

MINUTES
MEETING OF THE BOARD OF TRUSTEES
APPALACHIAN STATE UNIVERSITY

Friday, February 27, 2015

11 a.m.

Chancellor's Office Conference Room
B. B. Dougherty Administration Building, Campus

CALL TO ORDER: The Board of Trustees of Appalachian State University met via conference call at the call of the Chair on Friday, February 27, 2015, at 11:00 a.m. in the Chancellor's Office Conference Room of the B. B. Dougherty Administration Building on the campus of Appalachian State University in Boone, North Carolina. Mr. Bradley T. Adcock, Chair, presided and called the meeting to order.

MEMBERS PRESENT:

Bradley T. Adcock
James M. Barnes
M. Lee Barnes, Jr.
Donald C. Beaver
Frank A. Daniels, Jr.
Avery B. Hall, Sr.
Charles V. Murray
Carson D. Rich
Alice G. Roess
Carole P. Wilson
Brenda White Wright

MEMBERS ABSENT:

H. Martin Lancaster
Michael A. Steinback

OTHERS PRESENT:

Dayton T. Cole
Randy K. Edwards
Sheri N. Everts
Kathy B. Roark

CONFLICT OF INTEREST NOTICE: Chair Adcock read the following:

Under the State Government Ethics Act, all voting members of the Board of Trustees have a duty to avoid conflicts of interest and appearances of conflicts. Looking at the agenda for today's meeting, does anyone know that you have a conflict of interest or an interest that would give rise to the appearance of a conflict of interest? If so, please let me know now. [None reported.]

CLOSED SESSION: Chair Adcock announced that he would entertain a motion that the Board convene in closed session.

Upon motion duly made, seconded and approved, the Board convened in closed session to:

1. prevent the disclosure of privileged or confidential information under Chapter 126 of North Carolina General Statutes or regulations [N.C.G.S. §143-318.11(a)(1)];
2. consult with its attorney to protect the attorney-client privilege [N.C.G.S. §143-318.11(a)(3)];
3. establish or instruct the staff or agent concerning the negotiations of the amount of compensation or other terms of an employment contract [N.C.G.S. §143-318.11(a)(5)]; and
4. consider the qualifications, competence, performance, or condition of appointment of a public officer or employee or prospective public officer or employee [N.C.G.S. §143-318.11(a)(6)].

Chair Adcock asked that the Trustees, Dayton Cole, Randy Edwards, Chancellor Everts and Kathy Roark remain in closed session and that all others in attendance be excused.

PUBLIC SESSION RECONVENED: Upon motion duly made, seconded and approved, the Board reconvened in open session at 11:23 a.m.

EMPLOYMENT AGREEMENT FOR DIRECTOR OF ATHLETICS (Mr. Douglas P. Gillin):

Upon motion duly made and seconded, the employment agreement for the Director of Athletics was approved (see Attachment 1).

ADJOURNMENT: There being no further business, the meeting adjourned at 11:25 a.m.

BRADLEY T. ADCOCK, Chair

By:

Kathy B. Roark

Kathy B. Roark
Assistant Secretary

EMPLOYMENT AGREEMENT FOR DIRECTOR OF ATHLETICS

This Employment Agreement (the "Agreement") is made by and between Appalachian State University ("Appalachian") and Douglas P. Gillin (the "Director"). In consideration of the mutual covenants, promises and conditions in this Agreement, Appalachian and the Director agree as follows:

1.0 Employment:

1.1 Subject to the terms and conditions stated in this Agreement, Appalachian agrees to employ Douglas P. Gillin as the Director of Athletics at Appalachian, and the Director agrees to and accepts the terms and conditions of employment outlined in this Agreement.

