waters shall adhere to, respect and follow the academic standards and requirements of the University in regard to the recruiting and eligibility of prospective and current student-athletes for the Men's Basketball Program. All academic standards, requirements and policies for the University shall also be observed by Waters and members of his staff, including Assistant Coaches, at all times and shall not be compromised or violated at any time.

## TERMINATION OF AGREEMENT

- 6.0. The University may terminate this Employment Agreement, suspend Waters up to twenty (20) days without pay, or take such other disciplinary action as is reasonably necessary for the following:
- 6.0(a) The NCAA Committee on Infractions, without regard to Waters' right of appeal, finds that Waters committed deliberate and serious violations of NCAA by-laws related to Waters' performance of duties at the University or any prior employer, or that Waters knew that individuals under his immediate supervision committed such deliberate and serious violations but Waters did not so report to the Director of Intercollegiate Athletics in a timely manner, provided that the University gives Notice of termination within thirty (30) days of such finding;
  - 6.0(b) A court of competent jurisdiction convicts Waters of any felony or of a misdemeanor involving (a) fraud; (b) the threatening, inciting or committing of violence; or (c) the illegal possession, use or distribution of alcohol or other drugs, provided that the University gives Notice of termination within thirty (30) days of such a conviction;
  - 6.0(c) A court of competent jurisdiction finds that Waters acted in a malicious, reckless or grossly negligent manner in the performance of his duties as Head Men's Basketball Coach, provided that the University gives Notice of termination within thirty (30) days of such finding;
  - 6.0(d) Waters refuses to perform any of those duties which are reasonably related to his position as determined and communicated by the Director of Intercollegiate Athletics to Waters provided that the University gives Notice of termination within thirty (30) days of such a refusal by Waters;
  - 6.0(e) Waters either (1) commits an act that materially violates a University policy, rule or regulation; a Horizon League Conference rule or regulation; or state or federal law or (2) has knowledge of an act committed by individuals under his immediate supervision that violates a University policy, rule or regulation; a Horizon League Conference rule or regulation; or state or federal law and which Waters fails to report to the Director of Intercollegiate Athletics in a timely fashion , provided that the University gives Notice of termination within thirty (30) days of good faith substantiation of such act;
  - 6.0(f) Waters fails to respond with good faith accuracy and in a reasonably timely manner (not less than five days) to any reasonable inquiry by the Director of Intercollegiate Athletics related to the performance of his duties as Head Men's Basketball Coach, provided that the University gives Notice of termination within thirty (30) days of his failure to respond;
  - 6.0(g) Waters reports for duty under the influence of intoxicants, provided that the University gives Notice of termination within thirty (30) days of good faith substantiation of such occurrence;
  - 6.0(h) Except for circumstances which are beyond the control of Waters, such as disability or illness, Waters is absent without authorization for five (5) or more consecutive days, provided that the University gives Notice of termination within thirty (30) days of Waters' initial day of absence.
  - 6.0(i) Waters materially breaches any of the other provisions of this Employment Agreement provided that the University gives Waters five (5) days to cure such material breach, if reasonably curable, and further provided that the University gives Notice of termination within thirty (30) days of Waters' failure to so cure.
- 6.1. Should this Employment Agreement be terminated by the University pursuant to Paragraph 6.0 (and its subparts), the services of Waters shall be terminated and such termination shall be effective on the date the University gives Notice of Termination or such later date as the Notice may specify. At any time during an investigation, disciplinary action, or termination pursuant to Paragraph 6.0 (and its subparts), the University may place Waters on paid administrative leave. If this Employment Agreement is terminated by the University in accordance with Paragraph 6.0 (and its subparts), the University shall not be responsible or

