

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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In re : Chapter 9  
CITY OF DETROIT, MICHIGAN, : Case No. 13- 53846  
Debtor. : Hon. Steven W. Rhodes  
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**SUPPLEMENT TO MOTION OF DEBTOR  
FOR ENTRY OF AN ORDER (I) AUTHORIZING THE  
ASSUMPTION OF THAT CERTAIN FORBEARANCE AND OPTIONAL  
TERMINATION AGREEMENT PURSUANT TO SECTION 365(a) OF  
THE BANKRUPTCY CODE, (II) APPROVING SUCH AGREEMENT  
PURSUANT RULE 9019, AND (III) GRANTING RELATED RELIEF**

The City of Detroit, Michigan (“Detroit” or the “City”), as the debtor in the above-captioned case, hereby submits this supplement (the “Supplement”) to the *Motion of Debtor for Entry of an Order (i) Authorizing the Assumption of that Certain Forbearance and Optional Termination Agreement Pursuant to Section 365(a) of the Bankruptcy Code, (ii) Approving Such Agreement Pursuant to Rule 9019, and (iii) Granting Related Relief* [Docket Nos. 17, 157] (the “Original Motion,” and together with the Supplement, the “Motion”).<sup>1</sup>

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Original Motion.

As set forth in the Original Motion and the *Omnibus Reply of the City of Detroit to Objections to the Motion for Assumption and Approval of the Forbearance and Optional Termination Agreement* [Docket No. 2029] (the “Omnibus Reply”), which are incorporated herein by reference, the Forbearance Agreement allows the City short-term and long-term access to its critically needed Casino Revenues, provides the City with an option to unwind the swap transactions and associated collateral arrangement at a discount and avoids the potential for protracted litigation.

#### **SIXTH AMENDMENT TO FORBEARANCE AGREEMENT**

Since the filing of the Original Motion, the City, through the Court-ordered facilitative mediation process, has been able to negotiate an improved settlement agreement with the Swap Counterparties, which will be memorialized in a Sixth Amendment to the Forbearance and Optional Termination Agreement (the “Sixth Amendment”), substantially in the form attached hereto as Exhibit 6.

Under the Sixth Amendment, the Swap Counterparties will be paid \$165 million as the Optional Termination Payment under the Forbearance and Optional Termination Agreement, together with breakage costs of up to \$4.2 million. Consistent with the reduced Optional Termination Payment, the requested Post-Petition Financing will be reduced such that the Swap Termination Loan will be \$165 million. All amounts in the General Receipts Subaccount and Holdback

Account will be released to the City upon closing. Should the parties fail to close on the Optional Termination on or before January 31, 2014, each of the City and the Swap Counterparties shall be entitled, upon giving written notice, to terminate<sup>2</sup> the Forbearance and Optional Termination Agreement and their obligations and undertakings thereunder.<sup>3</sup>

Each of these changes is beneficial to the City, and no party in interest can have any valid complaint with respect to the *improvement* of the City's compromise.

First, in the absence of the Sixth Amendment, the City estimates that, as of the date of its Omnibus Reply, the Optional Termination Payment would equal approximately \$200 million or 75% of the mark-to-market value of the swap transactions, plus breakage costs. In contrast, the \$165 million figure reflected in the Sixth Amendment amounts to approximately 62% of the mark-to-market value of the swap transactions as of that date. Thus, the City estimates that the Sixth

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<sup>2</sup> Except with respect to the Swap Counterparties' ability to terminate based on certain specified Forbearance Period Termination Events, both parties are prohibited from terminating the Forbearance Agreement prior to January 31, 2014.

<sup>3</sup> This paragraph of the Supplement is a summary of the salient terms of the Sixth Amendment and is qualified in its entirety by the terms of the Sixth Amendment. If there are any inconsistencies between the summary contained herein and the Sixth Amendment, the Sixth Amendment shall control. Parties are strongly encouraged to read the Sixth Amendment in its entirety.

Amendment reflects an additional 13% discount that will save the City approximately \$35 million as of that date.

