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14
 15 **UNITED STATES BANKRUPTCY COURT**
EASTERN DISTRICT OF CALIFORNIA
 16 **SACRAMENTO DIVISION**

17 In re:
 18 CITY OF STOCKTON, CALIFORNIA,
 19
 20 Debtor.

Case No. 12-32118-C-9
 Chapter 9

21 WELLS FARGO BANK, NATIONAL
 22 ASSOCIATION, FRANKLIN HIGH
 23 YIELD TAX-FREE INCOME FUND,
 24 AND FRANKLIN CALIFORNIA HIGH
 YIELD MUNICIPAL FUND
 Plaintiffs.
 25 v.
 26 CITY OF STOCKTON, CALIFORNIA,
 27 Defendant.

Adv. Proceeding No. 13-_____
**COMPLAINT FOR
 DECLARATORY RELIEF**

28

1 ***Fire Station Facilities Improvements.*** The City will use proceeds
2 of the 2009 Bonds in the approximate amount of \$5.335 million to finance
3 the costs of constructing and installing fire station facilities improvements,
4 including modernizing and expanding Fire Station No 7, located in
5 northern Stockton, from 3,800 square feet to 5,600 square feet;
6 constructing and equipping an approximately 7,250 square foot Fire
7 Station No. 13 in northeast Stockton; and developing a master plan study
8 for fire station facilities within the City. Construction of this component
9 of the Project commenced in January 2008 and is expected to be
10 completed in December 2009.

11 ***Police Communication Center Expansion and Relocation.*** The
12 City will use proceeds of the 2009 Bonds in the approximate amount of
13 \$3.8 million to finance the costs of relocating and constructing an
14 approximately 24,000 square foot Police Communications Center. This
15 new facility will be located at 22 East Weber Street in the central area of
16 the City. Construction of this component of the Project commenced in
17 September 2008 and is expected to be completed in December 2009.

18 ***Park and Facility Improvements.*** The City will use proceeds of
19 the 2009 Bonds in the approximate amount of \$11.120 million to finance
20 the costs of acquiring land and constructing seven parks located
21 throughout the City. This component of the Project commenced in
22 January 2008 and is expected to be completed in September 2009.

23 ***Street Improvements.*** The City will use proceeds of the 2009
24 Bonds in the approximate amount of \$10.457 million to finance the costs
25 of acquiring, constructing and installing various paving, bridge, widening,
26 lighting, landscaping and other street improvements within the City.
27 Construction of this component of the Project commenced in January 2008
28 and is expected to be completed in December 2009.

Official Statement at 15-16.

15. **The Nominal Lease.** To consummate the financing, the City first executed the
“Site and Facility Lease,” dated as of September 1, 2009 (the “Nominal Lease”), a copy of which
is attached as *Exhibit C*, with the Authority. The Nominal Lease was recorded with the office of
the Recorder of the County of San Joaquin, State of California, on September 8, 2009.

16. The Authority is a joint powers authority, organized pursuant to a Joint Exercise of
Powers Agreement, dated as of June 18, 1990, between the City and the Redevelopment Agency
of the City of Stockton. The Authority is controlled by the City. Among other things, the
Authority is governed by a five-member Board comprised of the members of the City Council of
the City; the Administrator of the Authority is the City Manager of the City; the Secretary of the
Authority is the City Clerk of the City; and the Treasurer/Controller of the Authority is the Chief
Financial Officer of the City. The Authority “was formed for the public purpose of aiding the

1 financing of projects for the City and the Redevelopment Agency of the City of Stockton.”
2 Official Statement at 73.