- liable for damages of any kind, including, but not limited to, the payment of salary, employee benefits, or other compensation, rights or benefits of any installments thereof, including income Waters may have received as a result of participating in camps, outside endorsements, appearances, or media broadcasts of any type, after the date of such termination.
- 6.2. If the University terminates this Employment Agreement prior to its expiration date for reasons other than those delineated in Paragraph 6.0 (and its subparts) of this Employment Agreement, then the services of Waters shall be terminated effective upon the date the University gives Notice of Termination or such later date as the Notice may specify. Should the University terminate this Employment Agreement pursuant to Paragraph 6.2, the following terms shall apply:
- 6.2(a) The University shall pay Waters liquidated damages in the amount equal to the total amount of Waters' Base Salary as established in this Employment Agreement for the unexpired remainder of the Term of the Employment Agreement.
- 6.2(b) The University shall provide Waters benefits from the date of termination through the end of the fiscal year.
- 6.2(c) The University shall not be liable to Waters for any collateral business opportunities or other benefits associated with Waters' position as Head Men's Basketball Coach, including income from camp, consulting relationships, media appearances, endorsements, or from any other source.
- 6.2(d) The University's financial obligation shall be paid on a bi-monthly basis throughout the remainder of the Term of the Employment Agreement.
- 6.3. Waters agrees to mitigate the University's obligation to pay liquidated damages under Paragraph 6.2 (and its subparts) by making a good-faith effort to obtain comparable employment including, but not limited to, a Head Basketball Coach at a NCAA or NAIA Member School, an Assistant Basketball Coach at a BCS school or an NBA Bench Coach. If Waters obtains such new employment, then, for so long as Waters remains so employed, the University's financial obligation to pay liquidated damages under Paragraph 6.2 (and its subparts) shall be to pay the difference between the University's bi-monthly liquidated damages payments to Waters and Waters' salary (excluding benefits) in his new position and subtracting any other income earned from coaching related activities. Should Waters obtain such new employment, he shall inform the University of his employment and his monthly salary within 30 days of obtaining the new employment. Failure to provide this notice will nullify the University's obligation to pay any additional liquidated or other damages.
- 6.4. Notwithstanding any other Paragraph of this Employment Agreement, this Employment Agreement shall terminate automatically if Waters dies or is totally disabled within the meaning of the applicable state retirement system definition or of any other University supplemental disability program. No salary or benefits will be paid after the date of death or disability other than vested death, disability, or retirement benefits.
- 6.5. If Waters resigns or otherwise terminates this Employment Agreement, Waters (or his new employer, if applicable), will pay the University the following amounts as liquidated damages:
- 6.5(a) \$500,000.00 should termination occur between April 10, 2006 and March 14, 2007.
- 6.5(b) \$400,000.00 should termination occur between March 15, 2007 and March 14, 2008.
- 6.5(c) \$300,000.00 should termination occur between March 15, 2008 and March 14, 2009.
- 6.5(d) \$225,000.00 should termination occur between March 15, 2009 and March 14, 2010.
- 6.5(e) \$225,000.00 should termination occur between March 15, 2010 and the expiration date of this Employment Agreement.

Nothing in this Section 6.5 and its subparts shall be construed to limit or abrogate Waters' responsibilities and obligations under Paragraph 6.6 of this Employment Agreement. Any liquidated damages payable under this Section 6.5 shall be payable on a bi-monthly basis throughout the remainder of the Term of the Employment Agreement.

- 6.6. Waters agrees that he will not seek alternative employment or seek job prospects with any other basketball program during the Term of this Employment Agreement. If, however, Waters is solicited for a position with another basketball program, Waters will not respond to such inquiries without the permission of the Director of Intercollegiate Athletics. The Director of Intercollegiate Athletics will not unreasonably withhold this permission. It is understood that denying requests for permission after May 1 of any given year, except in extraordinary circumstances about which Waters will advise the Director of Intercollegiate Athletics, shall not be deemed unreasonable.
- 6.7. The Parties acknowledge that they have bargained for the terms contained in Paragraphs 6.2 (and its subparts), 6.3, 6.4, 6.5, and 6.6. The Parties understand that this Employment Agreement is a personal services agreement and that termination of this Employment Agreement prior to April 9, 2011 will cause Waters or the University damages which cannot reasonably be calculated. Therefore, the Parties agree to the terms contained in Paragraphs 6.2 (and its subparts), 6.3, 6.4, 6.5, and 6.6.

