

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”), is entered by and between the Board of Governors of **MISSOURI STATE UNIVERSITY**, West Plains, Missouri, (“University”), and Jared Phay (“Coach”) and is effective as of July 1, 2023 (“Effective Date”).

WITNESSETH:

WHEREAS, the University currently employs Coach as its Head Men's Basketball Coach, and the parties desire to continue Coach's employment, to the mutual benefit of the parties;

WHEREAS, Coach's current Employment Agreement expires June 30, 2023; and,

WHEREAS, the University and Coach have agreed to the terms and conditions of this Employment Contract, and desire to reduce their agreement to writing;

NOW, THEREFORE, in consideration of the promises, covenants, and agreements herein set forth, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. Term of Employment

The University does hereby employ Coach for a term from July 1, 2023, through June 30, 2025 as the Head Men's Basketball Coach, subject to termination, on the terms and conditions hereinafter provided. The parties agree to review the terms and conditions of the Agreement after the 2024-25 basketball season.

2. Duties

During each year that the Agreement is in effect, Coach shall be responsible for fulfilling the following duties:

- (a) **Head Men's Basketball Coach**. Coach shall serve the University as its Head Men's Basketball Coach, and shall at all times devote his whole time, attention, and energies to

the conduct and coaching of intercollegiate men's basketball on behalf of the University, and to the administration and management of his coaching staff, and shall do and perform all services, acts, and things connected therewith as the Director of Athletics for the University shall from time-to-time direct, which are of a nature customarily and properly belonging to the duties of a University Head Men's Basketball Coach.

(b) Other Activities. Coach shall assist academic advisors to student-athletes in the Grizzly Basketball program, assist with athletics fundraising, and teach the university course PED 135 during the fall and spring semesters, if scheduled by the academic department. Coach may also volunteer to teach additional courses, without compensation, over and above the provisions of this Agreement, at the approval of the Dean of Academic Affairs. Notwithstanding the foregoing provisions, he shall be permitted to conduct summer basketball camps or clinics for his sole benefit as further described herein.

3. Compensation

As of the Effective Date, the University shall pay Coach the following compensation:

(a) Base Salary. On an annual basis, the University shall pay Coach Sixty-One Thousand, One Hundred Sixty-Six Dollars and Zero Cents (\$61,166.00) ("Base Salary"). For the duration of the Agreement, Coach Base Salary shall be subject to any and all across-the-board salary increases provided to University's other employees, including any across-the-board salary increases provided on July 1, 2023.

(b) Payment Via University's Standard Payroll Procedure. Coach's salary shall be paid in equal sums at such intervals as the University has established for its payroll procedure, less applicable taxes and withholdings.

(c) **Eligibility for Incentive Payments.** Coach shall be eligible for additional incentive payments as specified in Section 5.

4. Additional Entitlements

(a) **Fringe Benefits and Privileges.** The benefits and privileges accorded the University administrative, professional and staff employees, such as, but not limited to, paid vacation, sick leave, workers compensation, Missouri State Employees Retirement System (MOSERS), hospitalization/medical insurance, life insurance, long-term disability insurance, and other benefits established by the Board of Governors will likewise be accorded to Coach. It is agreed that the terms and conditions of the Faculty Handbook will not be regarded as a part of the Agreement and that Coach is not on tenure-track and is not receiving tenure.

(b) **Expense Allowance.** All necessary and reasonable expenses incurred by Coach while recruiting or on official business for the University's athletic program will be paid/reimbursed to Coach, pursuant to University policy. Such expenses must be approved by the University's Director of Athletics upon presentation of expense vouchers and supporting documents; such approval not to be unreasonably withheld.

(c) **Use of University Vehicles.** Coach expressly warrants and agrees that no University vehicles will be used to transport non-Missouri State students or non-Missouri State employees or for activities not involving Missouri State University. However, guests of the University traveling on official University business may ride as passengers in University vehicles if approved in advance by the Director of Athletics. It must be noted that no guarantee exists that liability coverage will be afforded to any guest in a university vehicle in the event of an accident.



(d) **Tickets.** Coach shall be entitled to two tickets to each Grizzly Athletics events and all tournament games for personal use and additional tickets as necessary to assist Coach in promoting and enhancing the University Men's Basketball program. Coach acknowledges that receipt of tickets may be reported as personal income subject to applicable taxes.

