



Item: II

Thursday, May 3, 2012

SUBJECT: Approval of Employment Agreement for Head Women's Basketball Coach

PROPOSED BOARD ACTION

Approve an employment agreement with Kellie Lewis-Jay for the position of Florida Atlantic University Head Women's Basketball Coach.

BACKGROUND INFORMATION

The position of Head Coach of the University's women's basketball program recently became open. The Athletics Department conducted an extensive search to fill the position, including interviewing multiple candidates. Interim Athletics Director Melissa Dawson has determined that the best qualified candidate is Kellie Lewis-Jay. Ms. Lewis-Jay meets all of the criteria for the position. Ms. Lewis-Jay has been offered and has accepted the position, subject to this Board's approval of the attached proposed employment agreement.

Under the proposed agreement, Ms. Lewis-Jay will assume overall responsibility for all aspects of the Women's Basketball Program, subject to the oversight of the Athletics Director. The proposed agreement prescribes the Head Coach's rights and responsibilities consistent with industry standards for NCAA Division I women's basketball programs, including important accountability standards for maintaining the program's NCAA Academic Progress Rating.

Pursuant to the Board's Operations Policies and Procedures, any employment contract that contains severance, termination, or separation from employment provisions inconsistent with the University's Personnel Regulations must be approved by the Board. Ms. Lewis-Jay's proposed employment agreement contains termination provisions that vary from the University's Personnel Regulations by: (1) adding specific actions that may constitute cause for dismissal and (2) adding a right of appeal to the President for any termination. In addition, the proposed agreement contains severance provisions that vary from the University's Personnel Regulations by providing Ms. Lewis-Jay up to one year's base salary if she is terminated without cause.

IMPLEMENTATION PLAN/DATE

The agreement would be signed and take effect immediately upon Board approval. Ms. Lewis-Jay's employment would commence on May 4, 2012 and terminate on April 30, 2017, unless otherwise extended, amended or terminated. After the first full year of the Agreement, the term may be extended for one additional year (through April 30, 2018) by mutual written agreement of the Head Coach and the University.

FISCAL IMPLICATIONS

Ms. Lewis-Jay will be paid an annual base salary of one hundred and sixty thousand dollars (\$160,000.00). Ms. Lewis-Jay will be entitled to a two and one -half percent (2.5%) increase in her annual base salary on July 1, 2013 and on each July 1 thereafter for the term of the agreement. Ms. Lewis-Jay is also eligible for certain annual bonuses if season ticket sales exceed certain levels or if the team achieves certain performance benchmarks. Ms. Lewis-Jay's base salary, any annual increases thereto, and any performance or ticket sales incentive payments are subject to the availability of funds in the University's athletics department's annual budget or the University Foundation's women's basketball Excellence Fund.

Supporting Documentation:

Proposed Employment Agreement

Presented by: Melissa Dawson

Phone: 561-297-2683

**FLORIDA ATLANTIC UNIVERSITY
HEAD COACHING AGREEMENT
(Women's Basketball Program)**

This Head Coaching Agreement ("Agreement") is made and entered into by and among the Florida Atlantic University Board of Trustees ("University" or "FAU"), a public body corporate of the State of Florida, and Kellie Lewis-Jay ("Coach") (collectively the "Parties") as follows:

1. PURPOSE. It is the purpose of this Agreement, which is based upon the mutual intent of the Parties, for Coach to serve as the head coach for the University's Women's Basketball Program ("Program") under the terms and conditions set forth herein, in accordance with all applicable University regulations and policies. It is further the intent of the Parties that the Coach will be responsible for administering all aspects of the Program, subject to the oversight and supervision of the University's Athletics Director, and will consult with the University's National Collegiate Athletic Association ("NCAA") Compliance Officer in developing and maintaining the University's Program in compliance with the regulatory criteria of the NCAA and the Sun Belt Conference or other successor conference ("Conference") (collectively the "Athletic Requirements"), and the University's regulations and policies.

2. COACH'S REPRESENTATIONS. Coach warrants and represents to the University the following:

- A. Coach has the necessary knowledge, skills, qualifications, and experience to serve as the head coach of the Program.
- B. Coach is legally competent and able to enter into this Agreement and there exists no conflicting obligations or agreements with another college, university, or other individual or entity that prevents her/him from entering into this Agreement and fully performing the duties required by this Agreement.
- C. Coach is familiar with and shall comply with all Athletic Requirements regarding the University and her/his coaching responsibilities. Coach further acknowledges and agrees that Coach is familiar with and shall comply with all the University's regulations and policies regarding her/his employment and the University regulations and policies applicable to the student athletes under her/his direction.
- D. Coach has fully disclosed to the Athletics Director and the University's NCAA Compliance Officer: 1) any and all past investigations of alleged violations of Athletic Requirements in which she/he has been involved directly, indirectly, as a witness or in some other capacity; 2) any lawsuits filed against her/him in her/his official or personal capacity arising out of any of her/his prior employment relationships; or 3) any and all instances in which she/he was investigated for misconduct related to the performance of her/his employment, including any alleged inappropriate misconduct involving former co-workers or the student athletes under her/his direction.

