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JOHNNY L. McCRAY, JR., ESQUIRE

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Dear Chairman Petrock and Members of the Board of Trustees (the "Board"):

I am writing to you, fellow members of the Board, to urge you to authorize and initiate a forensic audit of the books and records of Bethune-Cookman University (the "University") for fiscal years 2011 to 2014. Given the recent inconclusive report of the forensic examination of a document related to the Dormitory Project and other developments at the University which raise serious questions about the current financial health of the University, I fervently believe that the fiduciary duties entrusted to each of us mandate nothing less than the probing investigation of a forensic audit.

As you will recall, on June 29, 2015, the Board received the findings of a forensic document examiner, who analyzed the Services Agreement, dated February 20, 2014, between TG Quantum, LLC and the University (the "TGQ Agreement"), for the purposes of determining or ruling out the authorship of said document. Described by Immediate Past Chairman Rev. John Harrington as "a significant document", this agreement effected the disbursement of nearly $6M to the Dormitory Project developers and its partners for various services eight (8) months prior to the Board's initial consideration and conditional approval of the Dormitory Project and its related project documents. While ostensibly bearing the signature of President Jackson, on behalf of the University, when presented with the writing at last April's meeting of the Board, President Jackson denied having knowledge of its origin or having affixed his signature to same. Having considered the import of both the document and the resolution of questions of integrity, the Board moved to engage a forensic document examiner. In undertaking the forensic investigation, then Chairman Harrington noted "the Board felt it important to clearly establish that the signature in question was not authentic by engaging the services of a forensic document examiner." The examiner's report, however, did not establish to any reasonable degree of certainty the inauthenticity of the subject signature; rather, in applying the preponderance of the evidence standard, the examiner opined "it is probable that the writer of the signature was not [President] Jackson." More importantly, the examiner's report failed to shed any light on who may have been the signor of the TGQ Agreement.

Pursuant to the terms of the TGQ Agreement, minimum monthly payments in the amount of $250,000.00 were committed to TG Quantum and its partners. Further, by the time the Board initially considered approving the Dormitory Project in October 2014, a minimum of $2M had already been committed under the terms of the TGQ Agreement, without the knowledge or authorization of the Board. In fact, it was not until April 2015 meeting of the Board that the TGQ Agreement first came to the attention of the Board in a report by independent auditors commissioned after the departure of impugned CFO Emmanuel Gonsalves, whose tenures at prior institutions were marred by public and well documented allegations of financial impropriety and fiscal mismanagement. But for the report of these independent auditors, the Board would not have been aware of the TGQ Agreement, nor would the Board have been aware that $5.6M of unauthorized and theretofore undisclosed expenditures had already escaped the University's coffers. The auditors uncovered that the $5.6M was doled out in periodic payments of $250,000.00, $500,000.00, $750,000.00 and as much as $1.75M between February 2014 and the time auditors fortuitously stumbled upon the TGQ Agreement – roughly two months before this year's April meeting.

Undoubtedly, recognizing the significance of establishing the authenticity of the signature in question, procuring the forensic examiner's report and reviewing its findings are significant initial steps in ferreting out the origin of the TGQ Agreement; however, these actions cannot be the end of the Board's inquiry nor can this juncture be the terminus of the Board's fiduciary responsibilities. While the forensic examiner's report attempts to answer the question as to who may or may not have been the signor of the TGQ Agreement, it can in no way address the most vexing questions invited by the execution and delivery to a third party of an "agreement" appearing to contractually bind this University to the tune of $5.6M – all without the knowledge or authorization of this University's Board and, possibly, its president. If such a substantial amount of funds was expended unbeknownst to the Board and the President, only the Good Lord knows what, if any, additional improprieties our current knowledge may portend. What is the true financial condition of the University in the wake of confirmed revelations of fiscal improprieties? If $5.6M is expended unbeknownst to the President, key administrators and staff members, the University's General Counsel, and the Board's finance committee, the University has a problem. How can an educational institution the size of our university not realize $5.6M has been expended? What void in institutional controls could have coalesced to spin the maelstrom which resulted in such disregard for governance?

