

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

In re)	
)	Chapter 9
CITY OF DETROIT, MICHIGAN,)	
)	Case No. 13-53846
Debtor.)	
)	Hon. Steven W. Rhodes
)	

**OBJECTION OF SYNCORA GUARANTEE INC. AND SYNCORA
CAPITAL ASSURANCE INC. TO CORRECTED MOTION OF DEBTOR
FOR ENTRY OF AN ORDER, PURSUANT TO SECTION 105(a) OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, APPROVING A
SETTLEMENT AND PLAN SUPPORT AGREEMENT AND GRANTING
RELATED RELIEF**

In support of their Objection to the *Corrected Motion of the Debtor for Entry of an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving a Settlement and Plan Support Agreement and Granting Related Relief*, [Docket No. 2806] (the “Settlement Motion”), Syncora Guarantee Inc. and Syncora Capital Assurance Inc. (collectively, “Syncora”) state as follows:

Preliminary Statement

1. The Court should deny the Settlement Motion because it asks the Court to grant relief it cannot grant and, in the process, asks the Court to approve an (as-of-yet unexecuted and undisclosed) settlement agreement that (a) does not yield the anticipated benefits; and (b) impermissibly impairs the rights of third parties like Syncora.

2. Though the City portrays the new settlement as merely an improved version of its prior deal, this is not the case. In fact, the City and the Swap Counterparties have dramatically changed the nature of their proposed settlement. The prior settlement agreement purported to terminate the Swap in exchange for a payment of approximately \$237 million. In the process, the Swap Counterparties agreed to release Swap Insurer Syncora from its obligations under its Swap Insurance. As a result of this termination of the Swaps and the attendant certification by the Swap Counterparties that they had been paid in full, the Collateral Agreement terminated by its own terms. This in turn released the liens that presently exist on the Gaming Revenue.

3. The new transaction (the “Proposed Settlement”) is radically different. Because the City is now of the view that the Service Corporations are shams, it has decided to leave them out of the most recent settlement. This has profound structural implications for the new agreement. Unlike before, the Swap now does not terminate. Nor is the City relieved of its Swap-related payment obligations to the Service Corporations under the Service Contracts. Nor is Syncora’s insurance released.¹ In short, the *claims* being settled are very different this time around.

¹ Syncora maintains that the Swap Counterparties’ actions have materially prejudiced Syncora and, for various reasons, compromised the Swap Counterparties’ ability to claim under the Swap Insurance in the future. Because, however, the Swap Counterparties have taken the position that Syncora’s insurance obligations remain in place, Syncora assumes *arguendo*

And this is particularly important when one recalls that the Swap Counterparties do not have a secured claim against the City. Though the City portrays this as a simple reprise of its prior settlement, it is not.

4. The missing link here is the Service Corporations. They are the ones with liens from the City — not the Swap Counterparties. And their absence from the Agreement, coupled with the contractual provisions of the Collateral Agreement, means that the new settlement cannot achieve the goal of freeing up the Casino Revenues.

5. The City and the Swap Counterparties attempt to solve this problem by having the Court's Order simply release the liens on the Gaming Revenue — with no explanation of how that release is achieved. The Motion is thus problematic for three principal reasons.

6. *First*, nothing in the Bankruptcy Code gives the Bankruptcy Court the power to vaporize the liens granted by the Collateral Agreement. It is well-established that the Bankruptcy Code neither expands nor contracts the rights of a debtor. For the Court to order the release of all liens granted by the Collateral Agreement (as the Proposed Order has it doing in Paragraph 14), it must be based on a finding that there is a contractual basis to do so. The Court does not have the

that the Swap Insurance is not released for purposes of the instant objection. Syncora reserves all rights on this issue.

organic legal authority to destroy liens simply because the Swap Counterparties and the City want it to do so.

7. *Second*, the Proposed Order directing the release of all liens on the Pledged Property operates as a termination or amendment of the Collateral Agreement — a fact that the City and the Swap Counterparties studiously avoid mentioning in any of their papers. But this termination directly contravenes the plain language of the Collateral Agreement, which provides that it only terminates upon “the termination or expiration of the Hedges and each Counterparty’s delivery of confirmation to the Custodian of the payment in full of all obligations of the Service Corporations and the City to each Counterparty thereunder and hereunder.” (Collateral Agreement (“CA”), Ex. A at Section 14.4(a) (emphasis added).) Because the Swap is not being terminated — and because the Swap Counterparties’ obligations from the Service Corporations remain outstanding — the Collateral Agreement does not terminate as a result of the proposed transaction. And nor do the liens granted by the Collateral Agreement. (*See id.* at Section 14.4(b).) Nor can the Collateral Agreement be amended without Syncora’s (and the Service Corporations’) consent. (*Id.* at Section 14.5.)

8. The release of the liens on the gaming revenues operates an obvious impairment of Syncora’s rights. And that impairment translates into direct economic prejudice because the Swap Counterparties claim that Syncora insures

the Swap obligation that is indirectly secured by the lien granted by the City to the Service Corporations.

9. *Third*, other provisions of the Settlement Agreement and Proposed Order violate either the Bankruptcy Code or the underlying contracts. For example, the plan support agreement requires the Swap Counterparties to vote in favor of the City's proposed Plan of Adjustment. But this pledge of support violates Syncora's right to "control all actions that may be taken by any Specified Hedge Counterparty that is the beneficiary of such Credit Insurance..." (Contract Administration Agreement ("CAA"), Ex. B at § 6.9.2(2).) As with the Collateral Agreement above, the proposed action does not merely *prejudice* Syncora — it works an actual alteration to contractual rights Syncora has that cannot be altered without its consent. And this places the proposed "settlement" on all fours with the type found invalid in *In re SportStuff*, where the Eighth Circuit held that a settlement agreement between parties A and B may not destroy contractual rights possessed by party C. 430 B.R. 170, 177 (B.A.P. 8th Cir. 2010).

10. In addition, the over-reaching release and third-party suit injunction appear to bar non-parties from suing the Swap Counterparties for their actions in connection with the issuance of the Certificates of Participation (or "COPs"). Neither of these two provisions complies with the Sixth Circuit standard set forth in *In re Dow Corning Corp.* 280 F.3d 648 (6th Cir. 2002).

11. The Court should deny the Settlement Motion. In submitting this Objection, Syncora reserves all rights, claims, remedies, and defenses it has to the Swap Counterparties' and the City's actions.

Background

I. The Terms and Structure of the Instant Settlement Agreement Are Materially Different from the Terms and Structure of the Forbearance Agreement

12. At the outset, Syncora notes that the City has not actually executed a settlement with the Swap Counterparties. The Term Sheet attached to its motion makes clear that it is “merely for discussion purposes” and is “not intended to be a commitment by any Party.” Syncora submits that starting a Rule 9019 motion by first actually entering into a settlement agreement would be a more efficient way for all involved to proceed. Syncora reserves the right to supplement its objection if and when the City and the Swap Counterparties actually ink a settlement. This objection is based on Syncora's attempt to construct what a settlement agreement would look like based on the Term Sheet and the Proposed Order.

13. Though the City suggests that the Term Sheet settles the claims-at-issue in the Forbearance Agreement on more favorable terms, there are, in fact, material differences between these two settlements — both in the structure of the settlement and the claims that are being settled.

A. The Terms and Structure of the Forbearance Agreement

14. On July 15, 2013, the City, the Swap Counterparties, and the Service Corporations executed the Forbearance Agreement. At its core, the Forbearance Agreement purported to do three things.

15. First, it required the Swap Counterparties to waive their right to trap cash under the Collateral Agreement. (Forbearance Agreement (“FA”), Ex. C at § 1.1.) Second, it provided the City with the right to direct the Swap Counterparties to terminate the Swaps. (FA § 3.1.) Third, it provided for a discounted termination payment to the Swap Counterparties of approximately \$237 million. (FA § 3.5.)

16. Had the City been allowed to perform under the Forbearance Agreement, both the Swaps and the Collateral Agreement would have terminated. The termination of the Collateral Agreement, coupled with the Swap Counterparties’ certification that they had been paid in full by the Service Corporations, would have operated to terminate the Collateral Agreement and thereby release the liens on the Gaming Revenue. In addition, Syncora and FGIC would have been released from their obligations as Swap Insurers. (FA § 3.2(c).)

B. The Terms and Structure of the Proposed Settlement Agreement

17. In paragraph 53 of its Motion, the City implies that the Term Sheet settles claims that are identical to those settled by the Forbearance Agreement.

(Settlement Mot. at ¶ 53 (“In light of the four-day evidentiary hearing and closing argument and more than half-dozen pre-trial hearings and status conferences on the [Forbearance Agreement] . . . this Court is already familiar with the issues being compromised and claims being released through the proposed Agreement.”).) This is not the case.

18. The key difference between the Term Sheet and the Forbearance Agreement is the absence of the Service Corporations as parties. The Service Corporations were signatories to the Forbearance Agreement and were of sufficient vitality that Mr. Orr assumed they had engaged in arms-length negotiations of their own with Mr. Buckfire. (Orr Dep., Ex. D at 75:18–20, Aug. 30, 2013.) This is important because, Mr. Orr testified, one of the benefits of the Forbearance Agreement was that it “released all claims that the swap counterparties, the service corporations, and the city may have against one another.” (Hr’g Tr., Ex. E at 110:1–5 Jan. 3, 2014.)

19. In the interim, the City has decided that the Service Corporations are mere shams and filed a suit to invalidate the COPs on this basis. (*See* COP Invalidation Complaint, Ex. F at ¶ 38.) The City and the Swap Counterparties thus no longer propose to enter into a settlement with the Service Corporations.

20. As a result of the omission of the Service Corporations, the structure of the anticipated settlement — and the nature of the claims settled — has changed

dramatically. Under the to-be-executed settlement agreement, the following differences exist from the Forbearance Agreement:

- The Swaps do not terminate.
- The Service Corporations' rights to receive swap-related payments under the Service Contracts live on.
- The Swap Insurers are not released.

21. Without the Service Corporations, the new settlement is structurally amorphous. The City pays the Swap Counterparties \$85 million. The Swap Counterparties release "any and all claims . . . related to the Swaps, the Certificates of Participation, the Service Corporations, any and all transactions related to the Swaps, the Certificates of Participation, the Service Corporations and/or the Funding Trusts, or the Chapter 9 Proceedings." (Term Sheet at 8.) What these claims are, precisely, goes unmentioned. And this is particularly relevant when one recalls that the Swap Counterparties have not been granted a lien by the City, but rather by the Service Corporations who are now absent from the deal.

22. In addition, the new transaction proposes the following pieces of consideration not contained in the Forbearance Agreement:

- The City gets a plan support agreement from the Swap Counterparties.
- The Swap Counterparties get a sweeping third-party release and suit injunction against all parties with contribution or indemnity claims against the Swap Counterparties arising from anything related to the COPs/Swap structure.

- New liens are placed on the Casino Revenues, meaning that the City will not have unfettered access to those revenues upon emergence from bankruptcy.

23. The crucial question, as always, relates to the status of the liens granted by the Collateral Agreement. On this front, the Term Sheet is silent, other than providing that the Order approving the settlement will operate to release them. (Term Sheet at 6.) The Proposed Order included with the motion subtly does so without explicitly stating as much. (Proposed Order ¶ 14) (“ORDERED that, upon full payment by the City . . . all liens on the Pledged Property, including without limitation the Liens, shall be released without any further action or agreement by UBS, MLCS, the Custodian, or any other person.”) In the lengthy and detailed Proposed Order, this is the only mention of what happens to the liens granted by the Collateral Agreement. The subtle reference and use of the passive voice is no accident — instead, it reflects an attempt by the Swap Counterparties and the City to simply skirt the question of what happens to the Collateral Agreement.

24. Finally, while the new settlement releases all of the Swap Counterparties’ claims against the City, it allows the Swap Counterparties to retain all rights, claims, and remedies against both the Service Corporations and the Swap Insurers. (Settlement Mot. at 23.) The new settlement further provides that the insurers cannot (a) acquire an allowed secured claim for reimbursement or (b) be

subrogated to the Swap Counterparties' purportedly secured claim. (Term Sheet at 11.)

Objection

25. In its third attempt to craft a settlement agreement with the Swap Counterparties, the City has created a structure that radically differs from what was in place under the Forbearance Agreement. Specifically, the new structure does not terminate the Swaps or the Collateral Agreement or include the Service Corporations as signatory. Nor does it release Syncora from its Swap Insurance.

26. Instead, the City and the Swap Counterparties assume that the Court has the ability to release the liens granted under the Collateral Agreement. In addition, the City wraps into this settlement a plan support agreement that manufactures a new secured claim for the Swap Counterparties against the City. As described below, the new settlement fails for two principal reasons.

27. *First*, the new settlement assumes that the Court has the organic power to release the liens created by the Collateral Agreement — even though doing so would conflict with the governing documents.

28. *Second*, the new settlement modifies and amends the documents governing the Swap transaction. By doing so, the City and the Swap Counterparties are attempting to impair Syncora's third-party rights — a result that is expressly forbidden by *SportStuff*.

29. More generally, the problem with the City's approach is that it is attempting to craft a bilateral solution to a multi-lateral problem. In the spirit of compromise, Syncora has offered to consent to the settlement if it is released from its Swap Insurance, as it was under the prior settlement, thus foregoing its other arguments about the importance of the Swaps and the Collateral Agreement to the COPs. The Swap Counterparties have rejected this offer.

I. Legal Standard

A. Bankruptcy Rule 9019 is Not a Vehicle for the Destruction of Third-Party Rights.

30. Under Bankruptcy Rule 9019, a bankruptcy court may approve a settlement only if that settlement is fair and equitable and in the best interests of the estate. *In re SportStuff, Inc.*, 430 B.R. 170, 177 (B.A.P. 8th Cir. 2010); *see also In re Bard*, 49 Fed. App'x. 528, 530 (6th Cir. 2002); *In re Martin*, 212 B.R. 316, 319 (B.A.P. 8th Cir. 1997) (stating that the standard for compromise and approval of a settlement is whether the settlement is fair and equitable and in the best interests of the estate) *citing In re Apex Oil Co.*, 92 B.R. 847, 867 (Bankr. E.D. Mo. 1988). Before embarking on that analysis, however, the bankruptcy court must first be certain that the Proposed Settlement does not impair or extinguish the independent contractual rights of third parties. *In re SportStuff, Inc.*, 430 B.R. at 177. If the settlement does so, the bankruptcy court lacks the authority to approve the settlement-at-issue. *Id.* at 178; *see also In re Forty-Eight Insulations*, 133 B.R.

973, 979 (Bankr. N.D. Ill. 1991) (finding that court lacked authority under bankruptcy and non-bankruptcy law to approve a settlement and enter an order that impaired a non-debtor's contractual rights against another non-debtor).

31. *SportStuff* illustrates this well-established principle. In that case, a debtor manufacturer was the subject of multiple personal injury claims relating to one of its defective products. 430 B.R. 170, 174 (B.A.P. 8th Cir. 2010). The debtor filed an adversary proceeding seeking injunctive and declaratory relief against claimants who had suits against the debtor, its insurers, its vendors, and other indemnitees. *Id.* After the filing of this adversary proceeding, the debtor executed several settlements with its insurers that it submitted for approval under Bankruptcy Rule 9019. *Id.* The settlement agreements contained provisions, *inter alia*, releasing the insurer from any obligation to defend and indemnify the third-party vendors — none of whom were parties to the settlement agreements. *Id.* at 175. The vendors objected to the settlement agreements on the grounds that the settlement abrogated the separate contractual rights and state law causes of action the vendors possessed against the insurers. *Id.* The bankruptcy court overruled these objections and approved the settlements. *Id.*

32. On appeal, the Eighth Circuit Bankruptcy Appellate Panel reversed the bankruptcy court. Analyzing the various insurance contracts and the relationships between the parties, the appellate panel found that the settlements

impaired the vendors' independent contractual rights to assert claims against the insurer. *Id.* at 178-79. Because the settlements deprived the vendors of contractual rights without their compensation or consent, the appellate panel held that the bankruptcy court did not have jurisdiction to approve the settlement. *Id.* at 179 (“The bankruptcy court did not have the jurisdiction or authority to impair or extinguish these independent contractual rights.”).

