

**FIRST AMENDMENT TO
EMPLOYMENT AGREEMENT
BETWEEN
UNIVERSITY OF WISCONSIN-GREEN BAY
DEPARTMENT OF ATHLETICS
AND
LINC DARNER**

This EMPLOYMENT AGREEMENT ("Agreement") is made and entered into as of April 14, 2015 by and between the BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM through its duly authorized representatives, the University of Wisconsin-Green Bay Chancellor and its Director of Athletics ("University"), and Linc Darner ("Coach").

WHEREAS, the parties by mutual agreement and assent which to modify the terms to the original agreement in part;

NOW THEREFORE, University and Coach mutually agree to amend the April 14, 2015 Employment Agreement as follows:

I. THE POSITION

- A. Original Agreement incorporated as if set forth herein and reaffirmed by the Parties

II. SCOPE OF SERVICES/DUTIES

- A. Original Agreement incorporated as if set forth herein and reaffirmed by the Parties.

III. TERM OF EMPLOYMENT

- A. The term of the Employment Agreement began April 14, 2015 and continued unless terminated through April 30, 2020
- B. By mutual agreement and in consideration for the terms set forth in this First Amendment the term of this Agreement is hereby extended through April 30, 2022. It may further be extended for additional periods upon such written terms and conditions as may be mutually agreed upon by the parties.
- C. In the event that the current Athletic Director is separated, voluntarily or involuntarily from the University, the Coach shall be entitled to, upon his election, to an extension of this agreement for a period of one year, through April 30, 2023.
- D. In the event that the current Chancellor is separated, voluntarily or involuntarily, from the University, the Coach shall be entitled upon his election to an extension of the Employment Agreement for a period of one (1) year, through April 30, 2023.
- E. All provisions of this paragraph set forth in the Employment Agreement and not explicitly amended above are incorporated herein and reaffirmed by the parties;

IV. COMPENSATION

A. This First Amendment is entered into without adjustment to the base compensation package provided to the Coach.

B. If Coach achieves certain performance goals he will receive the following in additional compensation payable within 45 days of receipt of NCAA distributions:

- | | |
|--|---------------|
| (1) League and/or National Coach of the Year | \$ 1,500 |
| (2) NIT appearance | \$ 3,000 |
| (3) NIT Final Four appearance | \$ 10,000 |
| (4) APR graduation rate above 970 | \$ 1,500 |
| (5) Horizon League regular season championship | \$ 5,000 |
| (6) Horizon League tournament championship | \$ 5,000 |
| (7) NCAA tournament | |
| (a) Wins in the First and Second rounds | \$10,000 each |
| (b) Participation in Sweet Sixteen | \$15,000 |
| (d) Elite Eight appearance | \$20,000 |
| (e) Final Four appearance | \$50,000 |

The post season compensation for NCAA appearances will be cumulative and Coach must be employed by University on May 1st of said year to receive compensation as a result of these performance goals.

D. All terms of this paragraph set forth in the Employment agreement and not explicitly amended above are incorporated herein and reaffirmed by the parties.

V. TERMINATION AND LIQUIDATED DAMAGES

A. By University.

~~This Agreement may be terminated at any time by University by delivering to Coach written notice of University's intent to terminate this Agreement without cause, which notice shall be effective immediately after delivery of such notice to Coach.~~

Liquidated damages upon termination by University without cause, with notice.

The University shall have the right to terminate this Agreement prior to the expiration date without cause pursuant to Article V, Section A.2 of the Original Agreement. In such event, the University shall pay to Coach, as his exclusive remedy in lieu of any and all other legal remedies, damages of any type, or equitable relief available to Coach, liquidated damages in an amount equal to the balance of the amount due under this Agreement through the longest applicable term under Article III of the amendment granting credit for all payment made up through the date of separation.

B. By Coach.

Coach recognizes that his promise to work for University for the entire term of this Agreement is of the essence of this Agreement to University. Coach also recognizes that University is making a highly valuable investment in his continued employment by entering into this Agreement and that its

investment would be lost was he to resign or otherwise terminate his employment with University prior to the expiration of the term of this Agreement. While recognizing these agreements and this entire Agreement, the parties agree that Coach may, nevertheless, terminate this Agreement prior to its normal expiration, but only upon the following terms and conditions.

1. Termination by Coach.

This Agreement may be terminated by Coach by giving University written notice of the termination of his employment with University. In such event, if Coach accepts another head coaching position with a Division I NCAA institution at any time during the remaining term of this Agreement, Coach shall pay to the University, in lieu of any and all other legal remedies, damages of any type or equitable relief available to the University, and without regard to actions by the University to mitigate its damages, liquidated damages as follows:

- (a) If Coach accepts a head coaching position with a Division I Football Bowl Subdivision institution ("FBS") or Big East Conference institution:
 - (1) \$350,000 in year one of the contract if Coach terminates this contract prior to May 1, 2016;
 - (2) \$300,000 in year two or three of the contract if Coach terminates this contract after May 1, 2016 but prior to May 1, 2018;
 - (3) \$250,000 in year four if Coach terminates this contract after May 1, 2018 but prior to May 1, 2019.
- (b) If Coach accepts a head coaching position at a non FBS institution:
 - (1) \$200,000 in year one or two of the contract if Coach terminates this contract prior to May 1, 2017;
 - (2) \$150,000 in year three or four of the contract if Coach terminates this contract after May 1, 2017 but prior to May 1, 2019

The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that University will incur administrative, recruiting, and resettlement costs in obtaining a replacement for Coach in addition to potentially increased compensation costs if Coach terminates this Agreement while serving as Head Men's Basketball Coach, which damages are extremely difficult to determine fairly or with certainty. The parties further agree that the payment of such liquidated damages by Coach and acceptance thereof by University shall constitute adequate and reasonable compensation to University for the damages and injury suffered by Coach because of such termination by Coach. The parties acknowledge that the foregoing is not, nor should it be construed to be, a penalty, and shall be binding upon the parties.