#### **ADDITIONAL TERMS**

- 7.0. All materials or articles of information, including without limitation, personnel and student-athlete records, recruiting records, team information, films statistics, or any other material or data furnished to Waters by the University; developed or prepared by Waters for the University; developed or prepared by Waters at the University's direction; or developed or prepared by Waters in connection with his employment with the University, shall remain the sole property of the University. Within thirty (30) days of the expiration or termination of this Employment Agreement, Waters shall deliver any such materials in his possession, custody or control to the Director of Intercollegiate Athletics.
- 7.1. So long as he is Head Men's Basketball Coach, Waters shall have the right to use the game film of all University's Men's Basketball contests in connection with any television show, lecture or clinic that is sanctioned or approved by the University. Waters acknowledges that the University retains all ownership rights, interests and privileges associated with any and all game film of the University's Men's Basketball program.
- 7.2. Any Notice required to be given under this Contract shall be in writing and shall be sent by certified or registered mail to the other party at such party's last known address. Any notice to University shall be copied to University's General Counsel and any notice to Waters shall be copied to Dennis M. Coleman, Esquire, Ropes & Gray LLP, Boston, Massachusetts 02110-2624.
- 7.3. This Employment Agreement is subject to final approval by the University's Board of Trustees. The stipulated levels of compensation contained in this Employment Agreement are contingent upon the sufficiency of state appropriations and other resources.
- 7.4. This Employment Agreement is contingent upon Waters' providing evidence of his identity and authorization to work.
- 7.5. This Employment Agreement shall be governed by and construed under the laws of the State of Ohio.
- 7.6. If any provision of this Employment Agreement shall be determined to be void, invalid, unenforceable or illegal for any reason, it shall be ineffective only to the extent of such prohibition with the remaining provisions remaining in full force and effect.
- 7.7. This Employment Agreement constitutes the full and complete understanding and agreement of the Parties with respect to Waters' employment with the University and supersedes all prior understandings and agreements, oral or written, regarding Waters' employment with the University.



- 7.8. Although it is understood that from time to time Waters may have social contact with members of the Board of Trustees at fundraisers, media events, receptions or other social functions, Waters agrees to refrain from contacting directly any Trustee of the University or otherwise engage in any direct communication with any Trustee about items relating to the Men's Basketball Program or the administration of the University's Athletic Programs unless requested to do so by the Director of Intercollegiate Athletics.
- 7.9. Neither this Employment Agreement nor interest or claim in this Employment Agreement shall be assigned or transferred by Waters except as expressly authorized in writing by the University.

IN WITNESS WHEREOF, the parties hereto have executed this Contract the date first set forth above

Collette M. Gordon  
 Witness  
[Signature]  
 Witness

Gary Waters  
 Gary Waters

Byron T. Markovic  
 Witness  
[Signature]  
 Witness

Cleveland State University  
[Signature]  
 Michael Schwartz, President  
[Signature]  
 Lee Reed, Director of Intercollegiate Athletics

## AMENDMENT A

### TO THE EMPLOYMENT AGREEMENT BETWEEN

GARY WATERS

*Head Men's Basketball Coach*

- AND -

CLEVELAND STATE UNIVERSITY

This Amendment to be effective April 15, 2008, and entered into this 24<sup>th</sup> day of March, 2008, shall modify that Employment Agreement effective April 10, 2006 (the "Agreement") by and between **Cleveland State University** ("CSU" or the "University") and **Gary Waters** ("Waters") (collectively the "Parties").

WHEREAS, the Parties have determined that in their mutual interest the Term of Employment in the Agreement between them shall be modified,

NOW THEREFORE, in consideration of the above, the Parties agree as follows:

The "Term of Employment," consisting of paragraphs 1.0 and 1.1 of the Agreement, shall be deleted and replaced by the following:

#### TERM OF EMPLOYMENT

- 1.0 As used in this Agreement, the term "Contract Year" is defined to mean the twelve month period commencing each May 1st and ending the following April 30th. Each such Contract Year is designated by the calendar years in which it begins and ends (so that the Contract Year from May 1, 2008, through April 30, 2009, is referred to as the "2008-2009 Contract Year"); provided, that the first contract year shall begin April 15, 2008 and end April 30, 2009.
- 1.1 Subject to the provisions of paragraphs 6.0 through 6.7, below, the term of employment under this Agreement shall be for five (5) years beginning on the 1st day of May, 2008, and continuing for the 2008-2009 Contract Year (defined below) and for the next immediately succeeding four Contract Years, ending with the 2012-2013 Contract Year.
- 1.2 Beginning with the 2008-2009 Contract Year, unless University gives Waters written notice to the contrary before March 31, 2009, the term of this contract of employment shall be extended to a new five-year term commencing on May 1, 2009, and all provisions herein shall apply to the extended term. Unless written notice is given to Waters to the contrary by March 31 of each subsequent year, the term of the contract shall be automatically extended by one (1) additional year to

provide for a continuing five-year contract, subject to all provisions contained herein.

Paragraph 3.0 of "Compensation, Benefits and Economic Considerations" shall be deleted and replaced by the following:

- 3.0 Waters shall be paid a base salary of \$225,000.00 per year in twenty-four semi-monthly installments beginning June 1, 2006. Effective April 15, 2008, Waters shall be paid a base salary of \$283,264.00 per year, prorated for the balance of fiscal 2008 in semi-monthly installments. Waters understands that this base salary does not cover the time spent by him operating or assisting in the operation of any camp that is not an Institutional Camp.

