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 8

9 UNITED STATES BANKRUPTCY COURT
 10 EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION
 12

13 In re:
 14 CITY OF STOCKTON, CALIFORNIA,
 15 Debtor.

Case No. 2012-32118
 D.C. No. OHS-16
 Chapter 9

**MOTION FOR ORDER APPROVING
 STIPULATION FOR ORDER
 PURSUANT TO 11 U.S.C. § 365(d)(4)
 FURTHER EXTENDING TIME
 WITHIN WHICH TO ASSUME OR
 REJECT UNEXPIRED LEASES OF
 NONRESIDENTIAL REAL
 PROPERTY**

Date: February 18, 2014
 Time: 9:30 a.m.
 Dept: Courtroom 35
 Judge: Hon. Christopher M. Klein

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 24 Pursuant to § 365(d)(4) of title 11 of the United States Code (the “Bankruptcy Code”)¹,
 25 the City of Stockton, California (the “City”), the debtor in the above-captioned case, moves (by
 26 this “Motion”) for entry of an order approving the stipulation, attached hereto as Exhibit A, by
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28 ¹ All references to code sections are to the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, unless otherwise specified.

1 and between the City and the parties in interest² to five of the City’s lease/leaseback transactions
2 extending the time under § 365(d)(4)(B)(ii) within which the City must assume or reject certain
3 unexpired leases of nonresidential real property.

4 **JURISDICTION AND VENUE**

5 The Court has jurisdiction over this motion and the relief requested pursuant to 28 U.S.C.
6 §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157. Venue for the
7 motion is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

8 **BACKGROUND**

9 The opinion regarding the City’s eligibility for chapter 9 relief demonstrates that the Court
10 is intimately familiar with the complex facts of the City’s bankruptcy case. *See In re City of*
11 *Stockton, Cal.*, 493 B.R. 772 (Bankr. E.D. Cal. 2013). Accordingly, the City has omitted the
12 customary background description of the events leading to and following the City’s petition for
13 relief and instead focuses this Motion on the background relevant to the City’s unexpired leases
14 of nonresidential real property.

15 Prior to filing its petition for relief on June 28, 2012, the City had entered into the
16 following five transactions involving leases/leaseback financings to fund various public capital
17 improvements.³ In each transaction, the City entered into a lease for nonresidential real property
18 (each a “Lease”) that requires the City to pay rent for the use and occupancy of the leased

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24 ² National Public Finance Guaranty Corporation (“NPF”), Assured Guaranty Corporation and Assured Guaranty
25 Municipal Corporation (collectively, “Assured”), Ambac Assurance Corporation (“Ambac”), and Wells Fargo Bank
26 National Association (“Wells Fargo”) as Indenture Trustee with respect to the Lease transactions identified in this
27 Motion (together with the City, the “Stipulating Parties”).

28 ³ The City is also a party to that certain Lease Agreement, dated as of September 1, 2009, by and between the
Authority, as lessor, and the City, as lessee, relating to Stockton Public Financing Authority Lease Revenue Bonds,
2009 Series A (Capital Improvement Projects) (the “2009 Lease”). There is no bond insurance for the bonds relating
to the 2009 Lease, but all such bonds are owned by Franklin California High Yield Municipal Fund and Franklin
High Yield Tax-Free Income Fund (collectively “Franklin”). The 2009 Lease is not subject to the Motion or to the
attached stipulation; however, Franklin may be a party to a separate motion and stipulation relating to the 2009
Lease.

1 property.⁴ The Leases, as well as the real party or parties in interest⁵ and Indenture Trustee for
 2 each, are as follows:

Lease	Real Party or Parties in Interest	Indenture Trustee
Lease Agreement, dated as of June 1, 2003, by and between the Stockton Public Financing Authority (the "Authority"), as sublessor, and the City, as sublessee, relating to Certificates of Participation (Redevelopment Housing Projects), Series 2003A and Taxable Series 2003B (the "2003 Lease")	Ambac Assurance Corporation	Wells Fargo Bank, National Association ("Wells Fargo")
Lease Agreement, dated as of March 1, 2004, by and between the Redevelopment Agency of the City of Stockton (the "Agency"), as lessor, and the City, as lessee, relating to Redevelopment Agency of the City of Stockton Revenue Bonds, Series 2004 (Stockton Events Center–Arena Project) (the "2004 Arena Lease") as amended	National Public Finance Guaranty Corporation ("NPFPG")	Wells Fargo
Lease Agreement, dated as of June 1, 2004, by and between the Authority, as lessor, and the City, as lessee, relating to Stockton Public Financing Authority Lease Revenue Bonds, Series 2004 (Parking and Capital Projects) (the "2004 Parking Lease")	NPFPG	Wells Fargo
Lease Agreement, dated as of March 1, 2006, by and between the Authority, as lessor, and the City, as lessee, relating to Stockton Public Financing Authority 2006 Lease Revenue Refunding Bonds, Series A (the "2006 Lease")	NPFPG	Wells Fargo
Lease Agreement, dated as of November 1, 2007, by and between the Authority, as lessor, and the City, as lessee, relating to Stockton Public Financing Authority Variable Rate Demand Lease Revenue Bonds, 2007 Series A (Building Acquisition Financing Project) and Taxable Variable Rate Demand Lease Revenue Bonds, 2007 Series B (Building Acquisition Financing Project) (the "2007 Lease")	Assured Guaranty Corporation; Assured Guaranty Municipal Corporation	Wells Fargo

26 ⁴ Although described as lease transactions, it could be argued that certain of these transactions should be classified as
 27 secured loan transactions. Such transactions are included in this motion only in an abundance of caution in the event
 28 that such transactions are classified as true leases. As set forth herein, the Stipulating Parties reserve all rights with
 respect to these issues.

⁵ The real parties in interest to all Leases are the insurers of the respective bond and certificate of participation obligations.

1 While each Lease⁶ differs from the others in some respects, the various financings and
2 their Leases share the same fundamental structure: To accomplish each transaction, the City
3 leased nonresidential real property to either the Authority or the Agency (each a “PFA”), and the
4 PFA subleased the property back to the City. The PFA then assigned its right to receive rental
5 payments (along with certain other rights relevant to the enforcement of remedies) under the
6 applicable Lease to a trustee. Finally, the PFA issued bonds, or the trustee issued certificates of
7 participation (“COPs”), and transferred the proceeds to the City for expenditure on capital
8 improvements.

9 Payment of the principal of and interest on the bonds and COPs is made through the
10 applicable trustee, pursuant to, inter alia, the terms of the related indenture or trust agreement,
11 from the proceeds of rental payments received from the City pursuant to the terms of the
12 applicable Lease and related assignment.⁷

13 Pursuant to § 365(d)(4)(A), which is incorporated into chapter 9 cases by § 901(a), the
14 City was initially required to decide whether to assume or reject its unexpired leases of
15 nonresidential property within 120 days of the entry of the order for relief. The Court’s entry of
16 its order for relief on April 1, 2013 [Dkt. No. 843] triggered the 120-day period, giving the City
17 until July 30, 2013, to assume or reject its unexpired leases of nonresidential real property.
18 Section 365(d)(4)(B) allows bankruptcy courts to extend the initial 120-day period, in the first
19 instance upon a motion for cause brought by the debtor to extend the deadline by 90 days, and in
20 all subsequent instances upon the prior written consent of the respective lessors.

21 On July 5, 2013, the City moved, by its Revised And Amended Motion For Order
22 Pursuant To 11 U.S.C. § 365(d)(4) Extending Time Within Which The City Must Assume Or
23 Reject Unexpired Leases Of Nonresidential Real Property [Dkt. No. 993] (“For Cause Extension
24 Motion”) for a 90-day extension under § 365(d)(4)(B)(i). No party in interest opposed such
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26 ⁶ Copies of the Leases were attached as exhibits to the Declaration Of Vanessa Burke In Support Of City Of
27 Stockton’s Motion For Order Pursuant To 11 U.S.C. § 365(d)(4) Extending Time Within Which The City Must
28 Assume Or Reject Unexpired Leases Of Nonresidential Real Property [Dkt. Nos. 984-87].

