0000ULOH CCGPRO 201612

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

CIVIL DIVISION

GRAHAM B. SPANIER,	)Docket No. 2016-0571
	)
Plaintiff-Counterdefendant,	)Type of Pleading: ANSWER, AFFIRMATIVE)DEFENSES, AND COUNTERCLAIMS
v.	)
	)**FIRST AMENDED COUNTERCLAIMS**
THE PENNSYLVANIA STATE UNIVERSITY,	)
	)Filed on behalf of The Pennsylvania State)University
Defendant-Counterplaintiff.	)
	)Counsel of Record on Behalf)of This Party:

)Michael T. Scott (SBN 23882)
)mscott@reedsmith.com
)Daniel I. Booker (SBN 10319)
)dbooker@reedsmith.com
)Donna M. Doblick (SBN 75394)
)ddoblick@reedsmith.com
)
)REED SMITH LLP
)Firm No. 234
)Three Logan Square
)Suite 3100
)1717 Arch Street
)Philadelphia, PA 19103-7301
)Telephone: +1 215 851 8100
)Facsimile: +1 215 851 1420
)
)Joseph P. Green (19238)
)jgreen@lmgrlaw.com
)LEE GREEN & REITER INC.
)115 East High Street
)Lock Drawer 179
)Bellefonte, PA 16823-0179
)(814) 355-4769
)(814) 355-5024 (fax)
)
)*Attorneys for*
The Pennsylvania State University

)
)NOTICE TO PLEAD:

)TO: GRAHAM B. SPANIER:
)

)You are hereby notified to file a written
)response to the enclosed Amended
)Counterclaims within twenty (20) days from
)service hereof or a judgment may be entered
)against you.

) Donna Doblick

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

CIVIL DIVISION

GRAHAM B. SPANIER,) Docket No. 2016-0571
)
Plaintiff-Counterdefendant,)
)
v.)
)
THE PENNSYLVANIA STATE UNIVERSITY,)
)
Defendant-Counterplaintiff.)

FIRST AMENDED COUNTERCLAIMS

The Pennsylvania State University ("Penn State" or "the University"), by its undersigned counsel, respectfully files the following First Amended Counterclaims against Graham B. Spanier.

1. Dr. Spanier was President of the University for sixteen years -- from 1995 to November 9, 2011. Dr. Spanier also served as a voting member of the University's Board of Trustees during that same period. Dr. Spanier was a member of the University's faculty and held administrative positions in the College of Health and Human Development between 1973 and 1982. He rejoined the University's faculty as a tenured professor in 1995, and remains a tenured faculty member to this day.

2. Dr. Spanier owed the University numerous duties, including fiduciary duties, throughout the periods noted in paragraph 1, *supra.* As more fully set forth *infra,* Dr. Spanier's duties included, *inter alia*: the duty not to use for personal gain any non-public information he

obtained as a result of service to the University that was not available to the public; the duty to honor a strict rule of honest and fair dealings with the University; and the duty to exercise the utmost good faith in all transactions involving the University. Inherent in those duties was the duty to disclose to the University facts material to the University's decision-making and all facts that may give rise to a conflict of interest.

3. The University reposed trust, dependence, and confidence in Dr. Spanier while he served as the University's President, Trustee, and tenured faculty member, and Dr. Spanier stood in a confidential relationship with the University throughout those periods.

4. Dr. Spanier knew that the University reposed trust, dependence, and confidence in him during those periods.

5. As more fully described *infra,* Dr. Spanier was required, at all relevant times, to act in utmost good faith and with due regard of the University's interests in his dealings with the University, and to refrain from using any of his positions to the University's detriment and his own advantage.

6. Section B of Dr. Spanier's 2010 Employment Agreement with the University required Dr. Spanier to "perform such duties and responsibilities that are consistent with his position as President of the University under the Corporate Charter, the Corporate Bylaws, and the Standing Orders of the Board of Trustees," and required him to devote his "full business time attention, skill and efforts to the faithful performance of the Duties for the University." A true and correct copy of the 2010 Employment Agreement is attached hereto as Exhibit 1.

7. Article 6, Section (1) of the University's Bylaws in effect in 2011 (the "Bylaws") made clear that Dr. Spanier, like all Trustees, stood "in a fiduciary relationship to the University

which poses special confidence in" him. Pursuant to Article 6, Section (1)(b) of the Bylaws, Dr. Spanier was not permitted to use for personal gain "any information not available to the public at large and obtained as a result of service to the University." A true and correct copy of the Bylaws is attached hereto as Exhibit 2.

8. Further, pursuant to Article 6, Section (2) of those Bylaws, Dr. Spanier, in his role as a University employee, was required to "exercise the utmost good faith in all transactions touching upon [his] duties to the University and its property." He was held "to a strict rule of honest and fair dealings" between himself and the University. In that regard, he was obliged not to use his "positions, or knowledge gained therefrom, in such a way that a conflict of interest might arise" between his interests and the University's interests, and he was obliged to report any potential conflict of interest to an appropriate superior officer.

9. Penn State Policy HR91, which was in effect in 2011, imposed the duties described in Article 6, Section (2) of the Bylaws on Dr. Spanier in his capacity as a faculty member. HR91 provides, in pertinent part:

> Faculty and staff members of the University shall exercise the utmost good faith in all transactions touching upon their duties to the University and its property. In their dealings with and on behalf of the University, they shall be held to a strict rule of honest and fair dealings between themselves and the University. . . .

A true and correct copy of Policy HR91 is attached hereto as Exhibit 3.

10. The duties imposed by the Bylaws, the 2010 Employment Agreement, and Policy HR91 will collectively be referred to herein as "the Duties."

11. Dr. Spanier was aware, not later than April 2011, that a Pennsylvania grand jury was investigating allegations that Jerry Sandusky had engaged in criminal misconduct involving one or more children, including conduct that allegedly took place on the University's premises.

12. During and prior to the negotiation of the Separation Agreement described *infra,* in view of his Duties, and especially in light of his 2011 knowledge that a Pennsylvania grand jury was conducting an investigation of Sandusky, Dr. Spanier had the affirmative duty and obligation to disclose to the University facts material to the University's decision-making, including the duty to accurately and completely disclose facts regarding the state of his knowledge about allegations and investigations involving Sandusky, and the duty not to use the state of his knowledge about those matters to his advantage and to the University's detriment, including in connection with the negotiation of the Separation Agreement.

13. Specifically, but without limitation, Dr. Spanier had all of the aforesaid Duties on November 12, 2011, November 13, 2011, November 14, 2011, and November 15, 2011.

14. At no time after obtaining his 2011 knowledge of the grand jury investigation of Sandusky or during the negotiation of the terms of the Separation Agreement did Dr. Spanier disclose to the University the contents of emails either sent to or received by him regarding: (1) a 1998 allegation of misconduct by Sandusky with a child on University property, into which government officials and University police had conducted an investigation ("the 1998 Incident"); and (2) Sandusky having been observed showering with a minor boy on Penn State property (the "2001 Incident").

15. In 2012, individuals working with the law firm of Freeh Sporkin & Sullivan located emails, including emails that were sent to or received from Dr. Spanier, regarding the

1998 and 2001 Incidents (collectively, the "2012 Discovered Emails"). True and correct copies of the 2012 Discovered Emails are attached hereto as Exhibit 4.

16. Dr. Spanier's 2010 Employment Agreement describes three ways in which Dr. Spanier's employment as President of the University could end (other than by death or permanent disability): (1) by resignation (§ H.3); (2) by a termination for cause (§ H.1); or (3) by termination without cause (§ H.2).

17. If the University had accepted a resignation from the presidency by Dr. Spanier, Dr. Spanier would not have been entitled "to any further compensation or benefits as President, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment." *See* Exhibit 1, 2010 Employment Agreement, § H.3.

18. Similarly, in the event Dr. Spanier were terminated from the presidency For Cause, his employment as President would have "cease[d] immediately," and he would not have been "entitled to any further compensation or benefits as President, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment," nor would he have been "entitled to continue employment as a member of the University faculty, including the Post-Presidency Faculty Position set forth in Section E.6 of this Agreement." *Id.*, § H(1).

19. "Cause" is defined in the 2010 Employment Agreement to mean: "conduct reasonably determined by a two-thirds majority of the Board of Trustees to be: (a) gross negligence or willful malfeasance by Dr. Spanier in the performance of his Duties that materially harm the University; . . . ." *Id.*, § H.

20. On November 5, 2011 members of the Thirty-Third Statewide Investigating Grand Jury of the Commonwealth of Pennsylvania issued a presentment against Sandusky that described multiple instances of criminal sexual conduct involving minor boys (the "Presentment'), and that recommended that Sandusky be criminally charged with multiple counts of involuntary deviate sexual intercourse, aggravated indecent assault, corruption of minors, unlawful contact with minors, and endangering the welfare of minors. Several of the offenses were alleged to have been committed on the University's premises, at a time when Sandusky was either an employee of the University or had emeritus status that permitted him to have unrestricted access to the University's facilities.

21. The Presentment also recommended criminal charges against Tim Curley and Gary Schultz for failing to report allegations that Sandusky had engaged in child abuse on the University's premises to law enforcement or child protection authorities and for committing perjury during their grand jury testimony about those allegations.

22. On the recommendation of the Presentment, criminal complaints were lodged against Sandusky, Schultz, and Curley.

23. Dr. Spanier knew or should have known that the lodging of these serious criminal charges against former high-ranking University officials would have wide-ranging implications for the University. Dr. Spanier's 2011 knowledge of the grand jury investigation, and the subsequent issuance of the Presentment, triggered Spanier's Duties to disclose to the University the state of his knowledge about the information contained in the 2012 Discovered Emails (discussed *infra*).

24. On November 9, 2011, the University and Dr. Spanier mutually agreed that his position as President would be immediately terminated.

25. The parties then proceeded to negotiate the terms of Spanier's separation from the presidency. Between November 9, 2011, and November 15, 2011, counsel for the University was in near-daily contact with counsel for Dr. Spanier. At no time during the pendency of the grand jury investigation of Sandusky, following issuance of the Presentment naming senior University officials, or during the negotiations over the Separation Agreement did Dr. Spanier's counsel disclose to the University the full state of Dr. Spanier's knowledge, as later revealed, about the 2012 Discovered Emails or the information contained therein.

26. On November 15, 2011, the parties entered into a Separation Agreement in which it was agreed, *inter alia,* that Dr. Spanier's termination would be deemed to be "Without Cause," pursuant to section H.2 of the 2010 Employment Agreement. A true and correct copy of the Separation Agreement is attached hereto as Exhibit 5.

27. By their terms, and as also reflected in sections 3(d) and 3(e) of the Separation Agreement, certain sections of the 2010 Employment Agreement, including Sections E.5 and E.6, survived the termination of that agreement.

28. Section E.5 of the 2010 Employment Agreement provided Dr. Spanier with a paid one-year professional development and post-presidency transition period and the benefits described in Sections E.1 and E.4 of that agreement.

29. Section E.6 of the 2010 Employment Agreement provided that Dr. Spanier "shall continue to hold a tenured faculty position" "[f]ollowing his service as President, and that he

would be paid $600,000 annually for those services for a five-year period following the conclusion of the transition period described in Section E.5.