B. A Debtor Does Not Obtain Additional Rights in Bankruptcy.

33. It is axiomatic that a debtor does not have more rights in bankruptcy than it does outside of bankruptcy. *In re ExpressTrak, L.L.C.*, 03-67235, 2004 WL 3735126 (Bankr. E.D. Mich. Jan. 20, 2004) (“[W]hatever rights the debtor has in property at the commencement of the case continue in bankruptcy—no more, no less.”) *quoting* 8 *Collier on Bankruptcy* ¶ 365.03[2] (15th ed. rev. 2003). As a result, bankruptcy is not intended to confer new and superior rights for the debtor, nor impair the operation of state laws governing the debtor's contracts. *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 918, 59 L. Ed. 2d 136 (U.S.N.C. 1979) (“Uniform treatment of property interests by both state and federal courts within a State serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving a windfall merely by reason of the happenstance of bankruptcy.”) (internal quotations and citations omitted). For this reason, the equitable power of a bankruptcy court does not and cannot extend so far as to

manufacture new rights for the debtor. *In re Dow Corning Corp.*, 456 F.3d 668, 679 (6th Cir. 2006) (“Despite the equitable nature of bankruptcy proceedings, the bankruptcy judge does not have free-floating discretion to redistribute rights in accordance with his personal views of justice and fairness.”) (quotation omitted).

II. The Proposed Settlement Agreement Improperly Attempts to Expand the Court’s Power and Destroy Third-Party Rights.

34. The Proposed Settlement fails for two separate reasons. First, it attempts to effectuate a release of the liens that (a) the Court does not have the power to order and (b) is at odds with the governing documents. Second, it would impair many of the rights that Syncora was provided under the Swaps, the Collateral Agreement, and the Contract Administration Agreement, which is impermissible under *SportStuff*.

A. The Court Lacks the Organic and Contractual Power to Destroy Liens.

1. The Bankruptcy Does Not Have the Power to Effectuate the Release Contemplated by the Proposed Settlement and Order.

35. The Collateral Agreement created two different liens on the Casino Revenues — the City’s pledge to the Service Corporations and the Service Corporation’s grant of a security interest in that pledge to the Swap

Counterparties.² Thus, the City grants only one lien under the Collateral Agreement, and it grants that lien to the Service Corporations. The City has never granted a direct lien to the Swap Counterparties.

36. At the center of the Proposed Settlement is the City's and Swap Counterparties' request that the Court enter an order releasing both of these liens. (Proposed Order ¶ 14) (“[U]pon full payment by the City to UBS and MLCS of the Distribution Amount, all liens on the Pledged Property,³ including without limitation the Liens, shall be released without any further action or agreement by UBS, MLCS, the Custodian or any other person” (Proposed Order ¶ 14 (emphasis added).) Notably though, in support of this request, the City and the Swap Counterparties do not rely on any provision in the Collateral Agreement to explain the release of those liens. And they do not purport to terminate the Collateral Agreement (because they cannot). Instead, they simply assume — in

² Section 4.1(b) of the Collateral Agreement states that “[t]he City pledges to the Service Corporations and creates a first priority lien upon all of the City's right, title and interest in, to and under the Pledged Property, whether received or to be received, in order to secure the payment of all City Hedge Payables Related Obligations.” Section 4.2 states that the “[e]ach Service Corporation grants a security to the Counterparties in all of the Service Corporation's right, title and interest in, to and under the City Hedge Payables Related Obligations and the City Pledge.”

³ The proposed Order defines “Pledged Property” as “the collateral . . . pledged by the City under the Collateral Agreement and/or Ordinance No. 05-09 of the City.” (Proposed Order ¶ 9.)

both the Motion and the proposed Order — that the Court has the organic legal authority to release the liens in aid of their settlement.

37. As noted above, however, a debtor does not have more rights in bankruptcy than it does outside of bankruptcy. Despite this limitation, that is exactly what the City and the Swap Counterparties are seeking to accomplish here — namely, they are attempting to release the liens held by the Service Corporations even though the Service Corporations have not provided their consent to the release of the liens and are not parties to the new agreement. In short, the City and the Swap Counterparties are attempting to accomplish via court Order what they could not accomplish contractually — a clear violation on the restrictions on a debtor’s rights in bankruptcy.

2. The Purported Operation of the Proposed Settlement is at Odds with the Governing Documents.

38. Throughout its Motion, the City is careful to characterize its requested relief — the release of all liens on the Pledged Property — as a termination of the “lockbox structure” or the satisfaction of a “secured claim,” and never as a termination of the Collateral Agreement. The reason for this smokescreen is simple — though the City and the Swap Counterparties recognize that the termination of the Collateral Agreement (and the related liens) is a critical aspect of the Proposed Settlement, they also recognize that their attempt to terminate the

Collateral Agreement is impossible under the documents without the consent of Syncora and the Service Corporations.

39. Under the Collateral Agreement, a termination occurs only upon “the termination or expiration of the Hedges and each Counterparty’s delivery of confirmation to the Custodian of the payment in full of all obligations of the Service Corporations and the City to each Counterparty thereunder and hereunder.” (CA § 14.4(a) (emphasis added).) The Proposed Settlement provides, however, that the Swaps (the “Hedges”) will not be terminated. Nor does the Proposed Settlement contemplate the satisfaction of the Service Corporations’ obligations.

40. As a result, the Service Corporations’ obligations to make the Swap payments to the Swap Counterparties remain in place. (Term Sheet at 3.) Thus, as it is currently constructed, the Proposed Settlement does not meet the two termination requirements under section 14.4(a) of the Collateral Agreement because it does not obtain the consent of the Service Corporations. As a result, the Collateral Agreement does not terminate.

41. An alternative pathway to the release of the liens would be to amend the Collateral Agreement. But the Collateral Agreement requires that any amendments or modifications to its terms — including the terms governing termination — be consented to in writing by all the parties to the agreement and the Swap Insurers. (CA § 14.5.) However, the Service Corporations (which are

signatories to the Collateral Agreement) are not parties to the Proposed Settlement and thus cannot have consented to the numerous modifications of the Collateral Agreement. Nor has Syncora. Thus, in addition to the two technical requirements in section 14.4(a), the Proposed Settlement's attempt to terminate the Collateral Agreement also fails if viewed as an attempted amendment.

42. Because the Collateral Agreement does not terminate, the liens granted by that agreement to the Service Corporations and the Swap Counterparties also survive the Proposed Settlement. Yet, as noted above, the central purpose of the Proposed Settlement is the release of these liens in exchange for the City's \$85 million payment. Under the current structure though, the casino revenues continue to be subject to a lien held by the Service Corporations. As a result, the only benefit of the Proposed Settlement is the City paying \$85 million for a plan support agreement from a party that does not possess a secured claim against the City, and that is not empowered to release any secured claim under the Proposed Settlement.

43. The City and the Swap Counterparties are thus in a box — either the Proposed Order violates the law by releasing liens that cannot be released or the liens are not released and the Settlement makes no sense.

B. The Provisions of the New Settlement Impair Syncora's Third-Party Rights.

44. The Proposed Settlement has three primary elements. First, it requires the Swap Counterparties to vote in favor of the City's proposed Plan of

Adjustment. Second, it provides the City with access to the Casino Revenues by modifying the automatic cash-trapping provision in the Collateral Agreement. Third, it attempts to effectuate a broad third-party release. Each of these elements, however, is at odds with Syncora's consent and control rights under the governing documents.

1. The Plan Support Agreement Impairs Syncora's Right to Control the Actions of the Swap Counterparties

45. As part of the Proposed Settlement, the Swap Counterparties have agreed to enter into a plan support agreement requiring them to vote in favor of the City's Plan of Adjustment in exchange for the \$85 million payment. (Term Sheet at 1–2.) In so doing, the Swap Counterparties have placed control of their purported voting rights in the hands of the City (to the extent they have any).

46. The Contract Administration Agreement provides, however, that Syncora, as an insurer, shall “control all actions that may be taken by any Specified Hedge Counterparty that is the beneficiary of such Credit Insurance, including for purposes of actions permitted to be taken by such Specified Hedge Counterparty under this Agreement and for the purposes of giving all other directions, consents and waivers that such Specified Hedge Counterparty may give.” (CAA § 6.9.2(2) (emphasis added).) The plain language of this section therefore permits Syncora to direct the actions of the Swap Counterparties when, for example, they attempt to

compromise or diminish their claims under the Swaps — the payment of which Syncora purportedly insures.

47. Nevertheless, the plan support agreement requires the Swap Counterparties to vote in favor of the City's proposed plan — seemingly irrespective of Syncora's direction. Because the plan support agreement purportedly deprives Syncora of its ability to control the Swap Counterparties' vote, it violates section 6.9.2(2) of the Contract Administration Agreement.⁴ As a result, Syncora's rights under the Contract Administration Agreement are not merely *prejudiced*, they are *impaired* without Syncora's consent. This is precisely the type of impairment that *SportStuff* forbids. *See SportStuff*, 430 B.R. at 180.

2. The Proposed Settlement Modifies the Collateral Agreement and Swap Agreement.

48. Under the Swaps and the Collateral Agreements, Syncora possesses a number of rights. For example, the Collateral Agreement provides Syncora with the right to consent to any amendment of the Collateral Agreement that affects Syncora's rights, obligations, or remedies. (CA § 14.5.) Under this provision, Syncora has consent rights regarding any amendments to the Collateral Agreement that operate to its detriment — for example, a change to the nature of the security

⁴ Syncora reserves all rights to object to the plan support agreement during plan confirmation proceedings on the grounds that, *inter alia*, the plan support agreement cannot be signed or carried out by the Swap Counterparties.

granted to the Swap Counterparties. The rationale for these provisions is clear — Syncora, as the Swap insurer, could ultimately be liable and therefore must consent to any amendments to the documents that effect its rights as a subrogee. Syncora is a third-party beneficiary of the Collateral Agreement under New York law. *Septembertide Pub., B.V. v. Stein & Day, Inc.*, 884 F.2d 675, 679 (2d Cir. 1989) (finding that a party was a third-party beneficiary where the recognition of a right of performance is appropriate to effectuate the intention of the parties as evidenced by the language of the contract, and the “the timing, language, and financial obligations” created by the contract indicate that the parties’ intent was to benefit the third party).

49. Similarly, the Swaps provide Syncora with the right to consent, in writing, to (a) any “waivers, modifications, or amendments” to the Swaps or the Collateral Agreement; and (b) any terminations of the Swap due to the existence of termination events and events of default. (Amended and Restated Schedule to the Swap Agreement (“A&R”), Ex. G at Part 5(i), 8(b).) The Swaps agreement also allows Syncora to subrogate to the all of the rights of the Swap Counterparties to extent of Syncora’s payments. (*Id.* at Part 5(xiii).) Finally, the Swaps expressly state that Syncora is a third-party beneficiary. (*Id.* at Part 5(xi).)

50. Despite the consent provisions contained in the Collateral Agreement and the Swaps, the Proposed Settlement attempts to amend and modify these agreements without Syncora's consent. Such modifications include the following:

- The Proposed Settlement allows the Casino Revenues to flow out of the General Receipts Subaccount. (Settlement Mot. p. 18.) This provision modifies the plain language of the Collateral Agreement, which requires automatic trapping upon the occurrence of certain events. (CA § 5.4.)
- The Proposed Settlement provides the Swap Counterparties with liens on the collateral pledged by the City under the Collateral Agreement and/or City Ordinance No. 05-09. (Settlement Mot. p. 19.) This provision conflicts with the Collateral Agreement, which states that the City may not grant liens on the Pledged Property that are equal or senior in status to those created by the Collateral Agreement. (CA §§ 9.1–9.2.)
- The Proposed Settlement operates to amend the Collateral Agreement without the written consent of the Service Corporations or Syncora. (Term Sheet at 1.) This provision conflicts with the provision in the Collateral Agreement requiring that all amendments be signed by all parties to the agreement. (CA § 14.5 and ISDA Master Agreement (“ISDA MA”), Ex. H at § 8(b).)
- The Proposed Settlement provides the Swap Counterparties with the option to terminate the Swaps. (Term Sheet at 3–4.) This provisions conflicts with the provisions in the Swaps requiring Syncora's consent before the termination of the Swaps. (ISDA MA § 6(e); A&R § 5(iv).)

51. Thus, as in *SportStuff*, the City's Proposed Settlement attempts to prevent Syncora from exercising its right to consent to modifications and amendments of contracts that govern obligations that it insures — and for which it purportedly remains liable under the Proposed Settlement. In so doing, the

Proposed Settlement attempts to extinguish many of Syncora's rights under the Swaps transaction documents — and thus goes well beyond mere “prejudice” to a creditor. Most significantly, the Proposed Settlement has a detrimental effect on Syncora's rights as a subrogee as it unsecures Syncora's insurance obligations under the Swaps (to the extent those insurance obligations remain). Accordingly, the instant settlement, like the settlement in *SportStuff*, should not be approved.

3. The Broad Third-Party Release Contained in the Proposed Settlement Violates Sixth Circuit Law.

52. As part of the Proposed Settlement, the City provides the Swap Counterparties with a broad third-party release and suit injunction against all parties with contribution or indemnity claims against the Swap Counterparties arising from anything related to the COPs/Swaps structure. This provision does not, however, satisfy the rigorous standard that the Sixth Circuit applies to non-consensual third-party releases.

53. Under *In re Dow Corning Corp.*, the Sixth Circuit held that “enjoining a non-consenting creditor's claim is only appropriate in unusual circumstances. 280 F.3d 648, 659 (6th Cir. 2002) (internal quotations omitted). To determine whether an injunction is appropriate the following seven factors must be present:

- There is an identity of interests between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate;

- The non-debtor has contributed substantial assets to the reorganization;
- The injunction is essential to the reorganization, namely, the reorganization hinges on the debtor being free from indirect suits against the parties who would have indemnity or contribution claims against the debtor;
- The impacted class, or classes, has overwhelmingly voted to accept the plan;
- The plan provides a mechanism to pay for all, or substantially all, of the class or classes affected by the injunction;
- The plan provides an opportunity for those claimants who choose not to settle to recover in full; and
- The bankruptcy court made a record of specific factual findings that support its conclusions.

Id.

54. Though these factors are tailored to the plan context, they also provide a useful guide to the propriety of a non-consensual third-party release in the 9019 context, which provides much less in the way of creditor protections. Nevertheless, in this situation, the Proposed Settlement does not meet the factors set forth in *In re Dow Corning Corp.*

55. Most significantly, while the Proposed Settlement affects Syncora, there is no mechanism that would allow Syncora to be paid in full. In fact, the Proposed Settlement explicitly states that “neither UBS nor MLCS will exercise any right, claim or remedy against a Swap Insurer in connection with the Swap Insurer in connection with the Swap Insurance Policies that results in the Swap

Insurer acquiring an allowed claim for reimbursement, or an allowed secured claim by way of subrogation, against the City.” (Proposed Order ¶ 19.)

56. In addition, there is no evidence that the injunction is essential to reorganization or that the Swap Counterparties have contributed substantial assets to the City’s proposed Plan of Adjustment. In fact, if the settlement is approved, Syncora intends to argue that the Swap Counterparties’ claim has been manufactured for plan confirmation purposes.⁵

57. Accordingly, Syncora submits that the broad third-party injunction is improper and is yet another example of the City and the Swap Counterparties attempting to impair Syncora’s rights.

Reservation Of Rights

58. In submitting this Objection, Syncora reserves all rights, claims, remedies, and defenses it has to the Swap Counterparties and the City’s actions.

Conclusion

59. For the foregoing reasons, Syncora respectfully respects that the Court deny the City’s motion to approve the Settlement Agreement pursuant to Bankruptcy Rule 9019.

⁵ Syncora reserves its right to argue that the Swap Counterparties do not possess a secured claim for purposes of plan confirmation in the absence of an actual termination of the Swaps, which, as noted above, does not occur under the Proposed Settlement.