(e) **Coach's Show.** Coach shall be permitted to contract independently with and receive compensation directly from a radio station approved by the University for purposes of participating in a "Coach's Show." In participating in the Radio Show, Coach will not engage in conduct that does not well represent the University or the media outlet.

5. Other Compensation and Incentives

(a) **Achievement Payments.** Coach shall be entitled to receive certain payments (before taxes) during the term of this agreement, if the University Men's Basketball Team (the "Team") performs to certain levels of achievement. It is expressly understood that in no circumstances shall the total amount of achievement payments exceed \$8,000.00 annually during this Agreement period.

i. **Category I (NJCAA Region XVI Regular Season).** In the event the team finishes in first or second place in the regular season of NJCAA Region XVI, an amount of \$500.00 will be paid.

ii. **Category II (NJCAA Region XVI Post-Season Tournament).**

- In the event the team advances to and participates in the championship game of the NJCAA Region XVI Post-Season Tournament, an amount of \$500.00 will be paid.
- In the event the team finishes as champion of the NJCAA Region XVI Post-Season Tournament, an additional amount of \$1,750.00 will be paid.

iii. **Category III (NJCAA District Playoff Tournament).**

- In the event the team advances to championship match of the NJCAA District Playoff Tournament, \$500.00 will be paid.
- In the event the team finishes as champion of the NJCAA District Playoff Tournament, or otherwise advances to the NJCAA National Post-Season Tournament, an additional amount of \$1,000.00 will be paid.

iv. **Category IV (NJCAA National Post-Season Tournament).**

- In the event the team wins the first-round game of the NJCAA National Post-Season Tournament, an additional amount of \$1,000.00 will be paid.
- The remaining balance of the \$8,000.00 maximum amount (\$2,750.00) for post-season achievement payments will be divided in equal portions based on the number of possible games remaining. For each remaining victory in the NJCAA National Post-Season Tournament, that portion will be paid.

6. Basketball Camps

The University acknowledges that it is in the interest of the University to have men's basketball camps (including camps in the summer and an annual All-Star game or games in the spring). In this regard, Coach may conduct annual basketball camps during the term of this agreement and, if he does so for his own benefit, the University shall make available both University facilities and contracted facilities for that purpose, subject to the following provisions as long as the Agreement remains in effect and is not canceled or terminated.

- (a) **University Fee Per Camp Enrollee.** Coach agrees to pay the University one dollar (\$1.00) per paid enrollee or one hundred dollars (\$100.00), whichever is the lesser sum, for the use of the contracted basketball facility.

- (b) **Insurance Obligations.** Coach agrees to secure commercial general liability insurance to cover the operation of the camp. Such insurance shall be in minimum liability limits of Five Hundred Thousand Dollars (\$500,000.00) per person, and Two Million Dollars (\$2,000,000.00) in the aggregate, with the Board of Governors of Missouri State University named as additional insured. No such insurance shall be construed to constitute a waiver of any sovereign, governmental or official immunity. Coach agrees to increase the liability limits if requested by the University as a result of a change in Missouri law.
- (c) **Mandated Reporter Training.** Coach will attend and require all staff to attend any University-required mandated reporter and/or Title IX training prior to conducting any basketball camps.
- (d) **Use of University's Housing System.** Coach shall be given access to the University's residence housing system for use in conjunction with basketball camps, provided that he shall pay the then current daily rate charged by the University's Department of Residence Life for each camp enrollee. The University agrees to provide Coach with notice of any increase in residence hall rates for the subsequent year.
- (e) **All-Star Game.** "Basketball camp" will include coach's conducting of an area All-Star game(s), including use of University facilities for practice and tournaments, with an additional insurance policy for the All-Star Game. It is further understood that use of the University vehicles is not permitted to transport participants. Coach will reimburse University any additional rental fees or charges incurred by the University for use of facilities as a result of the All-Star game(s).
- (f) **No Guarantee as to Number of Camp Participants.** Coach does not guarantee any number of enrollees.

