

COUNTY OF BUNCOMBE
STATE OF NORTH CAROLINA

EMPLOYMENT AGREEMENT
Position: HEAD COACH VOLLEYBALL

THIS AGREEMENT made and entered into by and among the University of North Carolina at Asheville ("University") and **Julie Torbett** (Coach).

RECITALS

WHEREAS, the University is an institution of higher learning within the State of North Carolina and competes in intercollegiate athletics within the National Collegiate Athletic Association; and

WHEREAS, the Coach represents that he is experienced in the administration of athletics at the intercollegiate level; and

WHEREAS, the parties acknowledge that the primary mission of the University is education and, accordingly, the primary purpose of all the University's legal arrangements, including this Agreement, is the furtherance of the University's educational mission; and

WHEREAS, the University and the Coach desire to establish an employment relationship in accordance with the terms and provisions of this Agreement;

NOW THEREFORE, in consideration of the promises and mutual covenants set forth below, the parties agree as follows:

I. TERM OF EMPLOYMENT

1. University agrees to employ the Coach and the Coach agrees to serve University as its Head Volleyball Coach / Lecturer for eleven-months beginning **December 1, 2008** and continuing until **November 30, 2009**. The term of this Contract shall be reviewed by the Chancellor and Athletics Director no later than one year from the beginning of the term, but cannot be changed without mutual agreement of University and the Coach.

2. The Coach's employment, and this Agreement, are subject to the policies of The Board of Governors of the University of North Carolina, and in particular, the "Employment Policies for University Employees Exempt from the State Personnel Act," and any amendments thereto ("EPA Policies"). The EPA Policies are incorporated into this Agreement by reference.

3. Throughout the term of this Employment Agreement the Coach shall use his/her best full-time energies and abilities for the exclusive benefit of University. It is understood by the parties, however, that the University, at its sole discretion, retains the right to assign the Coach to other positions with different duties during the term of this Agreement. Any such reassignment shall not result in diminution in compensation or benefits, unless reassignment is the result of disciplinary action or is the result of financial exigency.

In no event will the Coach be assigned to any position which is not consistent with his/her education and experience. If the University makes a decision to reassign the Coach and the Coach refuses to accept reassignment, then the University may terminate this Agreement. If the Coach is reassigned the University shall not be liable for the loss of any compensation associated with any collateral business opportunities.

II. DUTIES

1. The Coach is hereby employed by the University as a HEAD COACH with all of the duties, responsibilities, obligations and privileges associated with the position. These duties shall include:

- (a) Encourage academic progress, in conjunction with the faculty and the University, of student-athletes toward graduation; Coach understand that he/she has responsibility for supporting and encouraging the educational pursuits of his/her student-athletes and uses best efforts to ensure that they make progress in a defined degree program;
- (b) Use his/her best efforts to ensure that all academic standards, requirements, and policies of the University are observed including those in connection with the recruiting and eligibility of prospective and current student-athletes who are academically qualified;
- (c) Conduct himself/herself and the Volleyball program in accordance with the Constitution and Bylaws of the conference and the NCAA; all State and Federal laws, and the University policies and procedures; and within the traditional high standards associated with this profession.
- (d) Maintain responsibility for the fiscal and budgetary functions associated with the Volleyball program, under the direction of the Athletics Director.
- (e) Maintain responsibility for the supervision and conduct of assistant coaches and staff and their activities, including compliance with the Conference and NCAA constitutions, the University bylaws, legislation and regulations and provide annual evaluations thereof;
- (f) Conduct recruiting activities, practices, game preparation, and coaching duties so as to develop and maintain a Volleyball program of the highest quality and which is competitive within the Conference and the NCAA;
- (g) Maintain and enforce any and all disciplinary policies and drug policies of the University and NCAA;
- (h) Use his/her best efforts to ensure that student-athletes in the Volleyball program conduct themselves in a sportsmanlike manner and in other ways that will result in a positive image for the University both on and off the field.
- (i) Perform additional duties as assigned by the Chancellor or Athletics Director

including, but not limited to, special speaking engagements, special Athletic Department or the University related marketing or promotional activities and teaching health and fitness classes.

2. The Coach agrees to perform faithfully and diligently the duties of this position, and agrees that the failure to discharge any of these duties constitutes a breach of this Agreement that would allow the University to discharge the Coach for cause.