1.2 The Director's employment at Appalachian will be subject to all applicable policies and procedures adopted and approved by the Board of Governors of The University of North Carolina (the "University"), the Board of Trustees and the Chancellor of Appalachian and Appalachian's Department of Athletics (the "Department"). The Director's position is classified as EPA Non-Faculty and is not subject to the State Personnel Act, North Carolina General Statutes, Chapter 126, except articles 6, 7, 14 and 15 thereof, and is further defined as a Tier II, Senior Academic and Administrative Officer ("SAAO"). The employment policies contained in Chapter 300 of The UNC Policy Manual, approved by the Board of Governors of the University, and adopted as institutional policies by the Board of Trustees of Appalachian, as both may be revised from time to time (collectively, the "EPA Policies") apply to the Director. In the event of any conflict between the terms of this Agreement and the EPA Policies, the EPA Policies will govern. The Director acknowledges and agrees that the Director has reviewed and understands the policies and procedures of the University found at <http://www.northcarolina.edu/policy/index.php> (in particular, Policy 300.1.1; 300.1.1.1[R]; 300.1.2 and 300.2.1) and those of Appalachian found at http://policy.appstate.edu/Policy_Manual and has been provided with a copy and has reviewed and understands those in the Department's Policies and Procedures Manual. The Director acknowledges and agrees that this position is not a position eligible for tenure.

1.3 The Director will work under the immediate supervision of the Chancellor of Appalachian (the "Chancellor"). The Chancellor will evaluate the Director's performance on an annual basis.

1.4 The Director will manage and supervise the entire Athletics Department.

1.5 Appalachian is committed to providing equal opportunity in education and employment to all applicants, students, and employees. Appalachian does not discriminate in access to its educational programs and activities, or with respect to hiring or the terms and conditions of employment, on the basis of race, color, national origin, religion, sex, gender identity and expression, political affiliation, age, disability, veteran status, genetic information or sexual orientation (the "EEO Policy"). Appalachian actively promotes diversity among students and employees. The Director of Athletics will follow the EEO Policy in all recruitment, supervision and other activities with applicants, coaches, and other employees.

2.0 Term:

2.1 The employment conferred herein is for a stated, definite term commencing on April 6, 2015 and terminating on April 5, 2019 (the "Initial Term"), subject to the EPA Policies and the conditions stated herein.

3.0 Compensation:

3.1 The total annual base salary for the work performed in this position during the stated term is

Two Hundred Fifty Thousand Dollars (\$250,000.00) (the "ABS"), payable in approximately equal monthly installments of Twenty Thousand Eight Hundred Thirty-three and 33/100 Dollars (\$20,833.33), less customary and applicable deductions and withholdings. For each full year (April 6-April 5, or "Contract Year") that the Director remains employed pursuant to this Agreement, Appalachian shall pay to the Director additional incentive compensation in the amount of Ten Thousand Dollars (\$10,000.00), less customary and applicable deductions and withholdings, on or before June 30 following the Contract Year. The incentive compensation will be paid in addition to the ABS and not as an increase of the ABS.

3.2 The Director's compensation may be reviewed periodically, subject to any policies adopted by the Board of Trustees of Appalachian or the Board of Governors of the University. Increases in salary during the Term of the Director's employment, if any, are at the sole discretion of the Chancellor and subject to the adoption of policies by the Board of Trustees of Appalachian and the Board of Governors.

3.3 While actively employed, the Director will be entitled to receive all employment-related benefits that are normally available to other EPA Non-Faculty employees with like appointments. Such benefits may include group family health insurance, group family life insurance, and the State's retirement program. The Director acknowledges that fringe benefits provided by Appalachian are subject to change from time to time by Appalachian, the University and/or the North Carolina General Assembly.

3.4 The Director may earn other revenue while employed by Appalachian with prior approval of the Chancellor. Any outside compensation opportunities are specifically subject to compliance with the "Policy on External Professional Activities for Pay" of the Board of Governors of the University and Appalachian's policies on external professional activities and conflicts of interest and commitment. The Director acknowledges and agrees that the Director has reviewed and understands such policies. Additionally, such opportunities are subject to all other relevant State and Federal policies and laws concerning conflicts of interest. Such activities are independent of the Director's employment with Appalachian, and Appalachian will have no responsibility for any claims arising therefrom. Opportunities for outside compensation will include, but are not limited to, engaging in any radio, television, motion picture, Internet, stage, writing or any similar activity, personal appearances, speeches, commercial endorsements, camps, and clinics, except as outlined below. Subject to specific reporting requirements established by Appalachian, no external activities for pay will be allowed without having on file with the Chancellor a signed approval of the "Notice of Intent to Engage in External Professional Activities for Pay" prior to engaging in those activities.