(g) Registration Fee, Revenue for Basketball Camps. The fee for each enrollee shall be established by Coach. Coach shall be allowed to retain all revenues and income generated by such camp, less fees referenced above in Sections 6(a) and (d).

(h) Use of University Name, Logos in Camps Promotion. Coach may use the University names, logos, and depictions on brochures and similar camp documentation. University funding and/or University personnel may be used for any required reconfiguration of playing surfaces for permitted camps.

7. Professional and Moral Conduct Required

It is understood that Coach is being employed by the University, which is a member institution of the National Junior College Athletic Association (“NJCAA”), for the purpose of administering, conducting, and coaching intercollegiate athletics. Accordingly, Coach agrees he will diligently conduct the athletic department under his direction in such a manner that NJCAA regulations and codes of conduct now existing or hereinafter enacted, will be fully complied with, in all particulars, including, but not limited to, the following:

- (a)** Coach will make best efforts to ensure that the Team’s student-athletes conduct themselves with honesty and sportsmanship at all times.
- (b)** Coach shall not accept compensation or gratuities of any kind whatsoever, either directly or indirectly, for representing a professional sports organization in the scouting or contacting of athletic talent or the negotiating of a contract.
- (c)** Coach will make best efforts to ensure that staff members of the University, or others serving on the Association’s committees or acting as consultants, shall not, directly or by implication, use the Association’s name or their affiliation with the Association in the endorsement of products or services.

- (d) Coach shall not represent, directly or indirectly, a student-athlete in the marketing of athletic ability or reputation to a professional sports team or professional sports organization and shall not receive compensation or gratuities of any kind, directly or indirectly, for such services.
- (e) Coach further agrees that he may be suspended for a period of time, without pay, or that his employment may be terminated, notwithstanding any other provisions of this agreement, if he is found by the NJCAA to be involved in violation of NJCAA regulations.
- (f) Accepting the role of a coach assumes the highest level of academic and athletic integrity, professionalism, responsibility and respect for the game, athletes, officials, administrators and the college community. The NJCAA has outlined the expectations in the “NJCAA Position Statement on Coaching and Athletic Administrator Ethics” which can be found in the NJCAA Handbook. In addition to and in conjunction with the NJCAA position, Coach will:
- Follow all rules, policies and procedures promoted by the college, conference, region, and national association;
 - Serve the student-athletes as a positive role model and mentor;
 - Develop and train each student-athlete to reach each of their athletic, academic, character and leadership potential;
 - Be accountable and take responsibility for the actions of self, athletes, and staff with respect to promoting good sportsmanship and respect for the game;
 - My signature below indicates my commitment to coaching excellence, and Coach agrees to follow the ideals as outlined in this Agreement; and.

- Failure to maintain these provisions shall constitute material breach of this agreement.

Coach acknowledges that he has an affirmative obligation to cooperate fully in the NJCAA/University infraction process, including the investigation and adjudication of a case of infraction. Furthermore, the Parties recognize that if Coach is found in violation of NJCAA regulations he may be subject to disciplinary or corrective actions as set forth in the provision of the NJCAA infractions process, including suspension without pay and/or termination of employment under Section 10(b).

8. Non-functional Personnel

Non-functional or otherwise unauthorized personnel shall not occupy seating or space either on or adjacent to the team bench during competitions.

9. Extension

On or before April 1 during each year of this agreement, the University's Director of Athletics, in conjunction with the University Chancellor, will conduct a performance review and evaluation of Coach and shall give Coach notice in writing stating whether it is willing to modify the agreement. Not later than thirty (30) calendar days following receipt of such notice, Coach shall respond by stating his acceptance or rejection, or his proposed modification of the salary offer extended by the University. If agreement upon the terms of such modification is reached, a new agreement document codifying the terms agreed upon shall be executed by the parties. Such agreement must be approved by the Board of Governors.

10. Termination

(a) **Termination Due to Expiration of Term.** This Agreement shall terminate as of the last day of the term (June 30, 2025). The parties may negotiate a new agreement beyond this termination date if the parties would like to continue Coach's employment.

