

THE UNIVERSITY OF NEW MEXICO ALBUQUERQUE, NM 87131

Date: Friday, June 10, 2016

| Davie. | Robert | F. |
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| | ILONOIL | - |

UNM ID:

Position Number: S04689

Job Suffix: 00

Athletics Football - 925E

After consultation with appropriate University authorities, it has been determined that your appointment status will be Head Coach - Y7020

for the period of service from 7/1/2016 to 12/31/2021.

| ANNUAL OF SERVICE | OF | PERCENT | PERIOD DURING WHICH PAYMENTS ARE MADE | | INSTALLMENTS | |
|-------------------|-------|-----------|------------------------------------------|------------|--------------|-------|
| | TIME | BEGINNING | ENDING | AMOUNT | NO. | |
| \$422,690.04 | 66.00 | 100 | 7/1/2016 | 12/31/2021 | \$35,224.17 | 66.00 |

This appointment is governed by applicable policies as stated in the University's Regents Policy Manual and The University Business Policies and Procedures Manual, as they are amended from time to time, published and distributed by the University, and by relevant federal and state laws and regulations. In conformance with UNM Policy 3240, the University reserves the right to renew or not renew this contract.

Please sign, and forward the original of this contract to the Division of Human Resources, 1700 Lornas Boulevard NE, Sulte 1400, and keep a copy for your records.

I accept the appointment described above.

| THE UNIVERSITY OF NEW MEXICO | EMPLOYEE Paris |
|-----------------------------------------------|------------------------------------------------|
| Paul Krebs Vice President for Athletics Date: | Robert Davie Head Coach/Football Date: 6/15/16 |



ADDENDUM TO EMPLOYMENT CONTRACT OF ROBERT DAVIE, HEAD COACH/FOOTBALL

The following additional terms and conditions shall be an addendum to the standard printed employment contract between The Regents of the University of New Mexico ("University") and Robert Davie ("Coach Davie"). The parties had previously entered in to an ADDENDUM TO EMPLOYMENT AGREEMENT OF HEAD COACH ROBERT DAVIE in November 2011, which was subsequently amended by the FIRST AMENDMENT TO ADDENDUM TO EMPLOYMENT AGREEMENT OF HEAD COACH ROBERT DAVIE in April, 2013. The parties intend this Agreement to supercede and terminate the original amended Agreement. Together, this Addendum and Coach Davie's standard printed contract shall be referred to as the "Agreement.

- POSITION: Coach Davie shall be responsible for all duties assigned by and under the direct supervision of the Vice President of Intercollegiate Athletics (VPIA). Coach Davie shall devote fulltime to the duties and responsibilities of Head Coach/Football and shall not engage in any other athletics-related employment, except as specifically approved by the VPIA or as provided below.
- 2. SALARY AND CONTRACT PERIOD: The contract term shall be for six (6) years for the period July 1, 2016 through December 31, 2021 (the "Contract Term"), which constitutes six (6) separate and distinct contract employment years (each a "Contract Employment Year" or collectively the "Contract Employment Years"). Coach Davie's base salary will be Four Hundred Twenty-Two Thousand Six Hundred and Ninety Dollars (\$422,690.00) per Contract Employment Year. The first Contract Employment Year shall be prorated on an annualized salary of \$422,690.00 reflecting that the first Contract Employment Year runs from July 1, 2016 through December 31, 2016. All subsequent contract years shall commence on January 1 and end on December 31. This Agreement may be extended beyond December 31, 2021, only by mutual, written agreement of the parties. Effective January 1, 2017, and each Contract Employment Year thereafter within the Contract Term, Coach Davie's base salary may be adjusted in accordance with the Regents' annual salary review for staff as provided in University Administrative Policies and Procedures Manual (UAPPM) #3500, Wage and Salary Administration, Section 4.1. Coach Davie understands and agrees that this Agreement does not guarantee or entitle Coach Davie to any annual increases in base salary. This Agreement shall automatically terminate upon Coach Davie's death or permanent disability ("permanent disability" shall mean a minimum of six (6) consecutive months of incapacity preventing Coach Davie from performing the essential functions of his job). No notice to Coach Davie shall be required for this Agreement, and with it Coach Davie's employment by the University, to end on December 31, 2021. Employer-paid fringe benefits shall be paid in addition to the base salary consistent with University policies, provided, however, that Coach Davie may accrue up to 168 hours of paid annual leave but will not be entitled to payment for unused annual leave upon separation from employment as provided in UAPPM #3400, Annual Leave, Section 7.
- OTHER COMPENSATION: Coach Davie may be granted the following compensatory benefits during the period of performance of this Agreement:
 - a. <u>Car Donor Program:</u> Subject to availability and at the discretion of the VPIA, in accordance with the car donor program and in cooperation with local Albuquerque car and truck dealers, the University may provide a courtesy car for Coach Davie's personal and business use.