30. The contractual right to a post-presidency transition period and the contractual right to continue serving as a tenured member of the University's faculty for a guaranteed salary for five years were subject to the contractual duties set forth in the 2010 Employment Agreement, including the duties set forth in section B thereof. As such, the duties set forth in section B of the 2010 Employment Agreement survived the execution of the Separation Agreement. The contractual right to a post-presidency transition period and the right to continue serving as a tenured member of the University's faculty with a guaranteed five-year salary also were subject to Dr. Spanier continuing to comply with all University policies, including HR91.

31. Pursuant to section 16 thereof, the Separation Agreement did not become effective or enforceable November 22, 2011 -- seven calendar days after Dr. Spanier executed that agreement.

32. Dr. Spanier remained as a tenured University faculty member following his termination from the Presidency on November 9, 2011.

33. As set forth *supra,* certain provisions of the 2010 Employment Agreement remain in effect to this day. The remaining provisions remained in effect by their terms until the Separation Agreement became effective and enforceable on November 22, 2011.

34. Dr. Spanier continued to owe the University the Duties described *supra* at all relevant times during the negotiation of the Separation Agreement, including during the period November 12-15, 2011.

35. In deciding to enter into the Separation Agreement, the University reasonably believed that Dr. Spanier, who had a long-standing relationship with the University, and who had been its highest-ranking official for over sixteen (16) years, was in compliance with the Duties the Bylaws, HR91, and the 2010 Employment Agreement imposed on him.

36. The Separation Agreement provides Dr. Spanier with very significant financial and non-financial benefits. Those benefits include, but are not limited to:

- a lump-sum payment equal to Dr. Spanier's current base salary for eighteen months (§ 3(a));
- a "Retirement Plan Equivalency payment" in the gross amount of $1,248,204.60 (§ 3(b));
- an agreement by the University to contribute to a retirement annuity for Dr. Spanier (§ 3(c));
- a one-year post-presidency transition period during which Dr. Spanier would be paid $700,000 (§ 3(d);
- an agreement by the University to keep Dr. Spanier as a tenured member of the faculty for five years, with an annual salary of $600,000 (§ 3(e));
- an agreement by the University to remise, release, and discharge Dr. Spanier from claims the University has or may have for acts, omissions, practices or events relating to his position as President (§ 8); and
- an agreement by the University not to make negative public comments about, and to make reasonable efforts to cause its Trustees not to make negative, untruthful public comments about, Dr. Spanier except in specific enumerated circumstances (§ 13).

37. In connection with the negotiation of the Separation Agreement in November 2011, Dr. Spanier did not disclose the full state of his knowledge of allegations and investigations involving Sandusky, nor were those facts otherwise known to the University, including most particularly, the University representatives who negotiated and approved the Separation Agreement, at that time. To the contrary, Dr. Spanier used his knowledge of those matters to the University's detriment and his own advantage in negotiating the terms of his separation.

38. Although the 1998 Incident and the 2001 Incident were described in the Presentment, the Presentment did not set forth the information contained in the 2012 Discovered Emails.

39. Dr. Spanier did not, either prior to or during the negotiations for the Separation Agreement in November 2011, including during the period November 12-15, 2011, provide the University with the information contained in the 2012 Discovered Emails or the full state of his knowledge about the 1998 and 2001 Incidents.

40. It was not until they were discovered in 2012 that the University, and, in particular, the University representatives responsible for negotiating and approving the Separation Agreement on the University's behalf, first learned of the information reflected in the 2012 Discovered Emails regarding the 1998 Incident and the 2001 Incident.

41. In light of Dr. Spanier's 2011 knowledge of the grand jury investigation of Sandusky, if the information set forth in the 2012 Discovered Emails had been disclosed by Dr. Spanier or otherwise made known to Penn State, and, in particular, the individuals responsible for negotiating and approving the Settlement Agreement on the University's behalf, during the

negotiations of the terms on which Dr. Spanier would cease serving as President of the University, Penn State would have terminated Dr. Spanier on terms materially different than those set forth in the Separation Agreement.

42. In light of his 2011 knowledge of the grand jury investigation, Dr. Spanier's repeated failures to divulge that information to the University, including during the period November 12-15, 2011, were breaches of his Duties.

43. In 2012, a presentment was lodged against Dr. Spanier in which he was formally charged with crimes, including felonies, in a court of law in connection with conduct he allegedly engaged in while President of the University, namely, his knowledge of, and grand jury testimony about, the 1998 and 2001 Incidents.

44. Since November 9, 2011, the University has bestowed substantial benefits upon Dr. Spanier pursuant to the provisions of the 2010 Employment Agreement and the Separation Agreement.

45. On November 15, 2015, counsel for the University and counsel for Dr. Spanier entered into a Tolling Agreement in which the parties agreed, *inter alia,* that:

> the running of any time limitations, legal or equitable, on claims which Penn State may assert against Dr. Spanier in the future . . . relating to his performance as Penn State's President; the negotiation, validity, or enforceability of his Separation Agreement dated November 15, 2011; payments thereunder and/or his performance of his obligations are hereby tolled as of November 12, 2015.

A true and correct copy of the Tolling Agreement is attached hereto as Exhibit 6.

46. When Penn State entered into the Separation Agreement, it reasonably assumed and believed, in light of its longstanding relationship with Dr. Spanier, the fact that the

University had reposed significant trust and confidence in him, and his 2011 knowledge of the grand jury investigation of Sandusky, that Dr. Spanier had fulfilled his Duties to disclose, accurately and completely, the state of his knowledge about the 1998 and 2001 Incidents.

47. Penn State's assumptions and beliefs in those regard had a material effect on Penn State's decision to enter into the Separation Agreement, including but not limited to its decision to agree to sections 3, 4, 8, and 13 thereof.

48. Based upon the 2012 Discovered Emails, Penn State believes that its assumptions and beliefs were mistaken, including, without limitation, its assumptions and beliefs that:

- No matters about Sandusky's conduct with a child on University property were brought to Dr. Spanier's attention ;
- Dr. Spanier had not been given information about any prior criminal investigation of Sandusky;
- Dr. Spanier did not discuss with Curley or Schultz any matter regarding Sandusky's conduct with a child on University property; and
- other matters addressed in the 2012 Discovered Emails.

FIRST COUNTERCLAIM
Breach of the 2010 Employment Agreement

49. Penn State incorporates paragraphs 1 to 48, *supra,* as if set forth here in full.

50. Pursuant to the terms of the 2010 Employment Agreement, including § B thereof, and Policy HR91, Dr. Spanier was required to "exercise the utmost good faith" in all of his 'transactions touching upon [his] duties to the University and its property," and he was "held to a strict rule of honest and fair dealings" in all of his dealings with the University. These obligations included the obligation to disclose to Penn State all facts material to the University's

decision-making, including with respect to the University's decision to enter into the Separation Agreement.

51. At the time he was negotiating the terms of the Separation Agreement, as well as prior thereto and thereafter, including on November 12, 2011, November 13, 2011, November 14, 2011, and November 15, 2011, and due to his 2011 knowledge about the grand jury investigation into Sandusky, Dr. Spanier had affirmative contractual duties to accurately and fully disclose to the University everything he knew about his, or the University's, awareness and handling of reports of Sandusky's conduct with minors while a University employee and/or while on the University's property, including the information contained in the 2012 Discovered Emails.

52. At the time he was negotiating the terms of the Separation Agreement, as well as prior thereto and thereafter, including on November 12, 2011, November 13, 2011, November 14, 2011, and November 15, 2011, Dr. Spanier failed to make a full and complete disclosure of the above-described information to the University.

53. Dr. Spanier's failure to disclose such information to the University constituted a material breach of the 2010 Employment Agreement.

54. Dr. Spanier's material breach of the 2010 Employment Agreement damaged the University in the amount of all payments and benefits it conferred on Dr. Spanier after November 9, 2011 pursuant to the terms of the 2010 Employment Agreement and/or the Separation Agreement.

55. The University is entitled to recoup, as damages for Dr. Spanier's breach of the 2010 Employment Agreement, all amounts paid to, or benefits conferred upon, him following his breach of that agreement.

56. The University is entitled, as relief for Dr. Spanier's breach of the 2010 Employment Agreement, to rescind the Separation Agreement and Dr. Spanier should be required to disgorge all sums of money and the value of all non-cash benefits he has received from the University under the terms of the 2010 Employment Agreement and the Separation Agreement from at least November 9, 2011 to the present.

SECOND COUNTERCLAIM
Unilateral Mistake of Fact

57. Penn State incorporates paragraphs 1 to 48, *supra,* as if set forth here in full.

58. In entering into the Separation Agreement, Penn State reasonably believed in good faith that Dr. Spanier had fully disclosed to the University everything he knew about his, or the University's, awareness, and handling, of reports of Sandusky's conduct with minors and that Dr. Spanier otherwise was acting consistently with the Duties he owed the University.

59. At the time he was negotiating the terms of the Separation Agreement, as well as prior thereto and thereafter, including but not limited to on November 12, 2011, November 13, 2011, November 14, 2011, and November 15, 2011, Dr. Spanier failed to make a full and complete disclosure of the above-described information.

60. But for one or more of Penn State's unilateral mistakes of fact, Penn State would not have entered into the Separation Agreement.

61. Dr. Spanier had reason to believe that Penn State was mistaken in its beliefs that he had made full disclosure and that he was acting consistently with the Duties he owed the University, and he had reason to believe that Penn State was entering into the Separation Agreement, including agreeing to sections 3, 4, 8, and 13 thereof, was a result of these mistaken assumptions and beliefs of one or more material facts.

62. The University is entitled to rescind the Separation Agreement, including sections 3, 4, 8, and 13 thereof, and Dr. Spanier should be required to disgorge all sums of money and the value of all non-cash benefits he has received from the University under the terms of the Separation Agreement.

63. In the alternative, Penn State should be excused from continued performance under the Separation Agreement, including but not limited to sections 3, 4, 8, and 13 thereof.

64. The parties can be restored to the status quo ex ante.

65. Dr. Spanier has not been unfairly prejudiced by the timing of the filing of this Counterclaim.

THIRD COUNTERCLAIM
Rescission

66. Penn State incorporates paragraphs 1 to 48, *supra,* as if set forth here in full.

67. Due to his 2011 knowledge of the grand jury investigation of Sandusky, Dr. Spanier had Duties to provide the University with material facts relevant to its decision to enter into the Separation Agreement and to refrain from using the information contained in the 2012 Discovered Emails and the state of his knowledge about the 1998 and 2001 Incidents to the University's detriment and his own advantage.

68. The University entered into the Separation Agreement in justifiable reliance on Dr. Spanier having fulfilled those Duties. Fulfillment of those Duties was material to the University's decision to enter into the Separation Agreement.

69. At no time prior to the effective date of the Separation Agreement did Dr. Spanier provide the University with the information described in the 2012 Discovered Emails or the full state of his knowledge about the 1998 and 2001 Incidents.

70. Dr. Spanier's failure to provide that information to the University constituted a breach of the Duties Dr. Spanier owed the University and a misuse of the confidential relationship he had with the University.

71. Under the circumstances, and due to Dr. Spanier's knowledge of the 2011 grand jury investigation, Penn State would have terminated Dr. Spanier on different terms had it been aware of the information Dr. Spanier had failed to disclose to it. In particular, Penn State would not have agreed to the provisions of the Separation Agreement that form the basis of Dr. Spanier's claims against it in this litigation had it been aware of the information set forth in the 2012 Discovered Emails.

