

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 12-1874-D

IN THE MATTER OF)
 THE NATIONAL GRADUATE SCHOOL OF)
 QUALITY MANAGEMENT, INC.)

ASSURANCE OF DISCONTINUANCE

The Commonwealth of Massachusetts (“Commonwealth”), by and through the Office of Attorney General Martha Coakley (the “AGO”), The National Graduate School of Quality Management, Inc. (“NGS”), and the present Board of Trustees of NGS (the “Board”) enter into this Assurance of Discontinuance (“AOD”) pursuant to G.L. c. 93A, §5.

WHEREAS, the AGO commenced an investigation regarding alleged breaches by past and present members of the Board of their fiduciary duty of care owed to NGS pursuant to the AGO’s authority under G.L. c. 12, §8 to see to the due application of charitable funds and to prevent breaches of trust in the administration of public charities within the Commonwealth concurrently with an investigation by the AGO of alleged violations of G.L. c 93A, §2(a) by NGS (collectively, the “Investigations”);

WHEREAS, the AGO determined that the members of the Board during the times relevant to this AOD included Thomas Kneavel, David Kane (deceased), John T. Rabbit, Paul J. Kessler (deceased), Jeffrey Treiber, John H. Bridges, Francisco Velazquez, Paul Farcus, Richard Wilson, Scott Adams, Sandra Clark-Martin, Liane Luke, Clint Miner, Peter Sterndale, Allen Larson, and Ralph Crouch (the “past and present Board members”), and that while these individuals had different lengths of service and were members of the Board at different times, each served for some portion of the period of time from July 14, 2003 until May 17, 2012;

WHEREAS, the AGO alleges that past and present Board members breached their fiduciary duty of care owed to NGS in the following ways:

1. For the period from July 2003 through September 2012, NGS President Dr. Robert Gee (“Gee”) received compensation from NGS that was not comparable with the

compensation levels of his peers nor was it reasonable given the size, assets, or complexity of NGS. The Board was or should have been aware of the existence of a 2003 employment agreement and a 2006 employment agreement between NGS and Gee and that the terms of both agreements, including a dramatic increase in compensation and an unusually long term of employment, favored Gee at the expense of NGS in the approximate amount of \$2,000,000. The Board failed to rescind the employment agreements, monitor NGS's chief executive's compensation levels, and prevent Gee from receiving excessive compensation.

2. In 2003 and again in 2009, Gee purchased luxury automobiles for his and his then wife's personal use using NGS funds. The automobiles purchased were unreasonable and excessive. The Board was or should have been aware that Gee purchased luxury automobiles for personal use using NGS funds and that such purchases were made at the expense of NGS in the approximate amount of \$195,000. The Board failed to prevent the purchases.
3. In 2005, Gee purchased two timeshares in St. John for his personal use using NGS funds. The purchase of the timeshares was unnecessary and not reasonably connected to any legitimate business of NGS, nor were the timeshares ever used for any NGS business purpose. The timeshares were solely used by Gee, his family, and friends for personal recreation. The Board was or should have been aware that Gee purchased the timeshares for personal use using NGS funds and that such purchase was made at the expense of NGS in the approximate amount of \$253,000. The Board failed to prevent this purchase.
4. In 2009, the Board approved the purchase of property located on Onawa Lane, Falmouth by NGS for \$3,360,000. This amount was greater than NGS's assets in the prior fiscal year. The Board caused NGS to spend \$720,000 of its assets and incur debt of \$2,640,000. There was at the time no established plan for how the property would be used. A proposed use for the property at the time was as a center for environmental quality and sustainability; however, NGS did not have approval to

grant degrees in those disciplines. The other proposed use was as a personal residence for Gee. The Board knew at the time it approved the purchase that the property required extensive renovations in the amount of \$1,500,000. The Board authorized the expenditure of NGS funds and caused NGS to incur significant mortgage debt without a business plan in place all to the detriment and at the expense of NGS in the approximate amount of \$2,264,000.

5. In 2009, the Board failed to prevent Gee from collecting a \$100,000 net bonus from NGS without the approval of the Board. The Board was or should have been aware that Gee falsified records of a meeting of the NGS Executive Committee granting him a bonus, that \$150,000 of NGS funds were transferred to Gee, plus an additional payment of the employer portion of social security tax of \$2175.00, and that such total payment in the amount of \$152,175.00 was made at the expense of NGS.
6. In 2009, Gee signed, on behalf of NGS, a purchase-and-sale agreement for a property located on Quonset Road, Falmouth for \$1,250,000 without Board approval. The Board failed to prevent the sale and authorized the closing without a business plan in place. The purchase resulted in the expenditure of \$250,000 of NGS's assets and in NGS incurring additional debt of \$1,000,000, all to the detriment and at the expense of NGS in the approximate amount of \$293,000.

