



Item: VII.

Wednesday July 30, 2008

SUBJECT: New Business – Approval of New Employment Contract for Football Head Coach

PROPOSED BOARD ACTION

Approve a new employment contract with Howard L. Schnellenberger for the position of Florida Atlantic University Football Head Coach and Director of Football Operations.

BACKGROUND INFORMATION

On July 1, 1999, Florida Atlantic University retained Howard Schnellenberger to become the University's first football head coach and director of football operations. On October 20, 2004, the University extended Coach Schnellenberger's contract through June 30, 2009. During his tenure Coach Schnellenberger founded the FAU football program, advanced the team to the NCAA Division I AA playoffs, elevated the program to NCAA Division I (the highest level of NCAA anted

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. The proposed new employment contract 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. Coach Schnellenberger's proposed new employment contract contains severance provisions that vary from the University's Personnel Regulations by providing him his base salary through the remaining term of his contract if he is terminated without cause.

IMPLEMENTATION PLAN/DATE

The contract would be signed and take effect immediately upon Board approval.

FISCAL IMPLICATIONS

Coach Schnellenberger will be paid an annual base salary of three hundred sixty three thousand one hundred seventy nine dollars and thirty cents (\$363,179.30). This is the amount of Coach Schnellenberger's base salary under his current agreement and thus does not

**FLORIDA ATLANTIC UNIVERSITY
HEAD COACHING AGREEMENT
(Men's Football Program)**

This Head Coaching Agreement ("Agreement") is made and entered into this 30th day of July, 2008, by and among the Florida Atlantic University Board of Trustees ("University" or "FAU"), a public body corporate of the State of Florida, and Howard L. Schnellenger ("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 continue serving as the head coach for the University's Men's Football Program ("Program") and Director of Football Operations 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 Athletic 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. It is further the intent of the Parties that this Agreement supersede all other agreements among the parties, oral or written, including but not limited to that certain Employment Agreement among the parties dated July 1, 1999, as amended by that certain Contract Amendment dated October 20, 2004.

2. COACH'S REPRESENTATIONS

3. TERM OF AGREEMENT. The Parties agree that Coach will serve as the head coach of the University's Men's Football Program for an initial term commencing immediately and concluding March 1, 2011 (the "Initial Term"), and if no football games are played in an on-campus football stadium in 2010, for a second term commencing March 2, 2011 and concluding March 1, 2012 (the "Contingent Term"), unless this Agreement is otherwise modified or terminated by the Parties in accordance with the requirements set forth in this Agreement. 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 he will devote his full time efforts and abilities for the exclusive benefit of the University and serve as the head coach of the Program and the director of football operations. Coach's duties and obligations shall include, but not be limited to, the following requirements:

- A. Coach acknowledges and agrees that he must abide by any and all applicable Athletic Requirements and University regulations and policies 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 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, Program operations director, and Program administrative staff necessary and appropriate to assist Coach in meeting his responsibilities hereunder; and developing, implementing, and adhering to the Program's annual budget, subject to the Athletic Director's approval. Coach agrees to attend all required University or Athletic Department meetings; to pass the NCAA recruiting examination on an annual basis; to exercise fiscal integrity at all times; and to ensure that he and all assistant coaches show the utmost respect for all University students, faculty and staff and that Coach and 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 he becomes aware, or has reasonable cause to believe, that any player or coach of any of the University's athletic programs, or any University student, faculty, staff member, agent or any outside individual 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 athletic 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 athletic program, he must immediately report his knowledge or belief of the situation to the Athletic Director and the University's NCAA Compliance Officer.
- C. Coach acknowledges and agrees that he or any coach under 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 his or her employment.
- D. Coach acknowledges and agrees that he and all individuals under 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

annual base salary on June 30, 2010, if the Program's announced NCAA APR rate at that time is above 925 or between 901 and 925, respectively.