72. Dr. Spanier had reason to know that Penn State was entering into the Separation Agreement, including agreeing to sections 3, 4, 8, and 13 thereof, as the result of one or more of the mistaken assumptions and beliefs discussed *supra.*

73. Penn State has been damaged by Dr. Spanier's failures to disclose.

74. The University is entitled to rescind the Separation Agreement, including but not limited to sections 3, 4, 8 and 13, and Dr. Spanier should be required to disgorge all sums of

money and the value of all non-cash benefits he has received from the University under the terms of the Separation Agreement.

75. In the alternative, Penn State should be excused from continued performance under the Separation Agreement, including but not limited to sections 3, 4, 8, and 13 thereof.

76. The parties can be restored to the status quo ex ante.

77. Dr. Spanier has not been unfairly prejudiced by the timing of the filing of this Counterclaim.

FOURTH COUNTERCLAIM
Unjust Enrichment

78. Penn State incorporates paragraphs 1 to 48, *supra,* as if set forth here in full.

79. Dr. Spanier has received significant financial and non-financial benefits from the University since November 9, 2011. Given Dr. Spanier's breaches of his Duties, his failure to disclose material facts, and Penn State's unilateral mistakes of material fact, it would be unjust and inequitable for Dr. Spanier to be permitted to retain all or some of such benefits.

80. Dr. Spanier should therefore be required to disgorge all sums of money and the value of all non-cash benefits he has received from the University from at least November 9, 2011 to the present.

81. The parties can be restored to the status quo ex ante.

82. Dr. Spanier has not been unfairly prejudiced by the timing of the filing of this Counterclaim.

WHEREFORE, Penn State prays that this Court provide the following relief on its amended counterclaims:

(a) Damages for Dr. Spanier's breach of his Duties;

(b) Rescission of the Separation Agreement;

(c) Disgorgement of all payments and benefits Dr. Spanier has wrongfully obtained;

(d) Interest on all sums awarded to the extent provided by law;

(e) Costs and fees incurred by Penn State to the extent provided by law; and

(f) Such other and further relief as this Court shall deem just and proper on the evidence to be presented to the Court.

Penn State demands a trial by jury on all of the Counterclaims so triable.

DATED this the 17th day of February, 2017.

Respectfully submitted,

Donna Doblick

Michael T. Scott (SBN 23882)
mscott@reedsmith.com
REED SMITH LLP
Three Logan Square
Suite 3100
1717 Arch Street
Philadelphia, PA 19103-7301
Telephone: +1 215 851 8100
Facsimile: +1 215 851 1420

Daniel I. Booker (SBN 10319)
dbooker@reedsmith.com
Donna M. Doblick (SBN 75394)
ddoblick@reedsmith.com
REED SMITH LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222-2716
Telephone: +1 412 288 3131
Facsimile: +1 412 288 3063

Joseph P. Green (19238)
jgreen@lmgrlaw.com
LEE GREEN & REITER INC.
115 East High Street
Lock Drawer 179
Bellefonte, PA 16823-0179
(814) 355-4769
Attorneys for The Pennsylvania State University

VERIFICATION

I, Thomas Poole, verify, based on my knowledge, information and belief, that the facts set forth in the foregoing First Amended Counterclaims are true and correct. I submit this Verification subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Thomas Poole

Dated: February 16, 2017

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement"), entered into by and between The Pennsylvania State University, the only land grant university chartered in the Commonwealth of Pennsylvania, and Graham B. Spanier, Ph.D., is to take effect July 1, 2010.

WITNESS

WHEREAS, Graham B. Spanier, Ph.D. ("Dr. Spanier" or the "President") has been employed by The Pennsylvania State University (the "University") as President of the University since September 1, 1995; and

WHEREAS, the University wishes to continue the employment of Dr. Spanier as President of the University in recognition of his extraordinary achievements, and Dr. Spanier wishes to continue to serve as the President and be its employee, subject to the terms and conditions of this Agreement; and

WHEREAS, The University desires to make further arrangements which will suitably recognize the extraordinary responsibilities and duties of Dr. Spanier and will reward him for his many unique accomplishments thus far during his tenure as President of the University; and

WHEREAS, both the University and Dr. Spanier intend this Agreement to supersede any and all prior agreements with respect to Dr. Spanier's employment relationship, with the exception of Section D.3 of the Employment Agreement effective July 1, 2007 (the "Prior Agreement"); and

WHEREAS, both the University and Dr. Spanier desire to set forth their respective rights

EXHIBIT
1

and obligations in this Agreement; and

WHEREAS, by Resolution of January 23, 1982, the Board of Trustees of the University (the "Board of Trustees") authorized the President of the Board of Trustees (the "President of the Board") to enter into employment agreements with certain senior employees in accordance with the terms of said Resolution; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. Term.

The University shall continue the employment of Dr. Spanier as its President for a term from July 1, 2010 through June 30, 2015 (the "Term"), except as provided in Section H ("Termination"). Dr. Spanier hereby accepts such employment upon the terms and conditions set forth in this Agreement.

B. Powers and Duties.

During the Term of this Agreement, Dr. Spanier shall serve as President and perform such duties and responsibilities that are consistent with his position as President of the University under the Corporate Charter, the Corporate Bylaws, and the Standing Orders of the Board of Trustees, as may be amended from time to time, or which may be assigned to him by or under the authority of the Board of Trustees consistent with his position as President of the University, including those duties as are set forth in the Resolution of the Board of Trustees adopted on June 11, 1970, as amended on November 19, 1971, May 30, 1975 and September 23, 1977, and as the same may be amended from time to time during the term of this Agreement (collectively, the

"Duties"). Dr. Spanier shall devote his full business time attention, skill and efforts to the faithful performance of the Duties for the University.

Dr. Spanier and the Board of Trustees acknowledge and agree that the Duties hereunder shall be limited to those duties customarily performed by presidents of universities comparable in size and mission to the University, such as educational leadership, faculty and community relations, budgeting, long range planning, fund raising, development, public relations, student services, recruitment and retention of personnel, and such other duties as may be authorized or directed, from time to time, by the Board.

Dr. Spanier shall serve as a member of the Board of Trustees of the University and as a corporate officer of the University so long as such service is provided for in the Corporate Charter or Bylaws of the University.

C. Compensation.

1. Annual Base Salary. As compensation for the services to be performed by Dr. Spanier pursuant to this Agreement and in accordance with industry norms, the University shall pay to Dr. Spanier an annualized base salary of $700,000 from July 1, 2010 through June 30, 2011 (the "Base Salary"), less applicable deductions. Any increases in Base Salary shall be based upon the President's performance during the preceding fiscal year in connection with the annual evaluation of his performance, set forth in Section D of this Agreement. During the Term of this Agreement, Dr. Spanier's Base Salary may be increased, but not decreased.

2. Signing Bonus. In consideration of executing this Agreement, Dr. Spanier shall receive a one-time signing bonus of $200,000 within sixty (60) days of the execution of this Agreement by both parties.

3. Retention Incentive. Beginning with the 2011-12 contract year, Dr. Spanier shall be eligible to receive an annual retention incentive provided that he completes service as President to the University through the end of each contract year (June 30). The amount of the retention incentive, if any, shall be at the sole discretion of the Compensation Council in accordance with the 1982 resolution of the Board of Trustees authorizing the Council regarding such compensation matters, but shall not exceed twenty percent (20%) of Dr. Spanier's then-current annual base salary. Any retention incentive awarded to Dr. Spanier shall be paid within sixty (60) days of the conclusion of the contract year to which it relates.

4. Retirement Contribution. In addition, the University shall contribute, at its normal Alternate Retirement Plan (the "Retirement Plan") contribution rate (currently 9.29%), to the purchase of an annuity contract within the meaning of Section 403(b) of the Internal Revenue Code and in accordance with the terms of the Retirement Plan as managed by TIAA-CREF. Further, in the event that:

a. limitations of the Internal Revenue Code do not permit the University to contribute on a tax-sheltered basis to the Retirement Plan at its normal contribution rate; or

b. less than fifteen (15%) percent of Dr. Spanier's Base Salary is contributed to Dr. Spanier's Retirement Plan, the University shall pay to Dr. Spanier, as current compensation, an amount equal to the difference between the amount actually contributed to the Retirement Plan and the greater of: (1) the amount that the University cannot contribute to the Retirement Plan because of

Internal Revenue Code limitations; or (2) fifteen (15%) percent of Dr. Spanier's Base Salary.

5. Retirement Plan Equivalency. The Retirement Plan Equivalency referenced in Section D.3 of the Prior Agreement shall continue during this Agreement. The Retirement Plan Equivalency shall be amended such that Dr. Spanier shall be required to remain available to perform services for the University pursuant to Sections B, B.5 and B.6 of this Agreement through June 30, 2017 to vest in the benefits of the plan. Dr. Spanier shall also become vested in the Retirement Plan Equivalency if his employment as President is earlier terminated without Cause, or his death or disability. Dr. Spanier shall not receive the benefits of the Retirement Plan Equivalency if his employment as President is terminated for Cause, or if he voluntarily resigns from his employment as President, or if following the conclusion of his service as President, his faculty appointment is terminated in accordance with the University's rules for tenured members of the faculty. A document separate and apart from this Agreement shall govern the five year extension of the Retirement Plan Equivalency to June 30, 2017.

D. Annual Evaluation.

No later than the week of the May 2011 meeting of the Board of Trustees, and each year thereafter, Dr. Spanier shall provide to the President of the Board of Trustees, the Vice President of the Board, the immediate past President of the Board and the Chairperson of the Committee on Finance and Physical Plant of the Board (the "Review Group") an assessment of his performance as President measured against the goals and objectives for the then-current fiscal year, as well as his proposed goals and objectives for the next fiscal year. The Review Group will review and provide appropriate feedback and direction with respect to Dr. Spanier's past performance and future goals and objectives. To aid the Review Group in its annual evaluation, Dr. Spanier agrees to furnish to the President of the Board such additional oral or written reports as the Review Group may request.

E. Benefits and Reimbursements.

1. Standard Benefits. Dr. Spanier shall be eligible to participate in all of the employee benefit plans of the University applicable to senior executives.

2. Supplemental Life Insurance.

a. In addition to life insurance provided as a standard benefit in Section E.1, the University has provided a life insurance death benefit of $1,000,000 for Dr. Spanier since September 1, 1997. The death benefit of this life insurance policy has escalated, and shall continue to be escalated annually on each July 1 during the Term of this Agreement, by the percentage increase in the Consumer Price Index (CPI-U, All Items, for All Urban Consumers, 1984=100) by multiplying the amount of life insurance in force for the contract year then ending by the sum of: one (1), plus the cumulative percentage increase in the Consumer Price Index between July 1 of the prior year and June 30 of the current year. There will be no diminution of this life insurance benefit at the conclusion of the Term of this Agreement. Provided, however, CPI increases in the death benefit shall cease as of the conclusion of the Term of this Agreement. In all other respects, this life insurance coverage shall be maintained in accordance with the terms and conditions of the University's plan of life insurance for its senior executives.

3. Supplemental Health Insurance. The University's policy relating to age and service eligibility requirements for continuation of health insurance coverage shall be waived for Dr. Spanier at the conclusion of his presidency.

