

Separation Agreements: When a University and a Coach Divorce
By Martin J. Greenberg and Thom Park

I. Introduction

Millions of dollars are now the norm for college coach's financial packages. For example, Nick Saban, University of Alabama's Head Football Coach, is paid approximately \$11.125 million annually.¹ Considering the extraordinary amounts of money large college football programs spend and generate, this probably does not strike most as a shock, even though coaches' pay is upwards of forty times more than the average full-time professor salary.² To terminate one of these high-priced employment contracts would require additional funds, namely, a backend buyout provision. These buyout provisions are now a pivotal part of college coaches' employment contracts and are used as a disincentive and deterrent to keep the college's head coach out of the marketplace.

In 2017 alone, a number of big-named college coaches were dismissed: Arkansas' Bret Bielema, Arizona State's Todd Graham, Florida's Jim McElwain, Nebraska's Mike Riley, Tennessee's Butch Jones, Texas A&M's Kevin Sumlin, and UCLA's Jim Mora.³ Every one of these coaches had a multi-million-dollar buyout arrangement.⁴ Respectively, \$11.8 million for Bielema, \$12.3 million for Graham, \$7.5 million for McElwain, \$6.6 million for Riley, \$8.3 million for Jones, \$10.4 million for Sumlin, and \$12.2 million for Mora.⁵ Collectively, these buyout total \$69.1 million. That is nearly a \$10 million average per coach to simply "go away."

According to USA Today, in 2017, nine coaches had buyout agreements in excess of twenty million dollars: Texas' Tom Herman (\$20.4), Michigan's Jim Harbaugh (\$20.5), Ohio State's Urban Meyer (\$21.3), Penn State's James Franklin (\$21.8), Iowa's Kirk Ferentz (\$22.5), Alabama's Nick Saban (\$26.9), Washington's Chris Petersen (\$30.6), Florida State's Jimbo Fisher (\$39.1) and Clemson's Dabo Swinney (\$40).⁶ Some of these buyout arrangements are subject to

mitigation of damages. The price of these expensive multi-million-dollar employment contracts accompanied by buyout arrangements has been increasing with no end in sight. However, at a certain point, one must question, when is enough, enough?

To examine how outrageous head coach contracts and buyout arrangements have become, one needs to look no further than The University of Florida (“UF”). UF is an ideal example of how a university may be required to pay millions, to multiple head coaches and assistant coaches and another university at the same time, despite only one currently serving as the head coach.

II. How UF Got Here – Head Coach Timeline

a. Muschamp’s Departure

Will Muschamp (“Muschamp”) was the Head Coach of UF from 2011 through 2014.⁷ He was the successor to Urban Meyer.⁸ Muschamp was highly sought after by UF after his success as a Defensive Coordinator for the University of Texas. However, Muschamp went from a heralded acquisition to being fired in a relatively short period of time. Muschamp experienced success early on in his UF career. So much so, that in 2012, Muschamp was given a contract extension until 2017.⁹ However, after less successful seasons (2013: 4W/8L, 2014: 7W/5L), UF decided that it was worth millions to get rid of the former sought-after head coach. Therefore, UF negotiated Muschamp’s departure before the end of his contract, thereby invoking a buyout provision of his contract. Will Muschamp’s Head Coaching Agreement dated as of December 13, 2010 states as follows with respect to termination without cause:

16.A. Termination by Association or Coach Without Cause.

(1) Association may terminate this Agreement without cause at any time thereby ending the employment of Coach by Association by giving written notice to Coach in accordance with clause (a) of Appendix A to this Agreement. The Termination shall be effective on the date specified by Association (as provided in more detail in paragraph 16E).¹⁰

17. Termination Consequences.

D. Termination by Association Without Cause. If this Agreement is terminated by Association without cause pursuant to subparagraph 16A, Coach shall be entitled to receive the amount equal to the sum of: [the product of Two Million Dollars (\$2,000,000) (without any reduction for outside income, but less deductions for applicable taxes and withholding) multiplied by the number of Contract Years that would have remained in the Term of the Agreement on the effective date of termination had the early termination not occurred (including the Option Term if exercised prior to the notice of termination)] plus [the prorated portion of \$2,000,000 determined by applying the proration process specified in paragraph 4 to such amount for any Partial Contract Year that would have remained in the Term on the effective date of termination had the early termination not occurred], which sum is to be paid by Association in five (5) installments, calculated in accordance with subparagraph 17H, the first payment being due within thirty (3) days of the effective date of termination and the second through fifth payments being due on each respective succeeding anniversary of the effective date of termination. In any event, no allowance shall be made under this subparagraph 17D for, and Coach shall not be entitled to receive, any other amount, payment or benefit payable or provided under paragraphs 4, 7, 8, 11, 12, 13, 14, and/or 15 for this Agreement, or under the Activities Agreement, after the date notice of termination is given. Coach and Association agree that said liquidated damages are reasonable given existing circumstances, including, without limitation, the range of harm that is foreseeable and the anticipation that proof of damages would be costly and impractical. The provisions of this subparagraph 17D shall survive the termination of this Agreement.¹¹

As a result of his contract buyout, Muschamp will collect approximately \$6.3 million from UF, and additionally, UF owes Muschamp's assistant coaches another \$2 million as well.¹² This cost does not include the expensive national coach search and any additional costs a college incurs to buy another coach out of his current contract. The departure of Muschamp led UF to its new heralded acquisition, an offensive mastermind, named Jim McElwain ("McElwain").

b. McElwain Coaching History

McElwain's career commenced as a graduate assistant at his alma mater, Eastern Washington University, in 1985-86.¹³ He then became the quarterback and wide receivers coach at Eastern Washington University from 1987-95, winning the Big Sky Championship in 1992.¹⁴ His next opportunity came as the offensive coordinator, wide receivers, and special teams coach at Montana State University from 1995-99.¹⁵ The offense, under his coaching, was the number

one offense in the Big Sky Conference in 1998.¹⁶ Next, McElwain became the wide receivers and special team coach at University of Louisville from 2000-02.¹⁷ The special teams, under his coaching, set a school record of nine blocked kicks in the 2000-01 season.¹⁸ McElwain then became the assistant head coach and the wide receivers and special team coach at Michigan State University from 2003-05.¹⁹ McElwain earned himself an NFL opportunity as the Oakland Raiders' quarterback coach in 2006, but quickly rejoined the collegiate coaching ranks in 2007 as the offensive coordinator and quarterback coach at Fresno State University.²⁰ His offense ranked 38th in the country in yards per game and 32nd in points per game resulting in a 9-4 record and a bowl victory.²¹ From 2008-11, McElwain became the offensive coordinator and quarterback coach at the University of Alabama.²² There, McElwain won a Southeastern Conference (SEC) championship game, and two BCS National Championship games.²³ McElwain's success at Alabama earned him his first head coaching position at Colorado State University from 2012-14 where he won the Mountain West Conference Coach of the Year award in 2014.²⁴

c. Hiring of McElwain

In 2014, the departure of Muschamp lead McElwain to his head coach position at UF. McElwain's Head Coaching Agreement was entered into as of December 5, 2014, Amended (Amendment No. 1) as of June 6, 2016, and Amended (Amendment No. 2) as of June, 2017.