3.5 In accordance with Appalachian policies and NCAA Bylaw 11.2.2, which are incorporated herein by reference, the Director will report annually on July 1 to the Chancellor all athletically-related income from sources outside Appalachian, including but not limited to, income from annuities; sports camps; housing benefits (including preferential housing arrangements); country club memberships; complimentary ticket sales; television and radio programs; endorsement or consultation contracts with athletics shoe, apparel or equipment manufacturers; and all other athletically-related income from any source other than Appalachian. Further, Director agrees to provide or cause to be provided to Appalachian reasonable and prompt access to all records related to such income.

3.6 While actively employed, the Director will be entitled to annual leave in accordance with the EPA Policies.

4.0 The Director's Duties and Responsibilities:

4.1 The Director is employed by Appalachian with all the duties, responsibilities, and obligations normally associated with such position at a university such as Appalachian. Duties will include, but not be limited to, the following specific duties:

4.1.1 Responsibility for the overall administration and management of the Athletics Department in keeping with the highest ethical standards and integrity of Appalachian, and directly reporting to the Chancellor of Appalachian;

4.1.2 Full responsibility for all activities, operations and policies of the Athletics Department, working with and cooperating with Appalachian's administration, the Board of Trustees, and other department heads;

4.1.3 Administers all Department of Athletics' fiscal operations in accordance with applicable law and Appalachian policy, and establishes procedures to assure adherence to Appalachian policy by all departmental coaches and staff members;

4.1.4 Establishes and enforces administrative policies and procedures that facilitate the achievement of the Department of Athletics' goals, maintains sound academic standards and contributes to the academic progress of student-athletes, including, but not limited to:

- a. Requiring recruitment and retention of student-athletes who are academically qualified; and
- b. In conjunction with Appalachian's faculty and other administrators, promoting and encouraging academic progress of student-athletes toward graduation in defined degree programs;

4.1.5 Keeps abreast of Sun Belt Conference (or such other conference with which Appalachian may be affiliated from time to time, hereinafter referred to as "Conference"), and NCAA activities, attending required meetings to aid in formulating Appalachian policies;

4.1.6 Provides leadership for and supervision of compliance with NCAA and Conference rules and regulations by coaches and other employees, friends, and supporters of Appalachian;

4.1.7 Engages in appropriate level of involvement with media, contributors, alumni, and friends of Appalachian;

4.1.8 Makes recommendations to the Chancellor in the selection, performance, evaluation, and dismissal of athletics personnel;

4.1.9 Serves as the Department of Athletics' official spokesperson on matters of policy and news releases such as schedules and hiring; and

4.1.10 Has final approval on matters involving scheduling, budgeting, ticket policy, fiscal policy, and other phases of the Athletics Department under guidelines outlined by the Chancellor, Board of Trustees, NCAA, and Conference.

4.2 It is recognized by the parties that a student-athlete may be declared not eligible for competition for academic reasons, because Appalachian believes such student-athlete would not be an appropriate representative of Appalachian, as a disciplinary sanction under Appalachian's student conduct code, or because Appalachian believes that such student-athlete is not eligible according to the rules for athletic competition specified by the Conference or the NCAA or for similar reasons. This decision may be made either by the applicable coach, the Director or the Chancellor.

4.3 The Director will seek to maximize print, radio and television coverage favorable to Appalachian.

4.4 The Director agrees that Appalachian may use, without additional compensation, his name, picture, likeness and voice in connection with programs and endorsements that promote Appalachian athletics and in all other respects for purposes of this Agreement.

4.5 If the Director is found to be in violation of NCAA or Conference rules and regulations, whether while employed by Appalachian or during prior employment at another NCAA member institution, the Director will be subject to disciplinary action as set forth in NCAA enforcement procedures and/or applicable Appalachian policies, rules or regulations. Such disciplinary action may include termination for cause in accordance with section 5.0 of this Agreement.

4.6 Director agrees to faithfully and diligently perform the duties of this position, and to devote such time, attention, and skill to the performance of these duties as necessary to perform the responsibilities of the position. During the term of this Agreement, the Director agrees that his failure to discharge any of these duties constitutes a breach of this Agreement that would allow Appalachian to discharge him "for cause" pursuant to section 5.0 of this Agreement.