3. TERM OF AGREEMENT. The Parties agree that Coach will serve as the head coach of the Program for a term of approximately five (5) year(s), commencing May 4, 2012, and ending April 30, 2017 ("Term"), unless this Agreement is otherwise modified or terminated by the Parties in accordance with the requirements set forth in this Agreement. On or after April 30, 2013, the Term of this Agreement may be extended by mutual written agreement of the parties for one additional year, ending April 30, 2018. Coach hereby accepts such employment on the terms

and conditions set forth in this Agreement. This appointment shall be subject to prior termination as provided for in this Agreement and to the availability of annual appropriations by the Florida legislature.

4. DUTIES. Coach agrees that throughout the term of this Agreement she/he will devote her/his full time efforts and abilities for the exclusive benefit of the University and serve as the head coach of the Program. Coach's duties and obligations shall include, but not be limited to, the following requirements:

- A. Coach acknowledges and agrees that she/he must abide by any and all applicable Athletic Requirements and University regulations and policies, including without limitation those relating to the conduct, administration and control of the Program as it is now constituted or as it may develop in the future. Coach acknowledges and agrees that she/he is responsible for the day-to-day operations and administration of the Program; the fiscally-responsible management of staff, budget and other resources; the hiring, management, and termination of assistant coaches, and Program administrative staff necessary and appropriate to assist Coach in meeting her/his responsibilities hereunder; and developing, implementing, and adhering to the Program's annual budget, subject to the Athletics Director's approval. Coach agrees to attend all required University or Athletics Department meetings; to pass the NCAA recruiting examination on an annual basis; to exercise fiscal integrity at all times; and to ensure that she/he and all assistant coaches show the utmost respect for all University students, faculty and staff and that Coach and her/his assistant coaches conduct themselves in a manner that positively represents the University and its educational mission.
- B. Coach acknowledges and agrees that if at any time during this Agreement that she/he becomes aware, or has reasonable cause to believe, that any player or coach of any of the University's athletics programs, or any University student, faculty, staff member, agent or any outside individual or volunteer who reportedly is acting on behalf of the University has violated, or allowed or caused to be violated, any Athletic Requirements or University regulations or policies, or if Coach receives notice or information that the NCAA or the Conference intends to investigate or review any alleged violations of the Athletic Requirements of one of the University's athletics programs, or if Coach receives notice or information that any state or federal law is alleged to have been violated by any player or coach of any University athletics program, she/he must immediately report her/his knowledge or belief of the situation to the Athletics Director and the University's NCAA Compliance Officer.
- C. Coach acknowledges and agrees that she/he or any coach under her/his direction who is found to have violated applicable Athletic Requirements or University regulations or policies regarding required conduct may be subject to disciplinary or corrective action up to and including suspension without pay or termination of her/his employment.
- D. Coach acknowledges and agrees that she/he and all individuals under her/his direction, including assistant coaches, administrative personnel and student athletes in the Program, must cooperate with and support the University's faculty and administration in meeting the educational mission of the University. The University has primary responsibility and places a high priority on the academic success of its student athletes, and Coach agrees to support this objective by using her/his best efforts to ensure all classroom attendance, study table, grade point average, and graduation requirements are met by the student athletes under her/his direction, and agrees to coordinate and

cooperate with any academic advisor designated to work with the individual student athletes. Coach acknowledges and agrees that she/he is responsible for the Program maintaining the minimum Academic Progress Rating ("APR") required of Division I women's basketball programs by the NCAA.

