

AMENDED AND RESTATED AGREEMENT  
(as of December 31, 2004)

STATE OF ALABAMA        )

COUNTY OF LEE            )

THIS AMENDED AND RESTATED AGREEMENT (this "Agreement") entered into as of the 31st day of December, 2004, by and between Auburn University (hereinafter "Auburn") and Thomas Hawley Tuberville, Head Coach of the Auburn football team (hereinafter "Coach"), amends and replaces in its entirety that certain Employment Agreement entered into by and between Auburn and Coach on or about February 14, 2003 (as amended first in March, 2003 and again in April, 2003) hereinafter referred to as the "2003 Agreement."

WITNESSETH THAT:

For and in consideration of the mutual promises herein contained, Auburn and Coach do hereby amend the 2003 Agreement and replace it in its entirety with the following:

1.        EMPLOYMENT: Auburn hereby employs Coach in the position of Head Football Coach, which is a continuation of his present employment, commencing on January 1, 2005, and Coach hereby accepts such employment and agrees to perform all those services pertaining to football, which are required of him as set forth herein and as prescribed by Auburn through the President and Athletic Director.

2.        TERM: The term of this Amended and Restated Agreement shall be seven (7) years, commencing January 1, 2005, and ending December 31, 2011. Beginning in

2005 and in each subsequent year, Auburn may offer to extend this Agreement for one additional year, such that the term of this Agreement remains seven (7) years. Such offer of extension will be made by notification to Coach in writing by the Athletic Director after consulting with the President of Auburn on or before December 1st of each year and may be accepted by Coach in writing on or before December 31st of said year. To determine whether an extension of the term is warranted, Auburn shall conduct an annual evaluation of Coach's performance, primarily in four areas: (1) academic success of Auburn's football student-athletes, (2) competitive success, (3) compliance with Auburn, SEC, NCAA and other rules and regulations, and (4) fiscal responsibility. Performance in other areas may be considered in this evaluation, but the four areas outlined above will be the primary areas of interest and concern.

Failure by the President of Auburn to extend the term of the Agreement shall not necessarily be deemed to be an indication of dissatisfaction with the performance of the Coach but may, to the contrary, be an indication of the University's decision to allocate financial resources to other factors affecting the athletics program's success. Additionally, extensions of more than one year may be made to the term in years following non-extension years so long as the total term of the Agreement does not exceed seven years.

3. SALARY: Commencing January 1, 2005, Auburn agrees to pay Coach an annual base salary of Two Hundred Ten Thousand Dollars (\$210,000.00), payable in twelve (12) equal monthly installments at the end of each month during the term of this Agreement, less any withholdings required by state or federal laws.

4. PERFORMANCE-BASED INCENTIVES: In addition to the payments to Coach as set forth in this Agreement, Auburn will pay the following performance-based incentives to Coach during the term of this Agreement upon the occurrence of the following events:
- a. Victories--In seasons with ten (10) or more victories, Fifty Thousand Dollars (\$50,000.00).
  - b. Having an undefeated regular season -- For having an undefeated regular season, One Hundred Thousand Dollars (\$100,000.00).
  - c. Playing in SEC Championship--For playing in the Southeastern Conference Championship Game, One Hundred Thousand Dollars (\$100,000.00).
  - d. Winning SEC Championship--For winning the Southeastern Conference Championship Game, One Hundred and Fifty Thousand Dollars (\$150,000.00).
  - e. Winning National Championship-- For winning the National Championship as determined by either the Bowl Championship Series ("BCS") or its equivalent or successor, or the Associated Press Poll or ESPN/USA Today Poll, Three Hundred Thousand Dollars (\$300,000.00). It is understood that in no event shall Coach receive more than one payment of \$300,000 for a National Championship under this sub-paragraph ("e") in any one year.
  - f. Academic Success/Graduation Rate--For an Academic Success Rate (such terms as defined by the NCAA) for Auburn football student-athletes equal to or better than the NCAA student athlete average, a two-week base salary bonus, or, for a Graduation Rate

equal to the Auburn University's overall undergraduate average, as compiled by the NCAA, one month's base salary bonus. This bonus will be paid within 30 days of Auburn receiving the graduation rate averages.

