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September 10, 2019

VIA EMAIL

David Dubrow
Arent Fox
1301 Avenue of the Americas, 42nd Floor
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Re: Cross Village Development

Dear Mr. Dubrow:

I write on behalf of the Board of Regents of the University of Oklahoma (the “University”) in response to your unsigned letter regarding the Cross Village project (“Cross”), dated September 6, 2019, that was replete with patently false, misleading, and disparaging statements, including an assertion in all caps that no one can trust or should do business with or buy the bonds of the University and the State of Oklahoma. You then circulated your inflammatory letter to numerous media publications, including the Wall Street Journal, Bloomberg, and The Bond Buyer, without notifying the University or allowing the University to respond or correct your false assertions.

Your letter, combined with prior statements to the press made by your client, UMB Bank, N.A. (“UMB”), and the debtor on the Cross bonds, Provident Oklahoma Education Resources Inc., a subsidiary of the sophisticated, nationwide company Provident Resources Group Inc. (collectively, “Provident”), makes clear that the strategy of the bond trustee and the debtor is to disseminate falsehoods in an effort to damage the reputation of the University and bully the University into bailing out sophisticated private institutions. Such a strategy will not work. The University has honored all its obligations with respect to Cross, a private project built to house upperclassmen, as you acknowledge. *See* Sept. 6, 2019 Ltr. at 1. The University wants Cross to succeed, but it must also protect the interests of its stakeholders, including students and

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taxpayers. The fact is that the Cross project was designed so the University has no obligations for servicing the Cross debt, as the offering materials to investors made clear in bold, capitalized type:

THE UNIVERSITY IS NOT OBLIGATED TO PAY THE PRINCIPAL, REDEMPTION PRICE, IF ANY, OR PREMIUM, IF ANY, OF, OR INTEREST ON THE SERIES 2017 BONDS, AND THE SERIES 2017 BONDS ARE NOT A DEBT, LIABILITY OR OBLIGATION OF THE UNIVERSITY.

The misstatements in your letter are egregious and include but are not limited to: misstating the involvement of the University in seeking investors for Cross; misstating the representations to investors regarding the University's obligations with respect to the commercial and parking spaces; mischaracterizing the University's non-renewal of the commercial and parking space leases; misstating the University's participation in negotiations; and mischaracterizing the University's obligations as moral obligations that should impact the University's credit rating.

Below is a non-exhaustive list of the false statements you intentionally circulated to the media in an effort to disparate the University and the State. Given the number of misstatements in your letter, the University cannot respond to every one.

1. You misstate the involvement of the University in seeking investors for the Cross Village project. You assert without any citation that “[t]he University drew on its status as a respected and trusted State entity in order to seek investors for this project.” Sept. 6, 2019 Ltr. at 1. As you well know, that is not true. Instead, Cross was owned and operated by Provident, which took out the debt with the assistance of the global investment bank, RBC Capital Markets (“RBC”). As you well know, all investors knew Provident was the sole obligor on the debt. Among other things, every operative document, including the Official Statement that RBC published to investors, the Loan Agreement that Provident signed, and the Trust Indenture that the bond trustee signed, made clear that the University undertook no obligation with respect to debt service. *See, e.g.*, Official Statement at 3 (“THE STATE (INCLUDING, WITHOUT LIMITATION, THE UNIVERSITY) IS NOT OBLIGATED TO PAY, AND NEITHER THE FAITH AND CREDIT NOR TAXING POWER OF THE STATE OF OKLAHOMA IS PLEDGED TO THE PAYMENT OF, THE PRINCIPAL, REDEMPTION PRICE, IF ANY, OR PREMIUM, IF ANY, OF, OR INTEREST ON THE BONDS.”), 16 (same); Loan Agreement at 10 (same), 65 (same), 67 (same); Trust Indenture at 26-27 (same), 47 (same); Official Statement at 37 (“NEITHER THE SERIES 2017 BONDS NOR ANY PAYMENT OBLIGATIONS ARISING THEREUNDER OR RELATED THERETO ARE AN OBLIGATION OR INDEBTEDNESS OF THE UNIVERSITY.”).