3 17. In the Nominal Lease, the City granted the Authority an interest in the real
4 property described on Exhibit A to the Nominal Lease (the “Site”) and the facilities on the Site as
5 described in Exhibit B to the Nominal Lease (the “Facility” and, together with the Site, the
6 “Property”), which are commonly known as Oak Park, Swenson Golf Course, and Van Buskirk
7 Golf Course. Nominal Lease § 2. Exhibit B to the Nominal Lease describes the Facility as
8 follows:

9 *Oak Park.* This property is an approximately 61.2 acre park,
10 located bounded on the east by Union Pacific railroad tracks, on the north
11 by East Fulton Street, on the south by East Alpine Street, and on the west
12 by North Sutter and Alvarado Streets. This park features group picnic
13 areas, 20 picnic tables, two tot lots, 15 barbecue pits, and four restrooms.
14 In addition, Oak Park features 11 tennis courts, two regulation softball
15 fields, the Billy Hebert Field, a 6,000 seat, regulation professional minor
league baseball field, renovated in 2002; and a multi-use field, a
community swimming pool complex with changing facilities, and an
approximately 13,875-square-foot ice-rink facility with seating for 350.
An approximately 5,000 square feet, one-story senior center, which is
available for rental to the public, is also located at Oak Park.

16 *Swenson Golf Course.* This property was opened in 1952 and is
17 located on approximately 219 acres at 6803 Alexandria Place. Swenson
18 Golf Course features a classic championship 18-hole, 72 par course, a
19 nine-hole executive, par 3 course, a 15 station driving range, two putting
greens and a practice bunker, [and] paved cart paths. There is also a
clubhouse, an approximately 2,000 square foot pro shop, an
approximately 5,000 square foot maintenance and storage facility and an
approximately 2,500 square foot café with seating located on this property.

20 *Van Buskirk Golf Course.* This property was opened in 1962 and
21 is located on approximately 214.0 acres at 1740 Houston Avenue. Van
22 Buskirk Golf Course features a classically designed par 72, 18-hole
23 course, an all grass driving range with 15 stations, two practice greens,
24 and partially paved cart paths. There is also, a clubhouse, an
approximately 2,000 square foot pro shop, an approximately 5,000 square
foot maintenance and storage facility and an approximately 2,500 square
foot cafe with seating located on this property.

25 Nominal Lease, Ex. B.

26 18. The “rent” payable by the Authority under the Nominal Lease is a nominal \$1.00.
27 Nominal Lease § 4 (“The City acknowledges receipt from the Authority as and for rental
28 hereunder the sum of one dollar (\$1.00), on or before the date of delivery of this Site and Facility

1 Lease.”). The “rent” under the Nominal Lease was not calculated to compensate the City for use
2 and occupancy of the Property.

3 19. The term of the Nominal Lease nominally runs through September 1, 2038, but is
4 contingent on the earlier or later maturity and payment in full of the Bonds:

5 The term . . . shall end on September 1, 2038, unless such term is extended
6 or sooner terminated as hereinafter provided. If, on September 1, 2038,
7 the aggregate amount of Lease Payments (as defined in and as payable
8 under the Lease Agreement) shall not have been paid, or provision shall
9 not have been made for their payment, then the term of this Site and
10 Facility Lease shall be extended until such Lease Payments shall be fully
11 paid or provision made for such payment. If, prior to September 1, 2038,
12 all Lease Payments shall be fully paid or provision made for such payment
13 in accordance with Section 4.3 or 4.4 of the Lease Agreement, the term of
14 this Site and Facility Lease shall end ten (10) days thereafter.

15 Nominal Lease § 3.

16 20. Notwithstanding the Nominal Lease of the Property, the City remains liable for
17 “any and all assessments of any kind or character and also all taxes, including possessory interest
18 taxes, levied or assessed upon the” Property. Nominal Lease § 13. The Nominal Lease does not
19 require the Authority to maintain or repair the Property or to procure insurance for the Property.

20 21. In the event that all or part of the Property is taken by eminent domain, “the
21 interest of the Authority shall be recognized and is hereby determined to be the amount of the
22 then unpaid Bonds including the unpaid principal and interest with respect to any such Bonds
23 then outstanding” Nominal Lease § 14.