g. Other Payments--All other payments earned under paragraphs 4(a) through (e) will be paid to Coach no later than January 15<sup>th</sup> following completion of the season in which the bonus is earned.

h. Discretionary Bonuses--In addition to the performance-based bonuses that Coach is specifically eligible to receive under this Agreement, Coach will also be eligible for other performance-based bonuses to be awarded at Auburn's discretion. The bonuses described above have no effect on Coach's eligibility for the performance-based bonuses set forth in Auburn's standard bonus policy.

i. Bonuses Cumulative---With the exception of the bonuses in Section 4(e), the total availability of which bonus shall not exceed \$300,000.00 even if multiple entities declare Auburn to be the National Champion, all of the performance-based incentives in Paragraph 4 are cumulative in nature. It is agreed and understood that Coach may earn more than one incentive payment during a given season.

5. CONTRACT COMPLETION: Auburn hereby acknowledges the obligation it has already incurred under the 2003 Agreement to pay Coach Four Hundred Thousand Dollars (\$400,000.00) for Coach's having completed the two most recent years of the 2003 Agreement and shall pay Coach a sum equal to Four Hundred Thousand Dollars (\$400,000.00) in satisfaction of the 2003 and 2004 Contract Completion bonuses upon execution

of this Agreement. In addition to such Four Hundred Thousand Dollars (\$400,000.00), Auburn will pay Coach Two Hundred Thousand Dollars (\$200,000.00) for each additional year of the term that he completes, through and including the 2007 calendar year (a sum which shall total \$600,000.00 if Coach completes the 2005, 2006, and 2007 calendar years). As earned, payment of each of the 2005, 2006, and 2007 Contract Completion bonuses shall be delivered to Coach on or before January 15 of 2006, 2007, and 2008 respectively. Contract Completion bonuses shall not be earned in part or pro rata for partial years but shall be earned in full following each complete year. Coach shall not be eligible to earn a Contract Completion bonus for any year after the 2007 calendar year.

6. AUTOMOBILES: Auburn will furnish Coach with the use of two new automobiles, which may be dealer cars. Auburn will also pay for gas, service and maintenance, and insurance on the vehicles.

7. COACHING STAFF: Coach will be responsible for the hiring and firing of his staff, but such responsibilities will be exercised in accordance with policies established by Auburn and its Department of Intercollegiate Athletics.

8. BEST EFFORTS: Coach will at all times promote the welfare of Auburn and its intercollegiate athletic program to the best of his ability.

9. WORK SCHEDULE: Coach is employed by Auburn to succeed at a specific task. Because time demands in the coaching profession are unique, largely on a seasonal basis, requiring coaches to work a normal 40-hour work week would be counterproductive to success. Therefore, coaches are given the flexibility to establish their own work schedule

reflecting seasonal demands and success goals for the program. However, coaches are expected to be reasonably available to meet with student-athletes, staff, alumni, media and friends of Auburn. Because normal 40-hour work weeks are not the norm, and because coaches under Contract set their own schedules, Coach will not accrue annual leave, but will have all other leave benefits normally provided to Auburn employees.

10. TRAVEL EXPENSES: Auburn agrees to provide or reimburse Coach for travel expenses incurred in connection with Auburn activities and in accordance with Auburn policy. Coach agrees to be personally responsible for expenses incurred for non-Auburn activities or for Auburn activities which are not in accordance with Auburn policy. Coach agrees that if for any reason he does not personally remit amounts for such non-Auburn related travel expenses to the Director of Athletics or his designee within thirty (30) days from the date such expenses were incurred, Auburn shall be entitled to collect remittance through payroll deduction without advance notice to Coach.

11. PROSPECTIVE EMPLOYMENT BY COACH OR AUBURN: Unless notice has been given to Coach by Auburn of his termination, neither Coach nor any person or entity acting at or under his express authority shall under any circumstances discuss or negotiate directly or indirectly his prospective employment with any other institution of higher learning or professional athletic team without notice to the Director of Athletics and the express permission of Auburn, which shall not be unreasonably withheld. Unless notice has been given by Coach to Auburn of his termination of this Agreement, neither the President nor the Athletic Director of Auburn or any person or entity acting at or under their express authority shall discuss or

negotiate directly or indirectly Auburn's prospective employment of any other person as Head Football Coach of Auburn without notice to Coach.