- E. Coach acknowledges and agrees that her/his responsibilities also include, without limitation: (i) the maintenance and cultivation of effective relations with the governing boards, associations, conferences, and committees that have regulatory oversight or authority over the University's intercollegiate athletics programs; institutional alumni; the media; the public; and students, faculty, staff and friends of the University; (ii) teaching the mechanics and techniques of basketball to team members, coaching and recruiting student-athletes, overseeing daily practices, analyzing and instructing student-athletes in areas of deficiency; (iii) making fundraising appearances for the University's athletics department at least fifteen (15) times a year, as designated by the Athletics Director and in coordination with the University's advancement efforts, (iv) performing all other duties customarily performed by a head basketball coach of commensurate rank serving other NCAA member institutions; and (v) performing such other duties as assigned by the Athletics Director and/or her/his designee consistent with Coach's position as Head Coach for the University's Women's Basketball Program.
- F. Coach acknowledges and agrees that she/he will assume primary responsibility, subject to the Athletics Director's approval, for developing the yearly basketball schedule and meeting institutional and conference goals, including an ongoing commitment to review the Program's scheduling model to increase Conference compatibility. To help off-set expenses for the University's athletic department, the Program will be required to play a sufficient number of games to generate at least \$20,000 in guaranteed game revenues for the 2012-13 season, with a minimum guarantee increase of five percent (5%) each year thereafter. In any season in which guaranteed game revenues exceed the minimum required guarantee revenue amount, Coach shall receive a Performance Incentive equal to twenty-five percent (25%) of the amount of revenues exceeding the minimum required guarantee revenue amount, up to a maximum annual Performance Incentive of \$5,000.

5. COMPENSATION & OTHER BENEFITS.

- A. Annual Salary. Under the terms of this Agreement, Coach will be entitled to an annual base salary in the amount of one hundred sixty thousand dollars and 00/100 cents (\$160,000.00). Coach will be eligible to receive a two and one-half percent (2.5%) increase in her/his annual base salary on July 1, 2013, and on each July 1 thereafter for the Term of this Agreement. Coach's base salary, any annual increases thereto, any Performance Incentive payments, and any Ticket Sales Incentive payments are subject to appropriate deductions for taxes and benefits pursuant to regular University payroll practices, and further subject to the availability of funds in the University's athletics department's annual budget or the University Foundation's women's basketball Excellence Fund.
- B. Business Vehicle. For the period that Coach is head coach of the Program, the University will provide an automobile for the use of Coach. The business and personal use of the automobile will be reported to the office of the University's Vice President for Financial Affairs in a format determined by that office. The personal use of such automobile will be valued according to guidelines of the Internal Revenue Service and

reported as income to Coach. Coach shall be required to pay expenses of maintenance, operation, fuel and insurance of the vehicle.

C. Performance Incentives. When the coaching efforts of Coach result in the Program being recognized in any of the following ways, Coach will be paid a one-time lump sum Performance Incentive pursuant to regular University payroll practices in the amounts indicated below. All such payments (other than those based upon NCAA APR rates) will be made no later than June 15th following the end of the season in which they were earned. Performance Incentives based upon NCAA APR rates are deemed to be achieved on the annual date that the NCAA announces all member institutions' APR scores, and Performance Incentive payments for such achievements shall be made within ninety (90) days of the date of the achievement. The Performance Incentives included within each "Group" listed below are *not* cumulative within each Group; the Coach is awarded based on the highest level achieved within each Group, if applicable.

1. Group 1:
 - a. Winning the Regular Season Conference Championship: \$2,500
 - b. Receiving an invitation to the WNIT \$3,000
 - c. Receiving an at-large NCAA Tournament Bid: \$4,000
 - d. Winning the Conference Tournament and receiving an automatic bid to the NCAA Tournament: \$5,000

2. Group 2:
 - a. Winning the Conference Coach of the Year: \$3,000
 - b. Winning the National Coach of the Year: \$10,000

3. Group 3:
 - a. Winning an NCAA Tournament game: \$5,000
 - b. Appearing in a NCAA Tournament Sweet 16 game: \$10,000
 - c. Appearing in a NCAA Tournament Elite 8 game: \$15,000
 - d. Appearing in a NCAA Tournament Final 4 game: \$20,000
 - e. Appearing in the NCAA National Championship game: \$25,000
 - f. Winning the NCAA Tournament Championship: \$30,000

4. Group 4:
 - a. Receiving a minimum NCAA APR of 950: \$2,000
 - b. Receiving a minimum NCAA APR of 960: \$2,500
 - c. Receiving a minimum NCAA APR of 970: \$3,000
 - d. Receiving a minimum NCAA APR of 1000: \$3,500
 - e. Receiving a top 10% NCAA APR recognition: \$5,000

D. Ticket Sales Incentives. If Program ticket sales net revenue exceeds \$5,000 for the 2012-13 season, Coach shall be entitled to a one-time lump sum bonus amount equivalent to twenty-five percent (25%) of the dollar amount by which ticket sales net revenue exceeds the athletics department's annual budget goals for Program ticket sales net revenue. A similar formula will be used for each successive year of the Agreement, based on the budgeted goals of the Program's ticket sales net revenue established by the athletic department each year. (Ticket sales revenues are calculated minus taxes and foundation donations).