24 22. **The Leaseback Agreement.** Concurrently with execution of the Nominal Lease,
25 the City and the Authority executed the “Lease Agreement,” dated as of September 1, 2009 (the
26 “Leaseback Agreement” and, together with the Nominal Lease, the “Agreements”), a copy of
27 which is attached as *Exhibit D*. A Memorandum of Lease Agreement reflecting the Leaseback
28 Agreement was recorded in the office of the Recorder of the County of San Joaquin, State of
California, on September 8, 2009.

29 23. The recitals to the Leaseback Agreement state that the City and Authority executed
the Nominal Lease “for the purpose of enabling the City to finance various capital improvements
throughout the geographic boundaries of the City” and recite that, “in order to provide the

1 revenues necessary to enable the Authority to pay debt service on the Bonds as it becomes due,
2 the Authority proposes to lease the Property back to the City.” Leaseback Agreement at 1.

3 24. Thus, pursuant to the Leaseback Agreement, the Authority purported to sublease
4 back to the City the very same Property that is the subject of the Nominal Lease. Leaseback
5 Agreement § 4.1. Notably, however, the Leaseback Agreement also enables the City to substitute
6 all or any portion of the “leased” Property with other property, without the consent of the
7 Authority, upon the satisfaction of specified conditions. Leaseback Agreement §§ 8.3(a), 8.3(b).
8 The Leaseback Agreement also empowers the City to remove and release from the purported
9 leasehold portions of the Property, with title to such removed and released Property vesting
10 unencumbered by the Outstanding Bonds with the City, without the consent of the Authority
11 upon the satisfaction of specified conditions. Leaseback Agreement §§ 8.3(c), 8.3(d).

12 25. In turn, the City agreed to pay “rent” exactly equal to the amounts due and payable
13 on the Bonds and under the Indenture: “In consideration of the lease of the Property from the
14 Authority hereunder and subject to the provisions of Section 6.2, the City agrees to pay to the
15 Authority, its successors and assigns, as rental for the use and occupancy of the Property during
16 each Fiscal Year, the Lease Payments (denominated into components of principal and interest) for
17 the Property” Leaseback Agreement § 4.3(a). Further, “[i]n the event the City should fail to
18 make any of the payments . . . , the payment in default shall continue as an obligation of the City
19 until the amount in default shall have been fully paid, and the City agrees to pay the same with
20 interest thereon, from the date of default to the date of payment at the highest rate of interest
21 borne by any Outstanding Bond.” Leaseback Agreement § 4.3(b). The City’s obligation to pay
22 “rent” under the Leaseback Agreement is subject to abatement only in the event that the Property
23 destroyed, damaged to the extent that the City’s ability to use the Property is substantially
24 impeded, or taken permanently by eminent domain. Leaseback Agreement § 6.2.

25 26. The “rent” under the Leaseback Agreement was not calculated to compensate the
26 Authority for use and occupancy of the Property (or any property substituted for the Property).

27 27. As with the Nominal Lease, the term of the Leaseback Agreement nominally runs
28 through September 1, 2038, but is contingent on the earlier or later maturity and payment in full

1 of the Bonds: “This Lease Agreement . . . shall end on the earlier of September 1, 2038, or such
2 earlier date on which the Bonds shall no longer be Outstanding under the Indenture. If, on
3 September 1, 2038, the Indenture shall not be discharged by its terms or if the Lease Payments
4 payable hereunder shall have been abated at any time and for any reason, then the Term of the
5 Lease Agreement shall be extended until there has been deposited with the Trustee an amount
6 sufficient to pay all obligations due under the Lease Agreement, but in no event shall the Term of
7 the Lease Agreement extend beyond September 1, 2048.” Leaseback Agreement § 4.2.

8 28. The Leaseback Agreement further provides the City with the right “to prepay the
9 principal component of the Lease Payments in full, or in part, without premium,” Leaseback
10 Agreement § 4.4, and provides that “all right, title and interest of the Authority in and to the
11 Property shall be transferred to and vested in the City” upon payment in full of the Bonds,
12 Leaseback Agreement § 4.6. Thus, the Authority retains no interest in the Property upon
13 termination of the Leaseback Agreement.