⁷ The descriptions of the transaction structure are included in this Motion for summary purposes only. In the event of
any inconsistency between such descriptions and the relevant underlying documents, the underlying documents shall
control.

1 motion. On July 24, 2013, the Court granted the For Cause Extension Motion, establishing a new
2 deadline of October 28, 2013 for the City to assume or reject its leases of nonresidential real
3 property. *See* Order Pursuant To 11 U.S.C. § 365(d)(4) Extending The Time Within Which The
4 City Must Assume Or Reject Unexpired Leases Of Nonresidential Real Property [Dkt. No. 1033]
5 (“For Cause Extension Order”). All subsequent extensions of this deadline could be made only
6 upon the prior written consent of the individual lessors. *See* § 365(d)(4)(B)(ii).

7 On October 14, 2013, the City moved, by its Motion For Order Approving Stipulation For
8 Order Pursuant To 11 U.S.C. § 365(d)(4) Further Extending Time Within Which To Assume Or
9 Reject Unexpired Leases Of Nonresidential Real Property [Dkt. No. 1143] (“First Stipulated
10 Extension Motion”) for a 120-day extension under § 365(d)(4)(B)(ii). On October 16, 2013, upon
11 the prior written consent of the individual lessors, the Court granted the First Stipulated Extension
12 Motion, establishing a new deadline of February 25, 2014 for the City to assume or reject its
13 leases of nonresidential real property. *See* Order Approving Stipulation Pursuant To 11 U.S.C. §
14 365(d)(4) Further Extending Time Within Which To Assume Or Reject Unexpired Leases Of
15 Non-Residential Real Property [Dkt. No. 1154] (“First Stipulated Extension Order”).

16 **RELIEF REQUESTED AND BASIS THEREFORE**

17 By this Motion, the City seeks an order pursuant to § 365(d)(4)(B)(ii) approving the
18 attached stipulation to extend the time within which the City must assume or reject the Leases by
19 125 days, from February 25, 2014, through and including June 30, 2014 (i.e., the last day of the
20 City’s fiscal year).

21 The City continues to grapple with complex and time-consuming issues in this Case.
22 Many of such issues relating to the Leases were addressed through the mediation process
23 conducted by Judge Elizabeth Perris. As evidenced by the first amended plan and disclosure
24 statement filed by the City on November 15, 2013, the mediation process resulted in agreements
25 between the City and several creditors holding significant claims against the City.

26 But no plan has been confirmed. In light of the ongoing uncertainty about the future
27 course of this case, and in light of the complex potential issues, including a pending adversary
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1 proceeding, relating to whether the Leases are true leases within the meaning of § 365⁸, a further
2 extension is necessary in order to let the negotiations and plan confirmation process play out.
3 Litigation of these disputes, in addition to the numerous other issues surrounding the Leases,
4 would entail great expense both in terms of time and dollars.

5 It would thus cause significant prejudice to the City and to the other Stipulating Parties if
6 the City was forced to make a determination regarding assumption or rejection at this time. The
7 Stipulating Parties, and each of them, are therefore of the belief that a further extension of the
8 time for the City to assume or reject the Leases is appropriate and in the best interest of all
9 interested parties.

10 **COMPLETE RESERVATION OF RIGHTS**

11 This Motion requests no relief other than the extension of time for the City to assume or
12 reject the Leases. The Stipulating Parties, and each of them, reserve all rights, defenses and
13 arguments other than those solely with respect to the extension of the time within which the City
14 must assume or reject the Leases. The rights reserved by the Stipulating Parties include, but are
15 not limited to, the following: (1) all rights, defenses and arguments as to whether the Leases are
16 “leases” within the meaning of § 365; and (2) all rights, defenses and arguments with respect to
17 the unlawful detainer suits against the City in the California Superior Court for the County of San
18 Joaquin, case numbers 39-2012-00277622-CU-UD-STK and 39-2012-280741-CU-UD-STK.
19 Moreover, no party in interest waives any rights, defenses and arguments by virtue of any failure
20 to seek payment under the Leases during the periods prior to the assumption or rejection of the
21 Leases, and there shall be no implication drawn from or prejudice resulting from any party’s
22 failure to seek such payment.