Dated: March 17, 2014

/s/ Ryan Blaine Bennett

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Inc.*

EXHIBIT A

Collateral Agreement

Collateral Agreement

among

The City of Detroit,

Detroit General Retirement System Service Corporation

and

Detroit Police and Fire Retirement System Service Corporation,

severally and not jointly,

U.S. Bank National Association,

as Custodian

and the

Other Persons Party Hereto

Dated as of June 15, 2009

Table of Contents

Article I. Definitions and Related Matters	1
Section 1.1. Certain Definitions.....	1
Section 1.2. Definitions in Authorizing Ordinance	8
Section 1.3. Definition of <i>Counterparty</i>	9
Section 1.4. Definition of <i>Developer Payments</i> and Ancillary Definitions	9
Section 1.5. Definition of <i>Holdback Requirement</i> and Ancillary Definitions.....	11
Section 1.6. Definition of <i>Wagering Tax Property</i> and Ancillary Definitions.....	12
Section 1.7. Time	12
Section 1.8. Business Days.....	12
Section 1.9. Interpretation.....	12
Article II. Effectiveness of this Agreement.....	13
Section 2.1. Closing Date	13
Section 2.2. Satisfaction of Conditions Precedent.....	13
Section 2.3. Factual Conditions Precedent	13
Section 2.4. Documentary Conditions Precedent	13
Article III. General Provisions; Irrevocable Instructions.....	13
Section 3.1. Appropriation.....	13
Section 3.2. No Indebtedness.....	14
Section 3.3. Contractual Obligations	14
Section 3.4. Irrevocable Instructions	14
Section 3.5. Payments from Accounts.....	15
Article IV. Pledges and Grant of Security Interests.....	15
Section 4.1. City Pledge.....	15
Section 4.2. Service Corporation Grant of Security Interests.....	15
Section 4.3. Alternative Service Corporation Pledge	16
Article V. Certain Payments.....	16
Section 5.1. Payment of Revenues	16
Section 5.2. Monthly Payments by City	17
Section 5.3. Payments to City from General Receipts Subaccount.....	17
Section 5.4. When Payments from General Receipts Subaccount Prohibited.....	18
Section 5.5. Payments to City from Holdback Account.....	18
Section 5.6. Payments by City to Holdback Account.....	19
Section 5.7. Payments to the Counterparties and the Custodian from Holdback Account ..	19
Section 5.8. Payment Determinations.....	19
Article VI. Representations and Warranties of the City.....	20
Section 6.1. General Representations and Warranties.....	20
Section 6.2. Revenues.....	21
Section 6.3. Developer Agreements and Guaranties	21
Section 6.4. No Other Liens, Charges or Encumbrances	21
Section 6.5. No Control Granted	22
Article VII. Representations and Warranties of Service Corporations	22
Section 7.1. General Representations and Warranties.....	22
Section 7.2. Concerning the Security Interests.....	23

Article VIII. The Accounts.....	24
Section 8.1. Establishment of Accounts	24
Section 8.2. Developer Subaccounts	25
Section 8.3. Receipt of Revenues	25
Section 8.4. Transfer of Revenues to General Receipts Subaccount.....	25
Section 8.5. Receipt of City Payments	26
Section 8.6. General Receipts Account	26
Section 8.7. Holdback Account	26
Section 8.8. Investments	26
Article IX. City Covenants.....	26
Section 9.1. No Senior or Parity Pledges or Liens	26
Section 9.2. Junior Pledges or Liens.....	26
Section 9.3. Further Assurances	27
Section 9.4. No Control Granted	27
Section 9.5. Excluded Property	27
Section 9.6. No Development Agreement Amendments.....	27
Article X. Service Corporation Covenants.....	28
Section 10.1. No Pledges of Liens of Service Corporation Property	28
Section 10.2. No Control Granted	28
Section 10.3. Excluded Property	28
Section 10.4. Alternative Taxes.....	28
Section 10.5. Alternative Payment of Developer Payments.....	28
Section 10.6. Further Assurances	28
Article XI. Remedies.....	29
Section 11.1. Remedies under Hedges	29
Section 11.2. Remedies as Secured Party.....	29
Section 11.3. Limitation on Remedies.....	30
Section 11.4. Failure to Appropriate.....	30
Section 11.5. Indemnity	30
Section 11.6. <i>Specified Event</i> means any of the following events:	31
Article XII. The Custodian	33
Section 12.1. No Fiduciary Duties or Responsibilities.....	33
Section 12.2. Duties and Responsibilities.....	33
Section 12.3. Certain Rights of Custodian.....	34
Section 12.4. May Hold 2006 Pension Funding Securities.	34
Section 12.5. Reporting of City Payments.....	35
Section 12.6. Weekly Reports	35
Section 12.7. Monthly Holdback Compliance Notice	35
Section 12.8. Quarterly Accounting	35
Section 12.9. Coverage Reports.....	35
Section 12.10. Compensation, Reimbursement and Indemnification.....	36
Section 12.11. Prior Payment of Regular Custodian Payments.....	37
Section 12.12. Corporate Custodian Required; Eligibility.	37
Section 12.13. Replacement of Custodian.....	37
Section 12.14. Merger, Consolidation and Succession to Business.	38

Article XIII. Interest Rate Limitation38

Article XIV. Miscellaneous39

Section 14.1. Addresses for Notices39

Section 14.2. Copies of Notices.....40

Section 14.3. Expenses40

Section 14.4. Termination.....40

Section 14.5. Amendment.....41

Section 14.6. Rights of Insurer41

Section 14.7. No Waiver.....41

Section 14.8. Binding Obligation41

Section 14.9. Assignment41

Section 14.10. Governing Law41

Section 14.11. Venue.....41

Section 14.12. WAIVERS OF JURY TRIAL.....42

Section 14.13. Headings and Table of Contents.....42

Section 14.14. Entire Agreement.....42

Section 14.15. Counterparts.....42

THIS COLLATERAL AGREEMENT IS ENTERED INTO FOR SETTLEMENT PURPOSES

Collateral Agreement, dated as of June 15, 2009 (the *Agreement*), among the **City of Detroit**, a municipal corporation organized and existing under the laws of the State of Michigan (the *City*), the **Detroit General Retirement System Service Corporation** (the *GRS Service Corporation*) and the **Detroit Police and Fire Retirement System Service Corporation** (the *PFRS Service Corporation*), each a nonprofit corporation organized and existing under the laws of the State of Michigan, acting severally and not jointly, **U.S. Bank National Association**, a national banking association with its principal place of business in Minneapolis, Minnesota (the *Custodian*), **UBS AG (UBS)**, **SBS Financial Products Company, LLC (SBS)** and collectively with UBS, the *2006 Counterparties*) and **Merrill Lynch Capital Services, Inc.**, as credit support provider to SBS and, upon the occurrence of certain events, successor to SBS,.

W I T N E S S E T H:

Whereas, in January 2009, the 2006 Counterparties notified the City, the GRS Service Corporation and the PFRS Service Corporation (each, a *Service Corporation* and collectively, the *Service Corporations*) that they believed that an event had occurred which entitled them to declare a certain “additional termination event” (the *2006 Additional Termination Event*) under the respective interest rate swap agreements (each, a *2006 Hedge* and collectively, the *2006 Hedges*) entered into by the Service Corporations and the 2006 Counterparties as part of the 2006 Transaction (the *2006 Transaction*) described in Ordinance No. 05-09 (the *Authorizing Ordinance*) undertaken by the City as part of its Pension System Funding Program described in therein;

Whereas, also as part of the 2006 Transaction the City entered into a Service Contract (a *2006 Service Contract*) with each Service Corporation (collectively, the *2006 Service Contracts*), which, among other things, provided for the City to make payments to the Service Corporations sufficient to pay amounts owing by the Service Corporations under their respective 2006 Hedges;

Whereas, the declaration of the 2006 Additional Termination Event could have resulted in the imposition of an immediate obligation on the City to make a combined payment to the Service Corporations in the range, estimated in January 2009, of \$300 million to \$400 million;

Whereas, the City Council adopted the Authorizing Ordinance on May 26, 2009, in contemplation of settlement with the Counterparties pursuant to the Definitive Documents;

Now, Therefore, in exchange for a waiver of the rights of each Counterparty to declare the 2006 Additional Termination Event and for a rescission of any declaration of the 2006 Additional Termination Event by a Counterparty made through the below defined Closing Date, and in the interest of avoiding fees and expenses of litigation and the delays that would result should litigation ensue, the parties hereto agree as follows:

Article I. Definitions and Related Matters

Section 1.1. Certain Definitions

Account means an account established by **Section 8**.

Accrued Service Charges has the meaning given that term in the Service Contracts.

Additional Termination Event has the meaning given that term in the Hedges.

Additional Wagering Taxes has the meaning given that term in **Section 1.6**.

Affected Party has the meaning given that term in the Hedges.

Agreement has the meaning given that term in the first paragraph of this instrument as it may be modified or amended pursuant to the terms hereof.

Alternative Taxes has the meaning given that term in **Section 1.6**.

Article 9 has the meaning given that term in **Section 1.2**.

Authorized Investments means (i) Any of the following to the extent an authorized investment of City funds at the time of investment:

(A) full faith and credit obligations of the United States of America maturing (or subject to redemption at the option of the holder) on or before the first anniversary of the investment,

(B) shares or other undivided interests in First American U.S. Treasury Money Market Fund,

(C) shares or other undivided interests in First American Treasury Obligation Fund, and

(ii) such other investments to the extent authorized investments of City funds at the time of investment that are acceptable to the Counterparties.

Authorizing Ordinance has the meaning given that term in the preamble hereto.

Business Day means a day on which the Custodian is open for the transaction of business in the City and State of New York and the City is open for business in Detroit, Michigan.

Casino Licensee has the meaning given that term in **Section 1.2**.

City has the meaning given that term in the preamble hereto.

City Charter means the Charter of the City of Detroit, Michigan.

City Hedge Payables Related Obligations has the meaning given that term in **Section 1.2**.

City Payment has the meaning given that term in **Section 5.2**.

City Pledge has the meaning given that term in **Section 4.1**.

Closing means the satisfaction of the conditions precedent to the effectiveness of this Agreement as evidenced by the Closing Certificate.

Closing Certificate means the certificate identified as such in **Exhibit 2.4**.

Closing Date means the date on which the Closing occurs.

Contract Administration Agreement has the meaning given that term in the Service Contracts.

Contract Administrator has the meaning given that term in the Service Contracts.

Counterparty has the meaning given that term in **Section 1.3**.

Custodian means the Person identified in the first paragraph of this Agreement as the “Custodian” *unless and until* a successor is appointed successor Custodian pursuant to applicable provisions of this Agreement; *thereafter*, **Custodian** means such successor.

Custodian Payment means any amount to which the Custodian is entitled pursuant to **Section 12.10**.

Defaulting Party has the meaning given that term in the Hedges.

Definitive Documents means:

- (i) this Agreement,
- (ii) the Service Contract Amendments,
- (iii) the Hedge Amendments and
- (iv) the Irrevocable Instructions.

Detroit Entertainment Subaccount means the Developer Subaccount with respect to Detroit Entertainment, L.L.C.

Developer has the meaning given that term in **Section 1.4**.

Developer Payments has the meaning given that term in **Section 1.4**.

Developer Subaccount means a subaccount established in the Receipts Account with respect to a Developer.

Development Agreement has the meaning given that term in **Section 1.4**.

Event of Default has the meaning given that term in the Hedges.

Excluded Indebtedness means any obligations of the City payable from receipts derived from the ownership, operation or disposition of projects or systems (such as the City's Water Supply System or Sewerage Disposal System Bonds) or other special revenues as defined in Bankruptcy Code Section 902.

Excluded Property means:

- (i) Revenues, and proceeds thereof, paid to the City from the General Receipts Subaccount, or released to the City from the Holdback Account, pursuant to this Agreement and
- (ii) the right of the City to receive any such amounts as and when paid or released.

Existing Casino has the meaning given that term in **Section 1.4**.

Existing Developer has the meaning given that term in **Section 1.4**.

Existing Development Agreement has the meaning given that term in **Section 1.4**.

Existing Payment Section has the meaning given that term in **Section 1.4**.

Final Payment means, as of a Term Period End Date or the date that an Unqualified Hedge Event occurs, the sum of:

- (i) any Custodian Payment then due and owing to the Custodian *plus*

(ii) in the case of:

(A) a Term Period End Date, the balance of any unpaid amounts (including, but not limited to, any Hedge Termination Payables) owing to the Counterparties under the Hedges and this Agreement *plus* an amount equal to any interest at the Interest Rate owing to the Counterparties under the Hedges; or

(B) an Unqualified Hedge Event, the payment of any unpaid amounts (including, but not limited to, any Hedge Termination Payables) owing to the Counterparties under the Hedges and this Agreement.

Finance Director means the Finance Director of the City or any other person authorized or permitted by law to fulfill functions of the Finance Director during any period of absence or incapacity of the Finance Director.

Fiscal Year means the City's fiscal year, which currently commences on July 1 and ends on the following June 30.

Fixed Amounts has the meaning given that term in the Hedges.

Fixed Rate Payer Period End Date means a March 15, June 15, September 15 or December 15.

Floating Amounts has the meaning given that term in the Hedges.

General Receipts Subaccount means the subaccount established in the Receipts Account pursuant to **Section 8.1**.

Greektown Subaccount means the Developer Subaccount with respect to Greektown Casino, L.L.C.

GRS Service Corporation means the Person so defined in the first paragraph of this Agreement and the successors of such Person.

Government Exception has the meaning given that term in **Section 4.3**.

Guaranty means any agreement or form of credit enhancement that protects the City against loss by reason of the failure of a Developer to make Developer Payments, whether by guaranty, assurance, subrogation, setoff, indemnity, insurance, collateral, security or otherwise.

Hedge means each of the 2006 Hedges as amended by the Hedge Amendments and as may be further amended in accordance with the terms thereof, including in the case of the 2006 Hedge with SBS, the Transaction Transfer Agreement and, upon a Transfer Party Accession Event, the related Transfer Hedge.

Hedge Amendments means the amendments to the 2006 Hedges with an effective date that corresponds to the Closing Date.

Hedge Event means the occurrence of a Termination Event or the continuance of an Event of Default under a Hedge (as such terms are defined in such Hedge) where the City is obligated to pay a termination payment to one or more Counterparties.

Hedge Payables has the meaning given that term in **Section 1.2**.

Hedge Periodic Payables has the meaning given that term in **Section 1.2**.

Hedge Termination Payable has the meaning given that term in the Service Contracts.

Holdback Account means the Account by that name established pursuant to **Section 8.1**.

Holdback Requirement has the meaning given that term in **Section 1.5**.

Insurer means, as the context may require, Financial Guaranty Insurance Corporation or Syncora Guaranty Inc, or any successor of either of them to the insurance obligations of its predecessor with respect to the insurance of the payment obligations of a Service Corporation under a Hedge.

Interest Rate means the “Specified Default Rate” (as such term is defined in the Hedges).

Irrevocable Instruction has the meaning given that term in **Section 3.4**.

Limitation on Remedies has the meaning given that term in **Section 11.3**.

MGM Grand Subaccount means the Developer Subaccount established with respect to MGM Grand Detroit, L.L.C.

Month means one of three months of a Quarterly Period, each of which has substantially equal days and ends on the 15th day (whether or not a Business Day) of the corresponding calendar month.

Monthly Coverage has the meaning given that term in **Section 12.9**.

Monthly Coverage Report has the meaning given that term in **Section 12.9**.

Monthly Holdback Compliance Notice has the meaning given that term in **Section 12.7**.

New Developer has the meaning given that term in **Section 1.4**.

New Development Agreement has the meaning given that term in **Section 1.4**.

New Payment Section has the meaning given that term in **Section 1.4**.

Notional Holdback Amount means the amount that would have been payable under clause (ii) of the definition of Standard Holdback Requirement had a Termination Event not occurred.

Obligor has the meaning given that term in **Section 3.4(c)**.

Outside Supplemental Appropriations Date means the date which is the earlier to occur of:

(i) the 120th day following the date on which the termination of any Hedge occurs and

(ii) the expiration of the first 60 calendar days during which the City Council is in regular session following the date on which the termination of any Hedge occurs.

Payment Date means the earlier to occur of (i) second Business Day preceding the end of a Month or (ii) the Term Period End Date.

Payment Section has the meaning given that term in **Section 1.4**.

Payment Time means 2:00 p.m.

Permitted Liens has the meaning given that term in **Section 9.2**.

Person means any natural person, firm, association, corporation, trust, partnership, joint venture, joint-stock company, municipal corporation, public body or other entity, however organized.

PFRS Service Corporation means the Person so defined in the first paragraph of this Agreement and the successors of such Person.

Pledged Property has the meaning given that term in **Section 1.2**.

Predecessor Developer has the meaning given that term in **Section 8.2**.

Public Act means a statute of the State of Michigan.

Qualified Hedge Event means a Hedge Event that arises because of a Specified Additional Termination Event.

Quarterly Accounting has the meaning given that term in **Section 12.8**.

Quarterly Coverage has the meaning given that term in **Section 12.9**.

Quarterly Coverage Report has the meaning given that term in **Section 12.9**.

Quarterly Payment means, as to any Quarterly Period, the amount of all City Payments due and owing as of the last day of such Quarterly Period.

Quarterly Period means a period of days from and including each Fixed Rate Payer Period End Date but excluding the next succeeding Fixed Rate Payer Period End Date (whether or not such date is a Business Day).

Ratings Downgrade has the meaning given that term in **Section 1.5**.

Ratings Upgrade has the meaning given that term in **Section 1.5**.

Ratings Upgrade Period has the meaning given that term in **Section 1.5**.

Receipts Account means the Account by that name established pursuant to **Section 8.1** and includes the General Receipts Subaccount and each Developer Subaccount established pursuant to **Section 8.2**.

Receipt Day means a Business Day on which the Custodian receives an amount of money at or before the Payment Time *or if* the Custodian receives an amount of money on any day after the Payment Time, *then* the following Business Day.

