

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made this 13th day of January, 2016, by and between West Virginia University Board of Governors for and on behalf of West Virginia University ("University") and Matthew Caponi ("Coach"). As set forth below, University and Coach agree as follows:

I. EMPLOYMENT & TERM

Subject to the terms and conditions of this Agreement, University agrees to employ Coach as Assistant Coach and Coach agrees to perform in this capacity for a term beginning on the date first written above, and terminating at 11:59 p.m. on February 28, 2017 ("Termination Date"). Coach agrees and understands that he has no expectation of future or continued employment beyond the Termination Date. Coach shall be employed as a full-time, exempt employee, by and subject to the rules and policies adopted by the University's Board of Governors and any other policies and procedures adopted by the University, all as they may be modified from time to time. Notwithstanding any University policy or rule to the contrary, for so long as Coach is employed at University, Coach will devote all of his working time and full professional effort to the duties required of his position, and Coach will have no gainful employment with any other person, firm, corporation or legal entity except upon prior written approval of the Director of Athletics. Furthermore, upon prior written approval of the Director of Athletics, Coach may serve as a trustee, director, or officer to nonprofit, charitable, family, professional, and other organizations or entities only to the extent that such service does not interfere with and is not inconsistent with Coach's duties to the University.

II. REPRESENTATIONS

Coach represents and warrants that he has not violated any of the rules and regulations of the National Collegiate Athletic Association ("NCAA"), and that he is not aware of any threatened or pending NCAA investigation involving his conduct at any other NCAA member institution; excepting, any NCAA infractions or investigation already disclosed to University by Coach. Coach also represents and warrants that he is not subject to any undisclosed criminal conviction or pending investigation. Further, Coach warrants that his resume and credentials are true and accurate and that Coach will be solely responsible for any financial obligations or other liabilities that arise out of or result from Coach's previous employment.

III. COMPENSATION AND BENEFITS

A. Base Salary. In consideration of services and satisfactory performance of the terms and conditions of this Agreement by Coach, University agrees to pay Coach an annual base salary as set forth in Exhibit A. ("Base Salary"). Base Salary shall be payable in at least semi-monthly installments. Payment of all Base Salary shall be in accordance with the payroll policies of University and subject to such deductions as may be required by applicable state and federal laws and regulations, and such employee benefit plans in which Coach elects to participate.

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B. Employee Benefits. Coach will be eligible to participate in all employee benefit programs available to other University employees of like status. Such benefits shall be governed by University policies and the laws of the State of West Virginia and will include, among others, health insurance, retirement, annual leave, sick leave and all other standard benefits. Importantly, Coach agrees that he will take leave in accordance with University policies and authorizes University to process leave accordingly.

C. Other Compensation and Incentives.

1. Courtesy Automobile: Coach shall receive one (1) courtesy vehicle; provided, however, that prior to receipt of the vehicle, Coach shall separately agree to the terms and conditions of the Department of Intercollegiate Athletics' Wheels Club Driver Agreement.

2. Tickets: Coach may elect to receive four (4) tickets for each home football game, two (2) tickets for each home men's basketball game, two (2) tickets for each home women's basketball game, and, if applicable, four (4) tickets for each post-season bowl game in which the University's football team participates. In addition to post-season bowl game tickets, Coach may also receive any complimentary items that are customarily provided to post-season bowl participants. Tickets shall be distributed to Coach as allowed by law and by the rules and regulations of the University, the athletic conference in which the University is a member and participates in for football and the NCAA, and are subject to applicable taxes.

3. Camps: Coach may be entitled to additional compensation for services performed related to the football youth camp(s) and/or clinic(s) held on campus as part of the Department of Intercollegiate Athletics' operations consistent with the provisions of West Virginia University Board of Governors' Policies, currently Policy No. 16, and other applicable state laws. Compensation will be dependent upon number of attendees, hours worked, or a percentage of net revenue generated by the camp and subject to the approval of the Head Football Coach, acting as the Camp Director, and the Director of Intercollegiate Athletics or designee. If entitled to additional compensation, Coach will be required to use vacation time while working the camp(s) and/or clinic(s).

4. Annual Performance Incentives: In addition to Base Salary, University shall pay Coach annual performance incentives within One Hundred Twenty (120) consecutive days of the end of the season in which earned as set forth in Exhibit A. Coach is entitled to payment of annual performance incentives if the University reaches the goal set forth in the exhibit and, to the extent the goal is an event, Coach participates in the event. Provided, however, that payment of all annual performance incentives shall be contingent on the football team achieving a 930 or higher multi-year Academic Progress Rate (APR). Accordingly, Coach will not receive any annual performance incentives for the upcoming year if the football team does not achieve a 930 or higher APR. For the avoidance of doubt, if the football team fails to achieve a 930 or higher APR, Coach will not receive any annual performance incentives until that mark is reached. By way of example, if the APR is below a 930 when it is announced in the Spring of 2016, the University will award no annual incentives to Coach in the upcoming 2016-17 season or any subsequent year until the APR is 930 or higher.