- E. Complimentary Tickets. Coach shall receive twenty (20) complimentary tickets to each Program home game. Assistant coaches in the Program shall receive six (6) complimentary tickets to each Program home game. These ticket allocations shall also apply to any post-season Program home games. Coach shall be provided the opportunity to purchase at face value up to forty (40) tickets allotted to the University for any post-season Program games. Coach shall be provided upon request up to six (6) complimentary tickets to each home game for all other University athletics teams.
- F. Athletic Products. Coach and all assistant coaches shall receive retail gear as part of the University's athletic department-wide arrangement.
- G. Travel. The University shall provide travel and accommodations for Coach's spouse and daughter to attend the conference tournament and NCAA tournament games for their program. Where feasible, regular season travel arrangements for the team shall be made available for Coach to purchase for his/her spouse and daughter at the rate charged the University, subject to availability from third-party providers. All travel shall be provided in accordance with Sections 112.061, Florida Statutes, processed in accordance with the University's travel policies and regular payroll practices, and reported as income to the Coach as appropriate.
- H. WBCA Convention. Coach and her/his assistant coaches shall be permitted to attend the WBCA Convention every year, subject to the availability of funds in the University's athletics department's annual budget.
- I. Cell Phones. Cell phones or cell phone stipends will be provided for Coach and her/his assistant coaches in the reasonable discretion of the University and in accordance with existing University policy and applicable law.
- J. Benefits. Coach is employed by the University as an FLSA exempt Contract Employee with employment terms governed by this Agreement. Coach is not an Administrative, Management and Professional (AMP) or Support Personnel (SP) employee; however, Coach will receive any and all other regular employment benefits provided by the State of Florida or the University to AMP non-tenure earning at-will employees at the University. Coach agrees that she/he shall be subject to the same University regulations, policies and payroll practices applicable to AMP employees unless expressly waived or superseded by the terms of this Agreement. Coach agrees that she/he is not eligible and will not accrue annual/vacation leave time through the term of this Agreement or be eligible for such leave payout upon termination that may otherwise be due to AMP employees if accrued. Coach may accrue sick leave time similar to an AMP employee through the term of this Agreement, but is not eligible for sick leave payout upon termination that may otherwise be due to AMP employees. Coach acknowledges that all regular AMP employment benefits may be adjusted from time to time as provided for by the State of Florida and/or the University. Nothing in this subsection shall prevent Coach from managing her/his own schedule (including reasonable vacation or use of accrued sick time as needed) in accordance with the provision of her/his duties set forth in Section 4 above and under the supervision and with approval of the Athletics Director.

6. OUTSIDE ACTIVITIES. Coach acknowledges and agrees that the performance of coaching duties of Program is her/his primary responsibility to the University, and further agrees that she/he will not engage in other activity that may reflect detrimentally on or adversely affect the reputation of the University or that is in conflict with the Coach's primary responsibilities as head coach of the Program or with the University's interest or educational mission. Further, Coach acknowledges and agrees she/he must obtain prior written approval of the Athletics Director before engaging in any outside employment or other non-paid activities other than Coach's responsibilities to the University. Coach shall annually report to the Athletics Director outside employment for compensation, including but not limited to all athletically-related income and benefits from sources outside the University and the time spent on all outside employment. The report shall include a detailed accounting of all income received by Coach for participation in any outside activities. The date by which such reports must be submitted shall be determined by the University. Coach shall effectively communicate to outside employers that any approved outside employment is Coach's responsibility and that Coach does not act as an agent or representative of the University in such outside employment. University facilities, property, staff, or team images shall not be used in such outside employment except with permission of the Athletics Director, and payment of appropriate fees may be required. Under no circumstances shall the University guarantee any such outside employment. All outside employment shall be independent of Coach's employment at the University, and the University shall have no responsibility or liability for claims arising therefrom. In the event University dismisses Coach or terminates this Agreement, regardless of the reason or timing of such action, Coach acknowledges and agrees that she/he shall have no claim or cause of action against University or its guarantors for loss of any contract or income Coach may have otherwise received from outside employment.