12. COOPERATION: Coach recognizes that Auburn serves as an institution of higher learning and shall fully cooperate with the faculty and administrators of Auburn in connection with the academic pursuits of student athletes and shall use his personal best efforts to encourage and promote those efforts. In that respect, Coach recognizes that a goal of Auburn is that every student athlete obtain an undergraduate degree and agrees to fully support the attainment of that goal.

13. COMPLIANCE WITH POLICIES, RULES AND REGULATIONS: Coach will faithfully perform the duties and obligations of the position of Head Football Coach to the best of his ability, and Coach will conform to the policies, rules and regulations of Auburn, its Department of Intercollegiate Athletics, and to the rules and regulations of the SEC and the NCAA. Coach will at all times exercise due care to assure that all persons under his supervision or subject to his control or authority, including the coaching, academic and training staffs, shall abide by said rules and regulations. Coach shall further observe and respect the principles of institutional control of every aspect of the athletic programs of Auburn.

In the event an internal investigation is instituted by Auburn or an investigation is instituted by the SEC or the NCAA into alleged major rules violations within the football program, during the pendency of the investigation, Auburn shall have the right after written notice to Coach to suspend payment of any amount owed to Coach under Paragraph 15 or Paragraph 16. Coach shall have the right prior to suspension of those payments to address

whether an investigation is warranted and whether suspension of payments is appropriate. If, at the conclusion of any such investigation, it is determined that no major rules violations occurred in connection with the football program, any payments due to Coach under Paragraph 15 and Paragraph 16 will be paid by Auburn within thirty (30) days with interest at a rate equal to the Auburn University Cash Pool Earnings Rate.

Pursuant to NCAA Bylaw 11.2.1., it is agreed that Coach may be suspended for a period of time without pay or his employment may be terminated if he or any person under his supervision or subject to his control or authority, including the coaching, academic and training staffs and anyone working with or under the supervision of the Auburn On-Campus Recruiting Coordinator, is found by Auburn, the SEC or NCAA to be involved in significant or repetitive violations of NCAA regulations. In exercising its rights under this paragraph, Auburn will consider any showing by Coach that he had no actual knowledge of or involvement in violations of such policies, rules and regulations and could not have reasonably been expected to have had such knowledge under the circumstances. This Paragraph shall not be construed in a manner so as to hold Coach responsible for violations by the On-Campus Recruiting Coordinator, or those under her supervision or subject to her control where Coach and his staffs had no direct or indirect knowledge of or involvement in and did not approve the conduct resulting in the violation. Coach also agrees that he may be suspended without pay or terminated if he is found to have been involved in significant or repetitive violations of NCAA regulations during previous employment at another institution. For purposes of this Agreement, "significant or repetitive" violations of NCAA regulations shall mean major violations of NCAA rules and

regulations.

14. OUTSIDE INCOME: Pursuant to NCAA Bylaw 11.2.2, Coach agrees to obtain prior written approval from the Auburn Director of Athletics for all athletically-related income and benefits which exceed One Thousand Dollars (\$1,000.00) per event from sources outside Auburn, including, but not limited to annuities, sports camps, housing benefits, country club memberships, complimentary ticket sales, television and radio programs, and endorsement or consultation contracts with athletics shoe, apparel or equipment manufacturers. A request for approval shall be in writing and shall include the amount and the source of the income. Coach also agrees to provide to the President of Auburn through the Director of Athletics annually (by August 1 of each year) a detailed written accounting of all such income and benefits which are less than \$1,000 per event. Outside income under this Paragraph shall not be included under Paragraph 15 and shall not be restricted in any amount by the provisions of Paragraphs 16 and/or 17.

15. ASSIGNMENT OF PERSONAL ENDORSEMENT RIGHTS: Coach hereby assigns to Auburn any and all personal endorsement rights he possesses or might possess so long as this Agreement is in effect. This assignment of personal endorsement rights by Coach to Auburn includes any and all rights of any nature which Coach possesses or might possess while he is Auburn Head Football Coach, and the assignment includes, but is not limited to, any rights to enter shoe contracts and apparel contracts as well as any other type of endorsement.