5.0 Termination for Cause:

5.1 Appalachian has the right to terminate this Agreement "for cause" in accordance with EPA Policies. In addition to the meaning of "for cause" in University and/or Appalachian policies and procedures, as well as its normally understood meaning in employment agreements, the term "for cause" includes, but is not limited to, any of the following:

- a. A violation of the duties set forth in this Agreement or refusal or unwillingness to perform such duties in good faith and to the best of the Director's abilities that is not remedied by the Director within thirty (30) days from the Director's receipt of written notice thereof from the Chancellor;
- b. A violation by the Director of any of the other terms and conditions of this Agreement that is not remedied by the Director within thirty (30) days from the Director's receipt of written notice thereof from the Chancellor;
- c. Any conduct of the Director that constitutes moral turpitude, or which would tend to bring public disrespect, contempt or ridicule upon Appalachian, or failure to follow the high moral and ethical standards commonly expected of a Director as a leading representative of the Athletics Department at Appalachian and which could reasonably be expected to be harmful to the interests or reputation of Appalachian, each as reasonably determined by the Chancellor or the Chancellor's designee;
- d. A major (Level I or Level II) violation by the Director, or knowing participation by the Director in a major violation, or major violation by a coach, an assistant coach or staff member of which the Director had reason to know, or should have known through the exercise of reasonable diligence, or which the Director condoned, of: (i) an NCAA rule, regulation or bylaw; (ii) a Conference regulation or bylaw; or (iii) any University/Appalachian policy, regulation, rule or procedure. For purposes of this subparagraph, whether or not a major violation has occurred shall be reasonably determined by the Chancellor or the Chancellor's designee;
- e. Misconduct of the Director, of a coach or of assistant coaches or staff of which the Director knew, had reason to know, or should have known through the exercise of reasonable diligence, or which the Director condoned, of such a nature that such misconduct would offend

the traditions and ethics of Appalachian, or which brings discredit to Appalachian and which could reasonably be expected to be harmful to the interests or reputation of Appalachian, each as reasonably determined by the Chancellor or the Chancellor's designee;

f. Any conduct of the Director that would constitute legitimate grounds for termination under the common law of North Carolina or under case law interpreting Title VII of the Civil Rights Act of 1964, as amended, including, but not limited to, insubordination, failure or refusal to cooperate with others in the Department or Appalachian, conduct that adversely affects morale or a supervisor's ability to supervise in the Department or Appalachian, and other conduct that is detrimental to Appalachian's legitimate interests, including but not limited to violations of federal, state or local laws;

g. Continued failure to positively represent Appalachian and Appalachian's athletics programs in private and/or public forums after receiving written notice of such failure from the Chancellor; or

h. Financial exigency or program curtailment or elimination as provided for in the EPA Policies.

5.2 In the event of termination of the Director's employment "for cause" prior to the expiration of this Agreement, all obligations of Appalachian to make further payments and/or provide other consideration hereunder will cease as of the end of the month in which such termination occurs. In addition, Appalachian will not be liable to the Director for loss of any collateral business opportunities or any other benefits, perquisites, or income from any other sources.

5.3 The Director has the right to terminate this Agreement, if Appalachian is in substantial breach of the terms of this Agreement and such breach is not remedied within thirty (30) days from the Chancellor's receipt of written notice thereof from the Director. Neither party will have any further obligation to the other from and after the effective date of such termination.

6.0 Termination Without Cause:

6.1 Appalachian may terminate this Agreement without cause at any time by giving written notice to the Director of Athletics; provided, however, that Appalachian will provide any compensation owed to the Director under Section 3.1 for the remainder of the term of this Agreement. Such amounts, if any, will be paid on a monthly basis, subject to customary and applicable deductions and withholdings, for each month remaining in the term of this Agreement, including any extension thereof (hereinafter "Remainder Term"). The Director may be entitled to certain benefits under the EPA Policy. Appalachian will not be liable for any loss of any collateral business opportunities or any other benefits, perquisites, or income from any sources that might ensue as a result of Appalachian's termination of this Agreement without cause.