- A. Coach's Shows. Coach shall have the opportunity to implement a radio and/or television show, subject to reasonable University approval and sponsor-related restrictions, and retain revenues in conjunction with the University's athletics' marketing company, as applicable.
- B. Sports Camps and/or Clinics. Coach has the opportunity to conduct sports camps and/or clinics related to her/his particular sport on the University's campus for at least two (2) weeks each summer, subject to availability and the University's facilities use policies. Such sports camps/clinics, while independent of Coach's direct employment with the University, shall be conducted as follows:
 - 1. For any sports camp or clinic conducted by Coach on the University campus or property or at any other site using the University's name, she/he agrees that she/he will be solely responsible for any taxes or expenses and liability incurred in operating such camps and/or clinics, and provide the Athletics Director and/or the University's NCAA Compliance Officer with proof of full liability insurance, including workers' compensation insurance, or any other insurance that may be required by law no later than seventy-two (72) hours prior to the start of any sports camp/clinic. Such insurance must specifically provide coverage in an amount not less than \$1,000,000.00 per incident for the University, the Board of Governors, the State of Florida, and any of their officers, employees, or agents, or the successors of any and each of them, against any and all claims or exposure which may result from any camp and/or clinic activities. Coach further agrees to indemnify and hold the University, the Board of Governors, the State of Florida, and any of their officers, employees, or agents, or the successors of any and each of them, harmless from

any liability which may result from any camp and/or clinic activities, including any attorney's fees and costs which might be incurred as a result of any legal action.

2. Prior to the start of any camp/clinic Coach agrees to perform any and all necessary background checks regarding any individual who will be working at the camp/clinic in accordance with Florida law. Coach acknowledges and agrees that the failure or inability to provide proof of insurances or the background checks required by this Agreement no later than seventy-two (72) hours prior to the start of any camp/clinic will constitute grounds for the University to withdraw authorization for the use of its name and facilities until proof of insurance or completed background checks are provided.
3. Coach agrees to provide an annual financial statement to the Athletics Director and/or the University's NCAA Compliance Officer within thirty (30) days of the end of camp. Coach further agrees that the University will have the right to audit business records of the camp(s) upon ten (10) days written notice to Coach of its intent to do so.

- C. Coach's Use of Marks. Coach has the right to use certain registered University logo(s) and mark(s) for the marketing, advertising or promotional materials for any camp activity or Coach's Show in which she/he is the primary participant or with which she/he is affiliated. Such usage is provided without charge to the Coach and may not be transferred to any third party or entity. Use of any registered University logos or marks must be approved in writing by the Athletics Director or her/his designee. Upon approval Coach agrees that she/he will use only those registered University logos or marks that she/he has been granted written permission to use, and that all such use shall be in accordance with University policies and any licensing agreement between the University and its outside intercollegiate athletics licensing entity. Coach will be solely responsible for any obligations resulting from the use of the University's name, registered service marks and/or logos, and any University facility or field.

7. SOLICITATION OF GIFTS. Coach may not solicit or accept personal gifts of cash or items of substantial value, or accept anything other than reasonable social hospitality from any outside individual in accordance with Florida law (Chapter 112, Florida Statutes), Athletic Requirements, and the University's regulations and policies, including its Code of Ethics.

8. TERMINATION OF EMPLOYMENT & OTHER DISCIPLINARY ACTIONS. The Parties agree and acknowledge that the services Coach will provide as head coach of the University's Program are the essence of this Agreement. The Parties recognize that except as provided herein, separation of the Coach's employment is governed by the University's regulations and policies.

- A. Prohibited Activities. In addition to the University's regulations and policies, the following is a non-exclusive list of prohibited activities for a coach to engage in which if violated may lead to discipline for the Coach, including but not limited to suspension for a period of time with or without pay or termination of employment and this Agreement for cause:
1. Failure or refusal by Coach to comply with any of the terms of this Agreement, neglect by Coach of any of the duties required by this Agreement, an unwillingness to perform such required duties to the best of Coach's ability, or other breach of this Agreement;

2. Any violation by Coach of the Athletic Requirements, or misleading or failing to timely and accurately respond to any reasonable requests or inquiries by the NCAA, the Conference, the University or any other governing body concerning or related to the supervision of the Program, or failure of the Program to maintain the minimum APR required of Division I women's basketball programs by the NCAA;
3. Directing or otherwise instructing any coach, student athlete, or any other individual to mislead, or to fail or refuse to respond or provide information or documents in response to any reasonable requests or inquiries by the NCAA, the Conference, the University or any other governing body concerning or related to the Program or any other college or university athletics program with which Coach may have been involved in the past;
4. Failure or refusal by Coach to report immediately to the Athletics Director and/or the University's NCAA Compliance Officer when Coach knows, or has reasonable cause to believe, any of the following events have occurred, or are about to occur:
 - (a) Any member of the Program has or may have violated, or allowed or caused to be violated, any Athletic Requirements, law or University regulations or policies, or has engaged in any serious or intentional violation of the law, or the University's regulations or policies;
 - (b) The NCAA or the Conference intends to investigate or review any alleged violations of Athletic Requirements by the Program or any other University sports program; or
 - (c) Any student, faculty or staff member, agent of the University, or any outside individual reportedly acting on behalf of the University who has a direct relationship with Coach has, or may have, violated, or allowed or caused to be violated, or is alleging to know of a violation of any Athletic Requirements, law or University regulation or policy;
5. Any fraud or dishonesty by the Coach while performing the duties required by this Agreement, including, but not limited to, falsifying, altering or otherwise fraudulently preparing any document(s) or record(s) of, or required by, the University, the NCAA, or the Conference pertaining to recruits or student athletes, transcripts, eligibility forms, compliance reports, financial or expense reports, or any other document pertaining or related to the Program;
6. Engaging in, assisting, encouraging, or soliciting others to engage in bookmaking, illegal gambling, or betting of any type involving any intercollegiate or professional athletic contest;
7. Possession, use, sale, or manufacture of any narcotics, drugs, or other controlled substances or steroids or other chemicals in a manner prohibited by law or applicable Athletic Requirements, or allowing, encouraging, or condoning the possession, use, sale, or manufacture of any narcotics, drugs, or other controlled substances or steroids or other chemicals by any student athlete in a manner which is prohibited by Law or by the Athletic Requirements, or failure or refusal to fully