Coach Davie shall be responsible for obtaining automobile liability insurance in accordance with insurance laws of the State of New Mexico, and will name the University as a third party beneficiary of such insurance policies. In addition, Coach Davie shall comply with all other federal and state laws, National Collegiate Athletic Association (NCAA) rules, University policies, and any other policies or directives of the Athletic Department applicable to the car donor program. Coach Davie understands and agrees that the provision of a courtesy car is in the exclusive discretion of the VPIA, and that Coach Davie will surrender any courtesy car provided upon request of the VPIA. Coach Davie further understands and agrees that any courtesy car provided pursuant to this paragraph constitutes taxable compensation to Coach Davie and that Coach Davie is solely responsible for the tax consequences associated therewith.

- b. Country Club Membership: Coach Davie will be provided one (1) membership in a country club designated by the VPIA. The Athletics Department agrees to cover the cost of membership fees, and Coach Davie agrees to pay for all personal expenses incurred in the use of the membership. Membership as contemplated by this paragraph includes golf and other privileges provided by the club selected, typically but not always including tennis and pool privileges. Coach Davie understands and agrees that the value of this membership likely is taxable compensation to him, and that Coach Davie is solely responsible for the tax consequences associated therewith.
- c. <u>Travel:</u> Coach Davie's spouse may be added to the official University travel party to regular season away and National Collegiate Athletics Association (NCAA) post-season games within the continental United States as determined by the VPIA in his exclusive discretion and subject to availability of funds. Coach Davie understands and agrees that the value of this benefit likely is taxable compensation to him, and that Coach Davie is solely responsible for the tax consequences associated therewith.
- d. Program Promotion: In addition to his regular coaching duties, Coach Davie shall be responsible for reasonable efforts to promote the Men's Football Program, the University of New Mexico and the University's Athletic Department within the community, and for meeting with sponsors and donors. These additional duties shall be discharged in coordination with and under the direction of the VPIA and shall include, without limitation, speaking to youth groups, alumni assemblies, service clubs and the like, conducting free football camps and clinics to disadvantaged youth, meeting with sponsors and donors, and similar activities as may from time to time be assigned by the VPIA or the Senior Associate Athletic Director. The University will pay to Coach Davie the additional sum of One Hundred Thousand Dollars (\$100,000.00) per Contract Employment Year, in addition to his base salary, to fulfill the obligations described in this paragraph. The University will pay the \$100,000.00 described in this paragraph in twelve (12) approximately equal installments during the Contract Employment Year, as part of Coach Davie's monthly compensation but in addition to, not a component of, Coach Davie's base salary, said amount to be paid directly from funds available to the Athletic Department. Coach Davie understands and agrees that payments to him pursuant to this paragraph constitute taxable compensation to him, and that Coach Davie is solely responsible for the tax consequences associated therewith.
- e. Media Participation/Cooperation: The University may enter into agreements with radio and/or televisions station(s) under which the University will receive revenue subject to