14 29. Under the Leaseback Agreement, “all improvement, repair and maintenance of the
15 Property shall be the responsibility of the City” and the City is liable for “all taxes and
16 assessments of any type or nature, if any, charged to the Authority or the City affecting the
17 Property or the respective interests or estates therein.” Leaseback Agreement § 5.1. The City
18 also is obligated to maintain public liability, property damage, fire and extended coverage, and
19 rental interruption insurance. Leaseback Agreement §§ 5.3-5.5.

20 30. Finally, the Leaseback Agreement expressly contemplates issuance of the Bonds
21 and delivery of the proceeds to the City: “The Authority agrees that the proceeds of sale of the
22 Bonds shall be paid to the Trustee on the Closing Date for deposit and application pursuant to the
23 terms and conditions of the Indenture, which terms and conditions authorize the City to draw
24 upon specified proceeds of the Bonds for purposes of financing the Project.” Leaseback
25 Agreement § 3.1.

26 31. In the event of a default under the Leaseback Agreement, the Authority has the
27 right to possess the Property and re-lease it for the term of the Bonds. Leaseback Agreement
28 § 9.2.

1 32. **The Bonds**. Concurrently with execution of the Nominal Lease and Leaseback
2 Agreement, the Authority executed the Indenture with Wells Fargo and issued the Bonds.

3 33. The Bonds are limited obligations of the Authority and, in the absence of an
4 exercise of remedies under the Indenture, are payable only from the payments made by the City
5 under the Leaseback Agreement and the other amounts held by Wells Fargo pursuant to the
6 Indenture. Indenture § 11.01.

7 34. In the Indenture, the Authority assigned to Wells Fargo all of its rights in the
8 Leaseback Agreement and the Nominal Lease. Indenture § 5.01(b). Pursuant to that assignment,
9 among other things, Wells Fargo is “entitled to and shall . . . take all steps, actions and
10 proceedings which [Wells Fargo] determines to be reasonably necessary in its judgment to
11 enforce, either jointly with the Authority or separately, all of the rights of the Authority [and] all
12 of the obligations of the City under the Lease Agreement.” *Id.* The Indenture further authorizes
13 owners of the Bonds to exercise rights and remedies under the Indenture in specified
14 circumstances and by direction through Wells Fargo. Indenture §§ 7.05, 7.06.

15 35. In the Leaseback Agreement, the City expressly acknowledged and consented to
16 the Authority’s assignment of rights to Wells Fargo and the owners of the Bonds. Leaseback
17 Agreement at 1 and §§ 3.1, 8.1, 9.7 (“Such rights and remedies as are given to the Authority
18 under this Article IX have been assigned by the Authority to the Trustee under the Indenture, to
19 which assignment the City hereby consents. Such rights and remedies shall be exercised by the
20 Trustee and the Owners of the Bonds as provided in the Indenture.”), 10.10.

21 36. As of August 16, 2013, the City’s unpaid obligations under the Leaseback
22 Agreement in respect of the Bonds totaled \$39,663,585.93, plus unliquidated amounts, consisting
23 of (a) principal on the Bonds in the amount of \$35,080,000.00; (b) accrued but unpaid interest on
24 the Bonds in the aggregate amount of at least \$4,176,614.70; (c) accrued but unpaid default
25 interest on the Bonds in the aggregate amount of at least \$186,498.60; and (d) accrued fees,
26 expenses and other Additional Payments of \$220,472.63.

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1 **B. The City’s Bankruptcy Case And Plan Of Adjustment.**

2 37. On or about March 1, 2012, the City failed to make the scheduled “rent” payment
3 due under the Leaseback Agreement in the amount of \$1,207,918.75. As a consequence, the
4 Authority was unable to make the scheduled payment on the Bonds in that amount and an Event
5 of Default occurred under Section 7.01 of the Indenture.