McElwain's Contract Amendment 2 provided for the following compensation:

	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023 - new
Base Paid bi-weekly	\$265,000	\$275,700	\$275,700	\$275,700	\$275,700	\$275,700	\$275,700
Media/PR (web, tv, radio) Paid bi-weekly	\$2,650,000	\$2,650,000	\$2,650,000	\$2,650,000	\$2,650,000	\$2,650,000	\$2,650,000
Equipment paid bi-weekly	\$253,200	\$253,200	\$253,200	\$253,200	\$253,200	\$253,200	\$253,200
Expense Account (gross) paid bi-weekly	\$140,000	\$175,000	\$175,000	\$175,000	\$175,000	\$175,000	\$175,000
Equipment fm Nike	\$200,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000

Semi-annual 2/1 and 7/1							
Pension Annual contribution	\$31,800	\$32,400	\$32,400	\$32,400	\$32,400	\$32,400	\$32,400
Retention Bonus Paid 1/31 of yr due	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000	\$750,000
Total	\$4,290,000	\$4,486,300	\$4,486,300	\$4,486,300	\$4,486,300	\$4,486,300	\$4,486,300

Total Over 6 years \$26,917,800²⁵

In his first year, McElwain won the 2015 SEC eastern division championship, the first coach to do so in his first year.²⁶ Also, McElwain was named 2015 SEC coach of the year.²⁷ McElwain followed up his success by winning another SEC eastern division championship again in 2016.²⁸ It is quite strange for a coach to begin a tenure winning consecutive division titles, only to be fired in October of 2017 during his third season. This is especially strange coupled with a .647 winning percentage, winning 22 of 34 total games at UF, and being signed to a 6-year \$26.9 million contract extension.²⁹

However, UF was 3-4 when McElwain was ultimately fired, after UF was blown out 42-7 by UF's arch-rival, University of Georgia, while ranked 112th or lower nationally in total offense in three straight seasons.³⁰ This was UF's third in-season coaching change in the last four coaching tenures.³¹ Another possible reason for McElwain's eventual departure was that he reportedly did not mesh well with UF officials from the very start, who found his arrogance distasteful.³² McElwain's arrogance is exemplified by a quote from his introductory press conference where he boasted, "I believe I can win with my dog Claribelle" in reference to his quarterback position.³³

For these reasons, UF again found their interests furthered by paying millions to get rid of McElwain, rather than to keep him on as head coach. I have previously stated that "[i]t's sort of a two-way street. If the coach isn't performing up to expectations, it may be cheaper from the standpoint of overall revenues to basically take the chance of getting rid of him at whatever cost to bring in something new and exciting."³⁴ However, UF will now be paying off Muschamp and his assistant coaches, McElwain and his assistant coaches, and its current head coach and assistant

coaches, all at the same time.³⁵ This does not include monies owed to Colorado State University, McElwain's previous employer before UF.³⁶

d. Money Owed to Colorado State University

If McElwain wanted out of his 5-year contract with Colorado State University (hereinafter, "CSU"), his previous employer, early, he would owe CSU \$7.5 million to be paid in full within 30 days.³⁷ However, regarding McElwain's CSU contract, a last-minute amendment signed by university president, Tony Frank, allowed McElwain to reduce the buyout by \$500,000 and eliminate the 30-day repayment period.³⁸ The \$7 million buyout agreement was the largest buyout fee ever in college sports, a record UF is surely not proud to hold.³⁹ The \$7 million breaks down like this: UF Boosters and UF Athletic Association will pay CSU \$3 million, McElwain will give CSU \$2 million, and UF guaranteed CSU another \$2 million for playing a future game against UF.⁴⁰ Currently, over \$3 million is still owed to CSU for McElwain's buyout, approximately \$1.5 million from each McElwain and UF.⁴¹

e. Death Threats – Termination for Cause

On October 23, 2017, at a news conference previewing the UF and University of Georgia rivalry, which would inevitably be McElwain's last game as UF's head coach, McElwain made the unprovoked statement that he, his family, staff and players all received death threats from UF's fan base.⁴² McElwain stated,

I think it's a pretty good kind of lesson for the way things are. There's a lot of hate in this world and a lot of anger. And yet, it's freedom to show it. The hard part is, obviously, when the threats against your own players, death threats to your families, you know, the ill will that's brought up out there. And yet, you know, I think it's really one of those deals that really is a pretty good testament to what's going on out there nationally. A lot of angry people. In this business, we're the ones that you take the shots at. And that's the way it is.⁴³

McElwain declined to provide additional details when reporters asked him to elaborate further about the alleged death threats.⁴⁴ Additionally, McElwain stated he would not go into details regarding the nature of the threats and stated he did not plan on contacting law enforcement.⁴⁵ UF was unsuccessful in its attempt to find any evidence to verify or substantiate these alleged death threats.⁴⁶ Within hours, UF responded via The University Athletic Association by releasing a statement that UF takes the safety of student-athletes, coaches, staff, and families very seriously, and met with McElwain who “offered no additional details” about threats facing him, his family, or other Gators.⁴⁷

Two days later, on October 25, 2017, it was reported that McElwain stated that he would share details on threats “when it becomes unmanageable.”⁴⁸ McElwain elaborated that, “[i]t’s exactly what I tell our guys not to do. Let something like that you know, creep into the focus on what you’re here to do. Ultimately, you know, that’s really what it is.”⁴⁹ Further, McElwain admitted that the threats he referred to were made “in the past” and that it was wrong of him to mention them now.⁵⁰ McElwain elaborated that “[i]t’s just something that came up and obviously was on my mind. It doesn’t make it right. It doesn’t make it right to air that laundry.”⁵¹ Had McElwain never mentioned these death threats, there is a good chance he would have remained employed by UF.⁵²

f. For-Cause Contract

Generally, termination for-cause is available only in response to a breach of contract by the other party. UF attempted to find justifications to fire McElwain for-cause or for a contractual breach that goes beyond unsatisfactory on-field performance.⁵³ UF tried to circumvent its responsibility to pay McElwain his not for cause buyout amount due to a material breach of the contract or at least give UF a negotiating nugget to lessen the amount of not for cause liquidated

damages.⁵⁴ According to Edward Aschoff of ESPN, UF administrators were exploring if McElwain's unsubstantiated claims of death threats were enough for UF to dismiss him with cause and avoid paying his buyout agreement.⁵⁵ UF's argument would essentially be that McElwain's unsubstantiated death threats allegation constitutes cause for dismissal without invoking his buyout agreement because he violated the Standards section of his contract by failing to provide any proof of his alleged death threats.⁵⁶ Therefore, McElwain failed to act in the Association's or University's highest standards of professionalism, integrity, and morals by fraudulently or dishonestly making the death threat allegations.⁵⁷ If the death threats were valid, UF could alternatively argue that McElwain failed to report these threats to the appropriate UF personnel thereby violating his contract.⁵⁸ "If McElwain knew of threats against student-athletes, but failed to report them, even when asked by superiors, that could have been considered sufficient for a buyout-free firing."⁵⁹ Brett McMurphy of ESPN reported that UF administrators believe McElwain's dishonesty regarding alleged death threats gave UF enough cause to fire McElwain without having to pay his buyout.⁶⁰ However, Matt Bakter of Tampa Bay Times reported, UF does not believe it can fire McElwain with cause.⁶¹ It is up for legal scholars to debate whether UF would actually have had a case if it attempted a for-cause firing, but the buyout settlement has made that point moot. Nevertheless, McElwain's actions provided UF the ammo it needed to negotiate the reduction of the original \$12.9 million buyout as agreed upon in the contract after termination.⁶²

III. McElwain Contract For Cause and Not For Cause Provisions

Some highlights of McElwain's contract that are pertinent to termination for cause and not for cause include:

a) Section 9, Standards, Subsection B

Section 9, *Standards*, Subsection B, which in pertinent part reads:

Coach, at all times during the term, shall comply with Laws, University Regulations, and Governing Athletic Rules and shall exercise due care that all persons subject to the Coach's supervision, control and/or authority shall also so comply. For the purpose of this Agreement and the Activities Agreement, any material, substantial and/or repetitive failure of Coach to exercise such due care or to so comply ... shall be a material violation of this agreement. The parties acknowledge that such noncompliance ... will have an adverse effect on the Association's and University's reputations missions and interests." Moreover, according to the *Standards* section of McElwain's contract, "[t]he undersigned must act in the Association's and University's highest standards of professionalism, competence, [...] personal and professional conduct, ethics, integrity, and morals, as such highest standards are determined by the President or Chairman in consultation with the Athletic Director."⁶³

b) Section 16, Termination

Section 16, *Termination*, states in pertinent part: "[w]hen Coach violates or fails to fulfill the obligations of this Agreement and/or the Activities Agreement ... the Association may terminate this Agreement or Activities Agreement with or without cause under this paragraph 16 and/or the Activities Agreement."⁶⁴

c) Section 16(C), Termination or Suspension for Cause by Association

Further, Section 16, Subsection C, *Termination or Suspension for Cause by Association*, reads in pertinent part:

The [A]ssociation may terminate this agreement for cause wherever cause for termination of this agreement is referred to in this Agreement, such cause shall mean the occurrence or existence of any one or more of the following [...] [t]he Coach's fraud and/or dishonesty in any other context, whenever occurring and whether or not relating to the Coach's employment, that may adversely reflect on and/or affect the reputation, mission and/or interest of the University and/or the Association [...] whether or not relating to the Coach's employment, during the period of the Coach's employment by the Association, any failure by the Coach to report promptly to the Athletic Director any violation of Laws, Governing Rules and/or University Regulations by any person [...] where the violation is known to the Coach.⁶⁵

d) Section 16(A), Termination by Association or Coach Without Cause.

A. (1) Association may terminate this Agreement without cause at any time thereby ending the employment of Coach by Association by giving written notice to Coach in accordance with clause (a) of Appendix A to this Agreement. The termination shall be effective on the date specified by Association (as provided in more detail in paragraph 16E).⁶⁶

e) Section 17, Termination Consequences

D. Termination by Association Without Cause. (1) If this Agreement is terminated by Association without cause pursuant to subparagraph 16A, Coach shall be entitled to receive the amount equal to the sum of [the product of TWO MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$2,250,000) (without any reduction for outside income, but less deductions for applicable taxes and withholding) multiplied by the number of Contract Years that would have remained in the Term of the Agreement on the effective date of termination had the early termination not occurred plus [the prorated portion of \$2,250,000 determined by applying the proration proves specified in paragraph 4 to such amount for any Partial Contract Year that would have remained in the Term on the effective date of termination had the early termination not occurred] which such (“Association Without Cause Payment”) is to be paid by Association in five (5) installments, calculated in accordance with subparagraph 17H, the first payment being due within ninety (90) days of the effective date of termination and the second through fifth payments being due on each respective succeeding anniversary of the effective date of termination.

(2) Notwithstanding the foregoing clause 17D(1), in the event that Coach accepts employment with any other SEC institution (“Other SEC Institution”) within ninety (90) days after termination of this Agreement under this subparagraph 17D, the terms of this clause 17D(2) shall govern. The Association Without Cause Payment owed to Coach under clause 17D(1) shall be reduced (potentially to zero) by the total amounts payable to Coach by the Other SEC Institution (i) as base salary and other “unconditional” payments to the Coach (meaning all those payments that are not dependent on team or Coach performance but are payable to Coach so long as he is employed and in good standing) (Other SEC Unconditional Payment”). This provision shall be implemented in the manner set forth in Appendix B, attached to and incorporated in this Agreement.

(3) In any event, no allowance shall be made under this subparagraph 17D for, and Coach shall not be entitled to receive, any other amount, payment or benefit payable or provided under paragraphs 4, 7, 8, 11, 12 (except as provided in subparagraph 12C), 13, 14 and/or 15 of this Agreement, or under the Activities Agreement, after the date notice of termination is given. Coach and Association agree that said liquidated damages are reasonable given existing circumstances,

including, without limitation, the range of harm that is foreseeable and the anticipation that proof of damages would be costly and impractical.

The provisions of this subparagraph 17D shall survive the termination of this Agreement.⁶⁷

[. . .]

H. Calculation of Installment Payments. In the event that a payment is required to be made to Coach in installments pursuant to subparagraphs 17B or 17D, in order to provide at least in part for the payment of applicable Federal Income, Social Security and Medicare taxes, the amount of each installment, prior to deduction or withholding of such taxes and withholding (which shall be calculated as provided in subparagraphs 16B or 16D, respectively), shall be as follows:

1st	50.0%
2nd	12.5%
3rd	12.5%
4th	12.5%
5th	12.5% ⁶⁸

IV. Negotiated Buyout

According to McElwain's contract, his original buyout would have been approximately \$12.9 million.⁶⁹ The \$12.9 million figure was reached because McElwain was in the first season of a recently extended six-year contract with buyout terms of \$2.5 million for each season remaining on his contract.⁷⁰ However, after McElwain's unsubstantiated death threat allegations, regardless if there was cause or not to fire McElwain, UF was able to leverage these comments against McElwain to argue a negotiated settlement of the original \$12.9 million figure.⁷¹ Essentially, McElwain and UF both calculated their chances of winning a for-cause argument and both decided it would be more amicable to simply settle on a lesser figure. This way, UF saves money by avoiding paying out the entire \$12.9 million and any attorney fees accompanied by this inevitable lawsuit, while also getting rid of a coach they are tired of, and McElwain is guaranteed some of his illustrious buyout agreement, instead of possibly losing all of it if UF was successful

in showing cause for his termination.⁷² With millions on the line and an uncertain outcome, why would McElwain not battle this more adamantly?

Also facilitating the settlement between UF and McElwain was McElwain's agent, Jimmy Sexton.⁷³ Sexton represents a large contingency of top football coaches, both professional and collegiate.⁷⁴ Sexton fought a reluctance to battle with UF mainly because Sexton had a great chance of representing the next UF head coach after McElwain.⁷⁵ Thus, Sexton felt pressure to keep his relationship with UF in good standing for better negotiation potential regarding UF's next head coach.⁷⁶ A lengthy contract battle over McElwain's buyout agreement would hinder Sexton's ability to amicably negotiate with UF over its next head coach.⁷⁷ In actuality, Dan Mullen, Mississippi State's former head coach, a client of Sexton's, wound up becoming UF's next head coach, thereby confirming Sexton's concerns of not pursuing more of McElwain's potential \$12.9 million buyout.⁷⁸ Sexton's long-term interests were better served by the acceptance of less than the total possible \$12.9 million of McElwain's buyout because he will be able to maintain a stronger relationship with UF, and therefore, be more likely to represent UF's next head coach and earn income off that pending contract. Thus, despite millions of dollars in the balance, having Sexton as an agent arguably had as much impact on McElwain's negotiated buyout settlement as any other factor.⁷⁹

UF agreed to pay McElwain \$7.5 million to buy the former head coach out of his UF contract.⁸⁰ These installments will be spread across six payments between 2017 and 2021.⁸¹ The first installment, due on December 1, 2017, was to be \$3.75 million.⁸² Then, McElwain received \$250,000 on February 15, 2018, and will receive \$1 million each July 1, 2018, 2019, and 2020, with the final installment of \$500,000 due by July 21, 2021.⁸³