Reduced Holdback Requirement has the meaning given that term in **Section 1.5**.

Regular Custodian Payments means any amount to which the Custodian is entitled pursuant to **Section 12.10(a)**.

Regular Scheduled Payments has the meaning given that term in the Service Contracts.

Release Date has the meaning given such term in **Section 5.5**.

Relevant Amount means, for any Month during the Term Payment Period, an amount equal to the sum of the following:

- (i) any Regular Custodian Payment due and owing to the Custodian during such Month;

(ii) *plus* the greater of:

(A) \$4,228,081.30 and

(B) the Notional Holdback Amount;

(iii) *plus*, subject to **Section 5.2(e)**, an amount equal to any interest at the Interest Rate owing to the Counterparties under the Hedges.

Reporting Period has the meaning given that term in **Section 12.9**.

Revenues has the meaning given that term in **Section 1.2**.

SBS means SBS Financial Products Company, LLC and its successors and assigns.

Service Charges has the meaning given that term in the Service Contracts.

Service Contract means each of the 2006 Service Contracts as amended by the Service Contract Amendments and as each may be further amended in accordance with the terms thereof.

Service Contract Amendments means the amendments to the 2006 Service Contracts with an effective date that corresponds to the Closing Date.

Service Corporation means the GRS Service Corporation or the PFRS Service Corporation, as the context may require.

Service Corporation Pledge has the meaning given that term in **Section 4.3**.

Service Corporation Property has the meaning given that term in **Section 4.2**.

Service Corporation Security Interest has the meaning given that term in **Section 4.2**.

Settlement Transaction means, collectively, the terms contained in each of the following agreements: this Agreement, the Hedge Amendments, the Service Contract Amendments and any other substantive agreement or documents (including, but not limited to, the Irrevocable Instructions and, to the extent not listed in the foregoing, the Definitive Documents) delivered as part of the Closing. For the avoidance of doubt, “substantive agreement” does not include any certificate or opinion delivered as part of the Closing.

Sinking Fund Installments has the meaning given that term in the Service Contracts.

Specified Additional Termination Event means has the meaning given that term in each of the Hedges.

Specified Event has the meaning given that term in **Section 11.6**.

Standard Holdback Requirement has the meaning given that term in **Section 1.5**.

Subject Month has the meaning given that term in **Section 12.9**.

Subject Quarter has the meaning given that term in **Section 12.9**.

Supplemental Appropriation means, with respect to any Fiscal Year in which a Qualified Hedge Event occurs, the amount necessary, when added to amounts previously appropriated and unexpended during such Fiscal Year, to pay the Relevant Amount each Month during such Fiscal Year.

Termination Event has the meaning given that term in the Hedges.

Term Payment Period means a period beginning on the day that a Qualified Hedge Event occurs and ending on Term Period End Date.

Term Period End Date means, as to a Qualified Hedge Event and corresponding Term Payment Period, the earlier to occur of (i) the seventh anniversary of such Qualified Hedge Event and (ii) the date on which occurs a Specified Event.

Threshold means ad valorem property taxes levied by the City, whether pursuant to the City Charter or Section 6093 *et seq.* of Public Act 236 of 1961, as amended, of 3 mills in any Fiscal Year in excess of 19.952 mills of ad valorem taxes levied by the City for general City purposes pursuant to the City Charter for the Fiscal Year ending on June 30, 2009.

Transfer Hedge has meaning given that term in the Service Contracts.

Transfer Party has the meaning given that term in the Service Contracts.

Transfer Party Accession Event has the meaning given that term in the Contract Administration Agreement.

2006 Funding Trust means the Detroit Retirement Systems Funding Trust 2006 established by the Trust Agreement, dated June 12, 2006, among the Service Corporations and U.S. Bank National Association as trustee, as amended in accordance with its terms.

2006 Hedge has the meaning given that term in the preamble hereto.

2006 Pension Funding Securities means the Certificates of Participation issued by the 2006 Funding Trust.

2006 Service Contract has the meaning given that term in the preamble hereto.

2006 Transaction has the meaning given that term in the preamble hereto.

UCC means the Uniform Commercial Code as in effect in the State of Michigan.

Unqualified Hedge Event means a Hedge Event *other* than a Qualified Hedge Event.

Wagering Tax Property has the meaning given that term in **Section 1.6**.

Wagering Tax Revenue Statute has the meaning given that term in **Section 1.2**.

Wagering Taxes has the meaning given that term in **Section 1.6**.

Section 1.2. Definitions in Authorizing Ordinance

The following terms are defined in the Authorizing Ordinance, as in effect on the date hereof, and are used herein as therein defined as of the date hereof. Such terms are set forth below for convenience of reference:

Article 9 means the Michigan Uniform Commercial Code – Secured Transactions, being MCL 440.9101 *et seq.*

Casino Licensee has the same meaning given such term in Section 18-14-2 of the Detroit City Code.

City Hedge Payables Related Obligations mean the City's obligation, whether now existing or hereafter arising, to pay to each Service Corporation under the respective Service Contract

the amounts of the Hedge Payables as such amounts may now or hereafter become due and payable.

Hedge Payables means, collectively, the Hedge Payables as defined in each Service Contract.

Hedge Periodic Payables means, collectively, the Hedge Periodic Payables as defined in each Service Contract.

Pledged Property means the Revenues, any investments made from time to time thereof, the Receipts Account and the Holdback Account, all amounts standing to the credit thereof from time to time, and any and all proceeds of any thereof.

Revenues means, collectively, Developer Payments and Wagering Tax Property.

Wagering Tax Revenue Statute means the Michigan Gaming Control and Revenue Act, being MCL 432.201 *et seq.*, MSA 18.969(201), *et seq.*, as amended.

Section 1.3. Definition of Counterparty

(a) **Counterparty** means a Person designated as “Party A” in a Hedge, and any successor thereto or assignee of, or subrogee under, such Hedge pursuant to the terms thereof, except as otherwise provided in **this Section**.

(b) The definition of Counterparty includes the Transfer Party:

(i) for the purpose of executing and delivering this Agreement.

(ii) for purposes of receiving notices and giving any consent that is provided to be given by the Counterparties hereunder and

(iii) for all purposes of this Agreement on and after a Transfer Party Accession Event.

(c) The definition of Counterparty does not include SBS for any purpose of this Agreement on and after a Transfer Party Accession Event *except* for the purpose of executing and delivering this Agreement.

(d) The Custodian may conclusively presume in the absence of actual knowledge to the contrary that a Transfer Party Accession Event has not occurred unless and until it has received notice that a Transfer Party Accession Event has occurred from a Person entitled to give such notice under a Service Contract.

Section 1.4. Definition of Developer Payments and Ancillary Definitions

The following terms are defined in the Authorizing Ordinance, as in effect on the date hereof, and are used herein as therein defined as of the date hereof. Such terms are set forth below for convenience of reference:

(a) **Developer Payments** means:

(i) amounts payable under each Existing Payment Section,

(ii) as of any particular date, the aggregate amounts payable under any New Payment Section up to but not exceeding the aggregate amounts that would have been payable under the applicable Existing Payment Section as of such date,

(iii) any interest payable, in respect of amounts payable under each Payment Section, and

(iv) any amounts payable under any Guaranty or in respect of any amounts payable under any Payment Section.

For the avoidance of doubt, **Developer Payments** does not include any other payments or rights to reimbursement made or to be made under any Development Agreement.

(b) Ancillary Definitions

Developer means any Existing Developer and any New Developer.

Development Agreement means any Existing Development Agreement and any New Development Agreement.

Existing Casino means any of the following casinos as the context may require:

(i) the casino currently known as the Greektown Casino and currently located at 555 E. Lafayette Boulevard in Detroit, Michigan;

(ii) the casino currently known as the MGM Grand Detroit Casino and currently located at 1300 John C. Lodge in Detroit, Michigan; and

(iii) the casino currently known as the MotorCity Casino and currently located at 2901 Grand River Avenue in Detroit, Michigan.

Existing Developer means each of Detroit Entertainment, L.L.C., Greektown Casino, L.L.C., MGM Grand Detroit, L.L.C. and any successor to any of them or assignee of any of their respective Existing Development Agreements.

Existing Development Agreement means any of the Revised Development Agreements among the City, The Economic Development Corporation of the City of Detroit and an Existing Developer, as in effect on the effective date of the Authorizing Ordinance, as such Revised Development Agreement may be modified or revised from time to time thereafter, and any substitute for such Revised Development Agreement with an Existing Developer.

Existing Payment Section means each of the following sections and any substitute for any such section in an Existing Development Agreement:

(i) Section 3.16(a)(iv) of the Existing Development Agreement with Greektown Casino, L.L.C. as the Existing Developer,

(ii) Section 3.16(a)(iv) of the Existing Development Agreement with MGM Grand Detroit, L.L.C. as the Existing Developer, and

(iii) Section 3.14(a)(iv) of the Existing Development Agreement with Detroit Entertainment, L.L.C. as the Existing Developer.

New Developer means a Person (that is not a public body) other than an Existing Developer.

New Development Agreement means an agreement with respect to an Existing Casino to which the City and a New Developer are parties and which contains a New Payment Section.

New Payment Section means a section in a New Development Agreement that provides for the calculation of payments similar to the calculation of payments made under an Existing Payment Section.

Payment Section means any Existing Payment Section and any New Payment Section.

Section 1.5. Definition of *Holdback Requirement* and Ancillary Definitions.

(a) ***Holdback Requirement*** means:

(i) for any Month *except* a Month occurring in a Ratings Upgrade Period, an amount equal to the Standard Holdback Requirement for such Month and

(ii) for any Month occurring in a Ratings Upgrade Period, means an amount equal to the Reduced Holdback Requirement for such Month.

(b) Definitions Related to the Amount of the Holdback Requirement

Reduced Holdback Requirement means an amount equal to the Regular Custodial Payment for the applicable Month.

Standard Holdback Requirement means the sum of:

(i) the Regular Custodian Payment payable during such Month *plus*

(ii) one-third of the aggregate of the Fixed Amounts payable by the Service Corporations under the Hedges during the Quarterly Period in which such Month falls without giving effect to any netting for the Floating Amounts due from the Counterparties under the Hedges.

(c) Definitions Related to a Ratings Upgrade Period

Ratings Downgrade means, after a Ratings Upgrade, (i) a reduction of the unenhanced ratings of the 2006 Pension Funding Securities to below BBB by Standard & Poor's or to below Baa2 by Moody's Investors Service, or (ii) the unenhanced rating of the 2006 Pension Funding Securities has been withdrawn or suspended by either Standard & Poor's or Moody's Investors Service.

Ratings Upgrade means the reinstatement of the unenhanced ratings of the 2006 Pension Funding Securities to not less than A- by Standard & Poor's and to not less than A3 by Moody's Investors Service.

Ratings Upgrade Period means a period of days beginning on (and including) the day that a Ratings Upgrade occurs and ending on (and including) the day on which the earlier of the following occur:

(i) a Ratings Downgrade or

(ii) a Termination Event or Event of Default under a Hedge where the Counterparty is not the sole Affected Party or Defaulting Party.

Section 1.6. Definition of *Wagering Tax Property* and Ancillary Definitions

The following terms are defined in the Authorizing Ordinance, as in effect on the date hereof, and are used herein as therein defined as of the date hereof. Such terms are set forth below for convenience of reference:

(a) *Wagering Tax Property* means, collectively, the Wagering Taxes, Additional Wagering Taxes and Alternative Taxes, including any interest and penalties thereon as provided for under Detroit City Code Section 18-14-6(c) and any and all proceeds of any thereof. For the avoidance of doubt, *Wagering Tax Property* does not include any municipal service fees authorized to be imposed by the City pursuant to Section 13 of the Wagering Tax Revenue Statute.

(b) Ancillary Definitions

Additional Wagering Taxes means taxes collected or to be collected by the City pursuant to Section 12(5) of the Wagering Tax Revenue Statute.

Alternative Taxes means all proceeds of taxes to which the City is at any time or from time to time entitled under Section 12(1) of the Wagering Tax Revenue Statute on account of the City rescinding or otherwise being unable to exercise its option to collect Wagering Taxes and all other amounts payable to the City pursuant to Section 12 of the Wagering Tax Revenue Statute.

Wagering Taxes means taxes levied or imposed or to be levied or imposed by Detroit City Code Section 18-14-3 pursuant to Section 12(4)(b) of the Wagering Tax Revenue Statute.

Section 1.7. Time

Unless otherwise indicated, all references to time herein refer to such time in Detroit, Michigan.

Section 1.8. Business Days

If this Agreement requires an act to be performed on a day that is not a Business Day then such act shall be performed on the first day thereafter that is a Business Day with the same effect as if such act were performed on the day that such act was otherwise required to be performed.

Section 1.9. Interpretation

(a) Capitalized terms used herein have the meanings given or provided for such terms herein *unless* the context clearly otherwise requires.

(b) Words of the masculine gender include correlative words of the feminine and neuter genders.

(c) Unless the context otherwise indicates, words importing the singular include the plural and vice versa.

(d) Articles, Sections and Exhibits referred herein refer to the corresponding Articles and Sections of this Agreement and Exhibits to this Agreement *unless* otherwise provided.

(e) The terms *hereby*, *hereof*, *hereto*, *herein*, *hereunder* and any similar terms used in this Agreement refer to this Agreement as a whole and not to any particular portion thereof.

(f) The word *or* is not exclusive.

(g) The enumeration of things after the word *including* is to be interpreted as illustrative and not as restrictive.

(h) References herein or in the preamble hereto to any Public Act, or codification thereof, or any section, subsection or paragraph thereof include any amendments to such Public Act, or codification thereof, or to any section, subsection or paragraph thereof and any substitute therefor.

(i) References herein or in the preamble hereto to any section, subsection or paragraph of either the Wagering Tax Revenue Statute or the Detroit City Code include any amendments to such section, subsection or paragraph as the same may be amended from time to time and any substitute therefor.

Article II. Effectiveness of this Agreement

Section 2.1. Closing Date

The Closing shall occur on a date on or before June 26, 2009.

Section 2.2. Satisfaction of Conditions Precedent

This Agreement shall become effective on and after the Closing Date.

Section 2.3. Factual Conditions Precedent

(a) The Existing Developers shall have received the Irrevocable Instructions.

(b) The Service Corporations and the Counterparties shall have entered into the Hedge Amendments.

(c) The City, the Service Corporations and the Counterparties shall have entered into the Service Contract Amendments.

(d) The Third Party Beneficiaries (as defined in the 2006 Service Contracts) shall have consented to the Service Contract Amendments and the Hedge Amendments.

(e) The Custodian has established the Accounts.

(f) The City Council shall have adopted a resolution to implement the Authorizing Ordinance and authorize the Definitive Documents.

Section 2.4. Documentary Conditions Precedent

The parties hereto shall have received and then hold such instruments, other documents and opinions in form and substance acceptable to each of the parties.

Article III. General Provisions; Irrevocable Instructions

Section 3.1. Appropriation

(a) The payment by the City of the City Payments and amounts payable pursuant to **Section 5.6** (if not appropriated at the time thereby required to be paid) are subject to appropriation by the City Council.

(b) The City Pledge, the Irrevocable Instructions and the deposit of Revenues in the Receipts Account are not subject to appropriation by the City Council.

Section 3.2. No Indebtedness

The obligations of the City under this Agreement shall not constitute or create any indebtedness of the City within the meaning of the limitation of The Home Rule City Act, being Act 279 of the Public Acts of Michigan of 1909, as amended, or any Michigan constitutional or other non-tax statute or City Charter limitation.

Section 3.3. Contractual Obligations

(a) The City Hedge Payables Related Obligations and all obligations of the City under this Agreement are contractual obligations, enforceable in the same manner as any other contract of the City and are not general obligations of the City to which the City has pledged its full faith and credit or ad valorem taxing power.

(b) **This Section** does not impair any lien or security interest in any Pledged Property.

Section 3.4. Irrevocable Instructions

(a) The City shall give effect to its obligations contained in **Section 5.1(a)** by means of the Irrevocable Instructions in the form attached hereto as **Exhibit 3.4** as modified with the consent of the Counterparties to take into account whether the addressee is a Casino Licensee, Developer or Obligor (the *Irrevocable Instructions*).

(b) The City shall deliver an Irrevocable Instruction to each Casino Licensee and each Existing Developer on or before the Closing Date. *If* a Casino Licensee and a Developer are the same Person *then* the Irrevocable Instruction as to Wagering Tax Property and Developer Payments may be combined in a single Irrevocable Instruction.

(c) The City shall deliver an Irrevocable Instruction on or before the Closing Date to each Person who is an obligor (an *Obligor*) under a Guaranty and from whom payment is required in lieu of or in substitution for an amount otherwise payable by a Developer as a Developer Payment

(d) The City shall deliver an Irrevocable Instruction to each New Developer on or before the date of effectiveness of each New Development Agreement.