As part of this assignment of personal endorsement rights, Coach hereby assigns any rights he has to author, co-author, publish, or contribute in any fashion to the creation of any

book, magazine, program or other publication, videotape, internet website or publication or broadcast to Auburn. Said assignment will be effective at all times while Coach is Head Football Coach at Auburn. The assignment includes materials such as highlight videotapes or publications which feature a particular game, season, player, etc., but does not include instructional-type videos or publications by Coach unless Coach used footage or photographs of Auburn football games or practices in such videos or publications. Coach may use video footage and photographs of Auburn football games or practices in such manner only with the express written permission of Auburn, and Auburn will be reasonable in considering any requests by Coach for such approval. Coach further agrees that as part of this Agreement, he acquires no rights to use of the Auburn logo, Auburn team nicknames, Auburn emblems, films or videotapes of any game or practice involving the Auburn football team or any trademark associated with Auburn or its athletic program. Coach acknowledges and agrees that such logos, nicknames, emblems, films, videotapes or trademarks are the exclusive property of Auburn and that he has no right to use any of these, but agrees to use or display the same in accordance with the wishes of Auburn in the performance of any activities pursuant to this Assignment of Personal Endorsement Rights or the Radio and Television Rights and Programs and Personal Appearances paragraph set forth below.

In exchange for the complete assignment of any and all personal endorsement rights by Coach, and the other terms and conditions set forth in this Paragraph, Auburn will pay Coach a sum equal to Eight Hundred Eighty-Five Thousand Dollars (\$885,000.00) per year for each year during the term of this Agreement. Coach acknowledges and agrees that Auburn has

the right to assign Coach's personal endorsement rights to a third party multimedia rights holder, which in turn will act as Coach's agent with respect to any and all endorsement opportunities. In exchange for the aforesaid payment, Coach further agrees to make reasonable efforts to cooperate with Auburn and the multimedia rights holder to which Coach's personal endorsement rights are assigned by Auburn. The amount stated above will be paid to Coach in twelve (12) equal installment payments each year of the term commencing January 1, 2005, less any withholdings required by state or federal law, to be paid at the end of each month.

16. RADIO, INTERNET, AND TELEVISION RIGHTS AND PROGRAMS AND PERSONAL APPEARANCES: Auburn shall own all rights to radio, television, internet or other programs that are broadcast or otherwise disseminated to the public in which Coach serves as a participant (hereinafter referred to collectively as "Programs"). Auburn shall be entitled, at its option, to produce and market Programs or negotiate with third parties for the production and marketing of Programs. Auburn shall be entitled to retain all revenue from Program Sponsors for commercial endorsements used during the Programs. "Program Sponsors" are defined as those persons or entities who make financial contributions to or pay a fee for commercial endorsements used on Programs.

Coach agrees to appear on, and work to make successful, Programs to be aired during the football season. Coach agrees that at a minimum, he will appear as principal participant and assist in the production of a minimum of eleven (11) half-hour football coach's television shows to be aired during Auburn's football season; a minimum of twelve (12) one (1) hour football coach's radio call-in shows during Auburn's football season and during spring

football; one (1) fifteen (15) minute pre-game radio show; and one (1) fifteen (15) minute post-game radio show per game during Auburn's football season. All references to "Auburn's football season" shall include pre-season, regular season and post-season games. Auburn has the discretion to require Coach to appear as principal participant in and assist in the production of additional Programs at its discretion. Principal participant projects are those projects in which Coach's involvement is instrumental to the marketing success of the product or project.

Other than as stated above, Coach shall not appear in any Program during the football season (including any post-season bowl game) without the prior written approval of Auburn, except in routine news media interviews for which no compensation is received. Likewise, Coach shall not appear in any commercial endorsements which are broadcast on the internet, on radio or on television during the football season which compete with any of the Program Sponsors. The reasonable efforts required of Coach under this section shall be that due diligence and personal time customarily exerted by head football coaches in the promotion and production of similar Programs at other institutions of higher education with major football programs. Auburn recognizes that the responsibilities of Coach place limitations upon the amount of personal time which Coach can devote to such Programs.