- a. McElwain’s contract agreement calls for an agreement reflecting a termination including a release provision. What follows is the Letter Agreement between McElwain and Florida, dated as of October 29, 2017:⁸⁴

Letter Agreement
As of October 29, 2017

RE: Release

Dear Coach McElwain

We have recently discussed that your current employment with the University Athletic Association, Inc. (“Association” or “UAA”) will end on October 30, 2017. In order to assist you in making a transition, we have discussed the Association’s offer to provide you a transition payment and have agreed on the related terms. This letter agreement (“Agreement”) is effective as of the date set forth above, is between you (“Employee”) and the Association, and captures our agreement concerning your transition. For good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Employee and the Association, the Employee and the Association agree as follows:

1. The “parties” to this Agreement are only the Employee and the Association.
2. The Association agrees to provide Employee with a “transition Payment” of \$7,500,000 as described herein. The Association agrees that Employee shall receive payments on or about the dates identified below:

December 1, 2017	\$3,750,000
February 15, 2018	\$250,000
July 1, 2018	\$1,000,000
July 1, 2019	\$1,000,000
July 1, 2020	\$1,000,000
July 1, 2021	\$500,000

All of the above payments are subject to and will be reduced by amounts for federal income, medicare and social security taxes, and will be paid provided that the Employee complies with the terms of this Agreement. It is understood that the Association shall have no obligation to make any payment to the Employee under this Agreement or otherwise other than the Transition Payment, and that payment of the Transition Payment does not extend the employment relationship beyond the termination date stated herein.

3. The Employee agrees as follows:
 - a) The Employee on his own behalf and on behalf of his heirs, representatives and assigns (“Employee Releasor”) does hereby release the Association and the University and their respective former and current trustees, directors, officers, employees, agents, students, contractors, and attorneys, and each of their successors, assigns, and representatives and the individuals’ heirs (collectively and individually, “Employee Releasee”), from and against any and all judgments, demands, claims, settlements, damages, costs (including without

limitation court and dispute resolution costs and attorneys fees), and liabilities of every kind and nature whatsoever that Employee Releasor has or may have against Employee Releasee, from the beginning of the world through the date of this Agreement, whether known or unknown, contingent or fixed, on any basis whatsoever (whether by law, in equity, under contract, tort, statute, rule, regulation, strict liability, warranty, special or economic loss, or on any other basis) relating to or arising from, in any manner, directly or indirectly, the employment relationship involving the Employee, the Association and/or the University (collectively and individually "Employee Claims"). This paragraph 3(a) shall be referred to as the "Employee Release." Nothing in this paragraph shall affect the Employee's right to enforce the terms of this Agreement against the Association.

- b) The Employee agrees (both individually or through any representative) not to disparage or speak, write or otherwise communicate ill of, the University, the Association, and/or their former, current or future trustees, directors, officers, employees, agents, students, contractors, attorneys, contributors and/or fans, publicly or privately. This clause shall be liberally construed to give effect to its purpose, which is to protect the reputations of the Association and the University. The parties agree that such reputations are valuable. The Employee further agrees he will not disclose the fact of and/or contents or terms of this Agreement to anyone other than his attorneys or financial advisers, or pursuant to an appropriate order or lawful subpoena from a court or other entity with competent jurisdiction, and that he will not display, discuss or make public in any manner whatsoever the fact of the Agreement, the Terms, or the contents of the Agreement unless required to disclose the same by law. Notwithstanding the foregoing, truthful statements made in compelled, sworn testimony in administrative, judicial, NCAA, or arbitral proceedings (including, without limitation, depositions and answers to interrogators in the discovery process as part of such proceedings, but not including communications made outside of such proceedings or discovery) shall not constitute a violation of this clause.
- c) All documents, records, and materials, including without limitation personnel records, recruiting records, team information, films, Association playbooks, statistics and any other material and data, furnished to the Employee by or on behalf of the Association, developed by the Employee on behalf, and/or at the expense or using the resources, of the Association, and/or otherwise in connection with the employment of the Employee by the Association are and shall remain the sole and confidential property of the Association. The Employee shall maintain the confidentiality of all such materials and data and this obligation shall survive the expiration or termination of this Agreement. Immediately upon signing of this Agreement, the Employee shall cause any such materials in his possession or control to be delivered to the Association (which may be done by Employee confirming to Association in writing that all such materials have been left in his office.

- d) For a period of one (1) year after the effective date of this letter agreement, the Employee shall not directly contact or otherwise seek to recruit any high school, college or other student athlete previously contacted or recruited by the Association and/or the University. This provisions shall survive the expiration or termination of this Agreement.
 - e) Without derogating from the importance of other consideration for this Agreement, the parties agree that paragraph 3, including without limitation the Release, non-disparagement, recruiting materials/functions and confidentiality provisions, are material and essential consideration for this Agreement. In the event that the Employee breaches any provision of paragraph 3 of this Agreement, as determined by the Association's Athletic Director, then the Employee will forfeit all rights, entitlement, and interest in the Transition Payment under paragraph 2.
4. The Association agrees as follows:
- a) The Association on its own behalf and on behalf of its respective former and current trustees, directors, officers, employees, agents, students, contractors, and attorneys, and each of their successors, assigns, and representatives (collectively and individually, "Association Releasor") does hereby release the Employee and his heirs, representatives and assigns ("Association Releasee"), from and against any and all judgments, demands, claims, settlements, damages, costs (including without limitation court and dispute resolution costs and attorneys fees), and liabilities of every kind and nature whatsoever that Association Releasor has or may have against Association Releasee, from the beginning of the world through the date of this Agreement, whether known or unknown, contingent or fixed, on any basis whatsoever (whether at law, in equity, under contract, tort, statute, rule, regulation, strict liability, warranty, special or economic loss, or on any other basis) relating to or arising from, in any manner, directly or indirectly, the employment relationship and/or any other relationship or matter involving the Employee, the Association and/or the University (collectively and individually "Association Claims"). This paragraph 4(a) shall be referred to as the ("Association Release"). Nothing in this paragraph shall affect the Association's right to enforce the terms of this Agreement against the Employee.
 - b) The Association agrees (on its own behalf and through any authorized representative) to engage in best efforts not to disparage or speak, write or otherwise communicate ill of, the Employee, publicly or privately. This clause shall be liberally construed to give effect to its purpose, which is to protect the reputation of the Employee. The parties agree that such reputation is valuable. The Association further agrees (on its own behalf and through any authorized representative) that it will engage in best efforts, inasmuch as possible in lieu of statutory guidelines affecting the same, to not disclose the fact of and/or contents or terms of this Agreement to anyone other than its attorneys or senior level staff-members, or pursuant to a public records request or an appropriate