(e) Upon reasonable request by any Counterparty during the term of this Agreement and in any event when requested by a Counterparty following the occurrence of a Hedge Event, the City also shall deliver or redeliver an Irrevocable Instruction to any Developer, Casino Licensee or Obligor, as identified by the Counterparty.

(f) Each Casino Licensee, Developer or Obligor owing any Revenues to the City, when notified by the Irrevocable Instructions, shall be discharged *pro tanto* by making payment in accordance with the Irrevocable Instructions.

(g) The City shall not revoke or otherwise act to effect any change to an Irrevocable Instruction without the prior written consent of each Counterparty.

(h) The City shall take all actions necessary to ensure that Irrevocable Instructions remain in effect during the term of this Agreement, including with respect to any Wagering Tax

Property or Developer Payments payable by any Developer or Obligor, whether or not an addressee of the Irrevocable Instructions.

(i) The failure of a Casino Licensee, Developer or Obligor to comply with an Irrevocable Instruction shall not relieve the City of its obligations contained in **Section 5.1**.

Section 3.5. Payments from Accounts

Any amount paid to the City from the General Receipts Subaccount or released to the City from the Holdback Account, in each case, pursuant to the terms of this Agreement shall be free and clear of any pledge or lien created by this Agreement.

Article IV. Pledges and Grant of Security Interests

Section 4.1. City Pledge

(a) The City Pledge as set forth in the Authorizing Ordinance, as in effect on the Closing Date, and as set forth below is an essential term of this Agreement.

(b) The City pledges to the Service Corporations and creates a first priority lien upon all of the City's right, title and interest in, to and under the Pledged Property, whether received or to be received, in order to secure the payment of all City Hedge Payables Related Obligations (the *City Pledge*).

(c) The City Pledge shall be valid, binding and enforceable as of the Closing Date, and the Pledged Property and other property pledged pursuant to the City Pledge shall immediately be subject to the lien of the City Pledge without any physical delivery thereof or further act.

(d) The lien of the City Pledge shall be valid, binding and enforceable as against all parties having claims of any kind in tort, contract or otherwise against the City irrespective of whether such claims are voluntary or involuntary or any such claimants have notice of the City Pledge.

(e) Neither the Authorizing Ordinance nor this Agreement nor any other document or any statement, or instrument by which the City Pledge is created or evidenced nor any financing statement or other notice need be recorded or filed.

Section 4.2. Service Corporation Grant of Security Interests

(a) Each Service Corporation grants a security interest to the Counterparties in all of the Service Corporation's right, title and interest in, to and under the City Hedge Payables Related Obligations and the City Pledge (the *Service Corporation Property*), in order to secure the payment of the Hedge Payables as the same may now or hereafter become due and payable by such Service Corporation under its respective Hedge and all other amounts owing to the Counterparties under this Agreement (the *Service Corporation Security Interest*).

(b) The Service Corporation Security Interest is an essential term of this Agreement.

Section 4.3. Alternative Service Corporation Pledge

(a) **This Section** is applicable *if and to the extent* that a Service Corporation is deemed a “governmental unit” or a “governmental subdivision or agency” as such terms are used in Article 9 (the *Government Exception*)

(b) The Service Corporation Pledge as set forth in the Authorizing Ordinance, as in effect on the Closing Date, and as set forth below is an essential term of this Agreement.

(c) Each Service Corporation pledges to the Counterparties and creates a first priority lien upon all of the Service Corporation’s right, title and interest in, to and under the Service Corporation Property, in order to secure the payment of the Hedge Payables as the same may now or hereafter become due and payable by such Service Corporation under its respective Hedge (the *Service Corporation Pledge*).

(d) The Service Corporation Pledge shall be valid, binding and enforceable as of the Closing Date, and the Service Corporation Property shall immediately be subject to the lien of the Service Corporation Pledge without any physical delivery thereof or further act.

(e) The lien of the Service Corporation Pledge of each Service Corporation shall be valid, binding and enforceable as against all parties having claims of any kind in tort, contract or otherwise against such Service Corporation irrespective of whether such claims are voluntary or involuntary or any such claimants have notice of the Service Corporation Pledge.

(f) Neither the Authorizing Ordinance nor this Agreement nor any other document or any statement, or instrument by which the Service Corporation Pledge is created or evidenced nor any financing statement or other notice need be recorded or filed.

Article V. Certain Payments

Section 5.1. Payment of Revenues

(a) The City shall pay all Revenues to the Custodian.

(b) The City shall not take any action to redirect the payment of the Revenues contrary to the Irrevocable Instructions.

(c) *If* the City shall receive any Revenues from or on behalf of a Casino Licensee or Developer or an Obligor under a Guaranty notwithstanding the giving of the Irrevocable Instructions, *then* the City shall transfer such Revenues to the Custodian for deposit to the credit of the Developer Subaccount within two Business Days following the earlier to occur of:

- (i) the Finance Director having actual knowledge of such payment and
- (ii) receipt by the City of notice from the Custodian that such payment was erroneously paid to the City.

(d) Until the Pledged Property has been released from the lien of the City Pledge, the City shall not transfer to the revenue division of the Michigan Department of Treasury, pursuant to Detroit Code Section 18-14-6(a), the responsibility and function of administering and collecting Revenues on behalf of the City.

Section 5.2. Monthly Payments by City

(a) Monthly, on or before the Payment Date of such Month, the City shall pay to the Custodian in one or more payments an aggregate amount from the City's general fund (collectively, a *City Payment*) for deposit to the credit of the Holdback Account as provided below:

(1) *Except* as provided in **paragraph (2) or (3), below**, the City Payment shall equal the Holdback Requirement for the Month in which such City Payment is made.

(2) *Subject* to **Section 5.2(e)**, the City Payment shall equal the Relevant Amount for each Month during the Term Payment Period.

(3) The City Payment shall equal the amount of the Final Payment for the Month in which occurs an Unqualified Hedge Event or the Term Period End Date.

(b) The City shall make the City Payment at or before the Payment Time on the date such payment is made.

(c) The City has no obligation to make more than one City Payment in any Month *except* as otherwise provided in **subsection (d), below**.

(d) *If* the City has made a City Payment equal to the Holdback Requirement in any Month and after making such payment the City becomes obligated to make a City Payment equal to the Relevant Amount or Final Payment during such Month, *then* on or before the Payment Date of such Month, the City shall pay a City Payment equal to the difference between the Holdback Requirement already paid by the City during such Month and the amount of such Relevant Amount or Final Payment, as the case may be.

(e) To the extent that, following the commencement of the Term Payment Period, payment of the amount referred to in **clause (iii) of the definition of "Relevant Amount"** requires a Supplemental Appropriation, the City may defer the payment of such amount until the earliest to occur of:

- (i) the date on which the Supplemental Appropriation is obtained,
- (ii) the Outside Supplemental Appropriations Date,
- (iii) the date on which an Unqualified Hedge Event occurs and
- (iv) the Term Period End Date.

For each Month in the deferral period, the amount so deferred shall not be included in the Relevant Amount, or as a City Payment, for that Month, *but* upon the expiration of the deferral period, an amount equal to the interest at the Interest Rate accrued and remaining unpaid to the Counterparties under the Hedges from the commencement of the deferral period shall be included in the Relevant Amount, and as a City Payment, in the Month in which the deferral period expires.

Section 5.3. Payments to City from General Receipts Subaccount

(a) Payments shall be made to the City from the General Receipts Subaccount as follows *except* during a Ratings Upgrade Period or as provided in **Section 5.4**:

(1) For any Month in which the Custodian receives the full amount of a City Payment required by **Section 5.2**, the Custodian shall, without notice to or consent by the Coun-

terparties, pay to the City an amount from the General Receipts Subaccount equal to such City Payment.

(2) Beginning on the second Business Day following the date on which the Custodian gives its Monthly Holdback Compliance Notice to the City and the Counterparties, the Custodian shall remit daily to the City all amounts standing to the credit of the General Receipts Subaccount during the Month covered by such Monthly Holdback Compliance Notice.

(b) *Except* as provided in **Section 5.4**, the Custodian shall remit daily to the City all amounts standing to the credit of the General Receipts Subaccount during a Ratings Upgrade Period.

Section 5.4. When Payments from General Receipts Subaccount Prohibited

(a) No payment shall be made to the City from the General Receipts Subaccount

(i) on and after the Term Period End Date or

(ii) on or after the occurrence of a Termination Event under a Hedge where the related Counterparty is not the sole Affected Party *except* as otherwise permitted by **subsection (b), below** or

(iii) while an Event of Default is continuing under a Hedge where the related Counterparty is not the sole Defaulting Party.

(b) No payment shall be made to the City from the General Receipts Subaccount on or after a Qualified Hedge Event *unless and until* the (i) City enacts the correlative Supplemental Appropriation and (ii) the Finance Director delivers to the Custodian and the Counterparties a certification that such Supplemental Appropriation has been duly enacted and is in the amounts required by this Agreement.

Section 5.5. Payments to City from Holdback Account

(a) *Except* as otherwise provided in **subsection (b), below**, on each Release Date, the Custodian shall pay to the City the balance in excess of \$5,000 standing to the credit of the Holdback Account at the end of the correlative Quarterly Period.

(b) No payment shall be made to the City from the Holdback Account if at the time a Final Payment is due and owing.

(c) **Release Date** means, as to any Quarterly Period, the latest to occur of:

(i) the date on which all payments to the Counterparties and the Custodian required by **Section 5.7** have been paid,

(ii) the date of the delivery by the Custodian, in accordance with **Section 12.9**, of the Quarterly Coverage Report for the immediately ended Quarterly Period and

(iii) the date of delivery by the Custodian, in accordance with **Section 12.9**, of the Monthly Coverage Report for the last Month in the immediately ended Quarterly Period.

Section 5.6. Payments by City to Holdback Account

(a) *If* a Quarterly Accounting shows that amounts standing to the credit of the Holdback Account are not sufficient to make all payments to the Counterparties and the Custodian required by **subsections (a) through (d) of Section 5.7**, then the City shall then pay to the Custodian an amount from its general fund equal to the amount of such insufficiency.

(b) *If* at any time amounts standing to the credit of the Holdback Account are not sufficient to pay all Regular Custodian Payments and City Payments due at the time, then the City shall then pay to the Custodian an amount from its general fund equal to the amount of such insufficiency.

(c) All amounts received by the Custodian from the City pursuant to **this Section** shall be deposited to the credit of the Holdback Account and applied to the insufficiency giving rise to the reason for such payment.

Section 5.7. Payments to the Counterparties and the Custodian from Holdback Account

(a) The Custodian shall pay to the Counterparties from the Holdback Account:

(i) at the end of each Quarterly Period, except during the Term Payment Period or after the occurrence of an Unqualified Hedge Event or the Term Period End Date, an amount equal to all Hedge Periodic Payables payable for such Quarterly Period; and

(ii) at the end of each Month during the Term Payment Period, an amount equal to the Relevant Amount for the Month, excluding the amount of any Regular Custodian Payment included in the Relevant Amount;

(b) Upon the occurrence of an Unqualified Hedge Event or the Term Period End Date, the Custodian shall pay the Final Payment from the Holdback Account.

(c) All amounts paid to the Counterparties pursuant to **Section 5.7(a)(ii)** shall be credited toward payment by the City of the amounts due and owing to the Counterparties under the Hedges as to which payment is deferred during the Term Payment Period due to the Limitation on Remedies.

(d) At the end of the Quarterly Period or at such other time or times as the payments are then due and owing, the Custodian shall pay to itself from the Holdback Account all Regular Custodial Payments then due and owing.

(e) If the funds in the Holdback Account are not sufficient to make the payments required by this **Section 5.7**, the amounts referred to in **Section 5.7(d)** shall be paid first, and any balance shall be paid to the Counterparties.

Section 5.8. Payment Determinations

(a) For purposes of the Custodian determining the amount or timing of payments to be made under this **Article V**, the Custodian may rely upon the written notice delivered by either Counterparty as to the occurrence of any Rating Upgrade, Rating Downgrade, Unqualified Hedge Event, Qualified Hedge Event, Outside Supplemental Appropriation Date, Term Period End Date or any other event affecting the determination of the amount or timing of payment under this **Article V**.

(b) Any such notice or determination shall not affect the right of the City to seek a refund or other payment from the Counterparties based on the City's belief that the information contained in the notice was incorrect.

Article VI. Representations and Warranties of the City

The City makes the representations and warranties contained in **this Article** for the benefit of the Custodian, the Service Corporations and the Counterparties on and as of the Closing Date.

Section 6.1. General Representations and Warranties

(a) Organization and Existence

(1) The City is a municipal corporation of the State of Michigan, with home rule powers, duly existing under the laws of the State of Michigan and pursuant to the City Charter.

(2) The City Charter and all amendments thereto were duly approved by a majority of the City electors voting thereon, and the City Charter and any such amendments have not been rescinded in whole or in part.

(b) Valid and Binding Agreement, Obligations and City Pledge

(1) This Agreement and each other Definitive Document to which the City is a party, constitutes a valid and binding agreement of the City enforceable in accordance with its terms *except* as may be limited by bankruptcy, insolvency or similar laws affecting the rights of creditors generally.

(2) The obligations of the City under the Authorizing Ordinance constitute a valid and binding agreement of the City enforceable in accordance with its terms except as may be limited by bankruptcy, insolvency or similar laws affecting the rights of creditors generally.

(3) The City Pledge as set forth in the Authorizing Ordinance and herein is valid, binding and enforceable in accordance with its terms *except* as may be limited by bankruptcy, insolvency or similar laws affecting the rights of creditors generally.

(c) Corporate and Governmental Authorization; No Contravention

(1) The execution, delivery and performance by the City of this Agreement and each other Definitive Document to which the City is a party are within the City's powers, have been duly authorized by all necessary action, require no action by or in respect of, or filing with, any governmental body, agency or official and do not contravene, or constitute a default under, any provision of applicable law or regulation or of the City Charter or of any agreement, judgment, injunction, order, decree or other instrument binding upon the City.

(2) Article XIV of Chapter 18 of the Detroit City Code and the Authorizing Ordinance are in full force and effect in accordance with all applicable City Charter, constitutional and statutory requirements, are within the City's powers, require no action by or in respect of, or filing with any governmental body, agency or official, and do not contravene or constitute a default under any provision of applicable law or regulation or of the City Charter or of any agreement, judgment, injunction, order, decree or other instrument binding upon the City.

(3) The representation regarding performance set forth in **paragraph (1)**, above is qualified to the extent that appropriations are required as set forth in **Section 3.1**.

(d) No Litigation

There is no action, suit or proceeding pending against, or to the knowledge of the City threatened against, or affecting the City, the Authorizing Ordinance or the Pledged Property before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision which could materially adversely the ability of the City to perform its obligations under this Agreement or any other Definitive Document to which the City is a party or the Authorizing Ordinance or which in any manner questions the validity of this Agreement or any other Definitive Document to which the City is a party, the Authorizing Ordinance or the City Pledge.

(e) Conditions Precedent

All acts, conditions and things required by the Michigan Constitution, the City Charter, the Detroit City Code and laws of the State of Michigan to exist, to have happened and to have been performed precedent to and in the execution and delivery of this Agreement and the other Definitive Documents by the City exist, have happened and been performed in due time, form and manner required by the Michigan Constitution, the City Charter, the Detroit City Code or laws of the State of Michigan in order to make this Agreement a valid and binding obligation of the City.

Section 6.2. Revenues

(a) The use and application of the Revenues as provided in the Authorizing Ordinance and this Agreement are in compliance with the Development Agreements and the Wagering Tax Revenue Statute.

(b) The statement of Revenues delivered with and as referenced in the Closing Certificate is a true and complete statement of all Revenues collected by the City for each year from 2003 – 2008 and for the year to date period in 2009 showing as to each Developer: (1) Wagering Taxes, (2) Alternative Taxes, (3) Additional Wagering Taxes, and (4) Developer Payments.

Section 6.3. Developer Agreements and Guaranties

(a) A true and complete copy of each Development Agreement (including all amendments thereto) has been delivered with the Closing Certificate as referenced therein.

(b) A true and complete copy of each Guaranty (including all amendments to each such Guaranty) has been delivered with the Closing Certificate as referenced therein.

(c) There are no Guaranties or Development Agreements *except* the Guaranties and Development Agreements delivered with the Closing Certificate.

Section 6.4. No Other Liens, Charges or Encumbrances

(a) The Pledged Property is not subject to any lien, charge or encumbrance *except* the City Pledge and either the Service Corporation Pledge (if the Government Exception is applicable) or the Service Corporation Security Interest (if the Government Exception is not applicable) granted by this Agreement.