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conditions and terms negotiated between the University and third parties. Irrespective of the University entering into any Media Agreements during the Contract Term, the University will, in addition to the foregoing amounts, pay to Coach Davie the additional sum of Two Hundred Thousand Dollars (\$200,000.00) per Contract Employment Year, in addition to his base salary, to make appearances as a representative of the University and/or which will otherwise fulfill the obligations of the University with regard to those third-party contacts or other arrangements. The University will pay the \$200,000.00 described in this paragraph in twelve (12) approximately equal installments during the Contract Employment Year, as part of Coach Davie's monthly compensation but in addition to, not a component of, Coach Davie's base salary. Coach Davie shall assist the University in obtaining contracts and arrangements as described in this paragraph, and will not unreasonably withhold or refuse any appearance which is necessary to meet the University's contractual and other obligations under this paragraph. Coach Davie will not enter into any individual agreements which conflict with the rights of the University as described in this paragraph. Coach Davie understands and agrees that payments to him pursuant to this paragraph constitute taxable compensation to him, and that Coach Davie is solely responsible for the tax consequences associated therewith.

- f. Endorsement Agreements: The University may enter into promotion, use and/or endorsement agreements with shoe and/or apparel and/or athletic equipment companies ("Endorsement Agreements"). Coach Davie shall assist the University as required in obtaining such agreements. Irrespective of the University entering into any Endorsement Agreements during the Term, the University will, in addition to the foregoing amounts, pay Coach Davie the sum of One Hundred Thousand Dollars (\$100,000.00) per contract year to wear and equip his team with shoes, other apparel and equipment as directed by the University. Coach Davie will not enter into individual endorsement or any other agreements with third parties which require him to endorse, wear or equip his team with shoes and/or apparel and/or equipment which would conflict with agreements between the University and Learfield Lobo Sports Properties or other parties/entities. The VPIA shall reasonably decide in good faith whether there is any conflict, and the VPIA's decision shall be final and binding on Coach Davie. The University will pay the \$100,000.00 described in this paragraph in twelve (12) approximately equal installments during the Contract Employment Year, as part of Coach Davie's monthly compensation but in addition to, not a component of, Coach Davie's base salary. Coach Davie understands and agrees that payments to him pursuant to this paragraph constitute taxable compensation to him, and that Coach Davie is solely responsible for the tax consequences associated therewith.
- g. All compensatory benefits are subject to compliance with University policies and procedures, the Mountain West Conference (MWC) rules and regulations, and the NCAA policies and procedures.
- 4. <u>INCENTIVE SALARY:</u> In addition to the compensation set forth above, Coach Davie will earn incentive salary according to the following schedule, which shall be reviewed and may with mutual agreement of the parties be adjusted upwards annually:

| 1. | Win MWC Championship | \$50,000.00 |
|----|-------------------------------------------|--------------|
| 2. | Top 25 ranking at end of the season | \$25,000.00 |
| 3. | Top 25 ranking at any point during season | \$10,000.00 |
| 4. | BCS Bowl Game | \$150,000.00 |

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| 5. | Victory over top-25 team | \$10,000.00 |
|----|-----------------------------------------------------|-------------|
| 6. | Non-BCS Bowl Game | \$20,000.00 |
| 7. | Conference Coach of the Year | \$10,000.00 |
| 8. | National Coach of the Year | \$25,000.00 |
| 9. | Average Paid Annual Attendance (excluding students) | 4-2,000.00 |
| | if 19,000 is reached | \$25,000.00 |
| | and if 21,000 is reached, an additional | \$25,000.00 |

Coach Davie will be eligible for such incentive salary payments after completing the Contract Employment Year in which the incentive is earned. Incentive payments, if any, will be paid no later than sixty (60) days after the end of such Contract Employment Year. No incentive salary payments will be paid in any Contract Employment Year where the team either exceeds its approved budget or has any academically ineligible players after summer school. Coach Davie understands and agrees that incentive payments, if any, are taxable compensation to him, and that Coach Davie is solely responsible for the tax consequences associated therewith.

5. INDEPENDENT INCOME: Subject to compliance with Athletics Department, University, MWC and NCAA policies, as currently in force and from time to time amended, and with advance written permission of the VPIA, Coach Davie may earn other athletics-related income during the period of this Addendum. Coach Davie understands and agrees that such activities are independent of Coach Davie's University employment and the University shall have no liability or responsibility for any claims arising therefrom. Coach Davie agrees to indemnify the University and hold it harmless from any claims arising out of any independent contractual or other business and/or employment arrangements with third parties. Coach Davie's advance written requests pursuant to this paragraph shall include the sources and amounts of any independent income contemplated by this paragraph. Coach Davie understands and agrees that he is solely responsible for any tax liability associated with such activities.