In exchange for Coach's covenants, obligations, and assignments in this Paragraph, Auburn will pay Coach a sum equal to the following amounts in the following years:

2005 - \$855,000.00

2006 - \$1,055,000.00

2007 - \$1,255,000.00

2008 - \$1,455,000.00

2009 - \$1,655,000.00

2010 - \$1,855,000.00

2011 - \$2,055,000.00

The annualized amounts specified above will be paid to Coach in twelve (12) equal installment payments during each year of the term, less any withholdings required by state or federal law, commencing January 1, 2005. It is understood and agreed that any income received by Coach under this Paragraph is in addition to the income received from any source covered by other Paragraphs of this Agreement.

17. PERSONAL APPEARANCES: Coach will make a reasonable number of personal appearances to assist Auburn and/or the multimedia rights holder in the marketing of projects described above or in the maintenance of positive alumni relations. Auburn and/or the multimedia rights holder may utilize Coach's services for the selling of commercial sponsorships through entertainment activities such as golf tournaments, dinners, receptions, personal appearances such as speeches to alumni groups, radio stations, sponsors, and the like. Such appearances must be scheduled at times that are mutually convenient to Coach and Auburn and/or the multimedia rights holder. Auburn shall reimburse Coach for all necessary out of pocket expenses incurred in making such personal appearances. Coach agrees not to appear on any Programs broadcast in Alabama, or states adjoining Alabama, other than those which are affiliated with Auburn and/or the multimedia rights holder, without prior permission from

Auburn or the multimedia rights holder. It is understood and agreed, however, that Coach may appear on normal sports shows or news casts of two minutes or less at his discretion.

The requests made by Auburn on Coach under this Paragraph shall be reasonable. Auburn recognizes that the responsibilities of Coach place limitations upon the amount of personal time that Coach can devote to such programs.

18. OTHER INCOME: Coach shall be allowed to retain any income received from coaching clinics and football camps in which he participates. Coach shall also be allowed to retain any income received from speaking engagements. Coach acknowledges and agrees that prior to accepting any speaking engagement, he must notify the Auburn Director of Athletics of the speaking engagement and obtain his approval. The Director of Athletics may refuse to provide approval at its discretion but will not unreasonably withhold such approval. In the event the total income received by Coach for speaking engagements is less than Fifty Thousand Dollars (\$50,000.00) during a given contract year, Auburn will pay Coach the difference between Fifty Thousand Dollars (\$50,000.00) and the amount actually received by Coach within thirty (30) days of presentation of supporting documentation by Coach for that year. Payment of this amount will be in addition to the annual payment for Radio and Television Rights and Programs and Personal Appearances set forth above. The payment under this paragraph shall be in addition to and exclusive of all other compensation under this Agreement. It is understood and agreed by Auburn that Coach will be guaranteed Fifty Thousand Dollars (\$50,000.00) per year for speaking engagements under this paragraph.

19. ENTERTAINMENT EXPENSES: Auburn will provide Coach with an annual allowance of Twenty Five Thousand Dollars (\$25,000.00) for social and entertainment functions which are related to his responsibilities as Head Football Coach. This will not include functions where team members are being fed or for meetings that are held in Coach's home for team members. Coach will be reimbursed for those sums in accordance with Auburn's procedures for reimbursement of expenses. It is understood and agreed by Auburn that Coach will be guaranteed up to Twenty-five Thousand Dollars (\$25,000.00) of reimbursable expenses under this paragraph as an expense allowance. The reimbursement of expenses for any team functions shall be in addition to the guaranteed amount.

20. RIGHT OF FIRST NEGOTIATION: Auburn shall have the right of first negotiation on any and all additional media concepts of any nature, both published and electronic, that are presented to Coach or developed by Auburn or Coach. Coach shall notify Auburn in writing of such concepts, along with all proposed terms and conditions associated with the concept, as soon as possible after he becomes aware of them. Auburn shall have twenty (20) days from the date of receipt of a written description of the concept to notify Coach in writing whether it wishes to accept the idea on the same terms as were presented. If Auburn should decline to participate, Coach shall then be free to pursue the concept and retain all benefits and proceeds of the project, provided he first obtains the written approval of Auburn to participate. Auburn reserves the right to withhold approval where it deems it appropriate or otherwise in the best interest of Auburn. Auburn will retain all proceeds of any and all projects, whether presented to Coach by Auburn, its multimedia rights holder or some other third party, in

which Auburn participates. In the event Coach receives any compensation from any source under this Paragraph, it shall be in addition to and exclusive of all other income under this Agreement.