participate and cooperate in the University's implementation and enforcement of any drug/alcohol testing program; or

8. Engaging in conduct which, in the sole determination of the University, violates any law or University regulation or policy; or engaging in any other conduct which, in the sole determination of the University, adversely affects the mission, operations, or reputation of the University, including but not limited to, acts of dishonesty, misrepresentation, fraud, violence, the abuse of alcohol or drugs, domestic violence or spousal abuse, or other acts of violence, assault, or moral turpitude. Also, any conduct which results in a plea of guilty or nolo contendere by Coach for any crime (except for minor traffic offenses), conviction of Coach for any crime (except for minor traffic offenses), or criminal charge for which adjudication or prosecution was deferred or withheld (except for minor traffic offenses).
9. Failure to fully and accurately report all additional sources of income in accordance with Law, Athletic Requirements, University rules, regulations and policies, and this Agreement, or any other conduct of the Coach which in the sole judgment of the University reflects adversely on the University, including but not limited to information learned by the University after executing this Agreement that the Coach was found to have violated Athletic Requirements at any previous college, university or employer.

B. Termination Obligations.

1. Termination by University Without Cause. The University may terminate this Agreement at any time without cause by delivery of written notice to Coach. In the event this Agreement is terminated by the University without cause, the written notice shall be signed (i) by the President of the University and the Athletic Director, if delivered within the first four years of this Agreement, or (ii) by the Athletic Director, if delivered after the first four years of this Agreement. Coach's employment with the University shall cease on the date that written notice is delivered, and Coach shall be entitled to continued payment of her/his Annual Salary as set forth in Section 5.A. above for the period of either: (i) one year from termination; (ii) the remaining term of this Agreement; or (iii) the date Coach begins employment in any other position, whichever is shortest. Coach agrees to provide the University advance notice of employment elsewhere. No further compensation or obligations, including but not limited to position reassignment, will be due and owing from either party, except as required by law.
2. Termination by University For Cause. In the event this Agreement is terminated by the University for cause (as defined herein), Coach's employment with the University shall cease on the date that written notice is delivered, and Coach shall not be entitled to any further compensation or benefits whatsoever except as required by law. For the purposes of this subsection 2, "cause" shall be defined as any act or omission that amounts to gross neglect of Coach's duties; grave dishonesty; conduct unbecoming a head coach; insubordination or derogatory comments that adversely affect the University, the Program or the University's athletics department; or a material breach of any University regulation or policy or term of this Agreement, including without limitation those activities prohibited in Section 8.A. above. "Cause" is further defined to include any reckless or knowing act or omission that is illegal, fraudulent or involves moral turpitude or the inability of Coach to perform the duties set forth in this Agreement.

3. Voluntary Termination by Coach Without Cause. In the event this Agreement is terminated by Coach without cause, Coach's employment with the University shall cease and Coach shall pay to the University: (i) \$50,000, if terminated on or before June 30, 2013; (ii) \$40,000, if terminated after June 30, 2013 and before June 30, 2014; (iii) \$30,000, if terminated after June 30, 2014 and before June 30, 2015; (iv) \$20,000, if terminated after June 30, 2015 and before June 30, 2016; or (v) \$10,000, if terminated after June 30, 2016. Any such payments shall be due and payable to the University no later than sixty (60) days after the effective date of termination. The parties agree that all such payments shall not be deemed a penalty, but rather are liquidated damages to compensate the University for all costs, expenses, and damages incurred by Coach's early termination of this Agreement, which costs, expenses, and damages cannot be predicted or calculated with precision but which will include, without limitation, the costs of searching for a replacement, assembling new support staff, maintaining continuity within the Program, and reputational harm.