(b) No financing statement is on file in any public office covering any of the Pledged Property *except* in favor of the Counterparties.

Section 6.5. No Control Granted

The City has not granted control (for purposes of Article 8 and, if applicable, Article 9 of the UCC) over the Pledged Property, or any account in which the Pledge Property is held, to any Person other than the Custodian.

Article VII. Representations and Warranties of Service Corporations

Each Service Corporation makes the representations and warranties contained in **this Article** for the benefit of the City, the Custodian, the other Service Corporation and the Counterparties on and as of the Closing Date.

Section 7.1. General Representations and Warranties

(a) Corporate Existence and Power

The Service Corporation is a nonprofit corporation duly incorporated, validly existing and in good standing under the laws of the State of Michigan.

(b) Corporate and Governmental Authorization; Contravention

The execution, delivery and performance by the Service Corporation of this Agreement and each other Definitive Document to which the Service Corporation is a party are within the Service Corporation's corporate powers, have been duly authorized by all necessary corporate action, require no action by or in respect of, or filing with, any governmental body, agency or official and do not contravene, or constitute a default under, any provision of applicable law or regulation or of the articles of incorporation or bylaws of the Service Corporation or of any agreement, judgment, injunction, order, decree or other instrument binding upon the Service Corporation.

(c) Valid and Binding Agreement and Service Corporation Pledge

(1) This Agreement and each other Definitive Document to which the Service Corporation is a party, constitutes a valid and binding agreement of the Service Corporation enforceable in accordance with its terms *except* as may be limited by bankruptcy, insolvency or similar laws affecting the rights of creditors generally.

(2) If the Government Exception is applicable, the Service Corporation Pledge as set forth in the Authorizing Ordinance and herein is valid, binding and enforceable in accordance with its terms *except* as may be limited by bankruptcy, insolvency or similar laws affecting the rights of creditors generally.

(d) No Litigation

There is no action, suit or proceeding pending against, or to the knowledge of the Service Corporation threatened against, or affecting the Service Corporation or the Service Corporation Property before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision which could materially adversely the ability of the Service Corporation to perform its obligations under this Agreement or any other Definitive Document to which the Service Corporation is a party or which in any manner questions the validity of this Agreement or any other Definitive Document to which the Service Corporation is a party, the Service Corporation, the Service Corporation Security Interest, or the Service Corporation Pledge.

(e) No Taxation

The Service Corporation is not subject to federal income tax or taxation by the State of Michigan.

(f) Not an Investment Company

The Service Corporation is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(g) Conditions Precedent

All acts, conditions and things required by the Michigan Constitution, the City Charter, the Detroit City Code and laws of the State of Michigan to exist, to have happened and to have been performed precedent to and in the execution and delivery of this Agreement and the other Definitive Documents by the Service Corporation exist, have happened and been performed in due time, form and manner required by the Michigan Constitution, the City Charter, the Detroit City Code or laws of the State of Michigan in order to make this Agreement a valid and binding obligation of the Service Corporation.

Section 7.2. Concerning the Security Interests

(a) Corporate Name

The Service Corporation's name as indicated on the signature page of this Agreement is such Service Corporation's name as indicated on the public record of the Service Corporation's jurisdiction of organization which shows the Service Corporation to have been organized.

(b) Registered Organization

The Service Corporation is a "registered organization," within the meaning of Article 9 of the UCC, of the type and organized under the laws of the State of Michigan.

(c) Place of Business

Section 9.04 of the respective Service Contract accurately sets forth the Service Corporation's place of business or, if more than one place of business, its chief executive office as well as such Service Corporation's mailing address if different and such Service Corporation has not had any other place of business or, if more than one place of business, any other chief executive office since its formation.

(d) Corporate Identification

Each Service Corporation represents only as to its own organizational identification number as follows:

- (1) The organizational identification number of GRS Service Corporation is 793781.
- (2) The organizational identification number of PFRS Service Corporation is 793782.

(e) Validity, Perfection and Priority of Security Interest

(1) As of the Closing Date, the security interest granted to the Counterparties in the Service Corporation Property is a valid security interest to the extent of the rights of such Service Corporation's interests therein, and such security interest is a perfected, first priority security interest.

(2) The Service Corporation Security Interest is valid, binding and enforceable as of the Closing Date, and the Service Corporation Property is immediately subject to the Service Corporation Security Interest without any physical delivery thereof or further act.

(3) The Service Corporation shall not be in breach of the representation contained in **paragraph (1) above** by reason of the Government Exception.

(f) No Other Liens, Charges or Encumbrances

(1) The Service Corporation's interest in the Service Corporation Property is not subject to any lien, charge or encumbrance *except* the Service Corporation Security Interest or, if the Government Exception is applicable, the Service Corporation Pledge.

(2) No financing statement is on file in any public office covering any Service Corporation Property.

(g) No Control Granted

The Service Corporation has not granted control (for purposes of Articles 8 and 9 of the UCC) over the Service Corporation Property, or any bank account or securities account in which the Service Corporation Property or any proceeds thereof are held, to any Person other than the Counterparties.

Article VIII. The Accounts

Section 8.1. Establishment of Accounts

(a) There is established with the Custodian the following accounts to be held as custodial accounts:

- Receipts Account
- Holdback Account

(b) The Custodian shall establish the Developer Subaccounts as required by **Section 8.2** in the Receipts Account.

(c) The Custodian shall establish the General Receipts Subaccount in the Receipts Account.

(d) The Accounts shall be held at an office of the Custodian located in the City and State of New York.

Section 8.2. Developer Subaccounts

(a) The Custodian shall establish a Developer Subaccount in the Receipts Account with respect to each Developer.

(b) The initial Existing Developers and the initial Developer Subaccounts to be established with respect thereto are:

- Detroit Entertainment Subaccount with respect to Detroit Entertainment, L.L.C.
- Greektown Subaccount with respect to Greektown Casino, L.L.C.
- MGM Grand Subaccount with respect to MGM Grand Detroit, L.L.C.

(c) The Custodian shall establish a new Developer Subaccount in the Receipts Account for each assignee of an Existing Developer and for each New Developer.

(d) *Predecessor Developer* means, as the context may require, (i) an Existing Developer that is the assignor of an Existing Development Agreement or (ii) an Existing Developer of an Existing Casino for which there is a New Developer.

(e) Upon the establishment of a new Developer Subaccount, the Custodian shall take the following actions.

(1) All amounts, if any, standing to the credit of the Developer Subaccount established in respect of the Predecessor Developer shall be deposited to the credit of the General Receipts Subaccount.

(2) Upon making such deposit, if any, such Developer Subaccount established in respect of the Predecessor Developer shall be closed.

(f) For the avoidance of doubt, the Developer Subaccounts are established for the purpose of convenience of administering this Agreement, and the establishment thereof does not give the Developers any rights to the respective Developer Subaccount or the amounts or investments credited thereto.

Section 8.3. Receipt of Revenues

(a) Promptly upon receipt of any Revenues in respect of a Developer on a Receipt Day, the Custodian shall deposit the same to the credit of the Developer Subaccount established in respect of such Developer.

(b) Revenues that consist of investment earnings of amounts credited to the General Receipts Subaccount or Holdback Account shall be a part of, respectively, the General Receipts Subaccount or Holdback Account and shall not be deposited to the credit of any Developer Subaccount.

Section 8.4. Transfer of Revenues to General Receipts Subaccount

Upon the deposit of any Revenues to the credit of a Developer Subaccount, the Custodian shall promptly thereafter transfer the same to the General Receipts Subaccount.

Section 8.5. Receipt of City Payments

Whenever the Custodian receives an amount as a City Payment or portion thereof, the Custodian shall deposit the same to the credit of the Holdback Account.

Section 8.6. General Receipts Account

The Custodian shall make the payments to the City from the General Receipts Subaccount at the times and in the amounts provided in **Article V**.

Section 8.7. Holdback Account

(a) The Custodian shall not deposit any amounts to the credit of the Holdback Account other than amounts paid by the City from its general fund.

(b) The Custodian shall make the payments to the Counterparties from the Holdback Account at the times and in the amounts provided in **Section 5.7**.

(c) The Custodian shall make the payments to the City from the Holdback Account at the times and in the amounts provided in **Section 5.5**.

Section 8.8. Investments

(a) Amounts standing to the credit of either Account shall be held in cash *unless* invested in Authorized Investments as provided in **subsection (b), below**.

(b) Amounts standing to the credit of either Account shall be invested by the Custodian at the direction of the Finance Director in Authorized Investments maturing on or before the date and in such amounts as will be needed to provide for amounts to be expended for the purposes for which the particular Account was established.

(c) The investment of amounts credited to an Account shall be held by the Custodian and shall be deemed at all times a part of such Account, and the interest accruing thereon and any profit realized therefrom shall be credited thereto, and any losses resulting from such investment shall be charged thereto.

(d) The Custodian may make such investments through its own investment or bond department.

Article IX. City Covenants

The City covenants with the other parties hereto as provided in **this Article**.

Section 9.1. No Senior or Parity Pledges or Liens

The City shall not grant or permit to exist any pledge of or other lien on, or security interest in, the Pledged Property that is senior to or of an equal priority with the City Pledge.

Section 9.2. Junior Pledges or Liens

The City may pledge or otherwise grant a lien on, or security interest in the Pledged Property that is junior to the pledge and lien granted by this Agreement *if, but only if*, (i) such pledge, lien or security interest is authorized by ordinance or resolution of the City Council and

(ii) as a condition to the grant, be subject to intercreditor arrangements satisfactory to the Counterparties (*Permitted Liens*).

Section 9.3. Further Assurances

(a) The City shall furnish to the Counterparties all information regarding the Pledged Property that any Counterparty from time to time may reasonably request.

(b) To the extent permitted by law, the City shall sign, file, or record all agreements and documents and shall take all other actions, that either Service Corporation or a Counterparty reasonably considers necessary or appropriate to perfect, to continue perfection of, or to maintain first priority of, the Service Corporation's security interest in the Pledged Property.

(c) In the event that the City receives conflicting instructions from the Counterparties regarding an action to be taken pursuant to **subsection (b), above**, the City may rely upon advice of counsel to the City whether such action is necessary or appropriate to perfect, to continue perfection of, or to maintain first priority of, the Service Corporation's security interest in the Pledged Property.

(d) The City authorizes each of the Service Corporations to file in any Uniform Commercial Code recording office a financing statement in favor the Service Corporation as secured party and covering the collateral under the City Pledge.

Section 9.4. No Control Granted

The City shall not grant control (for purposes of Article 8 and, if applicable, Article 9 of the UCC) over the Pledged Property or any Account other than to the Custodian or the Counterparties.

Section 9.5. Excluded Property

(a) For the avoidance of doubt, Excluded Property is not subject to **Sections 9.1 through 9.4**, inclusive.

(b) No pledge of or other lien on, or security interest in, Excluded Property shall be granted by the City *except* pursuant to ordinance or resolution of City Council.

Section 9.6. No Development Agreement Amendments

The City will not enter into any amendment, supplement or other modification of any Development Agreement without the consent of the Counterparties that:

- (i) changes the formula for calculating any Developer Payment, which change has the effect of reducing the amount of any Developer Payment or
- (ii) has the effect of changing the frequency of any Developer Payment or
- (iii) affects the making of Developer Payments in accordance with the Irrevocable Instructions.

Article X. Service Corporation Covenants

Each Service Corporation covenants with the other parties hereto as provided in **this Article**.

Section 10.1. No Pledges of Liens of Service Corporation Property

(a) No Service Corporation shall grant or permit to exist a pledge or lien on, or security interest in, any Service Corporation Property other than the Service Corporation Security Interest or, if the Government Exception is applicable, the Service Corporation Pledge.

(b) For the avoidance of doubt, **this Section** does not apply to Excluded Property.

Section 10.2. No Control Granted

The Service Corporation shall not grant control (for purposes of Articles 8 and 9 of the UCC) over the Service Corporation Property, or any bank account or securities account in which the Service Corporation Property or any proceeds thereof are held, to any Person other than the Custodian or the Counterparties.

Section 10.3. Excluded Property

No Service Corporation shall grant a pledge of or lien on, or security interest in, Excluded Property *except* pursuant to ordinance or resolution of the City Council.

Section 10.4. Alternative Taxes

(a) *If and when* Alternative Taxes become payable, the City shall, effective on or before the date of first payment, enter into an agreement with the State of Michigan providing for the payment of Alternative Taxes to the Custodian for deposit to the General Receipts Subaccount.

(b) Such agreement shall be in form and substance acceptable to the Counterparties.

Section 10.5. Alternative Payment of Developer Payments

(a) *If and when* a Developer begins to pay Additional Wagering Taxes to the State of Michigan, the City shall, effective on or before the date of first payment enter into an agreement with the State of Michigan providing for the payment of such Additional Wagering Taxes to the Custodian for deposit to the General Receipts Subaccount.

(b) Such agreement shall be in form and substance acceptable to the Counterparties.

Section 10.6. Further Assurances

(a) The Service Corporations shall furnish to the Counterparties all information regarding the Service Corporation Property that either Counterparty from time to time reasonably requests.

(b) The Service Corporations shall sign, file or record all agreements and documents and shall take all other actions, that either Counterparty reasonably considers necessary or appropriate to perfect, to continue perfection of, or to maintain first priority of, the Counterparty's security interest in the Service Corporation Property.

(c) In the event that the Service Corporations receive conflicting instructions from the Counterparties regarding an action to be taken pursuant to **subsection (b), above**, the Service Corporations may rely upon advice of counsel to the City whether such action is necessary or appropriate to perfect, to continue perfection of, or to maintain first priority of, the Counterparties' security interest in the Service Corporation Property.

(d) Each of the Service Corporations authorizes each of the Counterparties to file in any Uniform Commercial Code recording office (i) a financing statement in favor the Counterparty as secured party and covering the collateral under the Service Corporation Pledge and the Service Corporation Security Interest and (ii) an assignment to the Counterparty of any financing statement in favor of the Service Corporation covering collateral under the City Pledge.

Article XI. Remedies

Section 11.1. Remedies under Hedges

Following the occurrence of a Termination Event or Event of Default under a Hedge, the respective Counterparty (or the Service Corporations, if a Counterparty is the sole Affected Party or Defaulting Party in respect of such Termination Event or Event of Default under such respective Hedge), has all remedies available to it under its Hedge or otherwise by contract or applicable law *except* with respect to the exercise of remedies against the Pledged Property as provided in **Section 11.3**.

Section 11.2. Remedies as Secured Party

(a) In addition to a Counterparty's remedies under a Hedge, following the occurrence of a Termination Event or Event of Default under a Hedge where the Counterparty is not the sole Affected Party or Defaulting Party thereunder, each Counterparty has the remedies available to it as a secured party to enforce the Service Corporation Pledge, the Service Corporation Security Interest and the City Pledge. Such remedies of the Counterparties as secured parties under the Service Corporation Pledge and Service Corporation Security Interest shall include the exercise of all rights and remedies otherwise available to the Service Corporations as secured parties under the City Pledge, including the right to cause the Pledged Property to be applied to the obligations owing to the Counterparties under the Hedges up to the amounts then appropriated.

(b) Such remedies include the right to cause the Pledged Property to be applied to the obligations owing to the Counterparties under the Hedges up to the amounts then appropriated and, to the extent that not all amounts for all obligations owing to the Counterparties have been appropriated, the right to use judicial process to obtain appropriations and to exercise any other equitable remedies available to the Counterparties against the Service Corporations and the City, as a Michigan home rule city, in respect of such unappropriated amounts.

(c) *Subject* to such appropriation as may be required, judicial remedies shall be available to the extent necessary for the Counterparties to recognize all the rights and benefits of a first priority secured party with respect to the Service Corporation Property and the Pledged Property, including, as appropriate, by writ of mandamus or other equitable remedy that would result in release of funds from the Accounts to be applied to the obligations owing to the Counterparties under the Hedges and this Agreement.

(d) In exercising remedies the Counterparties may act jointly or independently of each other.

Section 11.3. Limitation on Remedies

(a) *If* any Hedge is terminated by the respective Counterparty on account of any Specified Additional Termination Event *then* such Counterparty shall forbear (such forbearance being hereinafter referred to as the ***Limitation on Remedies***) from exercising any remedies as a secured party against the Pledged Property during the Term Payment Period.

(b) The Limitation on Remedies does not apply on or after a Term Period End Date.

Section 11.4. Failure to Appropriate

In the event that the City fails to make an appropriation in the City's final annual budget adopted by the City Council pursuant to and in compliance with the City Charter for any Fiscal Year, and to maintain such provision without limitation, transfer or reduction throughout such Fiscal Year, on a line item basis and as a "first budget" obligation, an amount that is sufficient to pay in full, and which may be used exclusively for payment of, the City Payments for a particular Fiscal Year, mandamus may be an appropriate remedy for the Counterparties.