With the written permission of the VPIA, Coach Davie may organize and conduct a camp, clinic, lessons, or sports league pursuant to the Athletics Department's summer camp policy. Coach Davie understands and agrees to comply with the terms UNM Athletics' Camp Manual Policy and Procedures provided by the UNM Athletics Compliance office including, but not limited to, income reporting and background checks. These activities are performed in addition to Coach Davie's assigned duties and responsibilities, and shall not interfere with those assigned duties and responsibilities. Coach Davie shall receive no compensation from the University in connection with these activities. Coach Davie understands and agrees that he is solely responsible for any tax liability associated with such activities and that the University shall have no liability or responsibility for any claims arising therefrom. Coach Davie shall be responsible for obtaining general liability insurance in accordance with insurance laws of the State of New Mexico, and will name the University as a third party beneficiary of such insurance policies. Coach Davie agrees to indemnify the University and hold it harmless from any claims arising out of any camp-related activities.

6. CONDUCT OF ATHLETICS PERSONNEL: Coach Davie, hired to administer, conduct, and/or coach intercollegiate athletics, shall act with honesty and sportsmanship at all times in promoting the honor and dignity of fair play in the context of the high standards associated with collegiate competitive sports. Coach Davie understands and agrees that honesty and sportsmanship at all times, and the promotion of the honor and dignity of fair play in the context of the high standards associated with collegiate competitive sports, are material to this Agreement, and that any conduct

that undermines these values may be grounds for discipline, which can include termination for cause in accordance with paragraph 9.

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<u>UNETHICAL CONDUCT:</u> Coach Davie will refrain from unethical conduct. Unethical conduct may include, but is not limited to, the following examples of misconduct:

- a. Refusal to furnish information relevant to an investigation of a possible violation of an NCAA regulation when requested to do so by the NCAA or the University.
- Knowing involvement in arranging for fraudulent academic credit or false transcripts for a prospective or an enrolled student-athlete.
- c. Knowing involvement in offering or providing a prospective or an enrolled student-athlete an improper inducement or extra benefit or improper financial aid.
- d. Knowingly furnishing the NCAA or the University false or misleading information concerning Coach Davie's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation;
 - e. Receipt of benefits by Coach Davie for facilitation or arranging a meeting between a studentathlete and an agent, financial advisor, or a representative of an agent or advisor (e.g., "runner");
- f. Refusal to furnish information relevant to an investigation of a possible violation of federal or state law or University policy when requested to do so by lawfully authorized federal or state agents or University officials; or
- Refusal to comply with regulatory or policy requirements, including but not limited to the reporting requirements imposed by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Title IX of the Education Amendments of 1972 (the "Clery Act"), and any and all University policies relating thereto.
- Coach Davie's agreement to refrain from unethical conduct is a material term of Coach Davie's employment and this Agreement. Coach Davie expressly understands and acknowledges that unethical conduct is sufficient justification for Termination for Agreement for Cause as described in paragraph 9.
- COMPLIANCE WITH LAWS, POLICIES, RULES AND REGULATIONS: Coach Davie shall be responsible for being fully knowledgeable of, and being in full compliance with, the policies, rules, and regulations of the University, the MWC, or any other conference with which the University may elect to affiliate, the NCAA (all as currently in force and as amended from time to time), as well as applicable federal laws, including, but not limited to the Clery Act; Title IX of the Education Amendments of 1972; as applicable New Mexico laws; and University policies regarding crime reporting and sexual harassment, including, but not limited to sexual harassment, sexual misconduct, and sexual violence. Coach Davie shall immediately report any apparent or confirmed violations of the above laws, policies, rules, and regulations occurring in the Department to the Associate Director, Athletics/Admin. If the University determines that Coach Davie is in violation of MWC or NCAA rules and regulations while employed by the University, or was in violation of NCAA or conference rules and regulations during prior employment at another NCAA member institution,