Second, the Sixth Amendment adds an explicit provision requiring the Swap Counterparties to release monies left over in the General Receipts Subaccount and Holdback Account upon payment of the Optional Termination Payment. This change is meant for clarifying purposes only and, if anything, benefits the City by guaranteeing that it will receive a return of certain monies that are being held by the Collateral Agreement Custodian.

Third, the Forbearance Agreement provides both parties the right to terminate the Forbearance Agreement on or after January 31, 2014 and prohibits any termination prior to that date. This benefits the City in two ways: First, it provides the City with a right to terminate the Forbearance Agreement after January 31, 2014, and second, it prohibits the Swap Counterparties from exercising certain rights they may have had to terminate the Forbearance Agreement prior to January 31, 2014. It thus allows the City and the Swap Counterparties sufficient time to obtain a determination from the Bankruptcy Court on the Motion.

While the City maintains that the Forbearance Agreement, as originally proposed, satisfied the applicable standards imposed pursuant to Bankruptcy Rule 9019 and section 365 of the Bankruptcy Code, the City respectfully submits that the modifications made pursuant to the Sixth Amendment

substantially improve the benefits that the City is receiving pursuant to the compromise and remove any doubt as to the merits of the Motion.

WHEREFORE, for the reasons stated herein, in the Original Motion, and in the Omnibus Reply, the City respectfully requests that this Court: (a) enter an order substantially in the form attached hereto as Exhibit 1 granting the relief sought herein;<sup>4</sup> and (b) grant such other and further relief to the City as the Court may deem proper.

Dated: December 27, 2013

Respectfully submitted,

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Heather Lennox (OH 0059649)  
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<sup>4</sup> While Exhibit 1 hereto is substantially in the form of Exhibit 1 attached to the Original Motion, Exhibit 1 hereto has been modified to, among other things, (a) clarify that references therein to the “Forbearance Agreement” refer to the Forbearance Agreement, as amended by the Sixth Amendment to the Forbearance Agreement, and (b) memorialize the reservation of rights read into the record by counsel for the Ad Hoc Committee of COPs holders at the commencement of the Hearing.

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ATTORNEYS FOR THE CITY

## **SUMMARY OF ATTACHMENTS**

The following documents are attached to this Motion, labeled in accordance with Local Rule 9014-1(b).

Exhibit 1	Proposed Form of Order
Exhibit 2	Notice [Attached to Original Motion]
Exhibit 3	None [Brief Not Required]
Exhibit 4	Certificate of Service
Exhibit 5	None
Exhibit 6	Sixth Amendment to the Forbearance Agreement

**EXHIBIT 1**



**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

-----X  
In re :  
 : Chapter 9  
 :  
CITY OF DETROIT, MICHIGAN, :  
 : Case No. 13- 53846  
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Debtor. : Hon. Steven W. Rhodes  
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**ORDER (I) AUTHORIZING THE ASSUMPTION  
OF THAT CERTAIN FORBEARANCE AND OPTIONAL  
TERMINATION AGREEMENT PURSUANT TO SECTION 365(a) OF  
THE BANKRUPTCY CODE, (II) APPROVING SUCH AGREEMENT  
PURSUANT RULE 9019, AND (III) GRANTING RELATED RELIEF**

This matter coming before the Court on the motion (the "Motion")<sup>1</sup> for entry of an order (i) authorizing the assumption of that certain forbearance and optional termination agreement pursuant to section 365(a) of the Bankruptcy Code, (ii) approving such agreement pursuant Bankruptcy Rule 9019, and (iii) granting related relief; the Court having reviewed the Motion and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); and the Court having

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<sup>1</sup> Capitalized terms used herein are accorded the meanings given to them in the Motion. References herein to the "Forbearance Agreement" refer to the Forbearance Agreement, as amended by the Sixth Amendment to the Forbearance Agreement.

determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

**THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:**

A. Jurisdiction and Venue. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. Notice. Notice of the Motion and the Hearing was sufficient under the circumstances. As evidenced by the certificate of service, notice of the Motion and Hearing has been given to the following: (a) the trustees, transfer agents and/or paying agents, as applicable, for the City's secured and unsecured bonds; (b) the City's largest unsecured creditors as identified on the list filed under Bankruptcy Rule 1007(d); (c) the unions representing certain of the City's employees and retirees; (d) the four associations of which the City is aware representing certain retirees of the City; (e) the City's pension trusts; (f) the insurers of the City's bonds; (g) the COPs; (h) certain significant holders of the COPs; (i) the Swaps; and (j) the insurers of the Swaps. In addition, a copy of the Motion was served on the Office of the United States Trustee. Cause exists to modify the requirement under Bankruptcy Rule 2002(a) that a hearing on approval

of a compromise or settlement shall be given to all creditors and, accordingly, no other or further notice is required under the circumstances.

C. Assumption Appropriate. The assumption of the Forbearance Agreement and other relief sought in the Motion will benefit the City and is a sound exercise of the City's business judgment, is in the best interest of the City, its creditors and other parties in interest and is based on good, sufficient and sound business purposes and justifications. As of the date hereof, no defaults exist under the Forbearance Agreement and the City is not obligated to pay any cure amounts in connection with the assumption of the Forbearance Agreement.

D. Rule 9019 Authorization. The City was authorized, but not required, to seek approval of the Forbearance Agreement pursuant to Bankruptcy Rule 9019. The Forbearance Agreement is fair, reasonable and equitable.

E. Consent to Use of Casino Revenues. Pursuant to Section 1.2 of the Forbearance Agreement, UBS AG and MLCS consent to the City's use of the Casino Revenue as set forth in the Forbearance Agreement. The consent of UBS AG and MLCS will allow the City immediate access to its Casino Revenue as set forth in Forbearance Agreement, and no other or further consents are required.

F. Modification of Automatic Stay. Good cause exists to modify the automatic stay, pursuant to section 362(d) of the Bankruptcy Code, solely to

permit UBS AG and MLCS to petition for a writ of mandamus as a remedy for nonperformance under Section 2 of the Forbearance Agreement.

G. Arm's-Length Agreement. The Forbearance Agreement was negotiated at arm's length and in good faith by all parties. UBS AG and MLCS are not insiders of the City as that term is defined in Bankruptcy Code section 101(31). The parties' entry into and performance under the Forbearance Agreement does not violate any law, including the Bankruptcy Code, and does not give rise to any claim or remedy against the parties thereto, except as may be expressly set forth in this Order or in the Forbearance Agreement.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. Any objections to the entry of this Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived, or settled, or not otherwise resolved pursuant to the terms hereof, if any, hereby are denied and overruled on the merits with prejudice.
3. Pursuant to section 365(a) of the Bankruptcy Code, the City is authorized to assume the Forbearance Agreement, attached as Exhibit 6 to the Motion, as amended by the Sixth Amendment to the Forbearance Agreement.
4. The Forbearance Agreement is approved in its entirety. The City is authorized to perform its obligations that arise from the Forbearance

Agreement pursuant to Bankruptcy Rule 9019, and any actions taken heretofore in furtherance of these obligations are hereby ratified.

5. The Custodian under the Collateral Agreement is hereby authorized to rely upon the terms of this Order and UBS AG and MLCS' consent to the use by the City of the Casino Revenue.

6. The automatic stay imposed pursuant to section 362 of the Bankruptcy Code is modified solely to permit UBS AG and MLCS to petition a court of competent jurisdiction for a writ of mandamus as a remedy for nonperformance under Section 2 of the Forbearance Agreement.

7. The City is authorized to take any and all actions necessary or appropriate to implement the terms of this Order and the Forbearance Agreement.

8. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, enforcement or interpretation of this Order.

9. This Order does not affect any claims or defenses of any non-debtor party against any other non-debtor party arising under or in connection with Section 9.1 of the Contract Administration Agreement dated as of June 12, 2006, as amended, among the Detroit Retirement Systems Funding Trust 2006, the Service Corporations (as defined in the Forbearance Agreement) and the other parties thereto.