3. The COACH shall devote such time, attention, skill and efforts to the performance of his/her duties as necessary to perform the responsibilities of the position of HEAD COACH. The Coach shall have the responsibility and authority, in consultation with and with the approval of Athletics Director, and consistent with all applicable UNC and the University policies, to employ and discharge all coaching personnel associated with his/her Program.

III. COMPENSATION, LEAVE AND BENEFITS

1. The annual compensation for the position of HEAD VOLLEYBALL COACH is **\$42,945.00**. Your monthly compensation during this eleven-month contract period is **\$3,578.75**.

Leave will be consistent with the University's "Personnel Policies for Designated Employment Exempt from the State Personnel Act," for the eleven months of employment. The salary for this position will be reviewed at least annually, generally after the annual session of the NC General Assembly establishes salary increases for the year. A letter from the UNC Asheville Human Resources Office indicating your new salary will be issued at that time. This letter will constitute an addendum to this contract for the purposes of salary increases only. In no case shall salary increases within the fiscal year exceed fifteen percent (15%) as established by the University of North Carolina Board of Governors.

2. The HEAD COACH is classified as an EPA (for "Exempt from Personnel Act") Non Faculty Employee of the University. As an EPA Non Faculty employee, he/she will be entitled to receive all employee-related benefits, which are normally available to EPA Non-Faculty Employees, as set forth in the EPA Policies.

IV. COMPLIANCE WITH RULES, REGULATIONS, etc.

1. The Coach is charged with knowledge of, and shall conduct himself/herself and the University's intercollegiate athletics program in accordance with all rules, policies and regulations that apply to or regulate the University's athletics program. These include, but are not limited to the constitution and bylaws of any athletic conference of which the University is a member; the requirements of the NCAA; all policies and procedures of The Board of Governors of The University of North Carolina; and all policies and procedures of the University of North Carolina at Asheville.

2. Any violation by the Coach of the rules, policies, or regulations of the University, the Conference, or the NCAA shall be a violation of this contract, and the Coach shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, including suspension without pay or termination of employment.

V. OUTSIDE ACTIVITIES

1. The HEAD COACH may engage in external professional activities for pay while employed by the University, subject to the following terms and conditions:

(a) Any external activities for pay must not interfere with the full and satisfactory performance of duties as a University employee. Such activities must be conducted in accordance with The Board of Governors of The University of North Carolina's Policy on External Professional Activities for Pay, and in accordance with Policy 11.2.2 of the NCAA Bylaws.

(b) Before engaging in any such external activity for pay, the HEAD COACH will file a notice of intent, as required by the Board of Governors' policy including amount and source of income.

(c) As required by NCAA Policy 11.2.2, the HEAD COACH shall annually provide to the Chancellor, on June 1, a report of all athletically related income and benefits from sources outside the University, including the source and the amount of the income. Sources of income may include, but are not limited to, the following: income from annuities, sports camps, housing benefits (including preferential housing arrangements), country club memberships, complimentary ticket sales, television and radio programs, and endorsement or consultation contracts with athletics shoe, apparel or equipment manufacturers. The University shall have reasonable access to all records of the Coach to verify this report.

(d) The Coach will not use the name, trademarks, or service marks of the University or its athletics programs, except as part of his/her official duties as Coach, without the advance written consent of the University. All income deriving from such endorsements will accrue to the benefit of the University; the University will pay to the Coach 50 percent of such income.

(e) With respect to the operation of camps using the University's name, such activity shall be only with the prior approval of the Athletics Director and Chancellor and shall be conducted in accordance with all applicable University policies, including those requiring the payment of fees for use, if any, of University facilities. To the extent any such camp is operated with or under the sponsorship of the University, the Coach's compensation there from shall be subject to annual agreement between the Coach and the Athletics Director, but the University expressly makes no guarantee of any compensation to the Coach from such activity.

(f) Any external activities for pay are independent of the Coach's University employment, and the University shall have no responsibility for any claims by him/her against the University, or against him/her by others arising there from.

VI. UNIVERSITY RECORDS

All materials or articles of information including, without limitation, personnel records, recruiting records, team information, films, statistics or any other material or data furnished to the Coach by the University, developed by the Coach on behalf of the University, or for the University's use or otherwise in connection with the Coach's employment hereunder are and shall remain the sole property of the University. If the return of such materials is requested at any time the Coach shall immediately deliver same to the University.