6 38. The City filed a petition under chapter 9 of the Bankruptcy Code on June 28, 2012
7 (the “Petition Date”).

8 39. The City has made no payments under the Leaseback Agreement since the Petition
9 Date. As a consequence, the Authority has made no payments on the Bonds since the Petition
10 Date and Events of Default under the Indenture have occurred and are continuing. At times, the
11 City has been and continues to be in possession and control of the Property.

12 40. On August 15, 2013, Wells Fargo filed a proof of secured claim in respect of the
13 City’s obligations under the Nominal Lease and the Leaseback Agreement, which has been
14 identified as Claim Number 187-1 on the official claims register in the City’s bankruptcy case
15 (the “Claim”). A copy of the Claim, without Schedule 1 to the Addendum to Proof of Claim, is
16 attached as *Exhibit E*.

17 41. On September 27, 2013, the City posted on its website a draft plan of adjustment
18 and disclosure statement, together with a staff report recommending that the City Council
19 authorize the City Manager to file and prosecute a plan and disclosure statement in substantially
20 the form of the posted drafts (the “Staff Report”). A copy of the Staff Report is attached as
21 *Exhibit F*. The Staff Report states that the Bonds are “a secured obligation (Oak Park and two
22 golf courses)” and that the “the leased properties [are] pledged as collateral for the bonds.” Staff
23 Report at 18, 22.

24 42. In a presentation to the City Council on October 3, 2013, City staff described the
25 Property as “Leased property/collateral” and stated that “Franklin could take collateral (leasehold
26 interest in facilities)” under the City’s proposed plan.

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1 48. An actual controversy exists between the Plaintiffs and the City regarding the
2 nature of the Agreements.

3 49. As demonstrated by the Plan, the City asserts that the Agreements are leases of
4 nonresidential real property within the meaning of and capable of rejection pursuant to
5 section 365 of the Bankruptcy Code and subject to the damage claim limitations of
6 section 502(b)(6) of the Bankruptcy Code.²

7 50. The Plaintiffs allege that the Agreements, in economic substance, constitute a
8 secured financing transaction by which the City borrowed more than \$30 million in proceeds of
9 the Bonds to finance the Projects. The Plaintiffs allege that, as a consequence, the Agreements,
10 which pertain to the Property and have no relationship to the Project, are not leases of
11 nonresidential real property within the meaning of and capable of rejection pursuant to
12 section 365 of the Bankruptcy Code and are not otherwise subject to the damage claim limitations
13 of section 502(b)(6) of the Bankruptcy Code.

14 51. Section 365 of the Bankruptcy Code applies, in relevant part, only to “true” leases
15 in which the lessee pays a rent calculated to compensate the lessor for the ongoing use and
16 consumption of the leased property. Section 365 of the Bankruptcy Code does not apply to
17 “financing” leases that represent a borrower’s cost of funds for capital assets and improvements.

18 52. Similarly, the damage limitation provisions of section 502(b)(6) of the Bankruptcy
19 Code only apply to “true” leases that are susceptible to rejection pursuant to section 365 of the
20 Bankruptcy Code. Accordingly, the damage limitation provisions of section 502(b)(6) of the
21 Bankruptcy Code do not apply to “financing” leases that may not be rejected pursuant to
22 section 365 of the Bankruptcy Code.

23 53. Further, in a chapter 9 case, “[a] lease to a municipality shall not be treated as an
24 executory contract or unexpired lease for the purposes of section 365 or 502(b)(6) of [the
25 Bankruptcy Code] solely by reason of its being subject to termination in the event the debtor fails
26 to appropriate rent.” 11 U.S.C. § 929.

27
28 ² All applicable provisions of the Bankruptcy Code cited in this Complaint are made applicable
to cases under chapter 9 by section 901 of the Bankruptcy Code.