Further undermining confidence in the University's fiscal health is the deafening silence of the absence of any report to the Board that a, conceivably, material inducement for the Board's final approval of the Dormitory Project has been fulfilled. Specifically, there has been no indication to the Board that any portion of the $5.6M has been reimbursed to the University. As you may recall, prior to the Board voting on the $72M Dormitory Project, President Jackson assured the Board that he had secured an agreement from TG Quantum and/or its partners to reimburse the University $4M within 60 days of closing on the Dormitory Project, with the remaining $1.6M to be reimbursed at a later date(s). At the time, the Board was advised that closing was slated to occur within days of the adjournment of the April 2015 meeting of the Board. We are now approaching six (6) months onward, and the Board has received no indication that a dime of those monies have been replenished to the University's coffers. In the interim, however, the President has disseminated to the University at least two memoranda, on April 23, 2015 and June 6, 2015, imposing university-wide spending freezes. Not only may the failure to timely reimburse the funds, coupled with the recent memoranda raise questions about the University's financial condition, such failure may constitute a material breach of the project documents by a party(ies) with whom the University is otherwise committed to long-term contractual relationships. Nevertheless, even if the monies were reimbursed, unless and until the Board is fully apprised of the current financial condition of the University, such reimbursement is merely a palliative to conceal known improprieties and an unsightly plaster covering the weightiest questions raised by the little which we already know.

Role of the Board Member in Financial Oversight

As members of the Board our fundamental role is to oversee the implementation of the University's mission. This role necessarily includes exercising our fiduciary duty to ensure that the University's financial resources are effectively managed and sufficient to assure long-term financial viability. Fiduciary responsibilities are encapsulated in the exercise of three core duties: the duties of good faith, of loyalty and of care. The duty of good faith requires that board members act in good faith, in a manner that they reasonably believe to be in the best interests of the University. The duty of loyalty requires that board members act in a manner that furthers the interest of the University and that members of the Board refrain from engaging in personal activities that could be construed to injure or take advantage of their relationship to the University.

Fiduciary's Duty of Care

The duty of care requires, among other things, that members of a governing board exercise diligence in the oversight of corporate officers, seeking and reviewing all necessary information in order to make informed decisions. In discharging this duty members must make reasonable inquiries and exercise independent judgment using the skill, caution and diligence that a prudent person would use in handling corporate affairs. In addition to regular attendance at board meetings, board members should, without limitation:

- *Read all information provided*.
- *Actively participate in board discussions, exercising independent judgment in decision-making.*
- *Ask questions to have a complete understanding of the organization's financial picture*.
- *Adopt and implement appropriate financial governance policies to protect the organization*
- Understand the impact of various revenue and fund development approaches on the organization's financial health.
- Understand the roles of the board's treasurer and the finance and audit committees, and actively participate in identifying and recruiting qualified board members to fill those roles.

One of the most critical requirements of the duty of care is for board members to read and review the financials, and ask questions about their content. Particularly, where a board member may not have a financial background, reviewing such information and adequately comprehending its substance can prove a daunting task. Implicitly, the nature of each board member's fiduciary responsibility embodies an inherent right to review the books and records of the University. While board members may rely, to some extent, on the information provided by an organization's management team, external consultants, including certified public accountants (CPAs), that reliance does not release board members from the due diligence required by the duty of care. By extension, if board members cannot rely solely on reports of financial professionals in discharging its fiduciary duties in the face of unanswered questions, the Board cannot similarly rely on the findings of an inconclusive forensic examination, without conducting a more probing investigation. Moreover, it further begs the question: if the Board deemed it important to determine the authenticity of the signature on the TGQ Agreement, can that same Board be satisfied with an inconclusive report, in the midst of so many unanswered questions.

In this case, the revelations of the independent auditors presented to the Board last April should serve as a clarion call for this Board to more rigorously investigate the financial affairs of the University, as opposed to accepting the invitation to bow to expediency by banding as the collective “ostrich”, more deeply embedding its heads in the sand. If the fortuitous discoveries of the independent auditors coupled with the continued $5.6M shortfall – in the midst of a university-wide spending freeze – isn’t sufficiently disconcerting, other matters further raise the specter of impropriety and suggest the absence of appropriate governance controls. For example, during Mr. Gonsalves’s tenure at the University, acting without the knowledge or authorization of the Board, he expended $500,000.00 to acquire the Deltona facility in a transaction that, at best, was belatedly reported to certain committees of the Board. Surely, you will recall that the Deltona acquisition was not his only unauthorized act: Mr. Gonsalves formed a community development corporation (CDC) and appointed as on its board a director who was forced to resign his longstanding position at the United Way of New York City, following an investigation that determined that he had converted over $225,000.00 of its funds to his personal use. Today, Mr. Gonsalves is long-gone but the University remains the beneficiary of the obliteration of the substantial budget surplus that greeted Mr. Gonsalves and President Jackson at the inception of their tenures. Even recently published newspaper reports regarding the University’s hiring of a convicted felon as an accountant, raise questions about the Office of Financial Affairs and cast a stain on the credibility of the University. Admittedly, such personnel matters don’t customarily fall within the province of the Board; however, given the pervading questions about the origin of the TGQ Agreement, the unknown circumstances under which funds were distributed pursuant thereto and the dubious circumstances under which the prior CFO departed, the Board needs to ask the tough questions, the answers to which, it should not rest without.