- 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 monthly 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 University team being recognized in any of the following ways with respect to the Program, 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 will be made no later than June 15th following the end of the season in which they were earned and are subject to the availability of funds in the University's bowl revenue allocation for the season in which they were earned.
- | | |
|--|-------------|
| a. Winning the Conference Championship and receiving a BCS bowl game invitation: | \$50,000.00 |
| b. Winning the Conference Championship and receiving a non-BCS bowl game invitation: | \$12,500.00 |
| c. Receiving an at-large bowl game invitation: | \$10,000.00 |
| d. Earning a Top 10 college coaches' poll national ranking | \$25,000.00 |
| e. Winning the National Coach of the Year Award: | \$25,000.00 |
| f. Winning the Conference Coach of the Year: | \$7,500.00 |
| g. Receiving a top 10% NCAA APR recognition: | \$7,500.00 |
| h. Receiving a top 25% NCAA APR recognition: | \$5,000.00 |
- D. Complimentary Tickets. Coach shall receive twenty (20) complimentary tickets to each Program home game and eight (8) complimentary tickets to each FAU basketball home game, from the best available seats or boxes. Subject to availability, University will provide Coach a reasonable number of tickets to Program away games and bowl games in which the University participates. In addition, Coach is entitled to the use of a box or suite, along with tickets for the number of seats available in the box or suite, at the stadium where Program home football games are played. Subject to availability and in conformance with the Athletic Department's ticket distribution policy, the University will provide Coach a reasonable number of additional tickets to Program home games for Coach to use to help promote the Program within the business community.
- E. Athletic Products. Coach shall receive \$1,000.00 in retail Nike gear as part of the University's athletic department-wide arrangement. Assistant coaches shall receive \$500.00 in retail Nike gear as part of the University's athletic department-wide arrangement. These amounts shall be modified if the University's athletic department-wide arrangement is modified.
- F. Cell Phones. Cell phone services (or reimbursements) will be provided by the University for Coach and his assistant coaches in the reasonable discretion of the University and in accordance with existing University policy.

- G. Insurance. University annually will provide Coach term life and disability insurance policies offered through State of Florida approved plans for its employees, in a combined amount equivalent to Coach remaining base salary under the term of this Agreement. Coach agrees that neither University nor any person or entity acting for the benefit of or

herein, separation of the Coach's employment is governed by the University's regulations and policies.

- A. Prohibited Activities. Notwithstanding 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:
- a. 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;
 - b. Any violation by Coach of the Athletic Requirements, or failure 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 men's football programs by the NCAA;
 - c. Directing or otherwise instructing any coach, student athlete, or any other individual to fail or refuse to respond to, or personally failing or refusing 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 athletic program with which Coach may have been involved in the past;
 - d. Failure or refusal by Coach to report immediately to the Athletic Director and/or the University's NCAA Compliance Officer when Coach knows, or should have known or has reasonable cause to believe, any of the following events have occurred, or are about to occur:
 - (1) 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;
 - (2) 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;
 - (3) 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, any Athletic Requirements, law or University regulation or policy;
 - (4) 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;

- (5) 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;
- (6) 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
- (7) Any conduct by the Coach which violates any law or University regulations or policies, or 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 in which adjudication was withheld by the Court for any crime (except for minor traffic offenses), failure to fully and accurately report all additional sources of income in accordance with Law, Athletic Requirements, and University Rules, or any other conduct of the Coach which in the sole judgment of the University reflects adversely on the University or impairs its operations or the fulfillment of its educational mission, including but not limited to information that the Coach was found to have violated Athletic Requirements at any previous college or university.

B. Termination Obligations.

a. In the event this Agreement is terminated by the University for cause, Coach's employment with the University shall cease, Coach shall be entitled to one month's base salary and Coach shall not be entitled to any further compensation or benefits whatsoever except as required by law.

b. In the event this Agreement is terminated by Coach for cause or by the University without cause, Coach's employment with the University shall cease and Coach shall be entitled to payment of his Annual Salary set forth in Section 5A above for (i) the remainder of the Initial Term of this Agreement, if such termination occurs during the Initial Term of this Agreement, or (ii) the remainder of the Contingent Term of this Agreement, if such termination occurs during the Contingent 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.

c. For the purposes of this Agreement, "cause" shall be defined as any act or omission that amounts to 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 8A 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.

- E. 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 his employment under this Agreement due to incapacity, as certified by two physicians selected by FAU, or death, this Agreement shall terminate and FAU shall have no further financial obligations to Coach, his estate, heirs, representatives or assigns, other than accrued salary and benefits up to the date of 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 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 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 he or she determines in his or her sole and absolute discretion. The University President shall provide Coach written notice of his or her 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 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. **JURISDICTION AND VENUE.** 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 DISCLOSURE OF THE AGREEMENT.** Both parties agree and acknowledge that this Agreement may be subject to the Florida public records law, Chapter 119, Florida Statutes.

19. **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.