Coach Davie shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedure and may be suspended by the University at the University's sole discretion for a period of time without pay, or terminated as described in paragraph 9. If Coach Davie fails to meet his/her obligations as stated in this paragraph and/or fails to complete any University-required campus security authority training within six (6) months of the Effective Date of his employment, or otherwise has failed or refused to meet his obligations under any law, regulation, policy or procedure, Coach Davie may be subject to disciplinary action up to and including termination as described in paragraph 9. Coach Davie specifically acknowledges and agrees that his compliance with applicable laws, policies, rules, and regulations are material obligations of this Agreement. Coach Davie shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach of any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the VPIA. Such approval shall not be unreasonably withheld. Failure to provide such notice to the VPIA shall constitute a material and actionable breach of this Agreement.

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- 9. TERMINATION OF AGREEMENT FOR CAUSE: The University reserves the right to terminate this Agreement for "adequate cause" at any time. "Adequate cause" includes violation of any material obligation of Coach Davie under this Agreement or any amendments thereto; insubordination; neglect of duty; malfeasance; conduct involving moral turpitude; any criminal conviction; major or repeated minor violation of policies, rules, or regulations of the University; major or repeated secondary infractions of the MWC or NCAA rules (including any similar infraction which may have occurred at Coach Davie's prior employment); major or repeated minor violation of New Mexico or federal laws, regulations, or policies; failure to ensure such compliance by his staff or student-athletes in the football program where applicable; willful or grossly negligent conduct injurious to the intercollegiate football program at the University; or, any other reason constituting adequate cause for termination pursuant to official written employment policies of the University and/or its Athletics Department. If this Agreement is terminated for adequate cause, the University shall have no further liability except for base salary and fringe benefits accrued to the date of termination.
- 10. TERMINATION BY REQUEST OF COACH DAVIE: Coach Davie may terminate this Agreement at any time upon thirty (30) days' notice to the VPIA. In the event that Coach Davie terminates this Agreement pursuant to this paragraph, the University shall have no further liability except for base salary as specified in paragraph 2 above accrued to the date of termination, and a pro-rata share of the Other Compensation described in paragraph 3(d), 3(e), and 3(f) above, accrued to the date of termination. Coach Davie understands and agrees that termination of this Agreement pursuant to this paragraph prior to the expiration of the Contract Term of this Agreement will cause irreparable harm to the reputation and athletic programs of the University in an amount not capable of precise calculation or quantification. Therefore, and only in the event Coach Davie accepts any coaching position in professional or collegiate football, Davie agrees to pay to the University, as liquidated damages (the "Liquidated Damages") and not as penalty, a sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) in the event that Coach Davie terminates this Agreement before the completion of the first partial (July 1 - December 31, 2016) Contract Employment Year, such additional sum to be reduced to One Hundred Thousand Dollars (\$100,000,00) in the event Coach Davie terminates the Agreement before the completion of any of the remaining five (5) full (January 1, 2017 - December 31, 2021) Contract Employment Years of the Agreement. Pursuant to this paragraph, any Liquidated Damages sum shall be paid in full to the University within sixty (60) days of termination. Failure to pay the full Liquidated Damages sum shall constitute a material and actionable breach of this Agreement. The Liquidated Damages shall be the University's sole and

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exclusive quantification and limitation of Coach Davie's damages owed to the University pursuant to this paragraph and the University shall seek no other remedies or damages whatsoever against Coach Davie related to Coach Davie's termination of this Agreement.