2. You misstate the representations to investors regarding the University's obligations with respect to the commercial and parking spaces. You assert, again without any citation, that the University "assured investors that even though the leases for the commercial space and parking were renewable on an annual basis, the University intended to lease all of the commercial and parking spaces for the life of the bonds at the agreed upon rents." Sept. 6, 2019 Ltr. at 1. No such assurances appear anywhere in the materials to investors, however. Indeed, those kinds of assurances would be antithetical to the consistent position by the University that it cannot commit to long-term contracts because it must ensure on a periodic basis that the money it spends benefits the University, its students, the State of Oklahoma, and its taxpayers. As a result, the Official Statement published by RBC to investors made clear that the leases were only for one-year terms. *See, e.g.*, Official Statement at 21 ("The term of each Commercial Space Lease Agreement shall be for a one year lease term"), 24 ("The Parking Space License Agreement will have a one year term"). You suggest that because the long-term projections included in the Official Statement by RBC made assumptions that the leases would be renewed, the University had an obligation to renew the leases. Sept. 6, 2019 Ltr. at 1. Of course, that is not true. The projections were not made by the University, but by a sophisticated company retained by Provident. Indeed, the Official Statement specifically warned that the University was making no representations with respect to the projections. Moreover, the projections disclosed all assumptions and made clear that they were forward-looking statements "dependent upon future events, the occurrence of which cannot be assured." *Id.* at 35-36.
3. You falsely state that the University broke a promise when it did not renew the commercial and parking leases. You assert that "[t]he University broke its promise when it failed to renew [the] leases on July 26, 2019." Sept. 6, 2019 Ltr. at 1. As you well know, however, the University broke no promise, but simply exercised its explicit contractual rights of which all parties and investors were aware. Specifically, the commercial lease expired *by its own terms* on July 31, 2019. Commercial Lease § 3.1 ("The Lease Term will end on the date specified [July 31, 2019] without notice."). The University had no obligation to renew it. The parking lease also expressly provided that it "end[ed] on July 31, 2019," and could be terminated in whole or in part any time after July 31, 2019 with the requisite notice. Parking License §§ 1, 2. There is no dispute that the University provided the requisite notice. You fail to mention in your letter that the University tried to find a solution for the leases. It engaged in negotiations with Provident and RBC for *over two months* in a voluntary mediation before it ultimately was forced not to renew the leases because your client, the bond trustee UMB, *refused to participate in the mediation.*
4. You misstate the University's participation in negotiations. You suggest at the beginning of your letter that the University has not been willing to participate in discussions about Cross. Sept. 6, 2019 Ltr. at 1. As you well know, however, that is a flat-out lie. The

University itself initiated discussions with Provident and RBC in May 2019, which led to a voluntary mediation. The University asked UMB to participate in the mediation, but it refused. The University sent a letter to you on August 5, 2019, communicating its willingness to continue mediation, but UMB continued to refuse to participate in mediation. Instead, UMB demands fully public discussions to ensure that it can use the media to influence discussions and to preserve the bondholders' rights to trade freely in the bonds. As your letter demonstrates, however, negotiating in the media is unproductive, and certain confidentiality protections are needed to promote full and frank discussions among the parties. If UMB and the bondholders are serious about negotiating a resolution to Cross, they can figure out a way to manage their trading with the requirements of a mediation. The University remains willing to mediate.

5. You incorrectly characterize the University's obligations as moral obligations and assert in bad-faith that the University's actions should impact the University's credit rating. In a transparent attempt to impair the University's credit rating, you assert that the University undertook a "moral obligation" with respect to Cross, and its non-renewal of the Cross leases should impact its credit rating negatively. Sept. 6, 2019 Ltr. at 2. As we have explained to you once before, however, the University undertook no moral obligation with respect to Cross. Unlike the moral obligations you describe in your letter, the University did not make any pledges as to budgeting any monies for Cross debt. To the contrary, as set forth above, the offering materials went out of their way to make clear that no investor should look to the University for debt servicing in any capacity.

In addition, even if there were a moral obligation (there is not), it would not affect the University or the State's credit rating. Failure to satisfy a moral obligation may be relevant to a credit rating only if it indicates that the governmental entity does not have the ability or willingness to satisfy its own debts. Here, the University's non-renewal of the commercial and parking space has nothing to do with the University's ability and willingness to satisfy its own debts. As the University explained when not renewing the leases, it diligently conducted a cost-benefit analysis of the leases, considering the actual results from the 2018-2019 academic year and the expected needs and budget for the 2019-2020 academic year. The analysis showed little benefit to the University. For example, for the 2018-2019 academic year, the University paid over \$6.8 million to Provident for the commercial and parking spaces, representing average lease rates over double the market rate for commercial space and almost ten times the market rate for parking spaces, without any corresponding benefit. Demand for the commercial retail businesses was so low that the University obtained only approximately \$40,000 in retail rental revenue, and the dining and parking spaces were not used enough to justify the lease rates. The University estimated the same limited demand for the 2019-2020 academic year, but would be required to pay almost \$7.1 million for the commercial and parking spaces under the escalating rent terms of the leases, if they were renewed.