4. Disability Coverage. In the event of Dr. Spanier's permanent disability during the Term of this Agreement, the University shall provide Dr. Spanier with disability coverage, having a total disability benefit of (a) not less than eighty percent (80%) of his Base Salary for the contract year in which he becomes disabled through the end of the Term of this Agreement, and (b) thereafter not less than sixty-five percent (65%) of his Base Salary for the contract year in which he becomes disabled until age 70. Any amounts received by Dr. Spanier under the terms of any long term disability plan applicable to senior executives shall be offset against the amounts payable to Dr. Spanier pursuant to the disability coverage provided in this Section E.4.

5. Professional Development and Post-Presidency Transition. Upon the completion of the Term of this Agreement (June 30, 2015) or if this Agreement is terminated without Cause, Dr. Spanier shall be entitled to a paid one year professional development and post-presidency transition period at the level of his then presidential Base Salary plus the benefits provided in Sections E.1, E.2, E.3 and E.4 of this Agreement. The post-presidency transition period shall commence immediately upon the completion of the Term, or the effective date of termination if this Agreement is terminated without Cause. During said period, Dr. Spanier shall

perform scholarly activities in preparation to assume active duties as a tenured member of the University's faculty and shall also be available to assist with various University efforts (such as fundraising and recruiting) as requested by the new President. As a condition of his eligibility for compensation and benefits under this Section B.5, Dr. Spanier shall refrain from performing any type of professional services for any other institution of higher education that will conflict with his duties with Penn State University. Notwithstanding the foregoing, any professional services performed by Dr. Spanier for a non-profit entity, government service, or for-profit boards that do not materially detract from his University responsibilities shall not be considered a conflict with his duties for the University. The Base Salary and benefits that Dr. Spanier receives under this Section B.5 shall not be reduced by the amounts he receives from other earnings. The terms of this Section B.5 shall survive the expiration of this Agreement.

6. Post-Presidency Faculty Position. Following his service as President, Dr. Spanier shall have the title of President Emeritus. In addition, Dr. Spanier shall continue to hold a tenured faculty position as a Professor in the Department of Human Development and Family Studies of the College of Health and Human Development of the University. He may continue to use his current academic title of Professor of Human Development and Family Studies, Sociology, Demography, and Family and Community Medicine. Upon the conclusion of Dr. Spanier's service as President, he may, at his option, elect to assume the title of University Professor. Dr. Spanier's Base Salary following his services as President shall be paid on a twelve month basis and shall be $600,000 annually. Dr. Spanier's compensation at this level shall be limited to five (5) years following the conclusion of his professional development transition period subsequent to the termination of his presidency on June 30, 2015 or the earlier

termination of his presidency without Cause. Dr. Spanier's employment as Professor subsequent to this period, including his eligibility for annual salary adjustments, shall be governed by the University's policies, rules and regulations applicable to other tenured members of the University faculty and not by this Agreement. Dr. Spanier's office location, academic responsibilities, and salary after the five year post-presidency period shall be determined in consultation with the Provost of the University.

The University shall provide Dr. Spanier with administrative support, including an office and a staff assistant to assist him with his responsibilities following the conclusion of his presidency. The terms of this Section E.6 shall survive the expiration of this Agreement.

7. Travel and Other Business Expenses. Dr. Spanier's reasonable travel and other business expenses incurred in his capacity as President of the University shall be paid on a cost reimbursement basis through the University's annual operating budget. When Dr. Spanier's spouse accompanies him on travel for University purposes, the University shall cover the costs of her reasonable travel expenses. The expenses of Dr. Spanier and his spouse shall be reviewed on an annual basis by the President of the Board of Trustees or his/her designee who does not report to the President.

8. Professional Memberships. The University shall pay the annual dues and membership fees for the President in professional associations of benefit to the University.

9. Automobile. The University shall continue to provide Dr. Spanier with a recent model automobile suitable for his role as President, to be owned or leased by the University, for his exclusive use. The University shall provide or reimburse Dr. Spanier for

insurance, maintenance, and other operating costs of the vehicle, including but not limited to, the cost of fuel, taxes, licenses, registration, and other similar operating expenses. On an annual basis, Dr. Spanier shall report all personal use in writing to the Senior Vice President for Finance and Business of the University.

F. Housing.

During the Term of this Agreement, for the benefit and convenience of the University in having the functions of the Office of President efficiently discharged and, in order to enable Dr. Spanier to fully perform the extensive duties of his position, he shall, as a condition of his employment as President of the University, continue to reside at the Schreyer House, an on-campus residence owned by the University for this purpose, located at University Park, Centre County, Pennsylvania, or such other residence as may be determined by the University (the "President's Residence"). The University shall pay for all costs of utilities and maintenance of the structures and grounds of the President's Residence.

For the benefit and convenience of the University, the President's residence shall be available, and shall be used, for University-related business on a regular and continuing basis. Costs associated with such University events shall be borne by the University.

In the event of Dr. Spanier's death during the Term of this Agreement (including all renewals and extensions), Dr. Spanier's family shall be permitted to occupy the President's Residence under the same terms and conditions for no less than 90 calendar days from the date of Dr. Spanier's death.

In the event of Dr. Spanier's permanent disability during the Term of this Agreement (including all renewals and extensions), Dr. Spanier and his family shall be permitted to occupy the President's Residence under the same terms and conditions for no less than 90 calendar days from the date of Dr. Spanier's permanent disability.

Dr. Spanier and his family shall vacate the President's Residence no later than thirty (30) calendar days following the effective date of termination or expiration of this Agreement (including all renewals and extensions).

Upon the termination of this Agreement, the University shall reimburse Dr. Spanier for the reasonable and necessary expenses of moving his personal property from State College, Pennsylvania to a location of his choice in the continental United States.

G. <u>Tax Reporting</u>.

The University shall include in the W-2 issued to Dr. Spanier all payments, benefits, allowances, and reimbursements that are defined as income or otherwise required to be reported by federal, state or local governments. Except as provided in this Agreement, Dr. Spanier shall be responsible for the payment of all personal taxes due and shall make such payments on a "when due" basis.

H. <u>Termination</u>.

1. <u>Termination For Cause</u>. The University may terminate this Agreement at any time for cause upon written notice to Dr. Spanier as provided in this Section H.1. For purposes of this Agreement, the term "Cause" shall mean conduct reasonably determined by a two-thirds majority of the Board of Trustees to be: (a) gross negligence or willful malfeasance by Dr. Spanier in the performance of his Duties that materially harm the University; (b) actions or

omissions by Dr. Spanier that are undertaken or omitted knowingly and are criminal or fraudulent and involve material dishonesty or moral turpitude; or (c) Dr. Spanier being formally indicted in a court of law of any felony, or any other crime involving misuse or misappropriation of University funds. In the event the President is terminated for Cause, Dr. Spanier's employment as President shall cease immediately, and he shall not be entitled to any further compensation or benefits as President, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment, nor shall he be entitled to continuing employment as a member of the University faculty, including the Post-Presidency Faculty Position set forth in Section E.6 of this Agreement.

2. Termination Without Cause. The University may terminate this Agreement without Cause upon a majority vote by the Board of Trustees at any time for the convenience of the University upon ninety (90) calendar days prior written notice to the President. Termination of this Agreement by virtue of the President's permanent disability or death (as set forth in Sections H.4 and H.5 of this Agreement, respectively) shall not be construed as termination without Cause. If the University terminates this Agreement without Cause prior to the expiration of the Term of this Agreement, Dr. Spanier shall be entitled to receive payments equal to his then existing Base Salary and benefits for eighteen (18) months from the effective date of his termination of employment as President, plus the Equivalency payment referenced in Section C.5 of this Agreement. In the event of such termination without Cause, Dr. Spanier and his family shall vacate the President's Residence no later than thirty (30) calendar days following the effective date of termination.

3. Resignation. Dr. Spanier may resign as President by providing at least ninety (90) calendar days written notice to the President of the Board of Trustees. Dr. Spanier's employment as President shall cease on the effective date of his resignation, and he shall not be entitled to any further compensation or benefits as President, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment.

4. Permanent Disability. If Dr. Spanier shall become permanently disabled during his service as President, this Agreement shall terminate effective on the date of permanent disability and he shall receive all benefits to which he is entitled pursuant to the University's disability coverage referenced in Section B.4, plus the Equivalency payment referenced in Section C.5 of this Agreement.

For purposes of this Agreement and based upon Section 409A of the Internal Revenue Code, "Permanent Disability" shall mean Dr. Spanier is (i) unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months or (ii) by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering the University's employees.

5. Death. In the event of Dr. Spanier's death during the Term of this Agreement, Dr. Spánier's Base Salary shall cease immediately and this Agreement shall

terminate effective on the date of death, provided however that the Equivalency payment referenced in Section C.5 of this Agreement shall be paid to Dr. Spanier's estate no later than thirty (30) days from the date of death.

I. Outside Activities.

The University recognizes that it is both appropriate and beneficial for Dr. Spanier, in his capacity as President to engage in outside activities, such as serving on for-profit and nonprofit boards of directors, consulting, delivering speeches, and writing. However, the President shall seek prior approval from the President of the Board of Trustees before agreeing to serve on the board of directors of any for-profit entities. Dr. Spanier may not engage in any outside activity that conflicts with his Duties under this Agreement.

All income or other compensation earned by Dr. Spanier in connection with his outside activities shall be paid to and retained by Dr. Spanier and reported in accordance with applicable tax law and established University policy. Such income, if any, shall have no effect on the amount of salary, benefits, or other compensation to which Dr. Spanier may be entitled to under this Agreement.

J. Indemnification. The University shall indemnify Dr. Spanier and hold him harmless against legal fees, expenses, judgments, and other financial amounts incurred while serving in his capacity as President of the University to the extent permitted by law. Dr. Spanier shall continue to be indemnified subsequent to termination of employment as President with respect to acts or omissions occurring while he was serving as President. The terms of this Section J shall survive the expiration of this Agreement.

K. Mediation. The parties agree that any controversy or claim that either party may have against the other arising out of or relating to the construction, application or enforcement of this Agreement, as well as any controversy or claim based upon the alleged breach of any legal right relating to or arising from Dr. Spanier's employment and/or termination of his employment shall be submitted to non-binding mediation. Within fifteen (15) days after delivery of a written notice of request for mediation from one party to the other, the dispute shall be submitted to a single mediator located in the Commonwealth of Pennsylvania chosen by the parties, and the venue for such mediation shall be in University Park or State College, Pennsylvania, as mutually agreed by the parties. The costs and fees associated with mediation, excluding attorney's fees for Dr. Spanier, shall be borne by the University.

L. Notice.

Any notice or other communication contemplated by this Agreement shall be deemed to be given when given in writing and mailed, registered or certified, postage prepaid with return receipt requested, to a party at the address set forth below or such other address as may hereafter be designated in writing:

To Dr. Spanier:

Dr. Graham B. Spanier
Schreyer House
Pennsylvania State University
University Park, PA 16802

To the University:

The Pennsylvania State University
Office of the Board of Trustees
205 Old Main
University Park, PA 16802
Attention: President of the Board of Trustees

M. Severability and Waivers.

If any portion of this Agreement shall be held to invalid, inoperative, or unenforceable, then, so far as possible, effect shall be given to the intent manifested by the portion held invalid, inoperative, or unenforceable, and the remainder of this Agreement not found invalid, inoperative, or unenforceable shall remain in full force and effect. No waiver or failure to enforce any or all rights under this Agreement by either party on any occasion shall constitute a waiver of that party's right to assert the same or any other rights on that or any other occasion.