21. TERMINATION OF CONTRACT OF EMPLOYMENT BY AUBURN:

Should Auburn elect to terminate this Agreement without just cause ("Just Cause" being failure to comply with the provisions of Paragraphs 13 and 14 above or the Personal Conduct Clause set forth below) then Auburn will be liable to Coach for the payment of liquidated damages in the amounts specified next to the calendar years listed below. Pro rata payments shall be made for partial years. The following chart illustrates the liquidated damages ("Buy-Out Amount") which may become due from Auburn under the provisions of this Paragraph:

<u>Calendar Year</u>	<u>Buy-Out Amount</u>
2005	\$7,000,000.00
2006	\$7,000,000.00
2007	\$6,000,000.00
2008	\$6,000,000.00
2009	\$5,000,000.00
2010	\$4,000,000.00
2011	\$3,000,000.00

The Buy-Out Amount shall be paid in the event of termination of the Contract by Auburn to Coach in two equal payments, the first of which shall be due thirty (30) days from the

date Auburn terminates this Agreement under the provisions of this Paragraph, and the second of which shall be due on the anniversary of such termination date. Payment of the Buy-Out Amounts by Auburn under this Paragraph will satisfy fully and discharge completely any and all obligations which Auburn has to Coach under this Agreement, including but not limited to, payments that have been earned or accrued, but not yet paid.

22. TERMINATION OF CONTRACT OF EMPLOYMENT BY COACH:

Should Coach elect to terminate this Agreement prior to the end of the term of this Agreement for any reason, unless the termination is due to Coach's disability or illness that prevents him from fulfilling his duties as Head Football Coach (see Paragraph 28 below), then Coach will be liable to Auburn for the payment of liquidated damages in the amounts specified next to the calendar years listed below. Pro rata payments shall be made for partial years. The following chart illustrates the liquidated damages ("Coach's Buy-Out Amount") which may become due from Coach to Auburn under the provisions of this Paragraph:

<u>Contract Calendar Year</u>	<u>Coach's Buy-Out Amount</u>
2005	\$7,000,000.00
2006	\$7,000,000.00
2007	\$6,000,000.00
2008	\$6,000,000.00
2009	\$5,000,000.00
2010	\$4,000,000.00
2011	\$3,000,000.00

In the event Coach terminates the Contract under the provisions of this Paragraph, Coach or his designee will pay the Coach's Buy-Out Amount in two equal payments, the first of which shall be due thirty (30) days from the date Auburn terminates this Agreement under the provisions of this Paragraph, and the second of which shall be due on the anniversary of such termination date. With the exception of the obligations contained in Paragraphs 26 and 27 of the Agreement, which shall survive the termination of the Agreement, payment of the Coach's Buy-Out Amount by Coach will satisfy fully and discharge completely any and all obligations Coach has to Auburn under this Agreement.

23. CONTRACT TERMINATION: Coach and Auburn acknowledge and agree that in the event either party were to terminate this Agreement prior to the end of its term, the injury or damage to the non-terminating party would be difficult or impossible to accurately estimate, and Coach and Auburn stipulate that the amount of liquidated damages set forth above in Paragraphs 21 and 22 represents a reasonable estimate of the probable loss or injury to the non-terminating party in the event this Agreement is terminated prior to the end of its term. Coach and Auburn intend for this clause to provide damages to the non-terminating party and not as a penalty against the party who terminates this Agreement prior to the end of its term. In no event, unless otherwise expressly provided herein, is Coach, after termination of employment, entitled to any other benefits or privileges, including but not limited to parking, tickets, or access to athletic events which otherwise are or may be available to Coach while employed or after employment.