- order or lawful subpoena from a court or other entity with competent jurisdiction. Notwithstanding the foregoing, truthful statements made in compelled, sworn testimony in administrative, judicial, NCAA, or arbitral proceedings (including, without limitation, depositions and answers to interrogators in the discovery process as part of such proceedings, but not including communications made outside of such proceedings or discovery) shall not constitute a violation of this clause.
5. This Agreement constitutes the entire agreement of the parties concerning the subject matter addressed and supersedes any prior or contemporaneous agreements, negotiations, offers and drafts, whether oral, in writing or in any other medium.
 6. This Agreement shall be governed and construed for all purposes under Florida law, without regard to such law governing choice of law. Exclusive venue shall be in Alachua County, Florida.
 7. The University of Florida, a public university of the State of Florida located in Gainesville, Florida (“University”), is not a party to, and does not have any obligation or liability under, this Agreement. The University is a third party beneficiary of this Agreement and may, at its sole option, enforce and receive any and all rights and benefits of the Association under this Agreement (which rights and benefits include, without limitation, all rights and benefits expressly intended for the University.)
 8. This Agreement may be amended only by a written agreement executed and delivered by the Employee and a duly authorized representative of the Association. No waiver of any breach or of any provision of this Agreement shall be valid unless made in writing signed by the waiving party, and a waiver on one occasion or of one breach or provision shall not constitute a waiver on any other occasion or of any other breach or provision. The parties acknowledge that the Association and the University each have a right of sovereign immunity as provided and limited under applicable law, and nothing in this Agreement shall be deemed to limit any right, exemption, privilege or immunity available to either of them under applicable law.
 9. The parties acknowledge, agree, and understand that this Agreement shall not constitute an admission of liability, wrongdoing, or anything improper.
 10. The Employee acknowledges that he has had ample opportunity to consult with competent counsel of his choice in connection with entering into this Agreement and fully understands its terms and tax consequences and any rights he is relinquishing under this Agreement. The parties acknowledge and agree that neither the Association nor the University has made any representation or warranty concerning the subject matter of this Agreement. Each party has exercised its own independent judgment in deciding to enter this Agreement.

Please sign this letter below on the attached copy and return the fully signed copy to me to signify your agreement to the terms of this Agreement.

Sincerely,

THE UNIVERSITY ATHLETICS ASSOCIATION, INC.

s/ Scott Stricklin, Athletics Director on 11/28/17

REVIEWED, UNDERSTOOD AND VOLUNTARILY AGREED TO BY:

s/ Coach Jim McElwain on 11/21/2017

The Letter Agreement constitutes the Release of the Association contemplated by Section 17(E), *Waiver of Claims and Release*, of the Contract which states as follows:

(1) Release of Association and University by Coach. In the event of a termination of this Agreement and/or the Activities Agreement by the Association or termination of this Agreement by the Coach or suspension of the Coach by the Association, and as a precondition and consideration of the Association's associated payments to and release of Coach and Coach's rights and right to rumination this Agreement under paragraphs 16 and 17, the Coach (meaning for purposes of this clause 17E(1) Coach on his own behalf of the Coach's heirs, assigns, and representatives) shall execute a release and waiver of all "Claims" against, and release, the Association, the Florida Board of Governors, the University, and each of their respective controlled affiliated entities; and each such body's and entity's respective former, current and future trustees, directors, board members, officers, employees, agents, students, contractors, and attorneys; and each such body's, entity's and individual's respective predecessors, successors, assigns, heirs, and representatives (collectively, singly and in any combination "Releasee"), from and against any and all judgments, rights, demands, charges, claims, settlements, damages and costs (including without limitation court and dispute resolution costs and attorneys fees), actions, causes of action, suits, proceedings, and liabilities of every kind and nature and on every basis whatsoever, that the Coach has or may have against the Releasee, from the beginning of the world through the date on which this Agreement is terminated or the end of the period of the Coach's suspension, as applicable ("release date"), whether known or unknown, foreseeable or not, contingent or fixed, on any basis whatsoever (whether at law, in equity, under contract, tort, statute, and/or regulation, for strict liability, liquidated, exemplary, punitive and/or special loss, economic loss, warranty, and/or on any other basis) AND, WHETHER CAUSES BY THE NEGLIGENCE OF A RELEASEE, OR OTHERWISE, to the extent directly or indirectly arising from or relating to this Agreement, the Activities Agreement, the Services Agreement, any or all such agreement's termination, and/or the employment and/or suspension of the Coach (collectively and individually, "Claims") other than the enforcement of the Retained Rights, which right of enforcement shall survive any termination of this Agreement. Without limiting the foregoing, released and waived Claims shall include, without limitation: (a) Claims under the Age Discrimination in Employment Act and Claims under the Older Worker benefit Protection Act (provided that Coach may rescind only this clause (a), only by and upon giving

notice of rescission to Association on or before the date that is seven days after Coach signs the release and waiver); and (b) Claims for consequential damages by reason of any alleged economic loss, such as (for example only and without limitation) loss of collateral income, loss of earning capacity, loss of business opportunity, loss of perquisites, loss of speech, camp or other outside activity fees, loss of expectation income, and damages allegedly sustained by, or by reason of, alleged humiliation or defamation resulting from the fact of termination or suspension, the public announcement thereof, and/or the dissemination by the Association, the University, and/or the Coach of truthful information and/or documents permitted and/or required by Laws, University Regulations, and/or Governing Athletic Rules. Notwithstanding anything in this Agreement or the Activities Agreement to the contrary, such released Claims include those that arise after the release date to the extent directly or indirectly arising from or relating to conditions, acts or omissions existing or occurring on or before the release date. Coach agrees that he may not recover any monetary damages, including without limitation attorneys' fees, or any other relief otherwise available in connection with any claim, charge or proceedings brought by the Equal Employment Opportunity Commission or other federal agency or by a state or local fair employment practices agency against Releasee. Notwithstanding the foregoing, Coach does not release or waive any Claims that are absolutely prohibited by law to be released or waived even voluntarily.

(2) Release of Coach By Association. In the event of any early termination of this Agreement by the Coach, then provided Coach does not seek any relief, damages, rights or other consequences under this Agreement, the Activities Agreement or otherwise, except only what is provided to him in such event expressly in this Agreement, the Association will execute a waiver and release of the Coach from any claim of the Association for consequential damages by reason of any alleged economic loss, such as (for example only and without limitation) loss of collateral income, loss of earning capacity, loss of business opportunity, loss of perquisites, loss of speech, camp or other outside activity fees, and loss of expectation income resulting solely from Coach's exercise of his right to terminate this Agreement. For clarity, the Association will retain (and will not waive) claims against Coach for payment of the Termination Amount owed under subparagraph 16A, claims for reduction of the Association Without Cause Payment under subparagraph 17D in connection with Coach's employment by another SEC institution, and claims associated with violations of this Agreement by or attributable to the Coach (such as, for example only, violations of Coach's nondisparagement and noncompetition obligations).

(3) General. The Coach acknowledges that in the event of termination of this Agreement, with or without cause and regardless of who is the terminating party, the Coach shall have no right to occupy the position of Head Football Coach, and that during any suspension of the Coach under this Agreement the Coach shall have no right to perform that position. The Coach further acknowledges that the Coach's sole remedies in any way directly or indirectly related to this Agreement,

the Activities Agreement, the Association and/or University, are provided in this Agreement and shall not extend to injunctive or other equitable relief in any such event. The Coach hereby waives any right he or she may have to injunctive and/or other equitable relief. The Coach acknowledges that the Coach has no right nor any expectation of the granting of tenure by the University and/or the Association.