1 54. Accordingly, pursuant to sections 365, 502(b)(6) and 929 of the Bankruptcy Code
2 and 28 U.S.C. § 2201, the Plaintiffs are entitled to and respectfully request that the Court declare
3 and adjudge that: (a) the Nominal Lease is not an unexpired lease of real property within the
4 meaning, scope and operation of sections 365 and 502(b)(6) of the Bankruptcy Code; and (b) the
5 Leaseback Agreement is not an unexpired lease of real property within the meaning, scope and
6 operation of sections 365 and 502(b)(6) of the Bankruptcy Code.³

7 **COUNT TWO**

8 **Declaratory Relief**
9 **(Agreements Give Rise To Claims Secured By An Interest In The Property)**

10 55. The Plaintiffs reallege and incorporate as if fully set forth herein the allegations set
11 forth in Paragraphs 1 to 54 of this Complaint.

12 56. This cause of action arises under the Federal Declaratory Judgment Act, 28 U.S.C.
13 § 2201.

14 57. An actual controversy exists between the Plaintiffs and the City regarding the
15 nature of the claims arising under the Agreements.

16 58. As demonstrated by the Plan, the City asserts that the claims arising under the
17 Agreements are general unsecured claims.

18 59. The Plaintiffs allege that the Agreements, in economic substance, constitute a
19 secured financing transaction by which the City borrowed more than \$30 million in proceeds of
20 the Bonds. The Plaintiffs further allege that the claims arising under the Agreements are secured
21 by a valid, perfected and enforceable interest in and to the Property.

22 60. Section 506(a) of the Bankruptcy Code provides in part that “[a]n allowed claim of
23 a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to
24 the extent of the value of such creditor’s interest in the estate’s interest in such property . . .” 11
25 U.S.C. § 506(a).

26 _____
27 ³ Contrary to the assertions of the City in the Disclosure Statement, the Agreements need not be
28 deemed “leases” in order to fall within the exception to the indebtedness limitation of Article
XVI, Section 18 of the California Constitution, as described in *City of Los Angeles v. Offner*, 19
Cal. 2d 483 (1942), and *Dean v. Kuchel*, 35 Cal. 2d 444 (1950).

1 secured by a valid, perfected and enforceable equitable mortgage and/or equitable lien upon the
2 Property and such other collateral as set forth in the Indenture.

3 **COUNT FOUR**

4 **Declaratory Relief**
5 **(Value And Extent Of Secured Claim)**

6 69. The Plaintiffs reallege and incorporate as if fully set forth herein the allegations set
7 forth in Paragraphs 1 to 68 of this Complaint.

8 70. This cause of action arises under the Federal Declaratory Judgment Act, 28 U.S.C.
9 § 2201.

10 71. An actual controversy exists between the Plaintiffs and the City regarding the
11 value of the property that secures the claims arising under the Agreements, including the claims
12 set forth in the Claim.

13 72. Section 506(a) of the Bankruptcy Code provides in part that the value of a
14 creditor's interest in the estate's interest in property "shall be determined in light of the purpose
15 of the valuation and of the proposed disposition or use of such property, and in conjunction with
16 any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C.
17 § 506(a).

18 73. Pursuant to section 506(a) of the Bankruptcy Code and 28 U.S.C. § 2201, and in
19 light of the Plan and the current status of the City's bankruptcy case, the Plaintiffs are entitled to
20 and respectfully request that the Court declare and adjudge the value of the property that secures
21 the claims arising under the Agreements, including the claims set forth in the Claim.

22 **COUNT FIVE**

23 **Declaratory Relief**
24 **(Alternative Claim For Administrative Rent)**

25 74. The Plaintiffs reallege and incorporate as if fully set forth herein the allegations set
26 forth in Paragraphs 1 to 73 of this Complaint.

27 75. This cause of action arises under the Federal Declaratory Judgment Act, 28 U.S.C.
28 § 2201.