4. Termination by Coach For Cause.

(a) In the event this Agreement is terminated by Coach for cause (as defined in subsection 4(c) below), Coach's employment with the University shall cease and Coach shall be entitled to payment of all sums that are past due as well as her/his Annual Salary set forth in Section 5.A. above for the remainder of the Term of this Agreement. Such payment shall be made at the University's election in either: (i) equal monthly installments or (ii) one lump sum no later than 120 days after the effective date of termination. No further compensation or obligations, including but not limited to position reassignment, will be due and owing from either party, except as required by law. For greater certainty, it is acknowledged and agreed by the parties hereto that the payment(s) set forth in this subsection 4(a) shall be Coach's sole remedy in the event of termination of this Agreement for cause by Coach, and Coach is entitled to no other pay, severance or termination payment or any other compensation, remuneration, benefits or other amount from the University.

(b) Any payment(s) referred to in subsection 4(a) above shall be subject to all such withholdings and other deductions as may be required by any and all applicable state, county, local or federal law, and University payroll policies. Furthermore, any payment(s) that may become due under subsection 4(a) are conditioned upon Coach's execution of a Release and Separation Agreement in a form to be provided by (and acceptable to) the University. Upon termination, Coach shall have no further obligations under the Agreement. Coach shall not be entitled to any other compensation and benefits set forth in this Agreement. Payment made by University as provided above will be in full satisfaction of all claims.

(c) For purposes of subsection 4(a) above, "cause" will mean: (i) any failure of the University to pay any of the sums or benefits contemplated under this Agreement when such sums are more than thirty (30) days overdue, provided however, that Coach has made a written demand to the Athletics Director that any sum or benefit due under this Agreement be paid and such sums remain unpaid for an additional thirty (30) day period; or (ii) a material breach of this Agreement, provided however, that Coach gives written notice to the Athletics Director specifying the alleged material breach and the University fails to cure the alleged material breach (or initiate a cure) within sixty (60) days after such notice.

- C. Termination for Death or Disability. The parties agree that this is a personal service agreement and that in the event of Coach's inability to perform the essential duties of her/his employment under this Agreement due to incapacity, as certified by two physicians selected by FAU, or death, this Agreement shall terminate and the University shall have no further financial obligations to Coach, her/his estate, heirs, representatives or assigns, other than accrued salary and benefits up to the date of her/his incapacity or death.
- D. Other Disciplinary Actions. The University may take other disciplinary or corrective action short of termination for cause in the event of the occurrence of any act or omission which could be grounds for termination for cause or for any act or omission short of a grounds for termination for cause, including without limitation minor or nonmaterial violations of any Athletic Requirements, any term of this Agreement, or University regulations or policies. Other disciplinary or corrective action may include, but is not limited to, suspension without pay for up to thirty (30) days, suspension with pay for up to ninety (90) days (extendable an additional thirty (30) days upon written notice), or other disciplinary or corrective action which may be authorized by University regulations or policies or the provisions of the NCAA enforcement procedures.
- E. Notice and Appeal. In the event the Athletics Director determines that suspension without pay or termination for cause is warranted, the Athletics Director will provide Coach with written notice of the basis for her/his determination. Within five (5) business days of receipt of such notice, Coach may submit a written appeal of the Athletics Director's decision to the University President. The University President may request further information from Coach, the Athletics Director, or any other source, and may take such further action in consideration of Coach's appeal as she/he or she/he determines in her/his sole and absolute discretion. The University President shall provide Coach written notice of her/his disposition of Coach's appeal. The University President's decision shall constitute the University's final action with respect to any such appeal.

9. SEVERABILITY. If, for any reason, any portion of this Agreement is held invalid or unconstitutional by any court of competent jurisdiction, such portion will be deemed a separate, distinct, and independent provision, and such holding will not affect the validity of any remaining portion of this Agreement.

10. WAIVER OF CLAIMS. The Parties agree that any and all claims any party may have against another are exclusively set forth in this Agreement and that no further damages or remedies will be owed as result of any actual or consequential loss of the Parties which might result from the termination of this Agreement, or from the exercise of any right set forth at Section 8 above. Such losses include, but are not limited to: loss of income or compensation; loss of any collateral income or benefits, or other business opportunities which resulted from Coach's position at the University; loss of camp, clinic or other outside activity fees; loss of expected income or opportunities; or damages that may allegedly be sustained for any alleged humiliation or defamation resulting from any termination of this Agreement, or any exercise of any right set forth at Section 8 above, or any statements or documents which may be released to the press or public as a result thereof or the release of any documents required by law. Coach agrees and acknowledges that she/he will have no right of injunctive relief.