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27 ⁸ On October 14, 2013, the 2009 Golf Course/Park Bond Trustee and Franklin commenced an adversary proceeding
28 against the City by filing a Complaint for Declaratory Relief in the Bankruptcy Court. [Dkt. No. 1181, commencing
Adversary Case 13-2315].

Exhibit A

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9 UNITED STATES BANKRUPTCY COURT
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 11 SACRAMENTO DIVISION
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13 In re:
 14 CITY OF STOCKTON, CALIFORNIA,
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Case No. 2012-32118
 D.C. No. OHS-16
 Chapter 9

**STIPULATION FOR ORDER
 PURSUANT TO 11 U.S.C. § 365(d)(4)
 FURTHER EXTENDING TIME
 WITHIN WHICH TO ASSUME OR
 REJECT UNEXPIRED LEASES OF
 NONRESIDENTIAL REAL
 PROPERTY**

Date: February 18, 2014
 Time: 9:30 a.m.
 Dept: Courtroom 35
 Judge: Hon. Christopher M. Klein

23
 24 The City of Stockton, California (the “City”), the debtor in the above-captioned chapter 9
 25 bankruptcy case, National Public Finance Guaranty Corporation (“NPF”), Assured Guaranty
 26 Corporation and Assured Guaranty Municipal Corporation (collectively, “Assured”), Ambac
 27 Assurance Corporation (“Ambac”), and Wells Fargo Bank National Association (“Wells Fargo”)

28 STIPULATION FOR ORDER PURSUANT TO 11 U.S.C.
 § 365(D)(4) FURTHER EXTENDING TIME WITHIN
 WHICH TO ASSUME OR REJECT UNEXPIRED
 LEASES OF NONRESIDENTIAL REAL PROPERTY

1 as Indenture Trustee with respect to the Lease transactions identified in Recital A below (all
 2 together, the “Stipulating Parties”), by and through their respective attorneys of record, seek an
 3 order approving the following stipulation (this “Stipulation”) extending the time under
 4 Bankruptcy Code § 365(d)(4)(B)(ii) within which the City must assume or reject certain
 5 unexpired leases of nonresidential real property.

6 **RECITALS**

7 **A. The City’s Lease/Leaseback Financings**

8 Prior to filing its petition for relief on June 28, 2012, the City had entered into the
 9 following five transactions involving leases/leaseback financings to fund various public capital
 10 improvements.¹ In each transaction, the City entered into a lease for nonresidential real property
 11 (each a “Lease”) that requires the City to pay rent for the use and occupancy of the leased
 12 property. The Leases, as well as the real party or parties in interest and Indenture Trustee for
 13 each, are as follows:

Lease	Real Party or Parties in Interest	Indenture Trustee
Lease Agreement, dated as of June 1, 2003, by and between the Stockton Public Financing Authority (the “Authority”), as sublessor, and the City, as sublessee, relating to Certificates of Participation (Redevelopment Housing Projects), Series 2003A and Taxable Series 2003B (the “2003 Lease”)	Ambac Assurance Corporation	Wells Fargo Bank, National Association (“Wells Fargo”)
Lease Agreement, dated as of March 1, 2004, by and between the Redevelopment Agency of the City of Stockton (the “Agency”), as lessor, and the City, as lessee, relating to Redevelopment Agency of the City of Stockton Revenue Bonds, Series 2004 (Stockton Events Center–Arena Project) (the “2004 Arena Lease”) as amended	National Public Finance Guaranty Corporation (“NPFPG”)	Wells Fargo

24
 25 ¹ The City is also a party to that certain Lease Agreement, dated as of September 1, 2009, by and between the
 26 Authority, as lessor, and the City, as lessee, relating to Stockton Public Financing Authority Lease Revenue Bonds,
 27 2009 Series A (Capital Improvement Projects) (the “2009 Lease”). There is no bond insurance for the bonds relating
 28 to the 2009 Lease, but all such bonds are owned by Franklin California High Yield Municipal Fund and Franklin
 High Yield Tax-Free Income Fund (collectively “Franklin”). The 2009 Lease is not subject to the Motion or to the
 attached stipulation; however, Franklin may be a party to a separate motion and stipulation relating to the 2009
 Lease.