N. Governing Law.

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, excluding its choice of laws rules.

O. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute but one of the same instrument. Signatures delivered by facsimile and by email shall be deemed to be an original signature for all purposes, including for purposes of applicable Rules of Evidence.

P. Complete Agreement.

This Agreement fully supersedes any and all prior agreements or understandings, written or oral, with the exception of Section D.3 of the Prior Agreement as amended by Section C.5 of this Agreement. This Agreement shall not be amended, modified, or changed other than by express written agreement of Dr. Spanier and the President of the Board of Trustees.

Q. Personal Contract.

The obligations and duties of Dr. Spanier shall be personal and not assignable or delegable in any manner whatsoever. This Agreement shall be binding upon and inure to the benefit of Dr. Spanier and his executors, administrators, heirs, successors, and permitted assigns, and upon the University and its successors and assigns.

R. No Trust Fund.

Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind. To the extent that the President acquires a right to receive payments from the University under this Agreement, such rights shall be no greater than the right of any unsecured, general creditor to the University.

S. Miscellaneous.

The headings in this Agreement are for convenience only and shall not be used in construing or interpreting this Agreement. The terms "Board," "Board of Trustees," and "University" as used in this Agreement, where applicable or appropriate, shall be deemed to include or refer to any duly authorized board, committee, officer, or employee of said entity. Whenever the context requires, the masculine shall include the feminine and neuter, the singular shall include the plural, and conversely.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the day and year written below.

ATTEST:

Witness

THE PENNSYLVANIA STATE UNIVERSITY

By: ______________________

President, Board of Trustees

June 2, 2010

Date

ATTEST:

Witness

Graham B. Spanier, Ph.D.

June 2, 2010

Date

CONTENTS

THE CORPORATE BYLAWS

9/10

EXHIBIT
2

THE CORPORATE BYLAWS

ART. 1. ORGANIZATION AND MEETINGS OF THE BOARD*

(1) Corporate Authority: The authority for effecting the corporate purposes and for management and government of The Pennsylvania State University is vested by charter in the Board of Trustees.

(2) Stated Meetings: There shall be such stated meetings of the Board of Trustees each year at such times and places as the Board of Trustees shall from time to time determine.

(3) Special Meetings: Special meetings of the Board of Trustees may be called upon motion of the Board, upon written request of five members, or upon call by the chairperson of the Board or upon call of the President of the University.

(4) Notice of Time and Place of Meetings: Written notice of the time and place of all meetings shall be mailed by the secretary to each member of the Board at his/her post office address at least 10 days in advance of the date of the meeting in the case of stated meetings and 3 days in the case of special meetings.

(5) Quorum: Thirteen (13) members of the Board shall constitute a quorum for the official transaction of all business.

(6) Vacancies: Vacancies in the membership of the Board of Trustees created by death, resignation, or failure to qualify after election by written acceptance may be filled by appointment by the president of the corporation for the unexpired term in all cases except memberships reserved for gubernatorial appointment and ex officio memberships established by charter.

ART. 2. QUALIFICATIONS FOR MEMBERSHIP ON THE BOARD OF TRUSTEES

(1) Members of the Board of Trustees shall be natural persons of full age who need not be residents of the Commonwealth of Pennsylvania.

(2) A person who is employed in any capacity by the University shall not be eligible to serve as a member of the Board of Trustees. This qualification for membership shall not apply to a person who is an ex officio member of the Board, nor to a person who is a student employed part-time by the University.

(3) A person shall not be eligible to serve as a member of the Board of Trustees for a period of three (3) years from the July 1 coincident with or next following the date of last employment in any capacity by the University. This qualification for membership shall not apply to a person who is an ex officio member of the Board, nor to a person who is a student employed part-time by the University.

(4) Only graduates of The Pennsylvania State University who shall have received an associate degree, a bachelor's degree, or an advanced degree from the University shall be eligible to serve as a trustee elected by the Alumni. No member of the faculty or the governing board of any other college or university in Pennsylvania shall be eligible to serve as a trustee elected by the Alumni.

*Use of Proxies at Meetings - In a legal opinion on February 4, 1963, the University's legal counsel determined that proxies could be used at meetings only if the Bylaws so provide. The Bylaws are silent on the matter.

ART. 3. OFFICERS OF THE CORPORATION AND THEIR DUTIES

(1) Officers of the Corporation: The officers of the corporation shall be a president, a vice president, a secretary, an associate secretary, three assistant secretaries, a treasurer, and three assistant treasurers, all of whom except the associate secretary, the assistant secretaries, the treasurer, and the assistant treasurers shall be members of the Board of Trustees.

(2) Secretary of the Board: The President of the University shall be ex officio the Secretary of the Board.

(3) Election and Term of Officers: All other officers of the corporation shall be chosen each year by ballot of the members of the Board of Trustees present at the stated meeting of the Board in January to serve for a period of one year and until their successors are chosen according to these bylaws.

(4) Duties of Officers: The president of the corporation shall perform the corporate duties which pertain to that office and shall also be chairperson of the Board. The president shall appoint all committees of the Board of Trustees and the chairperson thereof except the executive committee unless otherwise ordered by the Board. The vice president shall, in the absence of the president, perform the duties of the president. The secretary shall perform the corporate duties which pertain to that office; he/she shall be custodian of the corporate seal, conduct the ordinary correspondence of the Board of Trustees and maintain an accurate record of all proceedings of the Board and of the executive committee. The associate secretary shall assist the secretary in the performance of his/her duties and shall act for and on behalf of the University in the same manner and with the same authority as the secretary. The assistant secretaries shall assist the associate secretary and shall act for and on behalf of the University in the same manner and with the same authority as the secretary. The treasurer shall receive and disburse all monies of the corporation under procedures and safeguards prescribed by the Board of Trustees. The assistant treasurers shall assist the treasurer in the performance of these duties and shall act for and on behalf of the University in the same manner and with the same authority as the treasurer.

(5) Vacancies in Office: Vacancies in any office or offices may be filled by ballot of the members present at any meeting of the Board of Trustees.

ART. 4. COMMITTEES OF THE BOARD OF TRUSTEES

(1) The Executive Committee: Not less than seven (7) nor more than eleven (11) members of the Board of Trustees to be chosen by ballot of the members present at the stated meeting of the Board in January each year together with the president and the secretary of the corporation shall constitute an executive committee to serve for a period of one year and until their successors are chosen. The president of the corporation shall be chairperson of the executive committee and the secretary of the corporation the recording secretary of the executive committee. The number of elected members of the executive committee, within the above limitations, shall be determined by the Board of Trustees at each said stated meeting.

(a) Purpose of the Executive Committee: The purpose of the executive committee, under the direction of and subject to the approval of the Board of Trustees, shall be to transact all necessary business as may arise in the intervals between meetings of the Board.

(b) Meetings of the Executive Committee: Meetings of the executive committee may be called by the Board of Trustees, by the President of the Board or by the President of the University.

(c) Place of Meetings of the Executive Committee: All meetings of the executive committee shall be held at the executive offices of the University unless otherwise ordered by the chairperson of the committee.

(d) Notice of Meetings of the Executive Committee: Notice of the time and place of all meetings of the executive committee shall be given in the same manner as for meetings of the Board of Trustees.

(2) Standing Committees:

(a) Function of Standing Committees: To facilitate consideration of the business and management of the corporation and of the University, standing committees are established as hereinafter set forth.

1. Referral of Matters to Standing Committees: Any matters appropriate for consideration by a standing committee first shall be referred thereto by the Board of Trustees, the President of the Board or the President of the University, except that a two-thirds (2/3) vote of the trustees present at a meeting of the Board but in no event by an affirmative vote of less than nine (9) Trustees will permit initial consideration by the full Board.

2. Consideration by Board of Matters on Which Standing Committees Make No Recommendation or Report: Provided, however, that any matter referred to and considered by a standing committee, but upon which the committee makes no recommendation or report to the Board, may be brought before the Board for consideration at the request of any trustee.

3. Matters Appropriate to More Than One Committee: Except as otherwise provided in the bylaws, matters determined to be appropriate for consideration by more than one committee may be referred by the President of the Board of Trustees and the President of the University to one committee or more.

4. Final Authority of the Board: Unless otherwise specifically delegated and except as otherwise provided herein, authority to act on all matters is reserved to the Board, and the duty of each standing committee shall be only to consider and to report or make recommendations to the Board upon appropriate matters.

5. Specific Responsibility of Standing Committees: The several standing committees are charged specifically with the immediate care and supervision of the subject matters respectively indicated by and properly relating to their titles.

(b) Standing Committees Established: The following shall be the standing committees of the Board:

Committee on Educational Policy
Committee on Finance and Physical Plant
Committee on Campus Environment

(3) Selection of Committee Members:

(a) Appointment of Members: Members of the standing committees, and the chairperson and vice chairperson thereof, shall be appointed by the President of the Board of Trustees after consultation with the President of the University.

(b) Term of Committee Members: Committee members shall serve for a term of one (1) year commencing upon the date of the election of officers of the corporation, and until their successors are appointed in accordance with this bylaw.

(c) Vacancies on Standing Committees: Vacancies on all standing committees shall be filled through appointment by the President of the Board after consultation with the President of the University to serve the unexpired term created by the vacancy.

(4) Special Committees: Special committees shall be appointed by the President of the Board, after consultation with the President of the University, upon authority of the Board with such powers and duties as the Board may determine, provided that no special committee shall be created to act upon any matter appropriate to be acted upon by a standing committee.

(a) Length of Service of Special Committees: A special committee shall act for no more than one-year from the date of appointment and shall be considered discharged upon the expiration of said year unless specifically authorized by the Board at the time of its appointment, or from year to year, to act for a longer period.

(5) Subcommittees: Each committee shall have such subcommittees as may be required for the effective conduct of the business of the committee, provided, however, that subcommittees shall be created only in response to need and to serve a specific purpose.

(a) Appointment of Subcommittees: Each subcommittee shall be appointed by the chairperson of the committee of which it is a part, after consultation with the President of the Board and the President of the University.

(b) Length of Service of Subcommittees: Each subcommittee shall serve for a period of not more than the term of the members of the standing committee of which it is a part.

(6) Ex Officio Members: The President of the Board of Trustees, or in his/her absence the Vice President of the Board, shall be an ex officio member of all standing committees, of all special committees, and of all subcommittees. The President of the University shall be an ex officio member of all standing committees, of all special committees, and of all subcommittees except the Subcommittee on Audit of the Committee on Finance and Physical Plant.

(a) Counted in Determining a Quorum: Ex officio members shall be counted in determining the presence of a quorum.

(b) Chairperson of Committee Ex Officio Member of Subcommittees: The chairperson of each committee shall be an ex officio member of each subcommittee of his/her committee.

(7) Committee on Educational Policy: The committee on educational policy shall:

(a) Consider and report or recommend to the Board on matters pertaining to the educational policies and programs of the University, including the long-range educational development of the University;

(b) Consider and report or recommend to the Board on matters pertaining to the faculty;

(c) Consider and report or recommend to the Board on educational policy matters pertaining to instruction, research, and continuing education;

(d) Consider and report or recommend to the Board on matters pertaining to all phases of student life.