- 11. <u>TERMINATION BY REQUEST OF UNIVERSITY</u>: The University may voluntarily terminate this Agreement at any time by giving Coach Davie thirty (30) days' written notice. No notice from the University shall be required for the Agreement to expire by its terms on December 31, 2021.
 - (a) Severance. In the event of termination of this Agreement by the University other than for cause as defined in paragraph 9 above, the University may initiate and Coach Davie may agree, if he so chooses, to accept payment of his pro-rated base salary only, as described in paragraph 2 above, for the remainder of that Contract Term, and any incentive payments earned under paragraph 4 as of the date of termination. This sum shall be deemed a severance payment to Coach Davie. The sum described in this paragraph 11 will be paid in monthly payments to Coach Davie, with New Mexico and federal tax withholdings associated with the payment of salary, until paid in full. Coach Davie understands and agrees that there will be no retirement withholding or contribution on the severance payments described in this paragraph, and that no benefits of any kind will accrue to Coach Davie as a result of such payment. Coach Davie agrees that as a condition of receiving any severance payments under this paragraph 11, except for any earned but unpaid compensation to the date of termination and any legally protected rights Coach Davie has under any employee benefit plan, Coach Davie must execute a comprehensive release in the form to be determined by the University, in its sole discretion (the "Release"). Severance payments will not commence until Coach Davie has fully executed the Release. If Coach Davie brings a claim or lawsuit against the University, Coach Davie will forfeit his right to receive any severance payments from the University, and will repay to the University any amounts received by him under this paragraph 11.
 - (b) Mitigation/Offset. Coach Davie agrees that the University's obligation to make payments under this paragraph 11 shall be subject to Coach Davie's obligation to mitigate his damages by making reasonable, good faith and diligent efforts to obtain comparable employment as soon as reasonably possible after termination of this Agreement. Comparable employment includes employment as a head or assistant football coach at a Division I college or university or professional team. Should Coach Davie obtain such comparable employment, University's financial obligations under paragraph 11 shall cease so long as Coach Davie's monthly compensation from such comparable employment, including base salary, deferred compensation, public relations and bonuses and incentive salary, but excluding reasonable and usual non-monetary fringe benefits such as health and life insurance, club memberships and use of vehicles ("Monthly Compensation"), is equal to or greater than University's obligation to pay severance under this paragraph 11, prorated on a monthly basis. If Coach Davie's Monthly Compensation from such comparable employment is less than University's monthly obligation to pay severance under paragraph 11, the amount of University's obligation to pay severance shall be reduced by the amount of Coach Davie's Monthly Compensation from such comparable employment.

If, after diligent efforts to obtain comparable employment as described above, Coach Davie obtains employment that is not comparable employment, his income from such employment (plus or minus raises and adjustments) shall be off-set against University's obligations to pay severance under paragraph 11. Any amount received in mitigation of damages by Coach Davie that acts as an offset against the amount being paid contractually by the University shall apply retroactively.

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(c) <u>Notice</u>. Coach Davie shall promptly, but no less than ten (10) days from acceptance of other employment, notify the VPIA in writing of such employment and the total compensation to be paid to Coach Davie for the employment during the Term of this Agreement (had it naturally expired). In addition, Coach Davie agrees to provide the University with a copy of his W-2 form for each calendar year as long as the University has the obligation to make severance payments under this paragraph 11.

Except as otherwise expressly provided in this paragraph, all rights and obligations due from each party to the other under this Agreement shall cease upon the effective date of termination as set forth in the written notice required by this paragraph.

- 12. COMPLETE AGREEMENT: The standard printed employment contract and this Addendum/ Agreement to that contract, and any Exhibits attached hereto and incorporated herein by reference, constitute the final and complete agreement between the parties. Any amendments or further addenda, hereafter agreed to by both parties, shall be in writing and executed with the same formality. All prior and contemporaneous negotiations and agreements pertaining to this Agreement are deemed incorporated into this Agreement and such documents and instruments are deemed to have been abandoned if not so incorporated. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist.
- 13. <u>SEVERABILITY</u>: If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision shall be ineffective to the extent of such invalidity or unenforceability; provided, however, that the remaining provisions will continue in full force without being impaired or invalidated in any way unless such invalid or unenforceable provision or clause shall be so significant as to materially affect the parties' expectations regarding this Agreement. The parties shall replace any invalid or unenforceable provision with a valid provision which most closely approximates the intent and economic effect of the invalid or unenforceable provision.
- 14. GOVERNING LAW AND FORUM: This Agreement, and any other amendments or addenda, shall be governed by and construed in accordance with the laws of the State of New Mexico and the policies and procedures of The University of New Mexico Board of Regents. If either the University or Coach Davie brings any proceeding against the other arising out of this Agreement, each party agrees that such proceeding may be brought only in the County of Bernalillo, State of New Mexico, absent federal subject matter jurisdiction.

Date: 11. 29.16