VII. AUTOMATIC TERMINATION ON DEATH

1. This Employment Agreement shall terminate automatically if the Coach dies, or becomes disabled and is unable to perform the essential functions of the job.

2. If this Agreement is terminated pursuant to this section because of death, the Coach's salary and all other benefits shall terminate as of the calendar month in which death occurs, except that the Coach's personal representative or other designated beneficiary shall be paid all such death benefits, if any, as may be contained in any benefit plan now in force or hereafter adopted by the University and due to the Coach as an EPA-non-faculty member.

VIII. TERMINATION BY THE UNIVERSITY FOR CAUSE

1. The University may terminate this Agreement for cause at any time. Termination for cause may be for, but is not limited to, any of the following occurrences:

- (a) Failure to carry out assigned duties.
- (b) A violation by the Coach of a major NCAA, Conference, or University policy, procedure, regulation or bylaw.
- (b) Plea of guilty, verdict of guilty, or a plea of no contest to, or commission of a criminal act that constitutes a felony committed by the Coach; commission of other criminal acts may also be considered cause for termination.
- (c) Misconduct of the Coach
- (d) Any of those causes specified in the Employment Policies for EPA Non-Faculty Employees of the University.

2. In the event of a termination for cause, the University's sole obligation to the Coach shall be payment of his/her salary due and owing to the date of termination. The University shall not be liable to the Coach for any collateral business opportunities or benefits associated with her position as Coach.

3. Any process to terminate the Coach for cause shall be conducted in compliance with all relevant University policies.

IX. TERMINATION BY THE UNIVERSITY WITHOUT CAUSE; LIQUIDATED DAMAGES

1. This contract may be terminated by the University at any time without cause. In such event, the University shall pay the Coach liquidated damages in lieu of any and all other legal remedies or equitable relief; these liquidated damages will be the amount of his/her then current salary (or proportion thereof) for each year (or fraction thereof) remaining under this Contract, to be paid on an annual basis. **Such payment will not be made with State-appropriated funds but will be paid from athletic receipts as defined in N.C. Gen. Stat. § 116-36.2.** The University shall not be liable to the Coach for any collateral business opportunities or other benefit associated with his/her position as Head Coach. The parties have bargained for this liquidated damages provision, giving consideration to the following: this is a Contract for personal services. The parties recognize that a termination of this Contract by the University prior to its natural expiration could cause the Coach to lose some benefits, supplemental

compensation or outside compensation relating to his/her employment at the University, which damages are difficult to determine with certainty. Therefore, the parties have agreed upon this liquidated damages provision.

2. Notwithstanding the above provision, the Coach agrees to mitigate the University's obligation to pay liquidated damages pursuant to this Section. Coach will make reasonable effort to obtain other employment. If the Coach obtains new employment, or engages in other professional endeavors, the University's financial obligations under the liquidated damages provision shall be to pay the Coach the difference between what the Coach would have received as Head Coach by the University and the salary or other earnings from the new position or other professional endeavor.

3. For the purposes of this Contract, the term [Other earnings shall mean all compensation paid directly to the Coach by his/her new employer in the way of salary, commissions, bonuses, etc. (hereinafter referred to as [Direct Compensation), but would not include compensation earned indirectly by the Coach such as summer camps, shoe contracts or other endorsements (hereinafter referred to as Indirect Compensation), provided that such Direct Compensation was negotiated at arms length and in good faith without any reduction thereof based on any Indirect Compensation to be received by the Coach. In the event that the Direct Compensation to be received by the Coach is reduced due to such Indirect Compensation, then the amount of such reduction shall be added back to the Direct Compensation for the purpose of determining [Other earnings. In the event the Coach does not become employed but engages in professional endeavors as an independent contractor, contractor earnings shall be construed to fall within the definition of other earnings.

4. If the Coach's salary or earnings in the new position or endeavor exceed that which the Coach would have been paid at the University, then the University's financial obligations under the liquidated damages provision shall cease.

X. TERMINATION BY COACH WITH PERMISSION AND RELEASE BY THE UNIVERSITY

1. The parties hereby agree that the Coach has special, exceptional and unique knowledge, skill and ability as Volleyball coach which, in addition to the continuing acquisition of coaching experience and the University, as well as the University's special need for continuity in its VOLLEYBALL program, render the Coach's services unique. The Coach recognizes that the loss of his/her services to the University without approval and release, prior to the expiration of the term of this Agreement or any renewal thereof, would cause an inherent loss to the University which cannot be estimated with certainty or fairly or adequately compensated by money damages.

