

MEMORANDUM OF UNDERSTANDING

THE UNIVERSITY OF CENTRAL ARKANSAS
AND
THE OXFORD AMERICAN LITERARY PROJECT, INC.

This Memorandum of Understanding (“Agreement”) made and entered into effective the ___ day of October, 2012, by and between the Board of Trustees (“Board”) of the University of Central Arkansas (“UCA”) and The Oxford American Literary Project, Inc. (“OA”).

Preliminary Matters

On the 17th day of May, 2004, UCA, Brothers & Sisters Holding Co., Inc. and Mark Smirnoff, entered into an agreement (the “2004 agreement”) wherein they agreed to, among other things, establish, house and operate the Oxford American magazine on UCA’s campus. As contemplated by the 2004 agreement, the parties formed an Arkansas non-profit corporation known as “The Oxford American Literary Project, Inc.,” which has been recognized by the Internal Revenue Service as an organization exempt from taxation under Section 501 (c) (3) of the Internal Revenue Code of 1986, as amended. The 2004 agreement was for a period of three years.

The 2004 agreement contemplated “initial financing” in the amount of \$300,000 by UCA to the OA, as well as “supplemental financing” in the amount of \$190,000.00. Those sums (\$490,000) were paid to the OA. The 2004 Agreement also provided for how those sums were to be re-paid by the OA to UCA through net cash flows of the operations of the OA and the sale and distribution of its magazine.

UCA later provided additional financing in the amount of \$50,000.00 for the OA and its anticipated operating costs; an additional Ten Thousand Dollars (\$10,000.00) was transferred from UCA to the OA in December 2006; and finally in April 2007 an additional \$140,000 was transferred by UCA to the OA.

As of the date of this MOU, UCA has transferred and advanced to the OA the total sum of \$690,000. In addition, on an annual basis, UCA has provided \$50,000 to the OA, and has provided certain in-kind benefits, including but not limited to, two offices in Old Main on the UCA campus in Conway, Arkansas.

Agreement of the Parties

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FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Obligations of UCA:** For the term of this Agreement, UCA agrees to provide the following to the OA:

(a) two offices to house the editorial staff of the OA, with phones, desks and other office equipment as may be reasonably requested by the OA to perform the editorial functions on UCA's campus. Currently, the two offices are situated in Old Main, but UCA reserves the right to move such offices to another location in the event the space in Old Main is needed for other operations.

(b) \$50,000 per year to be transferred from the UCA budget to the OA in such time and such manner as the parties may agree, or authorization to make purchases for paper, office supplies and other items normally associated with performing office functions. The parties agree that UCA shall, from time-to-time, review such expenditures of the OA under this provision to ensure that such purchases serve a valid public purpose and are consistent with the operation of an editorial office on UCA's campus.

2. **Obligations of the OA:** For the term of this Agreement, the OA agrees to provide the following to UCA:

(a) two full-page advertisements in each issue of the Oxford American magazine, with the layout and content of the advertisement to be approved by UCA officials.

(b) having not less than two interns (unpaid) on the editorial staff each academic year. The time, manner and selection of the interns shall be determined by the publisher of the OA in consultation with the Dean of UCA's College of Fine Arts and Communication.

(c) create an editorial board for the OA and have two positions on the editorial board filled by the Dean of UCA's College of Fine Arts and Communication and the Chair of the UCA Writing Department.

(d) work with the UCA Writing Faculty on such mutual projects or endeavors as the parties may from time-to-time determine would serve to promote writing projects beneficial to both the OA and UCA. In addition, make a reasonable effort to ensure that the OA's relationship with UCA remains a visible part of its identity without implying that it is a localized, campus organization.

(e) work with the Dean's office of UCA's College of Fine Arts and Communication, as well as other officials of UCA, to have one event each year on the UCA campus to promote the OA and its programs/activities associated with the UCA Writing Department.

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3. **Re-affirmation of Prior Advances by UCA to the OA:** The parties agree that since 2004 to the date of this Agreement, that UCA has provided to the OA the sum of \$690,000. The OA acknowledges receipt of those sums. The OA agrees that the sum of \$690,000 represents a debt owed to UCA, but such indebtedness shall be re-paid (a) as agreed to by the parties in the 2004 Agreement (specifically Section 7) and the provisions of Section 7 of the agreement of May 17, 2004, are incorporated word for word as if set out herein, and (b) certain receipts or pledges received by the OA specifically for re-payment to UCA.

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The parties also understand, acknowledge and agree that those sums shall be re-paid, if and when, sufficient net cash flow exists from operations of the OA (as defined in Section 7 of the May 17, 2004, agreement), and in addition, through pledges or contributions to the OA specifically for the re-payment of part or all of such sums to UCA. The parties anticipate that at least 50% of the prior advances will be paid by the OA to UCA within five (5) years from the date of this Agreement.

4. **Term of the Agreement:** This Agreement shall be for a period of five (5) years from the date hereof. Provided, however, that either party may terminate this Agreement at the end of any fiscal year (June 30th) by providing to the other party not less than ninety (90) days' written notice of such termination. In the event of termination prior to the expiration of this Agreement, the OA shall pay to UCA the balance due of the sums owed to UCA through pledges or receipts designated for UCA, or from net available cash flow as set forth in Section 7 of the May 17, 2004, agreement.

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5. **Prior Agreements Not Affected:** Except as modified herein, any and all other documents, agreements or contracts entered into by the parties at any time prior to this date shall remain in full force and effect.

6. **Annual Review of Financial Statements:** The parties agree that during the term of this Agreement, they will meet annually to review the financial condition (cash flow; overall statement of operations; balance sheet and other data) of the OA to determine whether or not the operations of the Oxford American are, or are reasonably anticipated to break-even at any point, or become profitable.

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7. **Notices:** Any notices required or permitted to be given under this Agreement shall be given as follows:

(a) If to UCA:

President
University of Central Arkansas
Wingo Hall
201 Donaghey Avenue
Conway, AR 72035

with a copy to:

Vice President for Finance and Administration
University of Central Arkansas
Wingo Hall
201 Donaghey Avenue
Conway, AR 72035

(b) If to the OA:

Mr. Warwick Sabin
Publisher
The Oxford American

Little Rock, AR 72202

with a copy to:

[insert]

8. **Binding Effect:** The parties each represent to the other that the execution and delivery of this Agreement has been authorized by such action as each determines is necessary to make this Agreement a binding and enforceable legal obligation. Except as otherwise provided for herein, this Agreement supersedes all other agreements and understandings between the parties so that from and after the date hereof the obligations of the respective parties shall be governed by the terms and provisions of this Agreement.

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9. **Applicable Law:** The laws of the State of Arkansas shall govern this Agreement. Nothing herein shall be construed to waive the sovereign immunity of the University of Central Arkansas.

EXECUTED effective the date set forth above.

The Oxford American Literary Project, Inc.

Board of Trustees
University of Central Arkansas

By: _____
Title: _____

By: _____
Title: _____