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5. **Athletic Apparel:** Coach may receive apparel as set forth in Exhibit A.

6. **Annual Dues:** University will pay Coach's annual membership dues to such professional organizations related to Coach's duties as the Head Football Coach may from time to time approve in writing.

IV. PERFORMANCE

Coach shall report to and be supervised by the Head Football Coach; further, Coach will work with the Head Football Coach and the Director of Intercollegiate Athletics or designee to establish a work schedule consistent with University policies. Without limiting the foregoing, Coach shall conduct himself at all times in a manner which is consistent with being an instructor of students and which presents a positive representation of West Virginia University. The parties agree that, although this Agreement is athletics related, the primary purpose and priority of the University and this Agreement is to support the University's educational mission. The University retains the right to assign Coach to another position within the University that requires the performance of different duties during the term of this Agreement. In no event, however, will Coach be assigned to a position that is not consistent with his education and experience. If the University reassigns Coach, and Coach refuses to accept such reassignment, then the University may terminate this Agreement for cause pursuant to the terms and conditions for termination under Article VII, A, 5.

Coach shall comply with all local, state or federal laws, ordinances, rules or regulations, or of any of the written rules, regulations, policies, procedures or standards of the University, the Big 12 Conference (or any other athletic conference of which the University may become a member) or the NCAA. Coach will avoid at all times throughout the term of his employment the existence or appearance of a conflict of interest and shall comply with the applicable provisions of the West Virginia Governmental Ethics Act, W. Va. Code §§ 6B-1-1 to 3-11. Further, Coach shall adhere to NCAA Bylaw 1.1 Conduct of Athletics Personnel in the performance of his duties as Assistant Football Coach. Pursuant to NCAA Bylaw 11.2.1, it is stipulated by the parties that if Coach is found in violation of NCAA regulations, he 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 as set forth in Article VII herein.

Additionally, Coach shall not knowingly or negligently permit or condone, directly or indirectly, any student, employee or other individual subject to his control or supervision, to perform any act which reflects adversely on the University, its athletic programs, or otherwise affects the operations of the football program or Coach's responsibilities under this Agreement. In the event Coach violates the foregoing, Coach may be subject to disciplinary action, consistent with the terms of this Agreement, including, but not limited to, public or private reprimand, or, if appropriate, termination as determined by the Director of Intercollegiate Athletics, and/or the Head Football Coach, after consultation and review with the Director of Intercollegiate Athletics.

Coach understands and agrees that in the course of his employment, Coach will receive and become aware of information, projects, and practices which are sensitive and confidential in nature. Coach agrees to keep all such information strictly confidential and further agree not to communicate, disclose, divulge or otherwise use – directly or indirectly – such confidential and/or sensitive information for any purpose other than the necessary and appropriate business use related to Coach's position.

V. UNIVERSITY'S RIGHT TO USE OR AUTHORIZE THE USE OF COACH'S NAME, IMAGE, AND LIKENESS.

Notwithstanding anything to the contrary contained in this Agreement, Coach agrees that the University shall have the exclusive right, commercial or otherwise, to use Coach's name, nickname(s), initials, autograph, image, photograph, picture and other likeness and other indicia of or closely identified with Coach (collectively referred to as "Personal Indicia") for the benefit of the football program, the Athletics Department, the University, and with respect to any contracts or sponsorship agreements entered into between the University and any sponsor, manufacturer, media rights company or vendor of athletic apparel, shoes and other products or services. Additionally, the University shall have the exclusive rights to authorize, license, or to grant any such sponsor, manufacturer, media rights company, vendor, or other party the right to use Coach's Personal Indicia; provided, however, that any such use shall be in good taste and does not reflect negatively upon Coach.

To the extent necessary, Coach hereby assigns to University all rights, title and interest to the use of his Personal Indicia, and any derivatives thereof, during the term of this Agreement, which assignment will terminate or expire when Coach's employment with University ends, except for uses related to Coach's tenure and performance at University. Coach, subject to this Agreement, is, and will remain, the sole and exclusive owner of his name and likeness and all proprietary and potentially proprietary rights therein.