(b) **Termination for Incapacity; Cause.** This agreement may be terminated at any time during the term, by the University, upon the occurrence of any one of the following events:

i. **Termination Due to Incapacity.** The Agreement shall terminate automatically if Coach becomes totally disabled within the meaning of the University's disability insurance for employees of Coach staff classification so that he qualifies under the University's long-term disability plan, or if Coach becomes permanently disabled. Permanently disabled shall mean physical or mental incapacity of a nature which prevents Coach from performing his duties under the Agreement for a period of one hundred eighty (180) consecutive days. In the event termination occurs under this Section due to permanent disability at a time when Coach's University disability plan benefits are not sufficient to fund his compensation during the one hundred eighty (180) day waiting period to qualify under the University's long-term disability plan, the University will supplement those benefits to ensure Coach receives his full compensation.

ii. **For Just Cause.** The term "just cause" is defined as acts by Coach constituting or involving dishonesty in interactions with athletic or University administration, dishonesty when representing the University that brings ill repute to the University, moral turpitude that brings ill repute to the University, conviction of a felony, and major infractions of NJCAA rules and regulations as determined by NJCAA, prolonged absence from duty without consent of the Athletic Director, and willful

disregard for the welfare and safety of University student-athletes which has resulted in serious injury or death. No termination of employment for alleged “just cause” shall occur without first giving Coach notice in writing of the cause alleged, and an opportunity to be heard.

- iii. **Effect of Termination for Just Cause.** In the event the University terminates Coach’s employment, under Section 10(b)(ii) above, Coach shall not be entitled to any further compensation following the date of such termination, unless otherwise agreed to in writing by the University. Coach will, however, be entitled to all compensation and achievement payments earned through the date of termination.

11. Cancellation

- (a) **Cancellation Without Cause by Coach.** Coach may cancel this Agreement without penalty by giving written notice of cancellation on or after April 1 in the year of termination (final Agreement year); however, and notwithstanding any other provision of the Agreement, if Coach cancels this Agreement before April 1 in the year of termination, Coach shall pay as damages to the University the liquidated sum of \$10,000.00. (The April 1 date is calculated as one month after the end of the principal competitive season for men’s basketball.) The parties agree that actual damages in the case of such cancellation are difficult, if not impossible, to determine. Such liquidated sum shall be paid within one hundred eighty (180) days of notice of cancellation and, if not paid in such time, will increase by one hundred dollars (\$100.00) per day until paid.

- (b) **Cancellation Without Cause by University.** Notwithstanding any provision of the Agreement to the contrary, University may also elect to cancel this Agreement in any year by notification to Coach in writing, on or before May 1. It is understood and agreed that

cancellation does not require just cause or any cause. In the event of cancellation by University, Coach shall receive payment for the number of months remaining on the Agreement after the effective date times the base monthly rate by payment. For example, if the University cancels this Agreement as of June 30, 2024, then prior to May 1, 2024, University will give Coach written notice of such intent. This Agreement will then be canceled as of June 30, 2024, and as of that date Coach will be paid a liquidated sum of Fifty-Seven Thousand, One Hundred Dollars and Zero Cents (\$57,100.00). Said liquidated sum will be paid within thirty (30) days following the termination date and will be in full and complete satisfaction of all amounts which would be otherwise payable to Coach after the termination date. MOSERS retirement will not be paid on the liquidated sum. Social Security (FICA, Medicare tax) only will be paid on said liquidated sum, and standard payroll deduction for Social Security and income tax will be withheld. Coach will also be paid on or before the cancellation any and all amounts actually earned by Coach on or before Cancellation Date.

12. Missouri Law

The laws of the State of Missouri shall govern this Agreement, including the Missouri Sunshine Law. Coach acknowledges that the Agreement is a public document under the Sunshine Law, which the University may release without prior notice to him.

13. Entire Agreement

This Agreement constitutes the entire understanding between the parties, all previous oral and written statements, negotiations, and Letters of Employment having been incorporated herein.

It may only be amended in writing signed by the parties.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement on the dates indicated below:

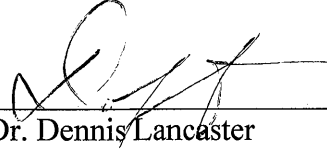
Coach



Jared Phay
Head Coach Men's Basketball

06/07/2023
Date

Missouri State University-West Plains



Dr. Dennis Lancaster
Chancellor

6/7/23
Date