This subparagraph 17E shall survive the expiration or termination of this Agreement, the Activities Agreement, and/or the Services Agreement.⁸⁵

V. University and Coach Divorce Clauses

Regardless if the termination is for cause or not for cause, in most instances the college and coach will enter into some form of separation, termination, settlement, or release agreement as are typical in divorce situations. In limited cases, a coach and college may agree to the terms of a release provision or agreement as part of the original contract in order to receive any portion of the termination fee. In any event, whether the release agreement is part of the original contract, or negotiated as part of the separation, the best written separation agreements will contain:

a. Acknowledgment of dismissal

Bruce Pearl and University of Tennessee, Separation Agreement and Release, March 21, 2011:

Paragraph “1. Coach Pearl’s employment with the University will terminate effective June 30, 2011.”⁸⁶

Phillip E. Fulmer and University of Tennessee, Separation Agreement, undated:

Section 1, Paragraph B. On the Effective Date, the Employment Agreement between the University and Coach Fulmer dated August 12, 2008 shall terminate for all purposes and shall be of no further force or effect, and neither the University nor Coach Fulmer shall have further rights or obligations under the Employment Agreement. Coach Fulmer agrees that he has been paid all monies due him from the University as wages, compensation, bonuses, benefits, and all other entitlements in respect of his employment on or prior to the Effective Date other than (i) reimbursement of authorized travel expenses and other authorized expenses authorized or incurred prior to the Effective Date, including reimbursement of his travel expenses to the College Football Hall of Fame event in New York in December, 2008, the Memphis Touchdown Club event in December, 2008, and the AFCA Convention in Nashville in January, 2009; and (ii) payment of his unused annual leave balance as of the Effective Date, all of which amounts shall be paid to

Coach Fulmer in accordance with the University's standard payroll and reimbursement policies and procedures.⁸⁷

b. That the dismissal was not for cause

c. That the amounts being paid are liquidated damages

K. Kim Anderson and University of Missouri, Agreement and Release, March 6, 2017:

Paragraph 2. In further consideration of the waivers and covenants made by Anderson herein, and pursuant to the Contract for Employment, the University shall pay Anderson, upon termination of the seven-day period specified in paragraph 15 herein, the following amounts, less applicable withholdings for federal and state income taxes and employment taxes:

- Liquidated damages in the negotiated lump sum amount of Four Hundred and Fifty Thousand Dollars (\$450,000.00); and
- Two Hundred Thousand Dollars (\$200,000), for meeting or exceeding the academic accomplishment and social responsibilities established by the Director of Intercollegiate Athletics for 2016-2017; and
- The amount on such date in the annuity fund established under the Contract for Employment.⁸⁸

Bruce Pearl and University of Tennessee, Separation Agreement and Release, March 21, 2011:

Paragraph 14.(d) Coach Pearl agrees that any violation of Section 14(a), 14(b), or 14(c) shall be a breach of the Agreement, and the University shall be entitled to liquidated damages in the sum of Ten Thousand Dollars (\$10,000) for each breach. The University shall be entitled to withhold the liquidated damages from any payments due Coach Pearl under this Agreement, provided, however, that the University shall not withhold more than Twenty Thousand (\$20,000) from any monthly payment due under this Agreement and shall not withhold more than Fifty Thousand Dollars (\$50,000) in total. The parties agree that no liquidated damages shall be due under this Section 14(d) after the date of the last payment due Coach Pearl under this Agreement. The parties agree that damages sustained by a breach of Section 14(a), 14(b), or 14(c) would be impractical or extremely difficult to determine, that such liquidated damages are a reasonable approximation of the harm caused by each breach, and that such liquidated damages are not intended to be, and shall not be construed as, a penalty.⁸⁹

d. That there be an acknowledgement of the amount paid is payment in full

Kelvin Sampson and Indiana University, Separation Agreement, February 22, 2008:

Section 1(d) Sampson agrees that he has been paid all monies due to him from Indiana University on account of wages, compensation, commissions, bonuses, paid time off, benefits, and all other entitlements in respect of Sampson's services on or prior to the Effective Date other than (i) payments to his regular compensation through the Effective Date at the rate in effect immediately prior to the Effective Date (i.e. taking into account the previously agreed upon reduction of \$500,000) and (ii) reimbursements of reasonable and necessary expenses incurred prior to the Effective Date in accordance with Section 4.03 of the Employment Agreement and the past practices and policies of Indiana University (the "Accrued Compensation and Reimbursements").⁹⁰

e. That in the event of death the payment continues to the estate of the coach.

Bruce Pearl and University of Tennessee, Separation Agreement and Release, March 21, 2011:

Paragraph 3. In consideration of the promises in this Agreement, the University agrees to pay Coach Pearl the total sum of Six Hundred Twenty Thousand Dollars (\$620,000) (the "Separation Payment") in twelve (12) equal installments, with the first installment to be paid on or before July 31, 2011, and the remaining installments to be paid on or before the last day of each of the next eleven (11) months. The Separation Payment includes the premium amount Coach Pearl will pay for twelve (12) months if he exercises his option under COBRA to continue the medical insurance coverage he has had as a University employee. In the event of Coach Pearl's death prior to any of the payments becoming due under this Section 3, the University will deliver the remaining payment(s) to the executor or administrator of his estate upon presentation of satisfactory proof of letters testamentary or letters of administration issued by a court of competent jurisdiction. Any delay in delivery of payments pending receipt of the letter testamentary or letters of administration shall not constitute a breach of the University's obligations under this Section 3.⁹¹

f. Release may contemplate some continued employment before an absolute termination date.

Phillip E. Fulmer and University of Tennessee, Separation Agreement, undated:

Section 2. Continuing Duties of Coach Fulmer Prior to Effective Date. Until the Effective Date, Coach Fulmer shall cooperate fully with the University's Athletics Department and its personnel in the performance of his duties as set forth in the Employment Agreement, including but not limited to coaching the University's football team in all remaining regular season football games.⁹²

g. The agreement constitutes a full and complete release.

Kelvin Sampson and Indiana University, Separation Agreement, Exhibit A, February 22, 2008:

Release of all Claims. In exchange for the agreement of The Trustees of Indiana University (“Indiana University”) to enter in the attached Separation Agreement (“Separation Agreement”) and for the performance of the obligations of Indiana University set forth therein, I hereby release (i) Indiana University and all past and/or present officers, directors, stockholders, partners, members, trustees, employees, agents, representatives, administrators, staff members, attorneys, insurers, fiduciaries, successors and assigns of any Person (as defined in the Separation Agreement) in their individual and/or representative capacities (hereinafter collectively referred to as the “Released Parties”), from any and all causes of action, suits, agreements, promises, damages, disputes, controversies, contentions, differences, judgments, claims and demands of any kind whatsoever (“Claims”) that I or my heirs, executors, administrators, successors and assigns ever had, now have or may have against the Released Parties, whether known or unknown to me, by reason of my employment and/or cessation of employment with Indiana University, or otherwise involving facts or circumstances that occurred on or prior to the date that I have signed this Release, other than (1) a Claim that Indiana University has failed to me the amounts contemplated by Section 2 of the Separation Agreement or has otherwise breached the terms of the Separation Agreement, (2) a Claim with respect to any breach or violation by Indiana University of the IU Release executed and delivered by it (and not revoked) and referred to in Section 6 of the Separation Agreement (collectively, the “Excluded Claims”). Such released Claims include, without limitation, any and all Claims under Title IVV of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (“ADEA”), the Rehabilitation Act of 1973, the Civil Rights Act of 1871, the Civil Rights Act of 1991, the Fair Labor Standards Act, the Employee Retirement Income Security Act of 1990 (“OWBPA”), and any and all other federal state or local laws, statutes, rules and regulations pertaining to employment, as well as any and all Claims under state contract or tort law including, but not limited to those based on allegations of wrongful discharge, breach of contract, promissory estoppel, defamation and infliction of emotional distress. [. . .]⁹³

h. The coach and the university will not sue each other.