WHEREAS, the present Board acknowledges that there is evidence to support certain of the allegations set forth above, but neither admits nor denies the AGO's allegations regarding any breach of fiduciary duty of care owed to NGS;

WHEREAS, the AGO alleges that NGS violated G.L. c. 93A, §2(a) by, *inter alia*, making misleading statements, including advertisements, about NGS's collegial and degree-granting status in Massachusetts;

WHEREAS, NGS neither admits nor denies the AGO's allegations regarding the violations of G.L. c. 93A, §2(a);

WHEREAS, NGS, the Board, and the AGO agree to resolve the Investigations;

WHEREFORE, NGS, the Board, and the AGO voluntarily enter into this AOD, and agree as follows:

Fundamental change in leadership or dissolution of the school

NGS will effectuate fundamental change in the leadership of the school by no later than August 1, 2014 and demonstrate financial stability and viability by no later than September 30, 2014. Leadership change and financial viability will be demonstrated by the attainment of each and every benchmark listed below in paragraphs 1-7. If any benchmark is not met when due, if change in leadership is not demonstrated by August 1, 2014, or if financial stability and viability are not demonstrated to an extent acceptable to the AGO on or before September 30, 2014, NGS will dissolve under M.G.L. c. 180, § 11A and its remaining assets will be distributed to other charitable entities under the principles of cy pres.

1. The NGS budget for May 2014 will be balanced, per the vote taken by the NGS Board of Trustees on February 23, 2014. In accordance with paragraph 2 below, NGS must provide evidence to the AGO that the budget has been balanced.
2. The NGS budget will be balanced each quarter until September 30, 2014, or until the end of the third quarter. NGS must provide evidence to the AGO that the quarterly budget is balanced within thirty-five days of the end of the prior quarter. In addition, NGS will provide monthly financial statements to the AGO within a maximum of twenty-five days after the end of each month until September 30, 2014. Failure in any quarter to illustrate that NGS is operating at or under budget on a quarterly basis will constitute failure to meet a benchmark. All reports referenced in this section shall be in a format and provide a level of detail satisfactory to the AGO in its sole discretion.
3. NGS will have an entirely new Board that is acceptable to the AGO and that includes individuals with charitable administration/board experience in place by August 1, 2014. An exception may be made for Jerome Weber, given his addition to the Board after the alleged breaches of fiduciary duty occurred. The following individuals who served on the Board during some or all of the period relevant to this AOD will not be eligible to serve as members of the Board at any time after July 31, 2014: Thomas Kneavel, John T. Rabbit, Jeffrey Treiber, John H. Bridges, Francisco Velazquez, Paul Farcus, Richard Wilson, Scott Adams, Sandra Clark-Martin, Liane Luke,

Clint Miner, Peter Sterndale, Allen Larson, Ralph Crouch, Aileen Gee, and Robert Gee. NGS will provide the AGO with the Curriculum Vitae and a list of qualifications, including charitable administration/board experience, of potential new board members for AGO approval prior to any vote electing them to the NGS Board. AGO approval of new board members will not be unreasonably withheld.

4. From the date of execution of this Agreement until September 30, 2014, NGS will provide the AGO with monthly student enrollment reports, including information on (i) current students and (ii) graduates and withdrawals subsequent to the most recent report. All reports referenced in this section shall be in a format and provide a level of detail satisfactory to the AGO in its sole discretion.
5. NGS will provide monthly written reports to the AGO regarding the review process currently being undertaken by the Department of Higher Education (“DHE”) and the New England Association of Schools and Colleges (“NEASC”) throughout the course of those reviews. If the Board becomes aware of any continuing or current failure to comply with any regulation, the Board must immediately report the regulatory violation to the AGO and outline any steps NGS is taking to cure the violation. The AGO will evaluate each report and violation for materiality and make a determination whether the violation rises to a level that would require NGS to take steps to begin the dissolution process.
6. If and when a buyer is located for the property located at 186 Jones Road, Falmouth (“the Property”), which property is currently owned by NGS, NGS will provide the AGO with written assurance that the sale of the Property is being made for fair market value and to a disinterested party prior to the closing of the sale of the Property. If there is any relationship between the purchaser and NGS, all potential conflicts of interest must have been disclosed to and reviewed by the Board prior to sale. Evidence of this disclosure and review must be provided to the AGO prior to the closing of the sale of the Property.

7. Beginning on the date of this AOD, NGS will begin itemizing and valuing its current assets and investigating potential recipients of its charitable assets according to the doctrine of cy pres in anticipation of a possible dissolution. Information concerning NGS's progress in identifying its current assets and possible recipients will be made available to the AGO upon request.

Injunctive relief under M.G.L. c. 93A.