2. The Coach therefore agrees, and hereby specifically promises, not to seek, negotiate for, or accept employment, under any circumstances, without first obtaining written permission of the Chancellor and Athletics Director, as a VOLLEYBALL coach at any institution of higher education which is a member of the NCAA or for any professional team participating in any professional league or conference in the United States or elsewhere requiring performance of duties prior to the expiration date of the term of this Agreement or any extension thereof. If after discussions, Coach wishes to accept employment elsewhere as defined above, Coach must first

obtain a release of this Agreement from the Chancellor and Athletics Director, including a negotiated settlement to terminate the contract. Such release and settlement shall not be valid until accepted in writing by the Coach and the Chancellor and Director of Athletics.

3. It is agreed that permission to discuss another position, release of this Agreement, or a negotiated settlement entered into by the parties to this Agreement will be pursued in good faith, and that the University will not unreasonably withhold its approval or execution of a release for negotiated settlement.

XI. TERMINATION BY THE COACH WITHOUT PERMISSION AND RELEASE BY THE UNIVERSITY; LIQUIDATED DAMAGES.

The Coach may terminate this Agreement without permission and release by the University for any reason on written notice. Such termination by the Coach shall obligate the Coach to pay the University a sum, in lieu of any and all other legal remedies, in the amount of the salary remaining under the term of the contract or \$25,000, whichever is greater. The parties acknowledge that the University will incur administrative, recruiting and resettlement costs in obtaining a replacement Coach in addition to potentially increased compensation costs and loss of ticket revenues, which damages are difficult to determine with certainty. Therefore, the parties have agreed upon this liquidated damages provision.

XII. COVENANT NOT TO COMPETE

In the event of a termination under Section IX or Section X or Section XI, Coach agrees that he will not obtain employment as a head coach with any Conference school for the time period remaining under this Agreement. The parties agree that money damages would be inadequate to remedy a breach of this covenant; therefore, the University shall have the right to obtain from any court such equitable, injunctive, or other relief as may be appropriate, including a decree enjoining Coach from violating this paragraph.

XIII. MISCELLANEOUS

1. **SEVERABILITY**: The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability or any other provision hereof.

2. **NOTICES**: Any notice required or permitted to be given under this Agreement shall be sufficient if in writing, and if sent by registered or certified mail to the residence of record for the Coach, or, in the case of the University, to the Chancellor's Office.

3. **SITUS**: This Agreement shall be construed in accordance with and governed by the laws of the State of North Carolina.

4. **EQUAL PARTICIPANTS**: Each party hereto shall be viewed as an equal participant, and each party agrees that there shall be no presumption against the drafting party.

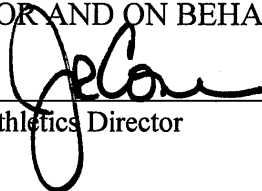
5. MERGER: This Agreement constitutes the full and complete agreement of the parties. No prior or subsequent written or oral understandings or representations pertaining to the subject matter of this Agreement shall be binding upon the parties unless contained herein or set forth in the form of written amendment(s) to this Agreement, executed by both parties prior to becoming effective.

6. PUBLIC RECORD: Upon execution, this contract is a public record subject to disclosure under North Carolina's public records law.

7. This instrument contains the entire agreement of the parties hereto and cancels and replaces any other employment contract or agreement between the Coach and the University. It may not be changed orally, but only by an agreement in writing signed by the Chancellor, except that compensation and benefits may be increased without a written amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

FOR AND ON BEHALF OF THE UNIVERSITY OF NORTH CAROLINA AT ASHEVILLE



Athletics Director

12-12-08

Date

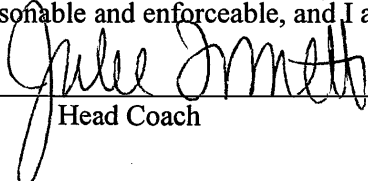


Chancellor

1/12/09

Date

I have read and understand the foregoing Employment Agreement, and I deem its provisions to be reasonable and enforceable, and I agree to abide by its terms and conditions.



Head Coach

12/10/08

Date