Lease	Real Party or Parties in Interest	Indenture Trustee
Lease Agreement, dated as of June 1, 2004, by and between the Authority, as lessor, and the City, as lessee, relating to Stockton Public Financing Authority Lease Revenue Bonds, Series 2004 (Parking and Capital Projects) (the "2004 Parking Lease")	NPFPG	Wells Fargo
Lease Agreement, dated as of March 1, 2006, by and between the Authority, as lessor, and the City, as lessee, relating to Stockton Public Financing Authority 2006 Lease Revenue Refunding Bonds, Series A (the "2006 Lease")	NPFPG	Wells Fargo
Lease Agreement, dated as of November 1, 2007, by and between the Authority, as lessor, and the City, as lessee, relating to Stockton Public Financing Authority Variable Rate Demand Lease Revenue Bonds, 2007 Series A (Building Acquisition Financing Project) and Taxable Variable Rate Demand Lease Revenue Bonds, 2007 Series B (Building Acquisition Financing Project) (the "2007 Lease")	Assured Guaranty Corporation; Assured Guaranty Municipal Corporation	Wells Fargo

While each Lease differs from the others in some respects, the various financings and their Leases share the same fundamental structure: To accomplish each transaction, the City leased nonresidential real property to either the Authority or the Agency (each a "PFA"), and the PFA subleased the property back to the City. The PFA then assigned its right to receive rental payments (along with certain other rights relevant to the enforcement of remedies) under the applicable Lease to a trustee. Finally, the PFA issued bonds, or the trustee issued certificates of participation ("COPs"), and transferred the proceeds to the City for expenditure on capital improvements.

Payment of the principal of and interest on the bonds and COPs is made through the applicable trustee, pursuant to, inter alia, the terms of the related indenture or trust agreement,

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1 from the proceeds of rental payments received from the City pursuant to the terms of the
2 applicable Lease and related assignment.²

3 The real parties in interest to all Leases are the insurers of the respective bond and
4 certificate of participation obligations.

5 **B. Prior Extensions Of The Deadline To Assume Or Reject Leases**

6 Pursuant to Bankruptcy Code § 365(d)(4)(A), which is incorporated into chapter 9 cases
7 by Bankruptcy Code § 901(a), the City was initially required to decide whether to assume or
8 reject its unexpired leases of nonresidential property within 120 days of the entry of the order for
9 relief. The Court's entry of its order for relief on April 1, 2013 [Dkt. No. 843] triggered the 120-
10 day period, giving the City until July 30, 2013, to assume or reject its unexpired leases of
11 nonresidential real property. Bankruptcy Code § 365(d)(4)(B) allows the Court to extend the
12 period during which the City may assume or reject the Leases, in the first instance upon a motion
13 for cause brought by the City to extend the deadline by 90 days, and in all subsequent instances
14 upon the prior written consent of the respective lessors.

15 On July 5, 2013, the City moved, by its Revised And Amended Motion For Order
16 Pursuant To 11 U.S.C. § 365(d)(4) Extending Time Within Which The City Must Assume Or
17 Reject Unexpired Leases Of Nonresidential Real Property [Dkt. No. 993] ("For Cause Extension
18 Motion") for a 90-day extension under § 365(d)(4)(B)(i). On July 24, 2013, the Court granted the
19 For Cause Extension Motion, establishing a new deadline of October 28, 2013 for the City to
20 assume or reject its leases of nonresidential real property. See Order Pursuant To 11 U.S.C.
21 § 365(d)(4) Extending The Time Within Which The City Must Assume Or Reject Unexpired
22 Leases Of Nonresidential Real Property [Dkt. No. 1033] ("For Cause Extension Order"). All
23 subsequent extensions of this deadline could be made only upon the prior written consent of the
24 individual lessors. See § 365(d)(4)(B)(ii).

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26 _____
27 ² The descriptions of the transaction structure are included in this Stipulation for summary purposes only. In the
28 event of any inconsistency between such descriptions and the relevant underlying documents, the underlying
documents shall control.