1. Number of Members: The committee on educational policy shall consist of not less than eight (8) appointive members, in addition to the ex officio members.

2. Non-Voting Faculty and Student Representatives: Three non-voting faculty representatives and three non-voting student representatives may be invited to attend and participate in the meetings of the committee on educational policy, except executive sessions of the committee. The faculty and student representatives shall be selected by the President of the University in such manner as he/she deems appropriate.

(8) Committee on Finance and Physical Plant: The committee on finance and physical plant shall:

(a) Consider and report or recommend to the Board on matters pertaining to finance, business, budgets, non-budget expenditures, audits, investments, trust funds, insurance, real estate contracts, government and private contracts, and grants, fees, room and board charges, and the long-range financial planning and development of the University;

(b) Consider and report or recommend to the Board on matters pertaining to endowments, gifts, and fund raising.

(c) Consider and report or recommend to the Board on matters pertaining to purchase and sale of real estate, master plans, construction, the appointment of architects, the selection of architectural styles and materials, architect's plans, rights of way, the award of contracts, and the names of buildings and roads.

(d) Consider and report or recommend to the Board on matters pertaining to the long-range comprehensive physical plant development of the University at each campus, consistent with the long-range educational development of the University.

1. Number of Members: The committee on finance and physical plant shall consist of not less than eight (8) appointive members, in addition to the ex officio members.

2. Non-Voting Faculty and Student Representatives: Three non-voting faculty representatives and three non-voting student representatives may be invited to attend and participate in the meetings of the committee on finance and physical plant, except executive sessions of the committee. The faculty and student representatives shall be selected by the President of the University in such manner as he/she deems appropriate.

(9) Committee on Campus Environment: The committee on campus environment shall:

(a) Consider and report or recommend to the Board on matters pertaining to the learning and work environment for students, faculty, staff and all other members of the University community, with particular emphasis on policies relating to diversity, nondiscrimination and human resources.

1. Number of Members: The committee on campus environment shall consist of not less than eight (8) appointive members, in addition to the ex officio members.

2. Non-Voting Faculty and Student Representatives: Three non-voting faculty representatives and three non-voting student representatives may be invited to attend and participate in the meetings of the committee on campus environment, except executive sessions of the committee. The faculty and student representatives shall be selected by the President of the University in such manner as he/she deems appropriate.

ART. 5. LIABILITY AND INDEMNIFICATION

(1) Limitation on Liability: To the fullest extent permitted by law, no trustee of the University shall be personally liable for monetary damages for any action taken, or any failure to take any action, as a trustee. This Section (1) shall apply to actions filed, and any breach of performance of duty or any failure of performance of duty occurring, on or after January 27, 1987. This Section (1) shall be deemed to be a contract with each trustee of the University who serves while this Section is in effect. Any amendment or repeal of this Section (1) or the adoption of any other provision of the Bylaws which has the effect of increasing trustee liability shall not be retroactive.

(2) Indemnification:

(a) Except as prohibited by law, every trustee and officer of the University shall be entitled as of right to be indemnified by the University against expenses (including counsel fees) and any liability (including judgments, fines, penalties, excise taxes and amounts paid in settlement) paid or incurred by such person in connection with any actual or threatened claim, action, suit or proceeding, civil, criminal, administrative, investigative or other, (hereinafter the "Claim") whether brought by or in the right of the University or otherwise, in which such person may be involved, as a party or otherwise, by reason of such person being or having been a trustee or officer of the University or by reason of the fact that such person is or was serving at the request of the University as a director, officer, employee, fiduciary or other representative of another corporation, partnership, joint venture, trust, employee benefit plan or other entity. No right of indemnification shall exist for such Claim brought by a trustee or officer against the University or other trustees or officers unless the Claim is for indemnity and expenses pursuant to this Section 2(a).

(b) A trustee or officer subject to such Claim, shall be entitled as of right to have expenses (including counsel fees) paid in advance by the University prior to final disposition of the Claim, subject to the right of the University to require the trustee or officer to provide an undertaking to reimburse the University for such expenses if it is finally determined by a court of competent jurisdiction that such trustee's or officer's conduct was such that the University is prohibited by Pennsylvania Law from indemnification.

(c) The University may indemnify and advance the expenses of an agent or employee as though such person was a trustee or officer. To the extent that an agent or employee has been successful on the merits or otherwise in defense of the claim, issue or matter therein, the University shall indemnify such person against expenses (including attorneys fees) actually and reasonably incurred by such person in connection therewith.

(d) The University may provide, at its cost, insurance, or may self insure, to protect itself and any trustee, officer, agent or employee eligible to be indemnified hereunder against any liability or expense whether or not the University would have the power to indemnify such trustee, officer, agent or employee.

(e) To the extent permitted by law, this Section 2 shall apply to every Claim filed on or after January 27, 1987. Article 5 of the Bylaws as it existed on May 14, 1987, shall apply to every other Claim.

ART. 6. CONFLICT OF INTEREST

(1) Disclosure of Potential Conflict of Interest by Members of the Board of Trustees:

Members of the Board of Trustees: Members of the Board of Trustees stand in a fiduciary relationship to the University which reposes special confidence in each member. Members of the Board of Trustees shall act in good faith, with due regard to the interests of the University, and shall comply with the fiduciary principles of conduct hereinafter set forth in addition to any other federal or state reporting requirements.

(a) Contracts and Transactions with University:

1. No member of the Board of Trustees, any member's spouse or any corporation, partnership, association or other organization in which one or more members of the Board of Trustees, or any member's spouse or dependent child has a beneficial ownership of ten (10%) percent or more, shall enter into any contract or transaction valued at $10,000 or more with the University unless the contract has been awarded through an open and public bidding process, in accordance with University Purchasing Policy, or has been fully disclosed to the Board of Trustees and approved by the affirmative votes of a majority of the disinterested members of the Board of Trustees. Full disclosure shall mean disclosure of the material facts as to the relationship or interest of the member or members of the Board of Trustees, or spouse or dependent child of such member or members, and disclosure of the material facts as to the contract or transaction, including a sole source justification. Approval by a majority of disinterested members of the Board of Trustees shall be valid even though the disinterested members are less than a quorum. The member or members interested in the contract or transaction may be counted in determining the presence of a quorum, may briefly state a position on the contract or transaction, and may answer pertinent questions concerning the contract or transaction, but such member or members shall not vote on the matter. The minutes of the meeting shall reflect that disclosure was made, the abstention from voting by the interested member or members and the approval by a majority of disinterested members. A record of such contracts or transactions shall be maintained in the office of the senior vice president for finance and business and shall be available for inspection by members of the Board of Trustees.
2. A contract or transaction valued at less than $10,000 between the University and one or more members of the Board of Trustees, or any member's spouse, or between the University and any other corporation, partnership, association or organization in which one or more members of the Board, or any member's spouse or dependent child has a beneficial ownership of ten (10%) percent or more, shall be subject to disclosure, but shall not be subject to bidding requirements and need not be approved by the Board of Trustees. Disclosure of such contracts and transactions shall be made annually by written report to the Board of Trustees, which report shall include a certification by the appropriate officers of the University that such contracts or transactions were made in the normal course of business and were fair to the University.

3. A contract or transaction between the University and one or more members of the Board of Trustees, or any member's spouse, or between the University and any other corporation, partnership, association or other organization in which one or more members of the Board, or any member's spouse or dependent child, has a beneficial ownership of ten (10%) percent or more, which was made before any such member assumed office as a member of the Board, and which remains to be performed, in whole or in part, at the time of assumption of office as a member of the Board, shall be subject to the disclosure requirements of Section (1)(a) 2 of this Article but shall not be subject to approval by the Board of Trustees.

4. In addition, a record of all spouses, children and family members of members of the Board of Trustees who are employed by the University and whose compensation exceeds $10,000 per tax year shall also be maintained in the office of the senior vice president for finance and business and available for inspection by members of the Board of Trustees.

(b) Misuse of Information: No member of the Board of Trustees shall for personal gain or for the gain of others use any information not available to the public at large and obtained as a result of service to the University.

(c) Gifts and Favors: No member of the Board of Trustees shall solicit or accept for personal use or for the use of others any gift, loan, gratuity, reward, promise of future employment or any other thing of monetary value based on any understanding that the vote, official action or judgment of the member would be influenced thereby.

(2) Disclosure of Potential Conflict of Interest by Employees of the University:

Employees of the University shall exercise the utmost good faith in all transactions touching upon their duties to the University and its property. In their dealings with and on behalf of the University, they shall be held to a strict rule of honest and fair dealings between themselves and the University. They shall not use their positions, or knowledge gained therefrom, in such a way that a conflict of interest might arise between the interest of the University and that of the individual. Employees shall disclose to the administrative head of the college or other unit in which they are employed, or other appropriate superior officer, any potential conflict of interest of which they are aware before a contract or transaction is consummated. This Bylaw shall be published to the University community at least once annually.

ART. 7. MISCELLANEOUS PROVISIONS

(1) Order of Business: The order of business at all meetings of the Board of Trustees shall be as follows: (a) roll call, (b) approval of minutes of preceding meetings of the Board and the executive committee, (c) report of the President of the University, (d) reports of other officers, (e) reports of committees, (f) unfinished business, (g) new business, (h) election of officers and members of the executive committee (January meeting).

(2) Compensation: No member of the Board shall receive compensation for his/her services, but shall be paid his/her necessary traveling expenses and hotel bills actually incurred while attending a meeting of the Board of Trustees or a meeting of a committee of the Board of Trustees of which he/she is a member, except that travel by personal automobile shall be reimbursed at the same rate established for the use of personally owned automobiles by staff members of the University when traveling on business for the University.

(3) Fiscal Year: The fiscal year of the corporation shall be as fixed by the Board of Trustees from time to time. (On March 31, 1961, the Board voted that the fiscal year of the University shall continue to be from July 1 to June 30.)

(4) Rules of Order: Unless otherwise modified by these Bylaws, the conduct of business in meetings of the Board and its committees shall be in accordance with the parliamentary procedures prescribed in Robert's "Rules of Order."

(5) Amendments: These Bylaws may be amended or repealed by a two-thirds vote of those present at any meeting of the Board provided written notice and copy of the proposed change or changes have been given in the call for the meeting or at a preceding stated or special meeting.

(6) Repeals: All resolutions of the Board inconsistent with these Bylaws are hereby repealed.

(7) Private Inurement: No part of the net earnings of the University shall inure to the benefit of, or be distributable to, its trustees, officers or other private persons, except that the University shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these Bylaws and the University's Charter.

(8) Term Limits: Term limits for elected members of the Board will be 15 years, effective with terms beginning July 1, 2003 or thereafter. This provision for term limits shall not apply to elected members of the Board while serving in the capacity as President or Vice President of the Board of Trustees. (For Trustees with terms beginning prior to July 1, 2003, the 15 year term limit is effective with the date of the most recent election or re-election as trustees elected by the alumni, elected by delegates of agricultural societies, and/or elected as business and industry trustees.)

9/10

PennState

Human Resources

General University Reference Utility

Policy Manual

Policy HR91 CONFLICT OF INTEREST

POLICY'S INITIAL DATE: June 23, 1983
THIS VERSION EFFECTIVE: March 12, 1993

Contents:

PURPOSE:

To avoid the possibility of any misunderstandings concerning the appropriate conduct of faculty and staff members in regard to all transactions touching upon their University duties and the property of the University.