K. Kim Anderson and University of Missouri, Agreement and Release, March 6, 2017:

Paragraph 6. Further, Anderson covenants and agrees that he will not file any lawsuit, complaint, appeal, grievance or other action with any entity (including but

not limited to any grievance under University rules or policies) in connection with his employment by University or the ending of such employment.⁹⁴

Hal C. Mumme and Belhaven University, Severance Agreement and Release, November 28, 2017:

Paragraph 5. Covenant Not to Sue. Mumme represents and warrants that he has not filed any complaints or claims for relief against Belhaven, its officers, directors, trustees, stockholders, corporate affiliates, subsidiaries or partners, attorneys, agents, or employees with any local, state, or federal court which currently are outstanding. If Mumme has done so, he will forthwith dismiss all such complaints or claims for relief with prejudice. Mumme further agrees and covenants not to bring any complaints or claims as outlined above in any local, state or federal court against Belhaven or its officers, directors, trustees, stockholders, corporate affiliates, subsidiaries or partners, attorneys, agents, or employees with respect to any matters arising out of Mumme's employment relationship with Belhaven or the conclusion of such relationship.⁹⁵

- i. *That the amounts being paid are taxable and the coach has received tax counsel advice.*

Kelvin Sampson and Indiana University, Separation Agreement, Exhibit A, February 22, 2008:

Section 3. Taxes: No Gross-Up. All amounts and benefits paid, provided or reimbursed to Sampson pursuant to Section 2 of this Agreement shall be subject to all applicable local, state and Federal income and employment taxes and other withholdings required by law. All amounts and benefits paid, provided or reimbursed to Sampson pursuant to Section 2 of this Agreement or otherwise shall be free of any obligation on the part of Indiana University or any of its Affiliates to compensate Sampson for the tax consequences directly or indirectly resulting therefrom.⁹⁶

- j. *That the coach has voluntarily entered into the agreement under the advice of his own counsel*

Phillip E. Fulmer and University of Tennessee, Separation Agreement, undated:

Section 23. Representation of Voluntariness. Coach Fulmer acknowledges that: (i) he has read this Agreement carefully, including the provisions of Section 13 concerning release of Claims; (ii) he has consulted with an attorney of his choice about all provisions of this Agreement; (iii) he understands that by signing this Agreement he is giving up any right he may have to bring any Claims against any of the Released Parties; and (iv) he agrees to all the terms of this Agreement voluntarily.⁹⁷

k. The exact severance date

l. A discrimination for age release

Hal C. Mumme and Belhaven University, Severance Agreement and Release, November 28, 2017:

Paragraph 6. Age Discrimination Release. Mumme acknowledges this Severance and Release Agreement specifically releases, among other things, his right to sue Belhaven for any alleged violations to his rights under the Age Discrimination in Employment Act, 29 U.S.C. §621, *et seq.* Mumme further acknowledges that he has forty-five (45) days from his receipt of this Agreement in which to consider whether to accept this Agreement's terms. After acceptance and execution of the Agreement, Mumme will have seven (7) days in which to reconsider and decide not to accept this Agreement, after which the Agreement becomes final and binding. Mumme also acknowledges that he understands the entire Belhaven football staff is being terminated and the staff consists of the following positions and ages:

<u>Position</u>	<u>Age</u>	<u>Selected for Separation</u>
Head Coach	65	Yes
Assistant Coach	48	Yes
Assistant Coach	37	Yes
Assistant Coach	33	Yes
Assistant Coach	29	Yes
Assistant Coach	29	Yes
Assistant Coach	29	Yes
Director of Football Operations	29	Yes

Belhaven reserves the right to rehire any football staff member in the future.⁹⁸

m. No admission of liability

Hal C. Mumme and Belhaven University, Severance Agreement and Release, November 28, 2017:

Paragraph 8. Nature of Agreement. Mumme understands and agrees this Agreement is a severance and release agreement and does not constitute an admission of liability or wrongdoing on the part of Belhaven. Mumme assumed a challenging coaching assignment, helping Belhaven transition from NAIA to NCAA Division III membership, including years Belhaven who not yet eligible to compete for the Division III championships and he built a dynamic offense based on the AirRaid model that set many high passing records.⁹⁹

Houston Dale Nutt and the University of Mississippi, Settlement Agreement, October 13, 2017

Paragraph 16. No Admission of Liability. Nothing in this Agreement shall be construed in any manner as an admission by University that it has violated any statute, law or regulation, breached any contract or agreement, or has engaged in any wrongful conduct with respect to Nutt. The University specifically disclaims any liability to, or wrongful acts against, Nutt or any other person, on the part itself, its employees or its agents.¹⁰⁰

n. Confidentiality

Hal C. Mumme and Belhaven University, Severance Agreement and Release, November 28, 2017:

Paragraph 11. Confidentiality and Non-Disparagement. Mumme understands and agrees that the terms and contents of this Agreement, and the contents of the negotiations and discussions resulting in this Agreement, shall be maintained as confidential by Mumme as well as his agents, employees and representatives. [. . .]

Mumme acknowledges he possesses information and documents that constitute confidential and proprietary information of which neither the public nor Belhaven's competitors will possess. Mumme agrees not to disclose any of Belhaven's confidential or proprietary information or documents (electronic or otherwise) to anyone unless he first informs Belhaven he wishes to disclose such information and receives Belhaven's written consent to disclose such information. In the event Mumme is subpoenaed to testify or disclose documents to another person or entity, Mumme will immediately inform Belhaven and give Belhaven the opportunity to decide whether to seek judicial review of the subpoena or otherwise object to the request.

Mumme acknowledges that violation of this Confidentiality provision would constitute a material breach of this Agreement and agrees that if Belhaven can prove in a legal forum that he violated this provision at any time, he will forfeit any remaining payments otherwise due him under this Agreement and that he will be required to reimburse Belhaven for all sums at the time of his breach.¹⁰¹

o. Non-disparagement

Hal C. Mumme and Belhaven University, Severance Agreement and Release, November 28, 2017:

Paragraph 11. Confidentiality and Non-Disparagement. [. . .] Mumme understands and agrees that as a condition for payment to him of the consideration herein, he shall not make any false, disparaging or derogatory statements in public or private regarding Belhaven, any of its directors, trustees, officers, employees, students, agents, or representatives, or Belhaven's business affairs, financial condition, policies or mission. [. . .]¹⁰²

Bruce Pearl and University of Tennessee, Separation Agreement and Release, March 21, 2011:

Paragraph 14.(a) Coach pearl agrees that he will not make or issue public statements or take any action that disparages the University or any of the Released Parties. Nothing contained in this Agreement shall be construed to limit or influence Coach Pearl's testimony in connection with any NCAA or legal proceeding. Coach Pearl acknowledges that this Agreement is subject to the provisions of the Tennessee Public Records Act.¹⁰³

p. *Returning of university property*

Phillip E. Fulmer and University of Tennessee, Separation Agreement, undated:
Section 12. Return of University Property. On or before the Effective Date, Coach Fulmer shall complete the University's standard exit procedures, including return of all University property, including key, University ID, mobile telephones, PDAs, computers, credit cards, calling cards, and any other University property in his possession, and shall return the courtesy vehicle assigned for use by his spouse. Coach Fulmer may retain the courtesy vehicle previously assigned for his use unless the University has arranged for a different dealer-provided courtesy vehicle pursuant to Section 4 of this Agreement, in which case Coach Fulmer shall return the courtesy vehicle previously assigned for his use on or before the Effective Date.¹⁰⁴

q. *Cooperation*

Phillip E. Fulmer and University of Tennessee, Separation Agreement, undated:
Section 11. Cooperation with Respect to NCAA Matters. Coach Fulmer covenants and agrees that he shall fully cooperate with the University with respect to any NCAA Investigation, proceeding, or hearing relating to or directly or indirectly arising out of (a) Coach Fulmer's activities as the Head Football Coach of the University or (b) the operations or activities of the University's Athletics Department, football team, coaches, or staff members during the period of Coach Fulmer's employment with the University.¹⁰⁵