As the University explained, it could not renew the full commercial lease or the parking lease at the escalated rates currently set forth in those agreements. Given the limited benefits to the University, the only purpose of any future lease payments would be to subsidize Provident, a private company that pays its own management millions of dollars. The University's decision not to renew the commercial and parking spaces is no reflection on the University's financial condition, its ability to repay its own debts, or its willingness and ability to satisfy its own contractual obligations. Instead, it merely is a reflection of the University exercising explicit contractual rights for the benefit of its own stakeholders.

6. You misstate the obligations of the State of Oklahoma with respect to Cross. You assert that the University's decision not to renew the leases amounts to Oklahoma's failure to meet its debt obligations and a "major blemish for the State." Sept. 6, 2019 Ltr. at 2. This assertion is directly contrary to controlling legal authority. A simple search of relevant case law would show that the Oklahoma Supreme Court has held that, as a unique governmental entity, the Board of Regents are separate from the State and cannot bind the State for bond-related debts. *See, e.g., In re Oklahoma Capitol Imp. Auth. for Approval of \$50 Million Oklahoma Capitol Improvement Auth. State Regents for Higher Educ. Endowed Chairs Funding Program Bonds, Taxable Series 2004*, 130 P.3d 232, 237 ("Regardless of the stipulations made, the state ... could never be called upon to pay these bonds, nor would it be under any obligation, moral or otherwise, to levy any tax for the purpose of repairing any loss that might result") (*quoting Regents of Univ. Sys. of Georgia*, 175 S.E. 567, 573 (1934)).

In fact, even in scenarios where the Regents themselves have direct obligations on the bonds, unlike here, the Court has held that such bonds "cannot become debts of the state as a matter of law" because "[t]he Regents have the sole constitutional authority to disburse funds appropriated to them in a lump sum by the Legislature . . . [and] [t]he Legislature cannot be forced to appropriate funds to repay the bonds." *Id.* at 236 (*citing Okla. Const. art. 13–A, § 3*).

7. You mischaracterize the \$20 million upfront payment the University received. You suggest that the University had some sort of obligation to renew the leases because it received \$20 million of the \$250 million bond proceeds. Sept. 6, 2019 Ltr. at 3. As you fail to recognize, however, the \$20 million is specifically spelled out in the ground lease as "a form of rent paid in advance" for use of the University's property. Provident still has its rights under the ground lease and is free to lease the commercial and parking spaces to others consistent with the terms of the ground lease.
8. You falsely claim that the University has a "sinister plan" to take over Cross at pennies on the dollar. Citing unnamed sources, you assert that the University intends to take over the project. Nothing can be further from the truth. No University official has ever

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expressed a desire to take over Cross. To the contrary, the University has been consistent that it supports Cross and wants to see it succeed. It is telling that you cannot name any of your sources for this disparaging statement.

At bottom, your letter, intentionally circulated widely to media outlets and containing demonstrably false statements made for the obvious and express purpose of injuring the University and the State of Oklahoma, rises to the level of defamation and tortious interference with contract. *See* 12 O.K. § 12-1441 (defining elements of libel); *Cohlma v. St. John Med. Ctr.*, 693 F.3d 1269, 1285 (10th Cir. 2012) (defining elements of tortious interference). Your patently false, extra-judicial statements are not protected by any judicial proceeding privilege. *See, e.g., Kleier Advert., Inc. v. Premier Pontiac, Inc.*, 921 F.2d 1036, 1043 (10th Cir. 1990) (holding that “the privilege extends only to communications made in court documents, attorney conferences and other matters officially related to court proceedings” and that, even where the privilege previously existed “unnecessary publication to the news media may result in loss of the privilege”).

Further, your tactics to use the media to harm the reputation of the University and the State of Oklahoma are a brazen violation of your ethical obligations as an attorney. Not only have you violated ethical rules with respect to extra-judicial statements, but you also have violated ethical rules prohibiting conduct involving misrepresentations and conduct that is prejudicial to the administration of justice.