6.2 The compensation due the Director under paragraph 6.1 will be reduced by the Director's earned income from all other athletically-related sources (including, but not limited to, employment as an administrator of or over an athletics program or department at any institution of higher education which is a member of the NCAA or for any professional team participating in any professional league or conference in the United States or elsewhere, or in sports broadcasting, requiring performance of duties prior to the expiration date of the term of this Agreement or any extension thereof), exclusive of contracts entered into by the Director prior to the commencement of the Director's employment by Appalachian pursuant to this Agreement, during the Remainder Term. The Director agrees to provide Appalachian certified copies of all documents necessary or appropriate to implement this provision. The measure of income earned by the Director during the Remainder Term will be determined by Appalachian from signed individual or joint income tax returns of the Director covering any and all

parts of the Remainder Term as submitted by the Director to the United States Internal Revenue Service (IRS). The Director hereby agrees to provide Appalachian certified copies of said tax returns at the same time they are filed with the IRS, authorizes Appalachian to obtain directly from the IRS certified copies of all such tax returns, and agrees to execute and cause execution of any documents necessary to effect such authorization upon request. The Director will refund immediately to Appalachian any payments in excess of the compensation remaining due under this paragraph after reductions have been calculated. Failure of the Director to perform any obligations set forth in this paragraph will relieve Appalachian of all further obligations under this Agreement. The obligations of the Director to refund payments and provide tax returns to Appalachian will extend beyond the ending date of the term of this Agreement or any extension thereof.

7.0 Termination by the Director:

7.1 The Director agrees that the promise to work for Appalachian for the entire term of the Agreement is essential to Appalachian. The parties agree that the Director has special, exceptional, and unique knowledge, skill and ability as a director for the Department of Athletics, rendering the Director's services unique. The Director therefore agrees, and hereby specifically promises, not to actively seek, negotiate for or accept an athletics related job at a college or university or related employment, under any circumstance, without first obtaining written permission from the Chancellor.

7.2 The Director agrees that Appalachian will have the right, in addition to any other rights which Appalachian may possess, to obtain an injunction by appropriate judicial proceedings to prevent the Director from performing athletics related activities or other related services in violation of this Agreement, for any person, university, firm, corporation or other entity; and against any other breach of this Agreement. The Director also agrees to indemnify and hold Appalachian harmless for its costs in any judicial proceeding necessary or appropriate to enforce Appalachian's rights under this Agreement, including court costs and attorneys' fees.

7.3 Appalachian agrees not to unreasonably withhold permission for the Director to discuss another position.

8.0 Termination for Death or Disability of the Director:

8.1 This Agreement shall terminate automatically if the Director dies, or if the Director becomes disabled and is unable to perform the essential functions of the job with or without reasonable accommodation.

8.1.1 If this Agreement is terminated pursuant to this section because of death, the Director of Athletics' salary and all other benefits shall terminate as of the date on which death occurs, except that the Director's personal representative or other designated beneficiary shall be paid all such compensation earned as of the date of termination and death benefits, if any, as may be contained in any benefit plan now in force or hereafter adopted by Appalachian and due to the Director as an EPA Non-Faculty employee.

8.1.2 In the event that the Director becomes and remains unable, in the sole judgment of the Chancellor, to perform the essential functions of the Director's employment hereunder for a period of ninety (90) days because of medical illness or incapacity and Appalachian thereupon affords notice of termination under subparagraph 8.1 above, except for payment of amounts due the Director accrued hereunder prior to the date of termination and payment of any disability benefits to which the Director may be entitled pursuant to any disability program in which the Director is enrolled through Appalachian, Appalachian shall have no further liability to the Director pursuant to this Agreement. Specifically and without limitation, at the end of

such ninety (90) day period, all salary and other benefits shall terminate, except that the Director shall be entitled to receive any disability benefits to which the Director is entitled under any disability program in which the Director is enrolled through Appalachian.

9.0 Restrictions On Other Employment:

9.1 In the event of a termination of this Agreement under Section 7 prior to its natural expiration, the Director agrees that the Director will not obtain athletics-related employment with any Conference member institution for the time period remaining under this Agreement unless the Director obtains the prior written approval of the Chancellor. The parties agree that money damages would be inadequate to remedy a breach of this covenant; therefore, Appalachian shall have the right to obtain from any court such equitable, injunctive, or other relief as may be appropriate, including a decree enjoining the Director from violating this section.

10.0 Relationship Between the Parties:

10.1 The relationship between the Director and Appalachian will be determined solely by the terms and conditions of this Agreement, including, but not limited to, the EPA Policies and all other applicable Appalachian, Department and University policies and procedures as they may be amended from time to time, all of which are incorporated herein.