Paragraph 6.5 of "Termination of Agreement" shall be deleted and replaced by the following:


- 6.5 If Waters resigns or otherwise terminates this Employment Agreement, Waters (or his new employer, if applicable), will pay the University the following amounts as liquidated damages:
- 6.5(a) \$400,000.00 should termination occur with more than four years remaining in the term of the Agreement;
  - 6.5(b) \$300,000.00 should termination occur with less than four years but more than three years remaining in the term of the Agreement;
  - 6.5(c) \$300,000.00 should termination occur with less than three years but more than two years remaining in the term of the Agreement;
  - 6.5(d) \$225,000.00 should termination occur with less than two years but more than one year remaining in the term of the Agreement;
  - 6.5(e) \$225,000.00 should termination occur with less than one year remaining in the term of the Agreement.


Nothing in this Section 6.5 and its subparts shall be construed to limit or abrogate Waters' responsibilities and obligations under Paragraph 6.3 of this Employment Agreement. Any liquidated damages payable under this Section 6.5 shall be payable on a bi-monthly basis throughout the remainder of the Term of the Employment Agreement.


The Parties agree that all other terms and conditions of the Agreement shall remain unaltered and in full force and effect.

*Remainder of this page intentionally left blank.*

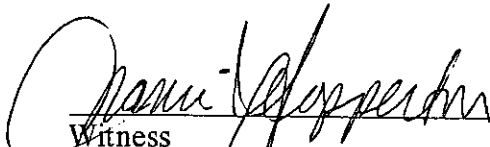
IN WITNESS WHEREOF, the Parties have executed this Amendment to the Agreement as of the effective date set forth above.


  
Witness


  
Gary Waters


  
Witness

Cleveland State University

  
Witness

  
Michael Schwartz, President

  
Witness

  
Lee Reed, Director of Intercollegiate Athletics

**OUTSIDE INCOME AGREEMENT for 2008-09**

All full or part-time athletics department staff member (excluding secretarial or clerical personnel) must annually receive written approval from the CEO for all athletically related income and benefits received from sources outside of CSU. (NCAA Bylaw 11.2.2). A coach/athletic department staff member must receive annual approval from CSU's CEO and AD to:

1. RECEIVE all athletically related income and benefits from sources outside the institution.
2. USE directly or by implication the institution's name or logo in the endorsement of commercial products or services for personal gain.
3. ACCEPT outside compensation or gratuities from athletics shoe, apparel or equipment manufacturers in exchange for use of such merchandise during practice or competition.

\_\_\_\_\_ Check here if no Outside Income was earned for the 2008-09 academic year.

**ATHLETICALLY RELATED OUTSIDE INCOME**

**Income Earned**

1.	Speaking Engagements	<u>\$1,000 - \$500</u>
2.	Salary Supplement (from outside the institution) Source: _____ Source: _____	_____ _____
3.	Endorsement or Consultation Contracts	
	(a) Athletic Shoes (Source: _____)	<u>\$4,000</u>
	(b) Apparel (Source: _____)	_____
	(c) Equipment (Source: _____)	_____
4.	Television Appearances or Commercials	_____
5.	Radio Appearances or Commercials	_____
6.	Income from Corporations in exchange for charitable or promotional work	_____
7.	Annuities	_____
8.	Sports Camps Source: _____ Source: _____	<u>\$4,000</u>
9.	Sports Clinics Source: _____ Source: _____	_____ _____
10.	Housing Benefits	_____
11.	Courtesy Car (from outside the institution)	<u>\$5,235</u>
12.	Country Club Membership (from outside the institution)	_____
13.	Complimentary Ticket Sales (from outside the institution)	_____
14.	Other (please specify below): _____ _____	_____ _____

I hereby certify that I am in compliance with all NCAA, Conference, and Institutional regulations governing Outside Income. I will notify the Compliance Coordinator of any new information or sources of income that may affect this Agreement.

Gary Waters  
Coach/Athletics Staff Member Signature

10/13/09  
Date

Gary Waters  
Print Name

\_\_\_\_\_  
Compliance Office Signature

\_\_\_\_\_  
Date

**RECEIVED**

JAN 28 2010

OFFICE OF GENERAL COUNSEL  
CLEVELAND STATE UNIVERSITY