The University reserves all its rights to pursue disciplinary and legal action against you, your firm of Arent Fox, and your client UMB. To that end, the University demands that you take immediate steps to preserve, and immediately to suspend all routine destruction of, all documents relevant to such claims, including the following:

- All documents relating to your September 6, 2019 letter, including without limitation all drafts of the letter, all comments made to the letter, all due diligence done in connection with the letter, and all documents supporting the assertions made in the letter.
- All documents relating to the dissemination of your September 6, 2019 letter, including without limitation all communications with media outlets.
- All documents relating to your communications with media outlets concerning Cross or the University since you were retained by UMB.

Very truly yours,



Molly Stephens



The UNIVERSITY of OKLAHOMA.

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Cross Village Development Briefing – September 10, 2019

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I. University Statement

The University's obligation is to faithfully steward its resources for the good of its students and the state of Oklahoma. OU has no contractual obligation to Provident's bondholders. The University has met all its obligations to Provident, and in not renewing the Cross leases is simply exercising the annual right to terminate that is specifically spelled out in its written agreement with Provident. Provident is now using deliberately crafted false statements to characterize OU's decision to not renew the leases. The propagation of these lies overshadows a fundamental truth – the renewal of the Cross leases would have led to OU subsidizing a private project by \$7 million without any commensurate benefit, which the University cannot do with student tuition and fees and taxpayer dollars. Doing so would violate state law. According to experts, including the Oklahoma State Bond Advisor, the non-renewal is not expected to have any impact on the the state's credit rating.

Provident's management is highly sophisticated and makes millions of dollars a year. Provident's publicly disclosed compensation shows the president's and executive vice president's salaries at \$1.3 million and \$700,000, respectively.

II. Additional Statements

"Simply, the University has met its financial obligations to Provident and has no indebtedness related to Cross Village. When tough choices have to be made to keep OU fiscally healthy, our first commitment is to protect the students, taxpayers and the state of Oklahoma not a private entity."

--University of Oklahoma Senior Vice President and Chief Financial Officer Ken Rowe

"We are monitoring the situation and are confident that the state's credit will not be affected by recent developments."

--Oklahoma State Bond Advisor Andrew Messer

(To The Bond Buyer on September 9, 2019, shared here with Messer's permission)

III. On Background

Provident Resources Group, a national company, leased land from the University of Oklahoma on which it built the Cross housing facility. Provident borrowed money for its project and is the sole owner and responsible party for the development, construction, and management of Cross.

The Cross project was created as a result of Provident borrowing money through issuing debt under which it was the sole obligor. The University has no financial obligation on the bonds that were issued. Provident borrowed the money for the development and singularly owns the debt; the debt is not OU's to repay.

The University agreed to lease commercial space and the parking garage for a year, with the right to renew on a year-to-year basis.

OU's basic commitments under its original agreement with Provident are:

1. to lease the land to Provident;
2. to market the Cross facility with other available housing options; and
3. to provide residence life programs.

After the first year, the University assessed the cost of parking to OU students relative to the demand, and also assessed the commercial space value. Demand for the commercial retail businesses was so low that the University only obtained approximately \$40,000 in retail rental revenue. The dining and parking spaces were found to not have been utilized enough to justify the lease rates. The University determined that renewing the leases would result in a \$7 million subsidy made to Provident in the upcoming year (and any subsequent years). OU exercised its explicit right in the contract to not renew the leases.

In good faith, the University began conversations with Provident in May 2019 when it notified Provident that non-renewal was a strong likelihood. Provident had ample time and opportunity to respond to the non-renewal and communicate changes to residents.

Recent mischaracterizations and misstatements issued by Provident include:

1. The involvement of the University in seeking investors for the Cross Village project
2. The representations to investors regarding the University's obligations with respect to the commercial and parking spaces
3. The University's non-renewal of the commercial and parking space leases
4. The willingness of the University to engage in negotiations
5. The University's obligations as moral obligations that should impact the University's credit rating.
6. The effect of the University's obligations on the State of Oklahoma.
7. The \$20 million upfront payment the University received
8. A purported "sinister" plan by the University to take over ownership of Cross.

Each of the above mischaracterizations and misstatements are refuted and corrected in a response letter from the University's outside counsel to Provident's counsel. That letter is included in this briefing.

The University as a public entity has a responsibility to act in a fiscally responsible manner and in the best interests of the students and citizens of Oklahoma.