24. PERSONAL CONDUCT CLAUSE. This paragraph 24 shall be referred to as the "Personal Conduct Clause". Auburn shall have the right to terminate this Agreement if Coach engages in Inappropriate Conduct as defined in this Paragraph. The term "Inappropriate Conduct" shall mean serious and egregious misconduct that is contrary to the positive image and conduct Auburn expects from its Head Football Coach. In this regard, inappropriate Conduct will include acts of dishonesty, moral turpitude, continued or consistent acts of misconduct by Coach after he is told that such conduct is unacceptable to Auburn, and acts of indiscretion that would embarrass or put Auburn in a negative light in the public eye. Illustrative but not conclusive acts of Inappropriate Conduct would include criminal conduct of a serious nature such as felonies or misdemeanors that cast Coach and Auburn in a negative light, embezzlement, misappropriation of funds, inappropriate sexual conduct that would embarrass or possibly result in liability for Auburn, violation of discrimination laws, striking an Auburn player or a player from an opponent or similar egregious act. Inappropriate Conduct is not intended to include isolated acts of misconduct unless the conduct is so egregious that Auburn feels termination of Coach is required under the circumstances. Where minor misconduct occurs, Auburn shall not use this Personal Conduct Clause as a means to avoid the liquidated damages or contract completion payments.

25. PAYMENT PROVISIONS: If Auburn terminates Coach for violation of the Personal Conduct Clause under Paragraph 24, Coach will be entitled to receive from Auburn the remainder of his base salary due for that particular contract year, plus any amount earned but not yet paid under Paragraph 4(a)-(h), Paragraph 15 and Paragraph 16, and nothing else.

Notwithstanding the foregoing, in the event Coach is terminated pursuant to this Personal Conduct Clause as a result of being convicted of or pleading guilty or nolo contendere to a felony crime, Coach will not be entitled to receive any further payment of any sort under this Agreement.

Auburn retains the discretion to determine, after due notice and appropriate hearing, whether any conduct by Coach is Inappropriate Conduct. In the event Auburn terminates Coach pursuant to the terms of the Personal Conduct Clause, Coach will have the right to contest, through the grievance procedure available to administrative and professional staff at Auburn University, whether Auburn owes him additional funds pursuant to Paragraphs 4(h) or 21 of this Agreement. A copy of the Auburn University rules and guidelines has been provided to Coach. Further, Coach will also be able to contest whether Auburn owes him additional funds before the Alabama Board of Adjustment pursuant to Alabama Code §41-9-60, et seq. If Coach contests whether Auburn owes him additional funds, Auburn will pay for reasonable attorney's fees incurred by Coach in the event that Coach prevails.

26. WAIVER OF CLAIMS: In the event of termination of Coach's employment, neither Auburn nor Coach shall be entitled to receive, and each hereby waives any claim against the other, and their respective trustees, officers, administrators, agents, employees, successors, and personal representatives for consequential damages by reason of any alleged economic loss, including without limitation, loss of collateral income, loss of earning capacity, loss of business opportunity, loss of perquisites, loss of speech, camp or other outside activity fees, or expectation income, or by reason of alleged humiliation or defamation resulting from the

fact of termination, the public announcement thereof, or the release by Auburn or Coach of information or documents required by law. Coach acknowledges that in the event of termination of this Agreement for reasons other than (i) termination for Just Cause; (ii) termination for violation of Auburn, SEC or NCAA rules or regulations; or (iii) termination for violation of the Personal Conduct Clause, he shall have no right to occupy the position of Head Football Coach and that his sole remedies are provided in Paragraph 21 and shall not extend to injunctive relief. Coach acknowledges that he has no expectation of tenure.

27. OWNERSHIP OF RECORDS: All documents, records, or materials, including without limitation, personnel records, recruiting records, team information, films, statistics or any other material or data, furnished to Coach by Auburn or developed by Coach on behalf of or at the expense of Auburn or otherwise in connection with the employment of Coach are and shall remain the sole and confidential property of Auburn. Within ten (10) days of the expiration or termination of this Agreement, Coach shall cause any such materials in his possession or control to be delivered to Auburn. At the same time Coach shall return to Auburn all credit cards or keys issued to him by Auburn.