11.0 Ownership of Information:

11.1 All materials or articles of information including, without limitation, personnel records, recruiting records, team information, films, statistics or any other material or data furnished to the Director by Appalachian, or developed by the Director on behalf of Appalachian or at Appalachian's direction or for Appalachian's use or otherwise in connection with the Director's employment hereunder, are and shall remain the sole and confidential property of Appalachian. If Appalachian requests access/or the return of such materials at any time during or at or after the termination of the Director's employment, the Director shall immediately deliver all such information to Appalachian.

12.0 Taxes:

12.1 The Director acknowledges that, in addition to the salary provided for in this Agreement, certain benefits that the Director receives incident to this employment relationship with Appalachian may give rise to taxable income. The Director agrees to be responsible for the payment of any taxes (including federal, state and local taxes) due on such income. The Director also understands that Appalachian shall withhold taxes on amounts paid or due to the Director, and the value of benefits provided to the Director, to the extent required by applicable law and regulation.

13.0 Public Record:

13.1 The Director acknowledges and understands that, upon execution of this Agreement, the payment amounts and other terms and conditions contained herein shall not be confidential and shall be considered a public record within the meaning of the North Carolina Public Records Act, N.C. Gen. Stat. § 132-1 *et seq.*

14.0 Governing Law:

14.1 This Agreement will be governed by and construed under the laws of the State of North Carolina. The courts of North Carolina will be the forum for any lawsuits arising from or incident to this

Agreement. The parties agree that any rule to the effect that an agreement shall be construed against the party drafting it shall have no application to this Agreement.

15.0 Severability:

15.1 If any provision of this Agreement is determined to be void, invalid, unenforceable or illegal for any reason, it will be ineffective only to the extent of such provision and the validity and enforceability of all the remaining provisions will not be affected thereby.

16.0 Board of Trustees' Approval:

16.1 The parties understand that, in accordance with policies of the Board of Governors of the University, this Agreement will not be valid until it is approved by the Board of Trustees of Appalachian and the Board of Governors or its delegate, as required.

17.0 Compensation Conditional:

17.1 Since support for this position is funded in whole or in part from sources other than continuing State budget funds, the continuation of your employment in this position is contingent upon the continued availability of funds from such other sources to support this position. The source of funding for this position is Athletics Department receipts. The effect of this contingency may apply without the additional notice of intent to discontinue or terminate employment otherwise required by Sections III.A and III.C of *The UNC Policy Manual*, Policy 300.2.1; provided, you shall be informed at the earliest practicable date of the occurrence of such a funding contingency.

18.0 Non-Assignment:

18.1 Neither party to this Agreement will assign this Agreement as a whole, or in part, without the written consent of the other. Any attempt to do so will render this Agreement null and void.

19.0 Notices:

19.1 Whenever it will be required or permitted that notice or demand be given or served by either party to this Agreement on the other, unless otherwise specifically provided, such notice or demand will be given or served in writing by hand delivery or certified mail, return receipt requested, addressed as follows:

If to Appalachian:

Sheri N. Everts
Chancellor
Appalachian State University
ASU Box 32002
Boone, NC 28608
Facsimile: 828-262-3024

If to the Director:

Douglas P. Gillin

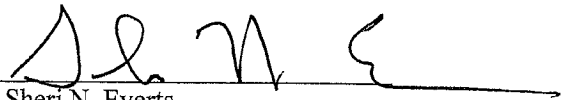
With copy to:

Office of General Counsel
ASU Box 32126
Boone, NC 28608
Facsimile: 828-262-8156

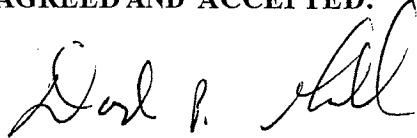
20.0 Entire Agreement:

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

APPALACHIAN STATE UNIVERSITY

By: 
Sheri N. Everts
Chancellor

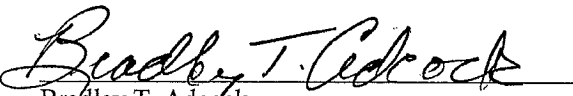
AGREED AND ACCEPTED:



Douglas P. Gillin
2-27-15

Date

APPROVED BY the Board of Trustees of Appalachian State University at its meeting on February 27, 2015.



Bradley T. Adcock
Chair, Board of Trustees
Appalachian State University

3/6/15

Date