**EXHIBIT 2**

***NOTICE [ATTACHED TO ORIGINAL MOTION]***

**EXHIBIT 3**

***BRIEF [NOT APPLICABLE]***

**EXHIBIT 4**

***CERTIFICATE OF SERVICE***



**CERTIFICATE OF SERVICE**

I hereby certify that on December 27, 2013, I electronically filed the Supplement to Motion of Debtor for Entry of an Order (I) Authorizing The Assumption of That Certain Forbearance and Optional Termination Agreement Pursuant to Section 365(a) of The Bankruptcy Code, (II) Approving Such Agreement Pursuant Rule 9019, and (III) Granting Related Relief with the Clerk of the Court, which sends notice by operation of the Court's electronic filing service to all ECF participants registered to receive electronic notice in this case

/s/ Deborah Kovsky-Apap  
Deborah Kovsky-Apap (P68258)

**EXHIBIT 5**

***AFFIDAVITS [NOT APPLICABLE]***

**EXHIBIT 6**

***[SIXTH AMENDMENT TO FORBEARANCE AGREEMENT]***

**SIXTH AMENDMENT  
TO  
FORBEARANCE AND OPTIONAL TERMINATION AGREEMENT**

**SIXTH AMENDMENT**, dated as of December [ ], 2013 (the “**Amendment**”), to the Forbearance and Optional Termination Agreement dated as July 15, 2013 (as amended, the “**Agreement**”) by and among Detroit General Retirement System Service Corporation, a Michigan nonprofit corporation (“**DGRS**”), Detroit Police and Fire Retirement System Service Corporation, a Michigan nonprofit corporation (“**PFRS**” and, together with DGRS, each a “**Service Corporation**” and collectively the “**Service Corporations**”), the City of Detroit (the “**City**”), the Emergency Manager of the City (the “**Emergency Manager**”), and UBS AG (“**UBS**”) and Merrill Lynch Capital Services, Inc. (“**MLCS**” and, together with UBS, the “**Swap Counterparties**”).

**WHEREAS**, the Service Corporations, the City, the Emergency Manager and the Swap Counterparties (collectively, the “**Parties**”) have previously entered into the Agreement;

**WHEREAS**, the Parties have previously agreed to amend the Agreement as of July 31, 2013, as of August 12, 2013, as of August 23, 2013, as of August 29, 2013, and as of September 4, 2013;

**WHEREAS**, the Parties now wish to further amend the Agreement according to the terms of this Amendment;

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, and intending to be legally bound hereby, the Parties agree as follows:

1. Amendments to the Agreement. The Parties hereby agree to amend the Agreement as follows:

a. The definitions of “Applicable Percentage”, “First Payment Adjustment Date”, “Mid-Market Amount”, and “Second Payment Adjustment Date” in Section 3.5 of the Agreement are hereby deleted.

b. The definition of “Optional Termination Amount” in Section 3.5 of the Agreement is hereby deleted and replaced with the following:

““Optional Termination Amount” shall mean with respect to each Swap Counterparty 50% of the sum of (a) \$165 million, and (b) three (3) basis points of breakage costs based upon the present value of amounts due under the Swap Agreements (using a discount curve calculated from swap rates published on Reuters Screen Page “ISDAFIX3” at 11:30 a.m. New York Time on the Optional Termination Date), which costs shall not exceed the lesser of (i) one-third of the aggregate of the Fixed Amounts (as defined in the Collateral Agreement) payable by the Service Corporations under the Swap Agreements during the Quarterly Period (as defined in the Collateral Agreement) for the Month

during which the Optional Termination Date occurs without giving effect to (A) any netting for the Floating Amounts (as defined in the Collateral Agreement) due from the Swap Counterparties under the Swap Agreements or (B) any termination of the Swap Agreements pursuant to Section 3 of this Agreement and (ii) \$4.2 million.”

c. The reference to “Sections 3.3(c), 3.3(d), 5, 8, 10 and 11” in Section 3.4(c) of the Agreement is hereby deleted and replaced with “Sections 3.3(c), 3.3(d), 3.4, 5, 8, 10 and 11.”