28. PHYSICAL OR MENTAL DISABILITY/INABILITY TO PERFORM: In the event of Coach's physical or mental disability or physical or mental inability to perform his duties under this Agreement for a period of time which would cause a substantial adverse impact on Auburn's intercollegiate program, Auburn will pay to Coach a sum equal to sixty percent (60%) of his annual base salary for the remainder of this Agreement, plus the entire amount of any payments earned but not yet paid pursuant to Paragraph 4(a)-(h), Paragraph 15

and Paragraph 16. Any amounts owed under Paragraphs 15 and 16 will be calculated on a pro rata basis using the date the disability began. Upon such payment, Coach's employment will be terminated without further obligation of either party except for obligations contained in Paragraphs 26 and 27, but Coach will continue to have the right to receive any non-monetary employee benefits (not to include any payment for the Assignment of Personal Endorsement Rights or the Radio and Television Rights and Programs and Personal Appearances) to which he is entitled because of his prior employment by Auburn. The amounts to be paid under this Paragraph will commence on the date that the disability began and Coach was officially determined to be unable to perform his duties as Head Football Coach and shall continue throughout the term of this Agreement. This Paragraph is not intended to confer any death benefit, nor shall it be applied in any manner which violates applicable law concerning handicaps or disability. Determination of any such physical or mental disability that would result in Coach's inability to perform the duties as Head Football Coach shall be made by majority vote of a panel of three (3) medical experts to be appointed by Auburn to be selected as follows: one by Auburn; one by Coach or his counsel, currently Jere L. Beasley,; and the third by the other two members. Proper notice shall be given to Coach and his counsel, currently, Jere L. Beasley, if Auburn believes this Paragraph should be invoked. Upon being appointed, the medical panel will then proceed to investigate the matter concerning disability, will hold hearings, and make a report to Auburn and to Coach and his attorney setting out its findings. The panel, if it finds a physical or mental disability for Coach, shall make a recommendation as to whether suspension or termination is the proper cause of action by Auburn.

29. LIFE INSURANCE: Auburn will purchase a term life insurance policy with a company to be selected by Coach insuring the life of Coach in the amount of Five Million Dollars (\$5,000,000.00). Auburn will pay all premiums when due during the term of the policy and will keep the policy in full force and effect for so long as Coach is employed by Auburn or is on disability. Coach shall designate his beneficiary under the policy. This policy shall be purchased within thirty (30) days after this Agreement becomes effective. In the event of a termination of this Agreement for any reason, other than the death of Coach, Coach shall be entitled to an assignment to him of such policy on his life upon payment by him to Auburn, within forty-five (45) days following such termination, of a sum equal to the proportionate part of the gross premium last paid before the date of transfer which covers the period extending beyond that date, plus administrative costs of such transfer, if any.

30. DUE PROCESS REQUIREMENTS: All the requirements of due process under federal or state laws for Auburn University employees generally shall be afforded Coach for applicable matters arising out of Coach's employment with Auburn University.

31. ENTIRE AGREEMENT: This instrument contains the entire Agreement of the parties and is understood to modify and replace any prior Agreement with respect to the subject matter hereof. The provisions of the Agreement shall be retroactive to December 31, 2004, when the Agreement in principle was agreed to.

32. NOTICE: In addition to the notices required to be given by Auburn to Coach, Auburn shall also deliver a copy of any such notice to his counsel, currently Jere L. Beasley, Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., 218 Commerce Street,

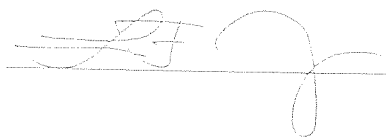
Montgomery, Alabama 36104. If Auburn fails to comply with this provision, any notice to Coach by Auburn shall be null and void.

33. ACCEPTANCE OF TERMS OF EMPLOYMENT: Auburn offers and Coach hereby accepts employment by Auburn as Head Football Coach on the terms and conditions herein contained.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the 16<sup>th</sup> day of February, 2005.

WITNESS:

AUBURN UNIVERSITY

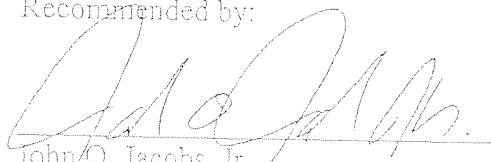
  
\_\_\_\_\_ TO

BY   
\_\_\_\_\_ Edward R. Richardson  
Interim President

  
\_\_\_\_\_ TO

BY   
\_\_\_\_\_ Thomas Hawley Tuberville  
Head Football Coach

Recommended by:

  
\_\_\_\_\_ John O. Jacobs, Jr.  
Auburn University Athletics Director

