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 City of Stockton
 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-20
 Chapter 9

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

Date: October 21, 2014
 Time: 9:30 a.m.
 Dept: Courtroom 35
 Judge: Hon. Christopher M. Klein

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
 27

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 Court is intimately familiar with the complex facts of the City’s bankruptcy case.
10 Accordingly, the City has omitted the customary background description of the events leading to
11 and following the City’s petition for relief and instead focuses this Motion on the background
12 relevant to the City’s unexpired leases of nonresidential real property.

13 Prior to filing its petition for relief on June 28, 2012, the City had entered into the
14 following five transactions involving leases/leaseback financings to fund various public capital
15 improvements. In each transaction, the City entered into a lease for nonresidential real property
16 (each a “Lease”) that requires the City to pay rent for the use and occupancy of the leased
17 property.³ The Leases, as well as the real party or parties in interest⁴ and Indenture Trustee for
18 each, are as follows:

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

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

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 ("NPF")	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")	NPF	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")	NPF	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 Lease⁵ 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

⁵ Copies of the Leases were attached as exhibits to the Declaration Of Vanessa Burke In Support Of City Of Stockton's Motion For Order Pursuant To 11 U.S.C. § 365(d)(4) Extending Time Within Which The City Must Assume Or Reject Unexpired Leases Of Nonresidential Real Property [Dkt. Nos. 984-87].

1 payments (along with certain other rights relevant to the enforcement of remedies) under the
2 applicable Lease to a trustee. Finally, the PFA issued bonds, or the trustee issued certificates of
3 participation (“COPs”), and transferred the proceeds to the City for expenditure on capital
4 improvements.

5 Payment of the principal of and interest on the bonds and COPs is made through the
6 applicable trustee, pursuant to, inter alia, the terms of the related indenture or trust agreement,
7 from the proceeds of rental payments received from the City pursuant to the terms of the
8 applicable Lease and related assignment.⁶

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

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

27 _____
28 ⁶ 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 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].

10 On February 4, 2014, the City moved, by its Motion For Order Approving Stipulation For
11 Order Pursuant To 11 U.S.C. § 365(d)(4) Further Extending Time Within Which To Assume Or
12 Reject Unexpired Leases Of Nonresidential Real Property [Dkt. No. 1245] (“Second Stipulated
13 Extension Motion”) for a 125-day extension under § 365(d)(4)(B)(ii). On February 7, 2014, upon
14 the prior written consent of the individual lessors, the Court granted the Second Stipulated
15 Extension Motion, establishing a new deadline of June 30, 2014 for the City to assume or reject
16 its leases of nonresidential real property. *See* Order Approving Stipulation Pursuant To 11 U.S.C.
17 § 365(d)(4) Further Extending Time Within Which To Assume Or Reject Unexpired Leases Of
18 Non-Residential Real Property [Dkt. No. 1251].

19 On June 12, 2014, the City moved, by its Motion For Order Approving Stipulation For
20 Order Pursuant To 11 U.S.C. § 365(d)(4) Further Extending Time Within Which To Assume Or
21 Reject Unexpired Leases Of Nonresidential Real Property [Dkt. No. 1582] (“Third Stipulated
22 Extension Motion”) for a 123-day extension under § 365(d)(4)(B)(ii). On June 19, 2014, upon
23 the prior written consent of the individual lessors, the Court granted the Third Stipulated
24 Extension Motion, establishing a new deadline of October 31, 2014 for the City to assume or
25 reject its leases of nonresidential real property. *See* Order Approving Stipulation Pursuant To 11
26 U.S.C. § 365(d)(4) Further Extending Time Within Which To Assume Or Reject Unexpired
27 Leases Of Non-Residential Real Property [Dkt. No. 1601].

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RELIEF REQUESTED AND BASIS THEREFORE

By this Motion, the City seeks an order pursuant to § 365(d)(4)(B)(ii) approving the attached stipulation to extend the time within which the City must assume or reject the Leases by 120 days, from October 31, 2014, through and including February 28, 2015.

The Court has taken under submission confirmation of the City’s First Amended Plan of Adjustment (as amended August 8, 2014) (the “Plan”) and has indicated it will issue oral findings and conclusions in respect of confirmation on October 30, 2014. An extension of the current deadline to assume and reject is necessary and appropriate regardless of the Court’s ruling. Even if the Court orally confirms the Plan on October 30, certain of the settlements contained in the Plan in respect of the Leases are contingent on the Plan becoming effective, and the City will need more than one day in order to take the additional steps needed in order to be in a position for the Plan to go effective. If the Court declines to confirm on October 30, a further extension also would be necessary to protect the Parties’ respective positions.