Section 11.5. Indemnity

(a) To the extent permitted by law, the City shall defend and hold harmless the Counterparties from and against any and all losses, damages, liabilities, and expenses incurred and paid (each, a liability) by either Counterparty arising out of or resulting from the commencement or continuation of any litigation, judicial action, or legislative action of the kind described in **paragraph 4 of Section 11.6**.

(b) *If*, for so long as this Agreement is in effect, a Counterparty has actual notice or knowledge of any claim or loss for which indemnification by the City is asserted, the Counterparty shall give to the City written notice within such time as is reasonable under the circumstances, describing such claim or loss in reasonable detail. *However*, any delay or failure of the Counterparty to give the notice shall not affect the City's indemnification obligations except to the extent that the City was prejudiced by the delay or failure.

(c) *If* a demand or claim for indemnification is made hereunder with respect to losses the amount or extent of which is not yet known or certain, *then* the notice of demand for indemnification shall so state, and, where practicable, shall include an estimate of the amount of the losses.

(d) In the case of actual notice of indemnification hereunder involving any litigation, arbitration or legal proceeding, the City shall have responsibility to, and shall employ counsel, and shall assume all expense with respect to, the defense or settlement of such claim.

(e) *Notwithstanding* the City's assumption of the defense, the Counterparty shall have the right to employ separate counsel and to participate in the defense of such action, and the City shall bear the reasonable out of pocket fees, costs and expenses of such separate counsel *if*:

(i) other than under **Paragraph (4) of Section 11.6**, a Termination Event or Event of Default under a Hedge has occurred other than or resulting from a Specified Event,

(ii) other than under **Paragraph (4) of Section 11.6**, the Term Period End Date has occurred,

(iii) the result of the use of counsel chosen by the City to represent the Counterparty would present such counsel with a conflict of interest;

(iv) the actual or potential defendants in, or targets of, any such action include the Counterparty and the Counterparty shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to the City,

(v) the City shall not have employed counsel reasonably satisfactory to the Counterparty to represent the Counterparty within a reasonable time after notice of the institution of such action or

(vi) the City, in its discretion, shall authorize the Counterparty to employ separate counsel at the City's expense.

The City shall not be liable under this Agreement for any amount paid by the Counterparty to settle any claims or actions if the settlement is entered into without the City's consent, which may not be unreasonably withheld or delayed.

Section 11.6. *Specified Event* means any of the following events:

(1) The City fails to pay any Relevant Amount to the Custodian as required by **Section 5.2**.

(2) The City fails to make an appropriation by the Outside Supplemental Appropriations Date in the City's final annual budget for the then current Fiscal Year and to maintain such appropriation without limitation, transfer or reduction throughout the balance of such Fiscal Year, on a line item basis and as a "first budget" obligation, of any supplemental amount necessary to provide exclusively for the payment of the Relevant Amount each Month during the balance of such Fiscal Year to the extent that there is not an appropriation then in effect.

(3) Commencing with the Fiscal Year beginning on July 1, 2009, the City fails to make an appropriation in the City's final annual budget adopted pursuant to and in compliance with the City Charter prior to the commencement of any Fiscal Year subsequent to the Fiscal Year in which the termination of the Hedges occurs and to maintain such appropriation without limitation, transfer or reduction throughout such Fiscal Year, on a line item basis authorizing exclusively payment of the City Payments and as a "first budget" obligation, of an amount at least equal to:

(i) the *greater* of (x) \$50,736,975 and (y) the sum of the Notional Holdback Amounts for the Months ending in such Fiscal Year,

(ii) *plus* an amount equal to interest at the Interest Rate to accrue and to be payable during such Fiscal Year to the Counterparties under the Hedges,

(iii) *plus* the Regular Custodian Payments to be paid during such Fiscal Year.

(4) The City, a Service Corporation, or a third party commences litigation or takes any other judicial action, or any legislative action is taken, to set aside or avoid or limit the

2006 Transaction, the City Pledge, the Service Corporation Security Interest, or the Service Corporation Pledge or any other part of the Definitive Documents or the Settlement Transaction. This **paragraph (4)** does not apply to the City challenging the release of funds from the General Receipts Subaccount for payment of the obligations owing to the Counterparties under the Hedges if such challenge (i) is based solely on the grounds that such amounts have not yet been appropriated by the City for such purpose and (ii) does not challenge the “first budget” obligation of the City to make such appropriation.

(5) The Authorizing Ordinance or any part thereof is amended (without the consent of the Counterparties), revoked, rescinded, nullified or suspended for any reason.

(6) The City rescinds, reduces or ceases to impose the tax imposed as of the Closing Date pursuant to Section 18-14-3 of the Detroit City Code or if the City, within two Business Days following the earlier to occur of (i) notice from the Custodian that a taxpayer has inadvertently or erroneously paid Wagering Tax Property directly to the City or (ii) the Finance Director learning of such payment, the City fails to transfer by wire transfer in same day funds to the Custodian for deposit to the credit of the General Receipts Subaccount such payment. *However*, the rescinding of such tax shall not cause the expiration of the Term Payment Period if the such tax is then collected by the State of Michigan pursuant to Section 12(1) of the Wagering Tax Revenue Statute and an amount of such collections equal to or greater than the tax currently imposed is paid to the Custodian under arrangements satisfactory to the Counterparties.

(7) The City fails to pay any Service Charges, Accrued Service Charges, Regular Scheduled Payments and Sinking Fund Installments as and when due and payable under either Service Contract.

(8) The City fails to pay when due any principal of, or interest on, any indebtedness for borrowed money, other than Excluded Indebtedness, aggregating \$5,000,000 or more or any other event shall occur the effect of which is to cause, or to permit the holder or holders of such indebtedness (or a trustee or agent on behalf of such holder or holders) to cause such indebtedness to become due, or to be prepaid in full (whether by redemption, purchase, offer to purchase or otherwise), prior to its stated maturity, in each case after giving effect to any applicable grace period requiring notice or the lapse of time or both.

(9) The City fails to pay any judgment or judgments aggregating \$5,000,000 or more, *excluding* judgments:

(i) on appeal and being contested in good faith or

(ii) for which the City has reached an agreement with the judgment creditor as to the timing and manner of payment that does not involve the imposition of any additional ad valorem property taxes above the Threshold and with which agreement the City is in compliance or

(iii) for which the City is diligently making arrangements for payment *and* the delay in payment will not result in the City being held in contempt of court for non-payment or in the imposition of a lien on the City’s general funds or the imposition of any additional ad valorem property taxes above the Threshold or

(iv) in favor of the Counterparties on any unpaid amounts owing to the Counterparties under the Hedges and this Agreement.

(10) The occurrence of an Unqualified Hedge Event.

(11) The City:

(i) commences a case or files a petition seeking relief under the Bankruptcy Code or any other insolvency law or procedure or

(ii) consents to an order of relief in any such proceeding or to the filing of any such petition or

(iii) seeks or is subject to the appointment of a receiver or an emergency financial manager for all or any substantial part of its assets or makes an assignment for the benefit of its creditors.

(12) The Governor of the State of Michigan determines that a financial emergency exists in the City.

Article XII. The Custodian

Section 12.1. No Fiduciary Duties or Responsibilities

The Custodian has no fiduciary duty or responsibility to any other party hereto or to any other Person.

Section 12.2. Duties and Responsibilities

(a) The Custodian undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Custodian and no permissive power or authority available to the Custodian shall be considered a duty.

(b) In the absence of bad faith on its part, the Custodian may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, documents, other instruments or opinions furnished to the Custodian and conforming to the requirements of this Agreement; *but* in the case of any such certificates, documents, other instruments or opinions which by any provision hereof or thereof are specifically required to be furnished to the Custodian, the Custodian is under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement.

(c) No provision of this Agreement shall be construed to relieve the Custodian from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, *except* as provided below.

(1) The Custodian is not be liable for any error of judgment made in good faith by an authorized officer of the Custodian, *unless* it is proved that the Custodian was negligent in ascertaining the pertinent facts;

(2) The Custodian is not liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Counterparties and

(3) No provision of this Agreement requires the Custodian to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for

believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Section 12.3. Certain Rights of Custodian.

(a) The Custodian may rely and is protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) Whenever in the administration of this Agreement the Custodian deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Custodian (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a certificate of a representative of a Counterparty.

(c) The Custodian may consult with counsel, and the written advice of such counsel is full and complete authorization and protection in respect of any action taken, suffered or omitted by the Custodian hereunder in good faith and in reliance thereon.

(d) The Custodian is under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request or direction of any of the Counterparties pursuant to this Agreement, *unless* such Counterparties shall have offered to the Custodian reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(e) The Custodian is not required to make any investigation into the existence or occurrence of any facts referred to herein but is entitled to rely upon a certificate delivered by a representative of a Counterparty.

(f) The Custodian is not obligated to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, or other paper or document, *but* the Custodian, in its sole discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

(g) The Custodian may execute any of its powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Custodian shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

(h) The Custodian has no duty to see to the recording, filing or registration of any instrument or document (including financing or continuation statements or filings under tax or security laws) or any rerecording, refiling or re-registration.

(i) The Custodian shall have the right at any time to seek instructions concerning the administration of this Agreement from any court of competent jurisdiction.

Section 12.4. May Hold 2006 Pension Funding Securities.

The Custodian, in its individual or any other capacity, may become the owner or pledgee of 2006 Pension Funding Securities with the same rights it would have if it were not Custodian.

Section 12.5. Reporting of City Payments

Within one Business Day after the Custodian deposits the full amount of a City Payment to the credit of the Holdback Account, the Custodian shall notify the City and the Counterparties of such deposit.

Section 12.6. Weekly Reports

On the second Business Day of a calendar week, the Custodian shall deliver to the City and the Counterparties a report setting forth the amount of Revenues received in the General Receipts Subaccount during the preceding calendar week.

Section 12.7. Monthly Holdback Compliance Notice

On the Business Day in a Month on which the Holdback Requirement has been met for such Month, the Custodian shall give notice (a ***Monthly Holdback Compliance Notice***) to the City and the Counterparties that such Holdback Requirement has been met.

Section 12.8. Quarterly Accounting

By the second Business Day preceding the end of a Quarterly Period, the Custodian shall notify the Counterparties, the City and the Service Corporations whether the Custodian has on deposit in the Holdback Account an amount sufficient to pay the Quarterly Payment (a ***Quarterly Accounting***).

Section 12.9. Coverage Reports

(a) The Custodian shall provide a report to the Counterparties and the City no later than 4:00 p.m. on the second Business Day following the last day (whether or not a Business Day) of each Month (a ***Monthly Coverage Report***) and of each Quarterly Period (a ***Quarterly Coverage Report***) and at such other time or times as are reasonably requested by any Counterparty or the City for an immediately prior Reporting Period.

(b) ***Reporting Period*** means:

(i) for a Monthly Coverage Report, the Month immediately ended (the ***Subject Month***) and

(ii) for a Quarterly Coverage Report, the Quarterly Period immediately ended (the ***Subject Quarter***).

(c) ***Monthly Coverage*** means, as to any Subject Month, the total amount of Revenues received by the Custodian during such Subject Month *divided* by the *sum* of:

(i) one-third of the Hedge Periodic Payables (without giving effect to any netting) payable by the Service Corporations during the Quarterly Period in which such Subject Month falls and

(ii) any Hedge Periodic Payables remaining unpaid from any Quarterly Period.

(d) ***Quarterly Coverage*** means, as to any Subject Quarter, the total amount of Revenues received by the Custodian during the immediately preceding three Months *divided* by the *sum* of:

(i) Hedge Periodic Payables payable by the Service Corporations during such three month period (without giving effect to any netting) and

(ii) any Hedge Periodic Payables remaining unpaid from any prior Subject Quarter.

(e) Each Monthly Coverage Report and each Quarterly Coverage Report shall meet the requirements of **this subsection**.

(1) Each Monthly Coverage Report and Quarterly Coverage Report shall include:

(i) the total Revenues received by the Custodian during the Reporting Period,

(ii) the total amount of Wagering Tax Property received by the Custodian during the Reporting Period, with respect to each casino that provides such information,

(iii) the total amount of Developer Payments received by the Custodian during the Reporting Period, with respect to each casino that provides such information,

(iv) the balance of each Account as of the end of the Reporting Period and as of the end of the immediately preceding Reporting Period and

(v) any disbursements from each Account made during the Reporting Period in reasonable detail.

(2) In addition to the requirements of **paragraph (1), above**, each Monthly Coverage Report shall include:

(i) the Monthly Coverage for the Subject Month and

(ii) the Quarterly Coverage for the three immediately preceding three Months.

(3) In addition to the requirements of **paragraph (1), above**, each Quarterly Coverage Report shall set forth any amounts to be released from the Holdback Account to the City or a Service Corporation in respect of the Subject Quarter.

(f) The Custodian shall provide a copy of each Monthly Coverage Report and Quarterly Coverage Report to the Insurers concurrently with providing such Monthly Coverage Report and Quarterly Coverage Report to the Counterparties.

Section 12.10. Compensation, Reimbursement and Indemnification

(a) The Custodian is entitled to payment or reimbursement by the City:

(i) from time to time for reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a Custodian of an express trust); and

(ii) *except* as otherwise expressly provided herein, upon its request, for all reasonable expenses, disbursements and advances incurred or made by the Custodian in accordance with any provision of this Agreement (including, without limitation, the reasonable compensation and the expenses and disbursements of its agents and counsel), *except* any such expense, disbursement or advance as may be attributable to the Custodian's negligence, willful misconduct or bad faith.

(b) The Custodian is also entitled to indemnification by the City for, and to be held harmless by the City against, any loss, liability or expense incurred without negligence, willful misconduct or bad faith on its part, arising out of or in connection with the acceptance or administration of the this Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

Section 12.11. Prior Payment of Regular Custodian Payments

The Custodian is entitled to payment for Regular Custodian Payments prior to any payment to the Counterparties from any Accounts.

Section 12.12. Corporate Custodian Required; Eligibility.

(a) There shall at all times be a Custodian hereunder which is a bank eligible to be a depository of City funds with (i) an office located in the City and State of New York and (ii) a combined capital and surplus of at least \$50,000,000. *If* such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, *then* for the purposes of **this Section**, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) The Custodian shall resign promptly in the manner and with the effect specified in **this Article** if it becomes ineligible under **this Section**.

Section 12.13. Replacement of Custodian.

(a) No Vacancy

No resignation or removal of the Custodian and no appointment of a successor Custodian pursuant to this Article shall be effective until the successor Custodian accepts its appointment as provided in **subsection (f), below**.

(b) Resignation

The Custodian may resign at any time, but such resignation shall become effective only in accordance with **subsection (f), below**. A resigning Custodian shall give notice of its resignation to each Insurer and each of the parties hereto.

(c) Removal by Counterparties

(1) The Counterparties acting together may remove the Custodian by so notifying the Custodian.

(2) If the Custodian becomes ineligible under **Section 12.12**, any Counterparty may petition a court of competent jurisdiction for the appointment of a successor.

(d) Appointment of Successor

(1) The retiring Custodian or the City may appoint a successor at any time prior to the date on which a successor Custodian takes office *provided* that the Counterparties have provided their prior written consent to the appointment of such successor Custodian.

(2) If a successor Custodian does not take office within 45 days after the retiring Custodian resigns or is removed, the City or any Counterparty may petition a court of competent jurisdiction for the appointment of a successor Custodian.

(3) Within one year after a successor Custodian appointed by the retiring Custodian, the City or a court of competent jurisdiction takes office, the Counterparties acting together may appoint a successor Custodian to replace such successor Custodian.

(e) Acceptable to the City and the Counterparties

No appointment of a successor Custodian shall be effective *unless* such successor Custodian is acceptable to the Finance Director and to each Counterparty, as evidenced by prior written consent.

(f) Acceptance of Appointment

(1) A successor Custodian shall deliver written acceptance of its appointment to the retiring Custodian, each of the other parties hereto and to each Insurer. Thereupon the resignation or removal of the retiring Custodian shall be effective, and the successor Custodian shall have all the rights, powers and duties of the Custodian hereunder.

(2) Upon the appointment of a successor Custodian becoming effective as provided in **this subsection**, the retiring Custodian shall promptly transfer all property held by it as Custodian to the successor Custodian.

Section 12.14. Merger, Consolidation and Succession to Business.

If the Custodian consolidates, merges or converts into, or transfers all or substantially all its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Custodian *if* such successor corporation is eligible under **Section 12.12**.