8. NGS, together with its officers, managers, agents, servants, employees, successors, and assigns, agree that NGS shall not:
 - a. advertise as a university in Massachusetts unless and until the school lawfully obtains such status;
 - b. advertise any degree program or grant any degree which requires approval or authorization by the Massachusetts Board of Higher Education ("BHE") for advertisement or offering (i) at any Massachusetts-based campus or (ii) to any Massachusetts-based resident and is not approved or authorized by BHE;
 - c. use the Massachusetts Department of Veterans Services facilities code to certify funds for payment toward any degree program other than those programs approved or authorized by BHE; or
 - d. misrepresent the nature of its educational programs.

Continued reporting obligations

If NGS meets all of the above benchmarks and complies with all reporting requirements by September 30, 2014 (or any later reporting date as set forth above), NGS shall proceed as follows:

9. From October 1, 2014 forward, for a period of three years (or until September 30, 2017), NGS will provide quarterly written reports to the AGO which reports must include: financial statements; enrollment statistics; information on strategic plan development; information about any regulatory or accreditation evaluation, review, or violation; and minutes from Board meetings. All reports referenced in this section shall be in a format and provide a level of detail satisfactory to the AGO in its sole discretion. The AGO

reserves the right to request information and documentation in addition to what is disclosed in the quarterly reports and/or to request a meeting with the Board and NGS leadership to discuss any information contained therein.

10. If DHE revokes NGS's license and/or if NEASC revokes NGS's accreditation at any time, the Board will immediately take steps to begin the dissolution process.

Miscellaneous provisions

11. The AGO will not proceed with or institute a civil action or proceeding against the Board, or, with the exception of Robert Gee and Aileen Gee, any current, former, or future member of the Board, based upon any of the above allegations of breaches of fiduciary duty through May 17, 2012.
12. The AGO will not proceed with or institute a civil action or proceeding based upon M.G.L. c. 93A or any other statute or regulation against NGS, or, with the exception of Robert Gee and Aileen Gee, any of its current, former, or future officers, trustees, managers, agents, servants, employees, successors, and assigns, including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorney's fees or costs, for NGS's statements regarding collegial status and degree-granting authority, including advertisements, through May 17, 2012.
13. This AOD constitutes the entire agreement by and between NGS, the Board, and the AGO and supersedes any prior communication, understandings, or agreements, whether written or oral, concerning the subject matter of this AOD.
14. The acceptance of this AOD by the AGO is not acceptance or approval by the AGO of any actions or activities of the past and present Board in their capacity as board members of NGS through May 17, 2012, and past and present Board members will make no representation to that effect.
15. The acceptance of this AOD by the AGO is not acceptance or approval by the AGO of any of NGS's business practices, and NGS will make no representation to that effect.
16. This AOD is made without any trial or adjudication of any issue of fact or law.
17. This AOD shall be binding upon NGS, its agents, officers, managers, servants, employees, successors and assigns.

18. This AOD and its provisions shall be effective on the date that it is filed in Suffolk Superior Court.

19. All notices and reports as required by the AOD shall be provided to both of the following:

Ashley H. Wisneski, Esq.
Assistant Attorney General
Non-Profit Organizations/
Public Charities Division
One Ashburton Place
Boston, MA 02108

Jenny Wojewoda, Esq.
Assistant Attorney General
Insurance and Financial Services
Division
One Ashburton Place
Boston, MA 02108

20. By signing below, NGS and the Board agree to comply with all of the terms of this AOD. Any violation of this AOD shall be prima facie evidence of a violation of G.L. c. 93A, §2 in any civil action or proceeding under G.L. c. 93A hereafter commenced by the AGO.

**The NATIONAL GRADUATE SCHOOL of
QUALITY SYSTEMS MANAGEMENT**

By

Name:
Title:
Date:

and
by its attorney,

Siobhan E. Mee, Esq., BBO# 640372
Mark E. Robinson, Esq., BBO# 423080
Bingham McCutchen LLP
One Federal Street
Boston, MA 02110
(617) 951-8265
siobhan.mee@bingham.com

**The BOARD OF TRUSTEES of the
NATIONAL GRADUATE SCHOOL
of QUALITY SYSTEMS MANAGEMENT**

By

Name:

Title:

Date:

and

by its attorney,

Siobhan E. Mee, Esq., BBO# 640372
Mark E. Robinson, Esq., BBO# 423080
Bingham McCutchen LLP
One Federal Street
Boston, MA 02110
(617) 951-8265
siobhan.mee@bingham.com

**COMMONWEALTH OF
MASSACHUSETTS**

**MARTHA COAKLEY
ATTORNEY GENERAL**

By its attorneys,

Ashley H. Wisneski, Esq., BBO# 660927
Assistant Attorney General
Office of the Attorney General
Non-Profit Organizations/Public Charities Division
One Ashburton Place
Boston, MA 02108
(617) 963-2079
ashley.wisneski@state.ma.us

Jenny L. Wojewoda, Esq., BBO# 674722
Assistant Attorney General
Office of the Attorney General
Insurance and Financial Services Division
One Ashburton Place
Boston, MA 02108
(617) 963-2547
jenny.wojewoda@state.ma.us

Date: _____