Kelvin Sampson and Indiana University, Separation Agreement, Exhibit A, February 22, 2008:

Section 4.(a) Covenants and Agreements: Cooperation. Sampson shall fully cooperate with Indiana University with respect to any NCAA Investigation, proceeding or hearing relating to or directly or indirectly arising out of (i) Sampson's activities as the head men's basketball coach of Indiana University's men's intercollegiate basketball team or (ii) the operations or activities of Indiana University's men's intercollegiate basketball team or any coaches or staff members

during the period from April 20, 2006 through and including the Effective Date (collectively, the “NCAA Matters”).¹⁰⁶

Bruce Pearl and University of Tennessee, Separation Agreement and Release, March 21, 2011:

Paragraph 14.(c) Coach Pearl shall cooperate fully with the University and the NCAA enforcement staff, Committee on Infractions, and Infractions Appeals Committee with respect to the current or any other investigation of alleged violation(s) of NCAA rules arising out of the men’s basketball program during Coach Pearl’s employment with the University.¹⁰⁷

r. *Non-interference and encouragement with respect to university athletes.*

Kelvin Sampson and Indiana University, Separation Agreement, Exhibit A, February 22, 2008:

Section 4.(b) Covenants and Agreements: Non-Interference and Encouragement. Sampson shall not interfere in any way with the activities of the varsity men’s basketball team and shall not discourage the current members from cooperating in the transition to a new head coach, from remaining active members of the team, and from playing to their full potential in all competition events.¹⁰⁸

Bruce Pearl and University of Tennessee, Separation Agreement and Release, March 21, 2011:

Paragraph 14.(b) Coach Pearl shall not interfere in any way with the activities of the University’s men’s basketball team; discourage any current member of the team from cooperating in the transition to a new head coach or remaining an active member of the team; or discourage any prospective student-athlete from enrolling in the University.¹⁰⁹

s. *Non-assignability.*

Phillip E. Fulmer and University of Tennessee, Separation Agreement, undated:

Section 15. Nonassignment. Coach Fulmer shall not assign this Agreement or any rights or interest under this Agreement without the University’s prior written consent, which consent the University may give or withhold in its absolute discretion.¹¹⁰

VI. Conclusion

In a time where college coaches are replaced as frequently as the students they coach, the termination and buyout sections have become the most important provisions of a college coach’s contract. These provisions are exercised more frequently than ever before and have become

commonplace in the industry. Thus, all coaching contracts should require a release or separation agreement, or some other alternative, as either part of the original employment contract or as part of the process of termination. A release or separation agreement structures the terms of a seemingly inevitable early exit and ensures maximum protection for the coach, as well as clarity, predictability, and flexibility for the universities.

Thom Park, Ph. D. – Co-Author

Thom has been a national leader in intercollegiate athletics for more than forty years. A 46-year Club Member of the American Football Coaches Association and a former member of the National Association of Collegiate Directors of Athletics, Thom has accomplished substantial university-level teaching, having taught for 33 years at Florida State University and the University of Central Florida, serving as Courtesy Associate Professor of Sport Administration, and consulting/employment experiences in sports administration.

A playing veteran of the Tangerine Bowl, as well as having coached or played a football game in 25 different states and 6 NCAA conferences, and coach in the Peach, Liberty, Gator, and Cotton Bowls, Thom, also, served as a Division I athletic director at Liberty University. Thom has coached at the Universities of Maryland and Connecticut, The Citadel, West Chester University, the U.S.M.C and North Florida Christian High School. Thom is a national authority on business issues, careers and sports agency matters related to coaching and has published dozens of articles in American Football Monthly and through the American Football Coaches Association, all of which can be found on his personal website: www.drthompson.com.

Additionally, Thom has enjoyed more than 20 years of success as a financial advisor in the financial services industry, including as advisor, business or financial advocate, and deal-maker to numerous sports professionals. Since 2009, Thom, also, has concurrently managed a private equity firm in Tallahassee, Florida.

Thom proudly served our country as a U.S. Marine Corps armor officer (1967-1977) during the Vietnam War and served afloat with 2nd Bn. 4th Marines from 3rd Tank Battalion. He has earned a Bachelor of Arts degree in Psychology, a Masters of Education in Counselor Education and a Doctorate of Philosophy in Counseling and Human Systems. Thom, also, completed his postdoctoral fellowship in Sports Psychology at Florida State University in 1988.

Thank you to Michael Forella for his research and assistance in the writing of this article.

Michael Forella is a second-year law student at Marquette University Law School where he is focusing on Sports Law. In addition to being a 2019 Juris Doctorate candidate, Michael is also a

2019 Sports Law Certificate candidate at Marquette through the National Sports Law Institute. Michael is a member of the Sports Law Society at Marquette and competed in the 2017-18 Marquette Sports Law Negotiation Competition. Michael is the recipient of the Thomas Moore scholarship and received the CALI Excellence for the Future Award in Copyrights as well as honors grades in classes such as Professional Sports Law, Amateur Sports Law, Sports Venues, and Business Law. Prior to Marquette, Michael earned his bachelor of arts in Pre-Law & Philosophy from Indiana University of Pennsylvania (Indiana, PA). While at Marquette, Michael has been a legal compliance intern for the Marquette University Athletic Department, a law clerk for Gruber Law Offices, and a legal intern for Martin J. Greenberg. This spring, Michael will go on to compete in the 2018-19 Tulane National Basketball Negotiation Competition.

¹ Cork Gaines, *University of Alabama football coaches will reportedly make \$18 million in 2017 as Nick Saban becomes the highest-paid coach*, Business Insider, May 2, 2017, <http://www.businessinsider.com/alabama-football-coaches-salaries-2017-2017-5>.

² Fred Grimm, *Don't worry, millions spent to pursue UF's new coach was for "educational purpose"*, Miami Herald, Dec. 14, 2014, <http://www.miamiherald.com/news/local/news-columns-blogs/fred-grimm/article4499476.html>.

³ Kyle Fredrickson, *From Bobo MacIntyre, McElwain to Saban, high-dollar buyouts are college football's new game*, Denver Post, Dec. 3, 2017, <http://www.denverpost.com/2017/12/03/cu-buffaloes-csu-rams-buyouts-macintyre-bobo/>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Andrew Astleford, *Florida owes former coach Will Muschamp lots of money*, SEC Country, Oct. 31, 2017, <https://www.seccountry.com/florida/florida-still-owes-former-coach-will-muschamp-lots-of-money>.

⁸ *Id.*

⁹ Grimm, *supra* note 2.

¹⁰ Head Coaching Agreement By & Between the University Athletic Association, Inc. & Will Muschamp. Section 16(A) Termination by Association or Coach Without Cause. Effective Date: Dec. 13, 2010 (on file with author).

¹¹ *Id.* at Section 17(D). Termination Consequences. Termination by Association Without Cause.

¹² *Id.*

¹³ *Jim McElwain*, Wikipedia, Oct. 30, 2017, https://en.wikipedia.org/wiki/Jim_McElwain.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Head Coaching Agreement By & Between The University Athletic Association, Inc. & Jim McElwain. Amended (Amendment No. 2) as of June, 2017. Effective Date: Dec. 5, 2014 (on file with author).

²⁶ Wikipedia, *supra* note 13.

²⁷ *Id.*

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- ²⁸ *Id.*
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