d. Immediately following Section 3.4(d) of the Agreement, the following subsection is hereby added to Section 3.4 of the Agreement:

“(e) for the avoidance of doubt, in accordance with Section 14.4(c) of the Collateral Agreement, all amounts standing to the credit of each Account shall be paid to the City, and, at the request of the City, the Swap Counterparties agree to instruct the Collateral Agreement Custodian to promptly pay such amounts to the City.”

e. The parenthetical “(provided that in lieu of such notice, notice of the occurrence of the Forbearance Period Termination Events in Sections 1.3(a), 1.3(l) or 1.3(m) below shall be given as set forth therein)” in Section 1.3 of the Agreement is hereby deleted and replaced with “(provided that in lieu of such notice, notice of the occurrence of the Forbearance Period Termination Events in Sections 1.3(a), 1.3(l), 1.3(m), or 1.3(n) below shall be given as set forth therein)”.

f. Immediately following Section 1.3(m) of the Agreement, the following subsection is hereby added to Section 1.3 of the Agreement:

“(n) Delivery on or after January 31, 2014 either (i) to the Swap Counterparties of a written notice from the City (given in its sole discretion and with a copy to the other parties hereto) terminating the Forbearance Period, or (ii) to the City of a written notice from the Swap Counterparties (given in their sole discretion and with a copy to the other parties hereto) terminating the Forbearance Period; provided that, in each of (i) and (ii) above, on such date payment in full by the City of the Optional Termination Amount to each of the Swap Counterparties has not occurred.”

g. Immediately following Section 1.4 of the Agreement, the following new Section 1.5 is hereby added to the Agreement:

“No party hereto shall deliver a written notice of a Forbearance Period Termination Event on or prior to January 31, 2014, other than pursuant to Section 1.3(a), 1.3(b), 1.3(f), 1.3(j)(ii), 1.3(j)(iv) or 1.3(n).”

h. The text “and” appearing immediately at the end of Section 3.4(c) of the Agreement is hereby deleted in its entirety.

i. The text “.” appearing immediately at the end of Section 3.4(d) of the Agreement is hereby deleted and replaced with “; and”.

j. The text “*Payment of Optional Termination Amount*” appearing in the heading of Section 3.3 of the Agreement is hereby deleted and replaced with “*Payment of Optional Termination Amounts*”.

k. The text “Optional Termination Amount” appearing in Section 3.3(c) of the Agreement is hereby deleted and replaced with “Optional Termination Amounts”.

l. The text “*Effect of Payment of Optional Termination Amount*” appearing in the heading of Section 3.4 of the Agreement is hereby deleted and replaced with “*Effect of Payment of Optional Termination Amounts*”.

2. Miscellaneous.

a. **Definitions.** Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings specified for such terms in the Agreement.

b. **Entire Agreement.** This Amendment, together with the Agreement, constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto. Except as amended hereby, the Agreement shall remain in full force and effect. No failure or delay of any party in exercising any right, power or privilege under the Agreement, as amended hereby, shall operate as a waiver thereof.

c. **Counterparts.** This Amendment may be executed and delivered in counterparts (including by facsimile or other electronic transmission) each of which will be deemed an original.

d. **Governing Law.** This Amendment will be governed by and construed in accordance with the “Governing Law and Jurisdiction” provisions of the Agreement.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first above written.

DETROIT GENERAL RETIREMENT  
SYSTEM SERVICE CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

DETROIT POLICE AND FIRE RETIREMENT  
SYSTEM SERVICE CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

THE CITY OF DETROIT

By: \_\_\_\_\_  
Name:  
Title:

EMERGENCY MANAGER OF THE CITY OF  
DETROIT

By: \_\_\_\_\_  
Name:

[Signature page to Sixth Amendment]

MERRILL LYNCH CAPITAL SERVICES,  
INC.

By: \_\_\_\_\_  
Name:  
Title:

UBS AG

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

[Signature page to Sixth Amendment]