C. Renegotiation

Not later than May 1, 2018 the parties shall review the Employment Agreement and First Amendment in an effort to assess compensation and other consideration of employment. The Parties shall, act in good faith to determine any amendments required and negotiate mutually beneficial terms of continued employment. In the event that the Parties fail to come to agreement on or before May 1, 2018 Paragraph V.B.1 of the Employment Agreement, as amended in the First Amendment shall be considered null and unenforceable, and the Coach shall be able to

terminate without application of the "buyouts" required therein.

In the event the parties are in active negotiations on May 1, 2018 either party may provide a written notice to the other in the fashion required by the Employment Agreement of the tolling of the above provision for three (3) months. The Parties will thereafter complete their negotiations not later than August 31, 2018.

Aside from those provisions explicitly stated above, all other terms of the Employment Agreement and First Amendment remain fully enforceable after May 31, 2018.

VI. NOTIFICATION REQUIRED PRIOR TO DISCUSSION WITH OTHER EMPLOYERS

The parties agree that should another employment opportunity be presented to Coach or should Coach be interested in other employment during the term of this Agreement, Coach shall notify the Director of Athletics or designee of such opportunity or interest before any discussions can be held by Coach with search firm, agent or potential employer.

VII. DISCIPLINARY/CORRECTIVE ACTION

Original Agreement incorporated as if set forth herein and affirmed by the Parties.

VIII. OUTSIDE EMPLOYMENT, ACTIVITIES AND BENEFITS

Original Agreement Incorporated as if set forth herein

IX. MEDICAL DECISIONS

Original Agreement incorporated as if set forth herein

X. UNIVERSITY PROPERTY

Original Agreement incorporated as if set forth herein and reaffirmed by the Parties XI.

XI. ACADEMIC POLICY AND GOVERNANCE

Original Agreement incorporated as if set forth herein and reaffirmed by the Parties

XII. ENTIRE AGREEMENT

Original Agreement incorporated as if set forth herein and reaffirmed by the Parties

XIII. SEVERABILITY/SAVING CLAUSE

Original Agreement incorporated as if set forth herein and reaffirmed by the Parties.

XIV. MODIFICATION

Original Agreement incorporated as if set forth herein and reaffirmed by the Parties

XV. ASSIGNMENT

Neither party may assign its rights or obligations under this Agreement except as specifically stated herein without the advance, written consent of the other party; provided, however, that nothing contained herein shall prohibit Coach from assigning, for collateral purposes only, his right to receive payments hereunder, including, but not limited to, his payments of salary under Article III or liquidated damages under Article V as amended herein.

XVI. GENERAL

Original Agreement incorporated as if set forth herein and reaffirmed by the Parties.

XVII. NOTICES

All notices, demands or other communications of any type given by either party hereto shall be void and of no effect unless given in accordance with the terms of this paragraph. All notices shall be in writing and delivered to the person to whom the notice is directed, either in person (provided that such delivery is confirmed), or by United States mail, postage prepaid, as a Registered or Certified item, return receipt requested. Notices delivered by personal delivery shall be deemed to have been given at the time of such delivery, and notices delivered by mail shall be effective when deposited in a Post Office or other depository under the care or custody of the United States Postal Service, enclosed in an envelope with proper postage affixed, and addressed as provided below. The proper addresses of the parties hereto are as follows:

If to University: Office of the Chancellor
University of Wisconsin-Green Bay
2420 Nicolet Drive
Green Bay, WI 54311-7001

If to Coach: Linc Darner
1415 Osprey Landing Dr.
Lakeland, FL 33813

Either party hereto may change the address for notice specified above by giving the other party hereto ten (10) days advance written notice of such change of address.

XIII. ACKNOWLEDGMENT

Coach acknowledges that he has read and understands the foregoing provisions of this Agreement, that such provisions are reasonable and enforceable, and that he agrees to abide by this Agreement and the terms and conditions set forth herein.

Any paragraph, clause or term of the original Employment Agreement not explicitly amended herein is reaffirmed by the Parties and shall remain fully enforceable.

IN WITNESS WHEREOF, University and Coach have executed this Agreement in Green Bay, Wisconsin on the dates indicated below.

THE BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN SYSTEM:

By: Gary L. Miller
Gary L. Miller, Chancellor

April 18, 2016
Date

ATHLETIC DIRECTOR:

By: Mary Ellen Gillespie
Mary Ellen Gillespie, Athletic Director

4/18/16
Date

COACH:

By: Linc Darner
Linc Darner, Head Men's Basketball Coach

4-18-2016
Date