Forensic Audit

A forensic audit of the University’s books and records for the fiscal years 2011 to 2014 is necessary for the Board to have a fair and accurate picture of the University’s financial position, and more particularly, to ferret out potential wrongdoing, whether civil or criminal, that may impact on the University’s financial health. Without limitation, such an audit may place particular focus on transactions related to the Dormitory Project and other large expenditures during fiscal years 2011 to 2014. Unlike the annual audit conducted by Ernst & Young LLP, the purpose of which is to verify that the University’s annual financial statements conform to specified accounting standards and are free of material misstatements, a forensic audit is investigatory in nature and employs techniques to detect fraud, embezzlement, misappropriation and other wrongdoing. In doing so, forensic auditors are capable of determining the existence and extent of wrongdoing, identifying perpetrators, following money trails and recovering assets. Also, the work of forensic auditors may entail interviews with persons who had access to the subject funds, and such auditors can be instrumental in procuring evidence, if necessary, to establish criminal wrongdoing.

Personal Liability of Fiduciaries

Governing boards act collectively; however, in an article recently appearing on August 1, 2015, in the AGB Board of Director's Statement on Fiduciary Duties of Governing Board Members, the author scrupulously noted the individual responsibilities of each member of a governing board and the implications of the failure to adhere to same:

> "While governing boards act as a body, the fiduciary duties applied by law and best practice fall on individual board members. Each has a personal responsibility to ensure that he or she is up to the task and fulfilling his or her obligations. *Effective board members must be more than names on a masthead. They must be fully engaged. They must attend meetings, read and evaluate the materials, ask questions and get answers, honor confidentiality, avoid conflicts of interest, demonstrate loyalty, understand and uphold mission, and ensure legal and ethical compliance* [emphasis added]. Those who cannot do so must step down and allow others to take their place."

Moreover, the AGB article emphasizes that not only is the sustainability of the institution dependent on adherence to the aforementioned tenets, but only in complying with such a mandate can a board member be assured of protection from personal liability.

Conclusion

In view of the circumstances summarized herein, I believe that adherence to our fiduciary duties mandates nothing less than the Board swiftly acting to conduct a comprehensive investigation of the financial affairs of the University. Further, I posit that the failure of the Board to, at a modicum, conduct a forensic audit amounts to a dereliction of duty that constitutes gross negligence from which the law provides no safe haven against personal liability. It is inconceivable to me that the Board, acting in prudence, would ignore all indicia of wrongdoing, and possible criminality, and to proceed to do nothing. The University can ill afford to suffer the potential negative consequences of indifference and inaction, and I refuse to abdicate the duties I have been entrusted as a member of the Board. In the face of such inaction, the law provides standing for stakeholders to bring derivative claims, on behalf of the University, against those who stand in a position of trust and breach that trust. Accordingly, if this Board fails to conduct an appropriate investigation, I am prepared to prosecute a derivative lawsuit, on behalf of the University, against the appropriate persons for breach of fiduciary duty. At this time, I also believe it may be appropriate to involve state and federal law enforcement officials to investigate whether embezzlement or other criminal acts may have been committed against the University.

In sum, while I recognize that we have much to be proud of at the University and that the administration reports favorable developments at the University, it cannot be ignored that the financial health of this institution is the lodestar to its sustainability. Therefore, I implore you to be mindful of the position of trust in which we each have been placed and the attendant charges we have pledged to keep, for and on behalf of the University. Also, I am hereby requesting that this matter be placed on the agenda for the upcoming meeting of the Board.

Sincerely,

Johnny L. McCray, Jr., Esquire