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

COMPLETE RESERVATION OF RIGHTS

This Motion requests no relief other than the extension of time for the City to assume or reject the Leases. The Stipulating Parties, and each of them, reserve all rights, defenses and arguments other than those solely with respect to the extension of the time within which the City must assume or reject the Leases. The rights reserved by the Stipulating Parties include, but are not limited to, the following: (1) all rights, defenses and arguments as to whether the Leases are “leases” within the meaning of § 365; and (2) all rights, defenses and arguments with respect to the unlawful detainer suits against the City in the California Superior Court for the County of San Joaquin, case numbers 39-2012-00277622-CU-UD-STK and 39-2012-280741-CU-UD-STK. Moreover, no party in interest waives any rights, defenses and arguments by virtue of any failure

Exhibit A

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9 UNITED STATES BANKRUPTCY COURT
 10 EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION
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13 In re:
 14 CITY OF STOCKTON, CALIFORNIA,
 15 Debtor.

Case No. 2012-32118
 D.C. No. OHS-20
 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: October 21, 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 as Indenture Trustee with respect to the Lease transactions identified in Recital A below (all

1 together, the “Stipulating Parties”), by and through their respective attorneys of record, seek an
 2 order approving the following stipulation (this “Stipulation”) extending the time under
 3 Bankruptcy Code § 365(d)(4)(B)(ii) within which the City must assume or reject certain
 4 unexpired leases of nonresidential real property.

5 **RECITALS**

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

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

Lease	Real Party or Parties in Interest	Indenture Trustee
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")	NPFG	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, from the proceeds of rental payments received from the City pursuant to the terms of the applicable Lease and related assignment.¹

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

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¹ The descriptions of the transaction structure are included in this Stipulation for summary purposes only. In the event of any inconsistency between such descriptions and the relevant underlying documents, the underlying documents shall control.

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

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

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

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

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1 § 365(d)(4) Further Extending Time Within Which To Assume Or Reject Unexpired Leases Of
2 Non-Residential Real Property [Dkt. No. 1154].

3 On February 4, 2014, the City moved, by its Motion For Order Approving Stipulation For
4 Order Pursuant To 11 U.S.C. § 365(d)(4) Further Extending Time Within Which To Assume Or
5 Reject Unexpired Leases Of Nonresidential Real Property [Dkt. No. 1245] (“Second Stipulated
6 Extension Motion”) for a 125-day extension under § 365(d)(4)(B)(ii). On February 7, 2014, upon
7 the prior written consent of the individual lessors, the Court granted the Second Stipulated
8 Extension Motion, establishing a new deadline of June 30, 2014 for the City to assume or reject
9 its leases of nonresidential real property. *See* Order Approving Stipulation Pursuant To 11 U.S.C.
10 § 365(d)(4) Further Extending Time Within Which To Assume Or Reject Unexpired Leases Of
11 Non-Residential Real Property [Dkt. No. 1251].

12 On June 12, 2014, the City moved, by its Motion For Order Approving Stipulation For
13 Order Pursuant To 11 U.S.C. § 365(d)(4) Further Extending Time Within Which To Assume Or
14 Reject Unexpired Leases Of Nonresidential Real Property [Dkt. No. 1582] (“Third Stipulated
15 Extension Motion”) for a 123-day extension under § 365(d)(4)(B)(ii). On June 19, 2014, upon
16 the prior written consent of the individual lessors, the Court granted the Third Stipulated
17 Extension Motion, establishing a new deadline of October 31, 2014 for the City to assume or
18 reject its leases of nonresidential real property. *See* Order Approving Stipulation Pursuant To 11
19 U.S.C. § 365(d)(4) Further Extending Time Within Which To Assume Or Reject Unexpired
20 Leases Of Non-Residential Real Property [Dkt. No. 1601].

21 **C. Reasons For The Stipulation**

22 The Stipulating Parties agree that in light of the status of this case, including the filing by
23 the City of a first amended plan as modified on August 8, 2014, there is no reason for the City to
24 force any issues relating to the Leases. The Stipulating Parties, and each of them, are therefore of
25 the belief that a further extension of the time for the City to assume or reject the Leases is
26 appropriate and in the best interest of all interested parties.

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

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STIPULATION

A. The Stipulating Parties agree that the time within which the City must assume or reject the Leases under Bankruptcy Code § 365(d)(4) should be extended by 120 days, from October 31, 2014 through and including February 28, 2015.

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

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

Dated: October 6, 2014

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Marc A. Levinson

Marc A. Levinson
Attorneys for the City of Stockton

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Dated: October 6, 2014

WEIL, GOTSHAL & MANGES LLP

/s/ Debra A. Dandeneau
Debra A. Dandeneau
Attorneys for National Public Finance Guarantee Corporation

Dated: October 6, 2014

SIDLEY AUSTIN LLP

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

Dated: October 6, 2014

ARENT FOX LLP

/s/ David L. Dubrow
David L. Dubrow
Attorneys for Ambac Assurance Corp.

Dated: October 6, 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