VI. PROMOTIONAL ACTIVITIES, PUBLIC APPEARANCES, & OUTSIDE INCOME

As part of Coach's responsibilities under this Agreement, Coach shall from time to time attend and participate in certain promotional activities as directed by the Head Football Coach or Director of Intercollegiate Athletics, or their designees. University agrees to consult and coordinate with Coach before scheduling such promotional activities, which consent shall not be unreasonably withheld. Such promotional activities may include, but are not limited to appearances at events sponsored by the University, the Mountaineer Athletic Club, or any other University affiliated organizations; appearances and participation in radio, television and Internet programs produced by or on behalf of the University its affiliated organizations, or other such programs licensed by the University. Such appearances and participation may include, but shall not necessarily be limited to, radio talk shows, pregame/postgame radio shows, television shows, Internet audio programs and occasional Internet features. Coach recognizes that he does not own the rights to radio, television, Internet and other programs that are broadcast or otherwise disseminated to the

public in which Coach serves as a participant under this Agreement. University retains exclusive rights to services in the areas as specified herein.

Nothing contained herein shall be deemed to prevent Coach from arranging or participating in, and deriving income and/or benefits from sources outside of the University such as speaking engagements, camps, or clinics ("Outside Events"). Provided, however, Coach acknowledges and agrees that prior to committing to any Outside Events, he must notify the Director of Intercollegiate Athletics, or his designee, of the Outside Event and obtain approval. The Director of Intercollegiate Athletics may refuse to provide approval at his discretion but will not unreasonably withhold such approval. Coach may not make participate in any Outside Events with businesses or corporations that compete with any of the University's corporate sponsors. Further, in accordance with NCAA Bylaw 11.2.2 regarding athletically-related income, Coach agrees to provide a written detailed account to the Director of Intercollegiate Athletics or his designee, at least once annually, or more frequently upon request, for all athletically-related income, compensation, gratuities or benefits from any and all sources outside the institution.

Coach shall make no public appearance, either in person or by means of radio, television, Internet or other means or medium, or willingly allow the use of his name in connection with his relationship to the University, when any such appearance or use of name will result in unfavorable reflection upon University or conflict with Coach's duties or University's rights under this Agreement.

VII. TERMINATION

A. Termination for Cause by University. The University specifically reserves the right to terminate this Agreement without further obligation at any time for cause, which shall be deemed to include, but is not limited to, the following:

1. The commission by Coach of a significant or severe violation, whether intentional or negligent, or a pattern of any violations, of the written rules, regulations, policies, procedures or standards of the NCAA, the University or, the Big 12 Conference (or any other conference of which University may become a member), or the allowing or condoning, whether directly or by negligent supervision, of any such violation by a student, coach or other individual subject to his control or supervision, or otherwise soliciting, directing or condoning such violation by any person;
2. Any conduct of Coach in violation of any federal, state, or local criminal statute (excluding minor traffic offenses) whether prosecuted or not, or any act of moral turpitude;
3. Substance abuse or habitual insobriety;
4. Material breach of Coach's duties or any term of this Agreement by Coach;

FOOTBALL ASSISTANT COACH

5. Willful, negligent or intentional disregard in the performance of Coach's duties or insubordination by Coach of the reasonable instruction of the Head Football Coach, the Director of Intercollegiate Athletics or their designees;

6. Fraud or dishonesty of Coach in the performance of his duties or responsibilities under this Agreement; or

7. Material misrepresentation of Coach's educational or other qualifications for employment of Coach under this Agreement; or

8. Conduct by Coach that is clearly contrary to the character and responsibilities of a person occupying Coach's position, offends the traditions of the University, brings discredit to the University; or harms the University's reputation.

In the event that Coach is terminated for cause by University, Coach shall not be entitled to, nor shall University be required to provide, any portion of the compensation, benefits and/or incentives as set forth in Article III of this Agreement, or any other entitlements under this Agreement, except Base Salary, benefits and incentive compensation actually earned and accrued but unpaid through the date of termination, all of which shall be paid within thirty (30) consecutive days of termination less all applicable taxes and other withholdings.