1 76. An actual controversy exists between the Plaintiffs and the City regarding the
2 City's obligations under the Agreements in the event that the Court determines that the
3 Agreements constitute unexpired leases of real property within the meaning, scope and operation
4 of section 365.

5 77. The City has made no payments under the Leaseback Agreement since the Petition
6 Date and has not indicated any willingness to do so at any time hereafter.

7 78. The City has been in possession and control of the Property at all time since the
8 Petition Date and has benefitted from its use and occupancy of the Property.

9 79. The Plaintiffs allege that, solely to the extent that the Court determines that the
10 Agreements constitute unexpired leases of real property within the meaning, scope and operation
11 of section 365 of the Bankruptcy Code, all "rent" payable by the City and all of the City's
12 obligations arising under the Agreements from the Petition Date through the effective date of
13 rejection of the Agreements constitute an administrative expense payable in accordance with
14 sections 365(d)(3) and 503 of the Bankruptcy Code.

15 80. Section 365(d)(3) of the Bankruptcy Code provides that "[t]he trustee shall timely
16 perform all the obligations of the debtor . . . arising from and after the order for relief under any
17 unexpired lease of nonresidential real property, until such lease is assumed or rejected,
18 notwithstanding section 503(b)(1) of this title." 11 U.S.C. § 365(d)(3).

19 81. Section 503(b) of the Bankruptcy Code provides that "there shall be allowed
20 administrative expenses . . . including – the actual, necessary costs and expenses of preserving the
21 estate" 11 U.S.C. § 503(b).

22 82. Accordingly, as an alternative form of relief and solely to the extent that the Court
23 determines that the Agreements constitute unexpired leases of real property within the meaning,
24 scope and operation of section 365 of the Bankruptcy Code, pursuant to sections 365(d)(3)
25 and 503(b) of the Bankruptcy Code and 28 U.S.C. § 2201, the Plaintiffs are entitled to and
26 respectfully request that the Court declare and adjudge that all "rent" payable by the City and all
27 of the City's obligations arising under the Agreements from the Petition Date through the
28

1 effective date of rejection of the Agreements constitute an administrative expense payable in
2 accordance with sections 365(d)(3) and 503 of the Bankruptcy Code.

3 **WHEREFORE**, the Plaintiffs respectfully request that the Court enter a judgment:

4 (1) Declaring that the Nominal Lease is not an unexpired lease of real property within
5 the meaning, scope and operation of sections 365 and 502(b)(6) of the Bankruptcy Code;

6 (2) Declaring that the Leaseback Agreement is not an unexpired lease of real property
7 within the meaning, scope and operation of sections 365 and 502(b)(6) of the Bankruptcy Code;

8 (3) Declaring that the claims arising under the Agreements, including the claims set
9 forth in the Claim, are allowed claims secured by a valid, perfected and enforceable security
10 interest in and lien upon the Property and such other collateral as set forth in the Indenture;

11 (4) Declaring that the claims arising under the Agreements, including the claims set
12 forth in the Claim, are allowed claims secured by a valid, perfected and enforceable equitable
13 mortgage and/or equitable lien upon the Property and such other collateral as set forth in the
14 Indenture.

15 (5) Declaring the value of the property that secures the claims arising under the
16 Agreements, including the claims set forth in the Claim.

17 (6) Alternatively, and solely to the extent that the Court determines that the
18 Agreements constitute unexpired leases of real property within the meaning, scope and operation
19 of section 365 of the Bankruptcy Code, declaring that all “rent” payable by the City and all of the
20 City’s obligations arising under the Agreements from the Petition Date through the effective date
21 of rejection of the Agreements constitute an administrative expense payable in accordance with
22 sections 365(d)(3) and 503 of the Bankruptcy Code.

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1 (7) Granting such other and further relief as the Court deems appropriate.

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3 Dated: October 14, 2013

JONES DAY

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/s/ James O. Johnston _____

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James O. Johnston

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Joshua D. Morse

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Counsel for Franklin

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- and -

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

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Counsel for Wells Fargo

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