POLICY:

Faculty and staff members of the University shall exercise the utmost good faith in all transactions touching upon their duties to the University and its property. In their dealings with and on behalf of the University, they shall be held to a strict rule of honest and fair dealings between themselves and the University. They shall not use their positions, or knowledge gained therefrom, in such a way that a conflict of interest might arise between the interest of the University and that of the individual. Faculty and staff members shall disclose to the administrative head of the college or other unit in which they are employed, or other appropriate administrative officer, any potential conflict of interest of which they are aware before a contract or transaction is consummated.

University tangible assets, equipment, supplies and services may not be used by employees for personal gain, or for purposes outside the scope of their employment.

RESPONSIBILITY:

The first responsibility for adherence to this policy lies with the faculty or staff member(s) directly involved. If there is reason to believe that this policy is not being adhered to, the matter should be reported to the faculty or staff member's administrative head for investigation and resolution. If the matter cannot be resolved at that level, it should be referred to the next higher administrative level for resolution.

CROSS REFERENCES:

Other Policies in this Manual should also be referenced, especially:

RA12 - Technology Transfer and Entrepreneurial Activity (Faculty Research),

EXHIBIT 3

AD47 - General Standards of Professional Ethics

RA10 - Handling Inquiries/Investigations into Questions of Ethics in Research and in Other Scholarly Activities

FN14 - Use of University Tangible Assets, Equipment, Supplies and Services.

From: Gary C. Schultz <gcs2@psu.edu>
Sent: Monday, February 26, 2001 1:57 PM
To: TMC3@psu.edu
Cc: Coble-Joan (JLC)
Subject: Confidential

Tim, I'm assuming that you've got the ball to 1) talk with the subject ASAP regarding the future appropriate use of the University facility; 2) contacting the chair of the Charitable Organization; and 3) contacting the Dept of Welfare. As you know I'm out of the office for the next two weeks, but if you need anything from me, please let me know.

EXHIBIT
4

From: Gary C. Schultz <gcs2@psu.edu>
Sent: Wednesday, February 28, 2001 2:13 PM
To: Graham Spanier; Tim Curley
Subject: Re: Meeting

<html>
Tim and Graham, this is a more humane and upfront way to handle this. I can support this approach, with the understanding that we will inform his organization, with or without his cooperation (I think that's what Tim proposed). We can play it by ear to decide about the other organization.

 At 10:18 PM 2/27/01 -0500, Graham Spanier wrote:
 <blockquote type=cite cite>Tim: This approach is acceptable to me. It requires you to go a step further and means that your conversation will be all the more difficult, but I admire your willingness to do that and I am supportive. The only downside for us is if the message isn't "heard" and acted upon, and we then become vulnerable for not having reported it. But that can be assessed down the road. The approach you outline is humane and a reasonable way to proceed.

 At 08:10 PM 2/27/01 -0500, Tim Curley wrote:
 <blockquote type=cite cite>I had scheduled a meeting with you this afternoon about the subject we discussed on Sunday. After giving it more thought and talking it over with Joe yesterday-- I am uncomfortable with what we agreed were the next steps. I am having trouble with going to everyone, but the person involved. I think I would be more comfortable meeting with the person and tell him about the information we received. I would plan to tell him we are aware of the first situation. I would indicate we feel there is a problem and we want to assist the individual to get professional help. Also, we feel a responsibility at some point soon to inform his organization and and maybe the other one about the situation. If he is cooperative we would work with him to handle informing the organization. If not, we do not have a choice and will inform the two groups. Additionally, I will let him know that his guests are not permitted to use our facilities.

 I need some help on this one. What do you think about this approach?</blockquote>

Graham B. Spanier
President
The Pennsylvania State University
201 Old Main
University Park, Pennsylvania 16802

 Phone: 814-865-7611
 email: gspanier@psu.edu
 </blockquote></html>

From: Gary C. Schultz <gcs2@psu.edu>
Sent: Thursday, March 01, 2001 4:06 PM
To: Tim Curley
Subject: Re: Fwd: Re: Schedule

<html>
OK, Tim. You can reach me anytime thru my office.

 At 07:34 AM 3/1/01 -0500, Tim Curley wrote:

 <blockquote type=cite cite>Gary: I will be sure to keep in touch with you on the basketball situation.

 <blockquote type=cite cite>X-Sender: gspanier@mail.psu.edu
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58
Date: Wed, 28 Feb 2001 21:18:24 -0500
X-PH: V4.1@f04n01
To: Tim Curley <tmc3@psu.edu>
From: Graham Spanier <gspanier@psu.edu>
Subject: Re: Schedule

Tim: I'll be in Australia, and it might be difficult to reach me--a 15 hour time difference. But call if you need me--Carolyn has my phone numbers. I will try to check email from time to time, but who knows how easy that will be. I will return late Saturday night (but that involves starting my return sometime on Friday, US time), so you might try calling me at home on Sunday afternoon if we haven't communicated earlier via email. If you need to start in one direction without me, do so. I think we are on the same wavelength and I will support you.

 At 08:19 PM 2/28/01 -0500, Tim Curley wrote:
 <blockquote type=cite cite>Graham: I know you are going out of town. When will you be returning? I may need to touch base with you regarding the basketball situation towards the end of next week. We will play next Thursday and pending the outcome of the next two games I will need to make a recommendation to you next Friday. I am planning to meet with the person next Monday on the other subject. Have a great trip!! You sure deserve a break!!!</blockquote>

Graham B. Spanier
President
The Pennsylvania State University
201 Old Main
University Park, Pennsylvania 16802

 Phone: 814-865-7611
 email:
gspanier@psu.edu</blockquote>
 </blockquote></html>

From: Joan Coble <jlc9@psu.edu>
Sent: Wednesday, March 07, 2001 8:54 AM
To: TMC3@psu.edu
Cc: gcs2@psu.edu
Subject: Fwd: Confidential

Tim - Have you updated Gary lately? Before he left for FL, he asked me to ck. w/you re this.

Pls. know that he is doing e-mail, but will not be reading until Sun., 3/11. He is spending a few days with Dave Schuckers and you may either phone him on his cellphone at 777-7393 or @ Schuckers at 941/388-3034. Pls. know that the Schuckers live in a Condominium & you may have to go through some referrals to get to speak w/them, so be patient if you go that route.

Thx. Joan

X-Sender: gcs2@imap.cac.psu.edu
X-Mailer: QUALCOMM Windows Eudora Version 4.3.2
Date: Mon, 26 Feb 2001 08:57:16 -0500
X-PH: V4.1@f04n01
To: TMC3@psu.edu
From: "Gary C. Schultz" <gcs2@psu.edu>
Subject: Confidential
Cc: jlc9@psu.edu

Tim, I'm assuming that you've got the ball to 1) talk with the subject ASAP regarding the future appropriate use of the University facility; 2) contacting the chair of the Charitable Organization; and 3) contacting the Dept of Welfare. As you know I'm out of the office for the next two weeks, but if you need anything from me, please let me know.

Gary C. Schultz
Senior Vice President for
Finance & Business/Treasurer
Penn State University
208 Old Main
University Park, PA 16802
814/865-6574
814/863-8685 (fax)
http://www.psu.edu/dept/fab

Joan L. Coble
Administrative Assistant
Office of the Senior Vice President for
Finance & Business/Treasurer
208 Old Main
University Park, PA 16802

814/865-6574 (phone)
814/863-8685 (fax)
http://www.psu.edu/dept/fab

Execution counterpart

CONFIDENTIAL SEPARATION AGREEMENT

This Confidential Separation Agreement ("Agreement") is entered into by and between The Pennsylvania State University ("University") and Graham B. Spanier, Ph.D. ("Dr. Spanier"). The University and Dr. Spanier, each intending to be legally bound and in consideration of the following mutual promises and covenants, do agree as follows.

1. Effective November 9, 2011, Dr. Spanier was terminated from the position of President of the University without cause pursuant to Section H.2 of his Employment Agreement dated July 1, 2010 ("Employment Agreement"). By virtue of Dr. Spanier's termination from the position of President, it is understood and agreed that he likewise relinquishes his position on the University's Board of Trustees, the presidency of The Corporation for Penn State (the "Corporation"), all ex-officio positions held with respect to any board of any subsidiary of the Corporation and all other ex-officio positions tied to the Presidency of the University, except that in the case of Dr. Spanier's membership on the National Security Higher Education Advisory Board, Dr. Spanier shall resign as soon as practicable under the policies and practices of such Advisory Board.

2. By virtue of Dr. Spanier's termination from the position of President of the University, it is also understood and agreed that except as otherwise provided below, Dr. Spanier's Employment Agreement was terminated as of November 9, 2011. Dr. Spanier may remain employed by the University, however, as a tenured member of the faculty in the Department of Human Development and Family Studies of the College of Health and Human Development, with the titles of President Emeritus, University Professor and Professor of Human Development and Family Studies, Sociology, Demography, and Family and Community Medicine.

EXHIBIT
5

3. Pursuant to the Employment Agreement and in return for Dr. Spanier agreeing to the terms of this Agreement, Dr. Spanier shall be provided with the following:

(a) A lump sum payment equal to Dr. Spanier's current base salary for a period of eighteen (18) months, with payment to be made on December 15, 2011. This payment is subject to tax withholdings required by federal, state and local laws. Dr. Spanier shall also be eligible to continue to participate in all of the employee benefit plans of the University applicable to senior executives for a period of 18 months from November 9, 2011 pursuant to Section E(1) of the Employment Agreement, and he shall be eligible to continue to receive for a period of 18 months from November 9, 2011 the supplemental life insurance, supplemental health insurance, and disability coverage as provided in Sections E(2), E(3) and E(4) respectively of the Employment Agreement. The University will also comply with the provisions in Section E.2 of the Employment Agreement regarding life insurance at the conclusion of the Term of the Employment Agreement (other than the provision with respect to continued escalation of the death benefit) and in Section E.3 regarding health insurance coverage at the conclusion of his presidency.

(b) The Retirement Plan Equivalency payment (referenced in Section C(5) of the Employment Agreement) in the gross amount of $1,248,204.60 payable in two installments: (1) an amount equal to the applicable federal, state and local tax withholding amount due on the Retirement Plan Equivalency gross payment amount shall be payable to Dr. Spanier on December 15, 2011, and remitted to the applicable taxing authorities; and (2) the remainder shall be paid to Dr. Spanier on June 30, 2017. No taxes shall be withheld from the payment of the second installment and the second installment shall not be reported as taxable income, since the first installment is intended to satisfy the entire tax liability with respect to the Retirement Plan Equivalency payment.

(c) For as long as Dr. Spanier remains employed by the University, the University will continue to contribute, at its normal Alternate Retirement Plan contribution rate (currently 9.29%), as it does for all employees under such Plan, to the purchase of an annuity contract within the meaning of Section 403(b) of the Internal Revenue Code. In addition, the University shall make the 2011 payment to Dr. Spanier as provided in Section C.4(b) of the Employment Agreement, at the time such payments have been made in the past, with the amount of such payment prorated to cover the period from January 1, 2011 to November 9, 2011.