B. Termination for Convenience by University. In addition to the provision set forth above, the University also reserves the right to terminate this Agreement without cause, at University's convenience. In the event that University terminates Coach without cause, University will pay, in equal monthly installments from legally available funds until the Termination Date, all Base Salary, benefits and incentive compensation actually earned and accrued but unpaid through the notice of termination for convenience, and, with regard to Article III (A) only, any or all other amounts University is legally obligated to pay to Coach pursuant to the terms of this Agreement, as if the Coach had fully performed through and until Termination Date as defined by Article II of this Agreement, less all applicable taxes and other withholdings. Notwithstanding the foregoing, before the University is required to pay the amount set forth in this paragraph, Coach must diligently seek mitigation of this payment obligation by obtaining full-time employment. Coach shall provide University with a written report of the specific efforts undertaken in this regard within thirty (30) days of termination and each thirty (30) days thereafter; provided, however, that if the Coach secures full-time employment elsewhere, he shall notify University within three (3) business days of the terms of such employment, including the amount of income, if any, resulting directly or indirectly. University's financial obligation under this Agreement shall cease if Coach earns more than that what is owed to him or, if he does not earn more than what was owed to him, will be reduced by the amount of any income received by Coach..

C. Termination by Coach. Coach agrees that he will not personally or, directly or indirectly, through any agent or representative, inquire into, seek, negotiate for, or accept other full-time or part-time employment of any nature at any time during the term of this Agreement without first having obtained the written permission of the Head Football Coach and the Director of Intercollegiate Athletics, which permission shall not be unreasonably withheld.

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FOOTBALL ASSISTANT COACH

In the event that Coach terminates this Agreement without first obtaining a release from the University, Coach agrees to either pay to University or cause to be paid to the University, as liquidated damages, twenty-five percent (25%) of the remaining Base Salary of this Agreement, which is payable within (30) days of the effective date of the termination by Coach. All payments made pursuant to this provision shall be considered by the parties to be liquidated damages resulting from the University's inherent loss which cannot be estimated with certainty, or fairly or adequately compensated by money damages.

Provided, however, that the referenced percentage for calculating liquidated damages payable to the University shall be one hundred percent (100%) in the event Coach accepts employment by a member institution of the Big 12 Conference. The parties have bargained for and agreed to the foregoing liquidated damages provisions, giving consideration to the fact that University will incur administrative, recruiting, resettlement, and other costs in obtaining a replacement for Coach, in addition to potentially increased compensation costs if Coach terminates this Agreement prior to its expiration, which damages are extremely difficult or impracticable to determine with certainty. The payment of the liquidated damages shall constitute adequate and reasonable compensation to the University for the damages and injury suffered because of termination by convenience by Coach; it is not, nor be construed to be, a penalty.

Upon termination of this agreement, Coach shall, within thirty (30) consecutive days of termination, receive payment from University for all Base Salary, supplemental and incentive compensation actually earned and accrued but unpaid under the terms of this Agreement and not paid as of the date of such termination, less all applicable taxes and other withholdings.

Notwithstanding the foregoing, nothing in this provision, shall be interpreted to limit Coach's career advancement; rather, University recognizes that unique opportunities for career advancement may occur. In the event that Coach receives an offer or notice of interest, Coach should immediately notify Head Football Coach and the Director of Intercollegiate Athletics in order for Coach and University to explore the possibility of Coach's release from this Agreement.

D. Inability to Perform In the event of the inability of Coach to continue to perform the essential functions of his position under this Agreement by reason of death, disability, or permanent retirement, this Agreement shall terminate and all future obligations between the parties shall cease. The parties further agree that in the event that Coach is unable to continue to perform his obligations under this Agreement and the Agreement is terminated pursuant to this Article VII (D), Coach shall be entitled to all earned and accrued Base Salary, benefits and incentive compensation earned but unpaid as of the date of his inability to perform. Such compensation shall be paid to Coach or his estate or beneficiaries, as the case may be, in addition to standard University benefits, if any.

E. Coach's Obligation Upon Separation from University All materials or articles of information, including without limitation, keys, keycards, cell phones, computers, equipment, parking passes, unused athletic event tickets and the like, the right to claim such tickets of the like, automobiles, personnel records, recruiting records, team information, video, statistics or any other

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material documents, correspondence, or other data furnished to the Coach by the University or developed by the Coach, whether directly or by others under his supervision and control, on behalf of the University for the University's use or otherwise in connection with the Coach's employment hereunder shall remain the sole property of the University. Coach shall cause any and all such materials in his possession or control to be delivered to the University by or before close of business on the date of his termination of employment. This provision shall apply equally to written and electronic materials and records. Coach understands that he will be responsible to pay for any lost, damaged, or unreturned University property by or before close of business on the date of his termination of employment.

VIII. GRIEVANCE PROCESS

Resolution of any employment grievance that Coach shall be governed by the West Virginia Public Employees Grievance Procedure (W. Va. Code §§ 6C-2-1 to -7).