1 On October 14, 2013, the City moved, by its Motion For Order Approving Stipulation For
 2 Order Pursuant To 11 U.S.C. § 365(d)(4) Further Extending Time Within Which To Assume Or
 3 Reject Unexpired Leases Of Nonresidential Real Property [Dkt. No. 1143] (“First Stipulated
 4 Extension Motion”) for a 120-day extension under § 365(d)(4)(B)(ii). On October 16, 2013, upon
 5 the prior written consent of the individual lessors, the Court granted the First Stipulated Extension
 6 Motion, establishing a new deadline of February 25, 2014 for the City to assume or reject its
 7 leases of nonresidential real property. *See* Order Approving Stipulation Pursuant To 11 U.S.C. §
 8 365(d)(4) Further Extending Time Within Which To Assume Or Reject Unexpired Leases Of
 9 Non-Residential Real Property [Dkt. No. 1154] (“First Stipulated Extension Order”).

10 **C. Reasons For The Stipulation**

11 The Stipulating Parties agree that in light of the status of this case, including the filing by
 12 the City of a first amended plan and disclosure statement on November 15, 2013, there is no
 13 reason for the City to force any issues relating to the Leases. The Stipulating Parties, and each of
 14 them, are therefore of the belief that a further extension of the time for the City to assume or
 15 reject the Leases is appropriate and in the best interest of all interested parties.

16 Accordingly, the Stipulating Parties hereby stipulate and agree as follows:

17 **STIPULATION**

18 A. The Stipulating Parties agree that the time within which the City must
 19 assume or reject the Leases under Bankruptcy Code § 365(d)(4) should be extended by 125 days,
 20 from February 25, 2014 through and including June 30, 2014 (i.e., the last day of the City’s fiscal
 21 year).

22 B. The consent of the Stipulating Parties, not including the City, satisfies
 23 Bankruptcy Code § 365(d)(4)(B)(ii).

24 C. In entering into this Stipulation, the Stipulating Parties, and each of them,
 25 reserve all rights, defenses and arguments other than those solely with respect to the extension of
 26 the time within which the City must assume or reject the Leases. The rights reserved by the
 27 Stipulating Parties include, but are not limited to, the following: (1) all rights, defenses and

28 STIPULATION FOR ORDER PURSUANT TO 11 U.S.C.
 § 365(D)(4) FURTHER EXTENDING TIME WITHIN
 WHICH TO ASSUME OR REJECT UNEXPIRED
 LEASES OF NONRESIDENTIAL REAL PROPERTY

1 arguments as to whether the Leases are “leases” within the meaning of Bankruptcy Code § 365;
2 and (2) all rights, defenses and arguments with respect to the unlawful detainer suits against the
3 City in the California Superior Court for the County of San Joaquin, case numbers 39-2012-
4 00277622-CU-UD-STK and 39-2012-280741-CU-UD-STK. Moreover, no party in interest
5 waives any rights, defenses and arguments by virtue of any failure to seek payment under the
6 Leases during the periods prior to the assumption or rejection of the Leases, and there shall be no
7 implication drawn from or prejudice resulting from any party’s failure to seek such payment.

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9 Dated: February 4, 2014

ORRICK, HERRINGTON & SUTCLIFFE LLP

10
11 /s/ Marc A. Levinson

Marc A. Levinson
Attorneys for the City of Stockton

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13
14 Dated: February 4, 2014

WEIL, GOTSHAL & MANGES LLP

15
16 /s/ Debra A. Dandeneau

Debra A. Dandeneau
Attorneys for National Public Finance Guarantee
Corporation

17
18
19 Dated: February 4, 2014

SIDLEY AUSTIN LLP

20
21 /s/ Jeffrey E. Bjork

Jeffrey E. Bjork
Attorneys for Assured Guaranty Corp. and Assured
Guaranty Municipal Corp.

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Dated: February 4, 2014

ARENT FOX LLP

/s/ David L. Dubrow

David L. Dubrow
Attorneys for Ambac Assurance Corp.

Dated: February 4, 2014

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C.

/s/ William W. Kannel

William W. Kannel
Attorneys for Wells Fargo Bank, National
Association, as Indenture Trustee