(d) Pursuant to Section E(6) of the Employment Agreement, a paid one-year post-presidency transition period during which Dr. Spanier will be paid his current annual salary of $700,000 (subject to tax withholdings required by law) and receive the benefits described in Sections E(1) through E(4) of the Employment Agreement. Dr. Spanier agrees to provide substantial services to the University as required by Section 457(f) of the Internal Revenue Code during such period.

(e) Following completion of the one-year post-presidency transition period, Dr. Spanier may continue as a tenured member of the faculty, with a salary of $600,000 annually for a period of five years, with all provisions of Section E(6) of the Employment Agreement being applicable. Thereafter, Dr. Spanier's employment and compensation as a tenured faculty member shall be governed by the University's policies, rules and regulations applicable to other tenured members of the faculty of the University.

(f) With respect to the contents of Schreyer House, as has been the case with prior presidents, it is agreed that all furniture purchased by the University in the public spaces of the house belong to the University and will remain the property of the University. Furniture and contents purchased by the Spanier family will remain the property of the Spanier family. Furniture and contents purchased by the University for the private family spaces of Schreyer House may, at the discretion of the Spanier family, be purchased by the Spanier family at a fair market value to be determined according to existing property inventory unit procedures under the purview of the Corporate Controller. Payment for such any such furniture or contents will be made within 30 days of departure from the residence.

4. In exchange for Dr. Spanier waiving the 90-day notice period described **in Section H(2) of the Employment Agreement, the University shall** provide **the following to Dr. Spanier:**

(a) Dr. Spanier shall be paid a lump sum payment equal to ninety (90) days pay at the rate of his current annual salary of $700,000 (subject to tax withholdings required by law), in lieu of the ninety days' notice required by Section H.2 of his Employment Agreement, with payment to be made on December 15, 2011.

(b) Dr. Spanier and his family may remain in the President's Residence for up to seventy-five (75) days from November 9, 2011. The University shall reimburse Dr. Spanier for the reasonable expenses of moving his personal property from the President's Residence as provided in Section F of the Employment Agreement.

(c) Dr. Spanier may retain the automobile provided under Section C(9) of the Employment Agreement for up to sixty (60) days from November 9, 2011.

(d) During the post-Presidency transition period referred to in Section E.5 of the Employment Agreement, the University will provide Dr. Spanier with administrative support to assist him with his responsibilities, including computer access and IT support, in the manner previously provided to past presidents of the University, in addition to all support referred to in the last paragraph of Section E.6 of the Employment Agreement. Following the post-Presidency transition, the University will provide Dr. Spanier with administrative support commensurate with that provided with other tenured faculty members and University Professors, and will continue to provide the administrative support referred to in the last paragraph of Section E.6 of the Employment Agreement.

(e) Dr. Spanier shall be reimbursed promptly for reasonable travel and business expenses incurred up to November 9, 2011 and not submitted prior to the execution of this Agreement as provided in Section E.7 of the Employment Agreement.

(f) In addition to its obligations under paragraph 6 below, the University shall reimburse Dr. Spanier for the attorneys' fees and expenses he has incurred in connection with matters relating to the grand jury presentment and his termination from the position of President of the University.

5. The parties shall cooperate in obtaining an opinion of mutually acceptable independent compensation counsel to the effect that the terms and conditions of this Agreement result in "reasonable compensation" for Dr. Spanier, meaning that the total compensation hereunder is comparable to that paid to similarly situated university officials in similar circumstances. The parties agree to negotiate in good faith to modify the terms of this Agreement if necessary to obtain such opinion. The University shall pay the fees and costs of such compensation counsel.

6. The University agrees to indemnify Dr. Spanier in accordance with the terms of Section J of the Employment Agreement and with the by-laws of the University.

7. Dr. Spanier, on behalf of himself, his heirs, representatives, estates, successors and assigns, does hereby irrevocably and unconditionally remise, release and forever discharge The Pennsylvania State University, its predecessors, parents, subsidiaries, affiliates, constituent organizations, benefits plans, and any successor

thereto, and their past, present and future trustees, officers, directors, administrators, agents, attorneys, insurance carriers, consultants or employees, as well as the heirs, successors and assigns of any such persons or such entities (severally and collectively called "Releasees"), jointly and individually, from any and all claims, known and unknown, that Dr. Spanier has or may have against any of the Releasees for any acts, omissions, practices or events up to and including the effective date of this Agreement and the continuing effects thereof, it being the intention of Dr. Spanier to effect a general release of all such claims. This release includes any and all claims under any possible legal, equitable, tort, contract, common law, statutory, or constitutional theory, including, but not limited to, any claims under 42 U.S.C. Section 1983, Title VII of the Civil Rights Act of 1964, the Pennsylvania Human Relations Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Americans With Disabilities Act, and other federal, state, and local statutes, ordinances, executive orders, regulations and other laws prohibiting discrimination in employment or benefits, and federal, state or local law claims of any kind whatsoever arising out of or in any way related to Dr. Spanier's employment as President of the University and his termination from the position of President of the University.

8. The University, on behalf of itself and the Board of Trustees, does hereby irrevocably and unconditionally remise, release and forever discharge Dr. Spanier from any and all claims, known and unknown, that the University has or may have against Dr. Spanier for any acts, omissions, practices or events up to and including the effective date of this Agreement and the continuing effects thereof, to the extent such acts or omissions relate to his position as President of the University, it being the intention of the University to effect a general release of all such claims.

9. It is expressly understood and agreed that by entering into this Agreement, the University in no way admits that it has treated Dr. Spanier unlawfully or wrongfully in any way.

10. Dr. Spanier agrees, and shall use reasonable efforts to cause his attorneys to agree that, except as required by law or to comply with legal obligations, they shall keep the terms and conditions of this Agreement **COMPLETELY CONFIDENTIAL** and they will not discuss, disclose, or reveal those terms and conditions, directly or indirectly, to the media or to any person, corporation, or other entity, other than to Dr. Spanier's attorneys, spouse, accountants and financial advisors or to any government agency or entity with jurisdiction over matters relating to this Agreement.

11. Dr. Spanier acknowledges that the University may be required to make the terms and conditions of this Agreement public in accordance with its policies and procedures or as required by applicable law or regulatory authority. If the University makes the terms and conditions of this Agreement public in accordance with this paragraph, Dr. Spanier will be relieved of his obligations in paragraph 10, but only to the extent of the provisions of this Agreement that are made public by the University.

12. Dr. Spanier will not make any negative comments to the media, to his professional colleagues or to any other members of the public regarding the University, its Board of Trustees or any member of the Board of Trustees, unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations.

13. The University will not, and will use reasonable efforts to cause the members of the Board of Trustees not to, make any negative comments about Dr. Spanier to the media, to their professional colleagues or to any other members of the

public, unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations.

14. In the event of any breach of any provision of this Agreement, the prevailing party in any litigation over such breach shall be entitled, in addition to all relief otherwise available under law, to an award of reasonable counsel fees and expenses incurred in investigating and litigating such breach.

15. Dr. Spanier acknowledges that he has been given the opportunity to consider this Agreement for at least 21 calendar days, which is a reasonable period of time, and that he has been advised to consult with his attorneys about this Agreement prior to executing it. Dr. Spanier further acknowledges that he has had a full and fair opportunity to consult with his attorneys, that he has carefully read and fully understands all of the provisions of this Agreement, and that he is voluntarily executing and entering into this Agreement, intending to be legally bound by it. If Dr. Spanier executes this Agreement in less than 21 days, he acknowledges that he has thereby waived his right to the full 21-day period.

16. For a period of seven calendar days following Dr. Spanier's execution of this Agreement, he may revoke it by delivery of a written notice of revocation to the office of Cynthia A. Baldwin, Esq., Vice President and General Counsel, The Pennsylvania State University, 108 Old Main, University Park, PA 16802. This Agreement shall not become effective or enforceable before the seven-day revocation period has expired.

17. The parties hereto further understand and agree that the terms and conditions of this Agreement constitute the full and complete understandings and arrangements of the parties with respect to the terms of Dr. Spanier's termination from

the position of President of the University and that there are no agreements, covenants, promises or arrangements other than those set forth herein with respect to that subject.

18. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

19. If any of the provisions of this Agreement are declared or determined by any court to be invalid or unenforceable for any reason, the remaining provisions and portions of this Agreement shall be unaffected thereby and shall remain in full force to the fullest extent permitted by law.

20. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the aforesaid parties, having read this Confidential Separation Agreement and intending to be legally bound hereby, have read, signed, sealed and delivered it, voluntarily, without coercion and with knowledge of the nature and consequences thereof.

THE PENNSYLVANIA STATE UNIVERSITY

By:____________________________
Steve A. Garban
President, Board of Trustees

____
Date

Graham Spanier
Graham B. Spanier

11/15/2011
Date

the position of President of the University and that there are no agreements, covenants, promises or arrangements other than those set forth herein with respect to that subject.

18. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

19. If any of the provisions of this Agreement are declared or determined by any court to be invalid or unenforceable for any reason, the remaining provisions and portions of this Agreement shall be unaffected thereby and shall remain in full force to the fullest extent permitted by law.

20. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the aforesaid parties, having read this Confidential Separation Agreement and intending to be legally bound hereby, have read, signed, sealed and delivered it, voluntarily, without coercion and with knowledge of the nature and consequences thereof.

THE PENNSYLVANIA STATE
UNIVERSITY

By: Steve A. Garban

Steve A. Garban President, Board of Trustees	Graham B. Spanier
11-15-11 Date	Date

TOLLING AGREEMENT

This Agreement is between The Pennsylvania State University ("Penn State") and Dr. Graham B. Spanier ("Dr. Spanier"). Penn State and Dr. Spanier agree that the running of any time limitations, legal or equitable, on claims which Penn State may assert against Dr. Spanier in the future, or which Dr. Spanier may assert against Penn State in the future, relating to his performance as Penn State's President; the negotiation, validity, or enforceability of his Separation Agreement dated November 15, 2011; payments thereunder; and/or his performance of his obligations thereunder are hereby tolled as of November 12, 2015. It is the parties' intent that this tolling agreement shall encompass the running of the statute of limitations, any statute of repose, and/or any accrual of laches or similar doctrine. Any claim which is not time-barred as of November 12, 2015 will not become time-barred after November 12 and while this Agreement is in effect. It is not the intent of this Agreement to revive any cause of action which is time-barred as of November 12, 2015. Either party may terminate this Agreement by written notice, with the effective date of such termination to be 15 days after receipt by the other party of such notice.

Thomas A. Clare
Attorney for
Graham B. Spanier

Attorney for
The Pennsylvania State University

Graham B. Spanier
Graham B. Spanier /TC

Stephen S. Dunham
Vice President and General Counsel
The Pennsylvania State University

Dated: November 12, 2015

EXHIBIT
6

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for The Pennsylvania State University, hereby certify that I caused to be served a true and correct copy of the foregoing FIRST AMENDED COUNTERCLAIMS this 17TH day of February 2017, by mailing same via U.S. mail, first class, postage prepaid, upon the following counsel of record:

Thomas A. Clare
Elizabeth M. Locke
Andrew C. Phillips
CLARE LOCKE LLP
902 Prince Street
Alexandria, VA 22314
tom@clarelocke.com
libby@clarelocke.com
andy@clarelocke.com

Kathleen Yurchak
STEINBACHER, GOODALL & YURCHAK
328 South Atherson Street
State College, PA 16801

Counsel for Graham B. Spanier

Donna Doblick

One of the Attorneys for The Pennsylvania State University