11. WAIVER OF DEFAULT. Any waiver of the Parties of any default or breach of any term or condition of this Agreement will not be deemed or construed as a waiver of any other default or further breach of the same, or any other, term or condition of this Agreement.

12. SOVEREIGN IMMUNITY. The Parties expressly agree and acknowledge that nothing contained in this Agreement is intended to constitute a waiver of sovereign immunity by the University, and that nothing will be construed or considered to constitute a waiver or relinquishment of any of the exemptions, rights, privileges or immunities as may be provided to the University or its offices, employees, or agents by federal or state law.

13. GOVERNING LAW. This Agreement shall be interpreted and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of Florida, excluding its choice of law rules.

14. DISPUTE RESOLUTION.

A. Negotiation. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between representatives of each party. Any party may give the other party written notice of any dispute not resolved in the normal course of business. If the matter has not been resolved within thirty (30) days of the disputing party's notice, either party may initiate arbitration of the controversy or claim as provided hereinafter. If a party intends to be accompanied at a meeting by an attorney, the other party shall be given reasonable notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this Section shall be treated as compromise and settlement negotiations for the purposes of the federal and state rules of evidence and procedure.

B. Arbitration. The parties hereby agree and consent that any dispute arising out of or relating to this Agreement or the breach, termination or validity thereof, that has not been resolved as provided above shall be heard by and finally settled by arbitration conducted expeditiously in accordance with the American Arbitration Association ("AAA") Rules. The parties hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim (whether based in contract, civil responsibility/tort or otherwise) arising out of, or relating to, this Agreement. The parties agree and consent that Palm Beach County, Florida shall be the jurisdiction and venue for any such arbitration. Any arbitrator not appointed by a party shall be appointed from the AAA Roster of Neutrals. The arbitration shall be governed by the United States Arbitration Act and any judgment upon the award decided upon by the arbitrators may be entered by any court having jurisdiction thereof. The arbitrators are not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives any damages in excess of compensatory damages but the arbitrators may, in their discretion, award a party's reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) in connection with such party successfully prevailing in a dispute. The Parties agree that this Agreement is entered into and shall be performed primarily with Palm Beach County, Florida and that any court of competent jurisdiction located in Palm Beach County, Florida will be the appropriate venue and jurisdiction for the resolution of any dispute arising from this Agreement.

15. PERSONAL CONTRACT. The rights, obligations and duties of Coach shall be personal and not succeeded to, assignable or delegable in any manner whatsoever. In addition, the parties acknowledge that it is not their intent to create or confer any rights or obligations in or

upon any third person or entity under this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of the parties based upon this Agreement.

16. NO TRUST FUND. Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind. To the extent that Coach acquires a right to receive payments from the University under this Agreement, the University's obligation to make such payments represents an unfunded promise or covenant to pay such amount running from the University to Coach.

17. TOTALITY OF AGREEMENT. This Agreement, the applicable Athletic Requirements, and the University's regulations and policies represent the entire agreement pertaining to the employment of Coach and it supersedes any and all other prior oral or written agreements between the Parties. Additionally, each Party acknowledges and agrees that they have entered into this Agreement knowingly and voluntarily after having had the opportunity to review the Agreement and to seek the advice of counsel regarding their respective rights in the Agreement. Further, this Agreement will be construed equally against the Parties and may not be modified or amended without the express written consent of all Parties to the Agreement.

18. PUBLIC RECORDS. The parties agree and acknowledge that this Agreement and other applicable documents are subject to the Florida public records law, Ch. 119, Florida Statutes.

19. TAXES. All compensation and benefits received by Coach from the University, including but not limited to automobile, tickets, and use of stadium, may be treated as taxable income and subject to taxation in accordance with IRS guidelines. Coach agrees that she/he will report and pay any tax that might be due to any taxing authority that is not otherwise reported by the University.

20. MISCELLANEOUS. The headings in this Agreement are for convenience only and shall not be used in construing or interpreting this Agreement. The term "University" as used herein, where applicable or appropriate, shall be deemed to include any duly authorized board, committee, officer, or employee of said entity. Whenever the context requires, the masculine shall include the feminine and neuter, the singular shall include the plural, and conversely. IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates indicated below.

Florida Atlantic University Board of Trustees

By: _____
M.J. Saunders, President

Date: _____

By: _____
Melissa Dawson, Interim Athletics Director

Date: _____

Coach

By: _____
Kellie Lewis-Jay

Date: _____