IX. HEADINGS

The headings of the articles and sections contained in this Agreement are for reference purposes only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

X. ENTIRE AGREEMENT; AMENDMENT

It is mutually understood that this Agreement and the attached cover letter and exhibits contain all of the terms and conditions to which the parties have agreed and that no other understandings or representations, either oral or written, unless referenced in the preceding paragraphs, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto. Any modification, amendment or addendum to this Agreement shall be effective only if made in writing and signed by both parties hereto.

XI. SEVERABILITY

If any provision of this Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby, and such remaining provisions shall remain in full force and effect.

XII. APPLICABLE LAW

This Agreement is made and entered in Monongalia County in the State of West Virginia, and the laws of West Virginia shall govern its validity, interpretation, performance, and enforcement by the parties of their respective duties and obligations hereunder.

XIII. VOLUNTARY AGREEMENT

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This Agreement is the result of arm's-length negotiation between the parties, and the parties have had the opportunity to be represented by counsel of their own choosing. Each party enters into this Agreement freely and voluntarily and with the full intent to be bound hereby.

XIV. NOTICE

Any and all notices required or permitted to be given under this Agreement will be sufficient if furnished in writing and sent by registered or certified mail to the other party at the address stated here:

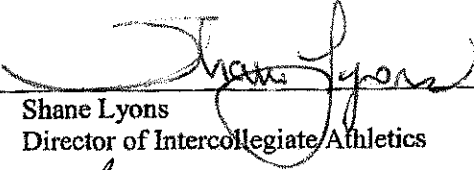
COACH: Last Address on File with the University

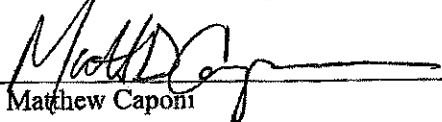
UNIVERSITY: Director of Intercollegiate Athletics
West Virginia University
PO Box 0877, Morgantown, WV 26507-0877

With a Copy to:
General Counsel's Office
West Virginia University
105 Stewart Hall, PO Box 6204, Morgantown, WV 26506-6204

BY THEIR SIGNATURES BELOW, the parties have executed this Agreement as of the day and year first above written.

**WEST VIRGINIA UNIVERSITY BOARD
OF GOVERNORS FOR AND ON BEHALF
OF WEST VIRGINIA UNIVERSITY**

By  _____
Shane Lyons
Director of Intercollegiate Athletics

 _____ 1/13/12
Matthew Caponi

FOOTBALL ASSISTANT COACH

EXHIBIT A
BASE SALARY, OTHER COMPENSATION, AND INCENTIVES

BASE SALARY

As set forth in the Agreement, Coach is entitled to a base salary of two hundred thousand dollars (\$200,000.00).

ANNUAL PERFORMANCE INCENTIVES

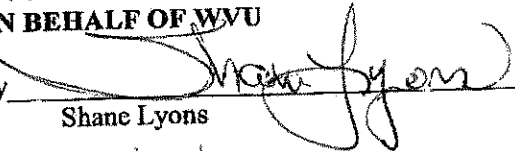
As set forth in the Agreement, Coach is entitled to the following annual performance incentives:

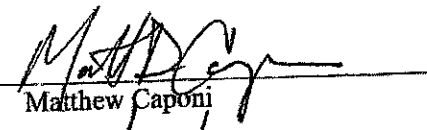
a.	Regular season victories (not cumulative)	\$ 15,000.00
	i. 12 wins	\$ 10,000.00
	ii. 11 wins	\$ 7,500.00
	iii. 10 wins	\$ 5,000.00
	iv. 9 wins	\$ 7,500.00
b.	Conference regular season title (or share of title)	\$ 10,000.00
c.	Non-College Football Playoff bowl appearance ¹	\$ 15,000.00
d.	College Football Playoff ("CFP") bowl non-semifinal appearance	\$ 20,000.00
e.	CFP Semifinal appearance	\$ 25,000.00
f.	CFP National Championship game appearance	\$ 5,000.00
g.	CFP National Championship game victory	

ATHLETIC APPAREL

Effective July 1, 2016, Coach is entitled to an allocation of One Thousand Dollars (\$ 1,000.00) retail value from the University's team apparel supplier which is subject to applicable taxes, if any.

WVU BOARD OF GOVERNORS FOR AND
ON BEHALF OF WVU

By 
Shane Lyons


Matthew Caponi

Date: 1/13/16

Date: 1/13/16

¹ Payment of this annual performance incentive, (c), is contingent on the football team achieving at least a .500 or better regular-season record. For the avoidance of doubt, if the football team becomes bowl eligible with a losing record, no bowl incentives will be earned.
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