Article XIII. Interest Rate Limitation

The following provisions apply only if any amount (a **Stated Amount**) payable by the City under this Agreement is limited by a maximum rate of interest permitted to be paid by the City under applicable law:

(a) The term **Permitted Amount**, as used in **this Article**, means the maximum amount that could be paid by the City during any Month without exceeding the interest rate limitation. The Permitted Amount in any Month may be greater or less than the Stated Amount.

(b) Subject to **subsections (c) and (d) below**, if the Permitted Amount payable by the City during any Month (the **Current Month**) is less than the Stated Amount payable during the Current Month, the City may satisfy its obligation to pay the Stated Amount for the Current Month by paying the Permitted Amount.

(c) The amount payable by the City during the Current Month under **subsection (b)** shall be increased, to the extent permitted by the applicable law, by the lesser of:

(1) the difference between the Stated Amount for the Current Month and the Permitted Amount for the Current Month and

(2) the aggregate excess of the total of the Permitted Amounts for all prior Months over the aggregate of the Stated Amounts for the prior Months, minus the sum of all amounts that the City has previously paid pursuant to **this subsection (c)**.

(d) The amount payable by the City during all Months subsequent to the Current Month up to the time of determination shall be increased, to the extent permitted by the applicable law, by the lesser of:

(1) the difference between the Stated Amount for the Current Month and the Permitted Amount for the Current Month, and

(2) the aggregate excess of the total of the Permitted Amounts for all subsequent Months up to the time of determination over the aggregate of the Stated Amounts for the subsequent Months, minus the sum of all amounts that the City has previously paid pursuant to **subsection (c)** and **this subsection (d)**.

(e) **This Article** shall not affect the legal interpretation of whether any amount payable by the City hereunder is or is not “interest” to which any law limiting interest would apply.

Article XIV. Miscellaneous

Section 14.1. Addresses for Notices

(a) All notices and other communications provided for hereunder shall be in writing unless otherwise stated herein mailed, sent or delivered:

(1) if to the City, at its address set forth in a Service Contract

(2) if to the City Law Department, at
City of Detroit Law Department
First National Building, Suite 1650
660 Woodward Avenue
Detroit, Michigan 48226
Attention: Corporation Counsel

(3) if to a Service Corporation, at its address set forth in the respective Service Contract

(4) if to the Custodian, at
U.S. Bank National Association
535 Griswold, Suite 550
Detroit, Michigan 48226
Attention: Susan T. Brown

(5) if to Financial Guaranty Insurance Company at
125 Park Avenue
New York, NY 10017
Attention: Risk Management

(6) if to Syncora Guaranty Inc. at
1221 Avenue of the Americas
New York, NY 10020
Attention: Surveillance

(7) if to a Counterparty, at its address shown beneath its signature on a signature page hereto,

or to such other address as such Person may specify to the other Person and shall be effective (i) if given by mail, three Business Days after such communication is deposited in the mails with first class postage prepaid or (ii) if given by any other means, when delivered at the address specified in or pursuant to **this Section**.

Section 14.2. Copies of Notices

A copy of each notice given hereunder shall be given contemporaneously to the City's Law Department.

Section 14.3. Expenses

(a) Each of the City and the Counterparties shall pay its own fees and expenses in connection with consummating the Settlement Transaction, including outside legal fees and expenses and outside consulting fees.

(b) *Except* in connection with consummating the Settlement Transaction, each of the City and the Counterparties shall continue to be responsible for the payment of any fees and expenses that it is required to pay under the Hedges, either Service Contract or the Contract Administration Agreement.

(c) The City shall pay the fees and expenses of the Service Corporations in connection with consummating the Settlement Transaction, including outside legal fees and expense and outside consulting fees.

(d) The City shall pay all of its fees and expenses and the fees and expenses of the Service Corporations (including outside legal fees and expense and outside consulting fees of any of them) in connection with the administration and enforcement of this Agreement.

(e) The City shall pay all compensation, reimbursement and indemnification to which the Custodian is entitled pursuant to **Section 12.10**.

Section 14.4. Termination

(a) This Agreement shall terminate upon the termination or expiration of the Hedges and each Counterparty's delivery of confirmation to the Custodian of the payment in full of all obligations of the Service Corporations and the City to each Counterparty thereunder and hereunder.

(b) The City Pledge and, as applicable, the Service Corporation Security Interest or the Service Corporation Pledge shall terminate upon the termination of this Agreement.

(c) Upon the termination of this Agreement, the Custodian shall:

(i) pay to the City all amounts standing to the credit of each Account and

(ii) give notice to the Developers and Obligors that the Irrevocable Instructions are no longer in effect.

(d) The obligations of the City to pay amounts owing to the Service Corporations or the Custodian shall survive the termination of this Agreement.

Section 14.5. Amendment

No amendment of this Agreement shall be effective for any purpose unless it is made by written instrument signed by all of the parties hereto and consented to by each Insurer *provided* that the consent of an Insurer shall only be required to the extent that an amendment affects the rights, remedies or obligations of such Insurer.

Section 14.6. Rights of Insurer

An Insurer may exercise any right or power given it by this Agreement *only if* it is not then in default under its Credit Insurance (as defined in the Service Contracts).

Section 14.7. No Waiver

No failure on the part of any party hereto to exercise, and no delay in exercising, any right hereunder shall be a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other further exercise thereof or the exercise of any other right.

Section 14.8. Binding Obligation

This Agreement is binding upon the parties hereto and their successors and their assigns to the extent permitted by **Section 14.8**.

Section 14.9. Assignment

(a) No transfer by any party of its interests herein without the consent of the other parties hereto shall be valid *except* that a Counterparty may assign its rights hereunder as provided in **subsection (b), below**.

(b) Any Counterparty may transfer its rights hereunder in connection with a transfer of its Hedge to the same extent and under the same conditions as the transfer of the Hedge is permitted by the terms thereof.

Section 14.10. Governing Law

(a) The rights and obligations of the parties under this Agreement shall be governed by and construed in accordance with the laws of the State of New York; provided, however, that the corporate powers and legal capacity of the City and each Service Corporation shall be governed by and construed in accordance with the laws of the State of Michigan.

(b) Notwithstanding anything to the contrary contain in **subsection (a), above**, the governing law for purposes of the UCC is the law of the State of Michigan determined without reference to its conflicts of law rules.

Section 14.11. Venue

With respect to any suit, action or proceedings relating to this Agreement, each party irrevocably submits to the extent permitted by law to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in Borough of Manhattan in New York City and of the courts of the State of Michigan and the United States District Court for the Eastern District of Michigan.

Section 14.12. WAIVERS OF JURY TRIAL

TO THE EXTENT PERMITTED BY LAW, THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.

Section 14.13. Headings and Table of Contents

Article and Section headings herein and the table of contents hereto are included herein for convenience of reference only and do not constitute a part of this Agreement for any other purpose.

Section 14.14. Entire Agreement

(a) This Agreement, the Definitive Documents, and the Hedges, the Service Contracts and the Contract Administration Agreement, as modified by the Definitive Documents, contain the entire agreement among the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous oral and written agreements and discussions with respect thereto, and none of the parties shall be bound by any conditions, inducements or representations with respect thereto other than as expressly provided for herein.

(b) There are no agreements, understandings, representations or warranties between the parties with respect to the subject matter hereof other than those set forth or referred to herein.

(c) All of the terms and conditions of the Definitive Documents and of the Hedges, the Service Contracts and the Contract Administration Agreement, as modified by the Definitive Documents, shall remain in full force and effect.

(d) This Section does not apply to any rights or obligations of the Insurers.

Section 14.15. Counterparts

(a) This Agreement may be executed in multiple counterparts, *but* all such counterparts taken together shall evidence one and the same original. It is not necessary in making proof of this Agreement to produce or account for more than one counterpart.


(b) Delivery of an executed counterpart of this Agreement by facsimile or other method of electronic transmission shall be equally effective as delivery of a manually executed counterpart.

In Witness Whereof, the parties hereto have set their respective hands on and as of the date first written above.

[Signatures appear on pages S-1 et seq.]

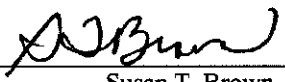
[Signature Page to the Collateral Agreement among the City of Detroit, the Detroit General Retirement System Service Corporation, the Detroit Police and Fire Retirement System Service Corporation, U.S. Bank National Association and other Persons]

CITY OF DETROIT

By  _____
Norman L. White
Finance Director

[Exhibit to the Collateral Agreement among the City of Detroit, the Detroit General Retirement System Service Corporation, the Detroit Police and Fire Retirement System Service Corporation, U.S. Bank National Association and other Persons]


U.S. Bank National Association,
as Custodian

By  _____
Susan T. Brown
Vice President


S - 2

[Signature Page to the Collateral Agreement among the City of Detroit, the Detroit General Retirement System Service Corporation, the Detroit Police and Fire Retirement System Service Corporation, U.S. Bank National Association and other Persons]

**DETROIT GENERAL RETIREMENT SYSTEM
SERVICE CORPORATION**

By 
Norman L. White
President


**DETROIT POLICE AND FIRE RETIREMENT SYSTEM
SERVICE CORPORATION**

By 
Norman L. White
President

[Signature Page to the Collateral Agreement among the City of Detroit, the Detroit General Retirement System Service Corporation, the Detroit Police and Fire Retirement System Service Corporation, U.S. Bank National Association and other Persons

UBS AG

By Mani-Anne Clarke
Authorized Signatory

By 
Authorized Signatory

UBS notice address is:

UBS Securities LLC
677 Washington Boulevard
Stamford, CT 06901
Attn: Municipal Derivatives
Tel: 203-719-1689
Fax: 203-719-1417

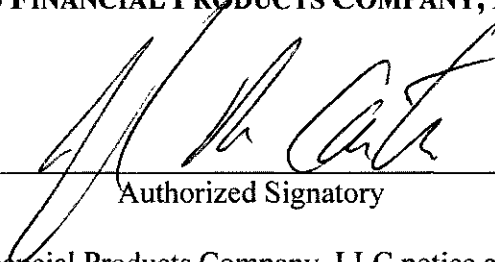
and with a copy to:

UBS AG, Stamford Branch
677 Washington Boulevard
Stamford, CT 06901
Attn: Legal Department
Fax: 203-719-0680

[Signature Page to the Collateral Agreement among the City of Detroit, the Detroit General Retirement System Service Corporation, the Detroit Police and Fire Retirement System Service Corporation, U.S. Bank National Association and other Persons]

SBS FINANCIAL PRODUCTS COMPANY, LLC

By



Authorized Signatory

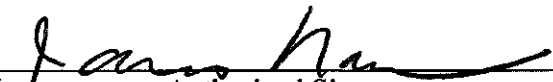
SBS Financial Products Company, LLC notice address is:

SBS Financial Products Company, LLC
100 Wall Street, 22ND Floor
New York, New York 10005
Attention: John Carter
Facsimile: (646) 576-9684

[Signature Page to the Collateral Agreement among the City of Detroit, the Detroit General Retirement System Service Corporation, the Detroit Police and Fire Retirement System Service Corporation, U.S. Bank National Association and other Persons]

MERRILL LYNCH CAPITAL SERVICES, INC.

By


Authorized Signatory

Merrill Lynch Capital Services, Inc. notice address is:

Merrill Lynch Capital Services, Inc.
Merrill Lynch World Headquarters
4 World Financial Center, 18TH Floor
New York, New York 10080
Attention: Swap Group
Facsimile: (646) 805-0218

with a copy to:

GMI Counsel
Merrill Lynch World Headquarters
4 World Financial Center, 12TH Floor
New York, New York 10080
Attention: Swaps Legal
Facsimile: (212) 449-6993

FORM OF IRREVOCABLE INSTRUCTIONS

June ●, 2009

[Developer]
[Developer's Address]
Attention: ●

Re: Payments to be made to the City of Detroit (the *City*) in respect of the below identified Casino

Dear Sir/Madam:

1. References to *You* and *Your*

- 1.1. [Name of Developer] is hereinafter referred to as *you*. *Your* has the correlative meaning.
- 1.2. As used herein, "you" and "your" also refer to your successors, if any, and any assigns of the below identified Development Agreement.

2. Applicability of these Instructions

These Instructions are applicable with respect to the casino currently known as _____ and currently located at _____ in Detroit, Michigan.

3. Certain Definitions

- 3.1. ***Development Agreement*** means the Revised Development Agreement, dated [_____,] among the City, The Economic Development Corporation of the City of Detroit and you, any amendments thereto and any substitute for such Development Agreement.
- 3.2. **Gaming Act** means the Michigan Gaming Control and Revenue Act, MCL 432.201, *et seq*; MSA 18.969(201), *et seq.*, as amended.
- 3.3. ***Wagering Tax Revenue Statute*** means Section 12 of the Gaming Act, being MCL 432.212, as amended.

4. Payments Subject to these Instructions

- 4.1. The following payments (collectively, the ***Payments***) only are subject to these Instructions:
 - 4.1.1. taxes payable pursuant to Detroit City Code Section 18-14-3 pursuant to the Wagering Tax Revenue Statute; and
 - 4.1.2. interest and penalties payable pursuant to Detroit City Code Section 18-14-6(c); and

- 4.1.3. amounts payable pursuant to Section [3.14(a)(iv) for Detroit Entertainment, 3.16(a)(iv) for Greektown Casino, 3.16(a)(iv) for MGM] of the Development Agreement
- 4.2. For the avoidance of doubt, *Payments* does not include:
 - 4.2.1. any payments pursuant to any other section of the Development Agreement or rights to reimbursement made or to be made under any Development Agreement; and
 - 4.2.2. any municipal service fees authorized to be imposed by the City pursuant to Section 13 of the Gaming Act.
- 4.3. References to such sections of the Gaming Act, Wagering Tax Revenue Statute, Detroit City Code or the Development Agreement include any amendments thereto or any substitutes therefor.

5. Place and Manner of Payment

- 5.1. All Payments to be paid to the City shall be paid to U.S. Bank National Association (the *Custodian*) for the benefit of the City by wire transfer in immediately available funds at the office of the Custodian in New York, New York, for credit to the below identified account.

- Wiring Instructions: ●
- Account Number: ●

6. Discharge of Liability

Payments made to the Custodian pursuant to these Instructions shall have the same force and effect as if made to the City, and you shall have no further liability with respect to such Payments if made as herein provided.

7. Changes to these Instructions

- 7.1. No change to these Instructions shall be effective for any purpose without the prior written consent of the Counterparties.
- 7.2. The initial Counterparties are:
 - 7.2.1. UBS AG
 - 7.2.2. SBS Financial Products Company, LLC
 - 7.2.3. Merrill Lynch Capital Services, Inc.
- 7.3. As used herein, "Counterparties" includes any successors of the initial Counterparties and any assigns of certain interest rate swap agreements.
- 7.4. You are entitled to rely on any consent stating that it is signed by a financial institution stating that it is a "Counterparty" as such term is used herein without making any independent investigation.

8. Instructions are Irrevocable

These Instructions are irrevocable and shall continue in full force and effect unless changed in writing by the City with the prior written consent of the Counterparties as provided in **Section 7**

and you have received prior written notice of such change from the City and copies of the written consents of each Counterparty delivered as set forth in **Section 10**.

9. Termination

These Instructions shall terminate upon written notice of the Custodian to you as set forth in Section 10 stating that the Custodial Agreement has terminated.

10. Communications and Notices

All communications and Notices hereunder shall be in writing and, unless otherwise stated herein, mailed, sent or delivered:

(1) if to the Custodian, at

U.S. Bank National Association
535 Griswold, Suite 550
Detroit, Michigan 48226
Attention: Susan T. Brown

(2) if to you at

[Address]
Detroit, Michigan • [Zip Code] •
Attention: •

or to such other address as may be specified to the other in accordance with the provisions of this Section and shall be effective (i) if given by mail, three business days after such communication is deposited in the mail with first class postage prepaid or (ii) if given by overnight courier or personally delivered, when delivered to the person identified at the address specified in or pursuant to **this Section**.

11. Binding Effect

These Instructions are binding on you, your successors, if any, and any assigns of the Development Agreement.

12. Captions

The captions of the sections of these Instructions are for convenience of reference and do not affect the meaning of these Instructions.

CITY OF DETROIT

By _____
Norman L. White
Finance Director

June 23, 2009

MotorCity Casino Hotel
2901 Grand River
Detroit, MI 48201

Attn: Rhonda Cohen, Chief Operating Officer

Re: Payments to be made to the City of Detroit, Michigan (the *City*) pursuant to the Revised Development Agreement, dated August 2, 2002 among the City, Economic Development Corporation of the City of Detroit and MotorCity Casino Hotel

Reference is made to the IRREVOCABLE INSTRUCTIONS, attached, that payments to be paid to the City shall be paid to U.S. Bank N.A. (the Custodian) for the benefit of the City.

The new wire instructions should be used for wires beginning on Wednesday, June 24, 2009.

Should you have any questions, do not hesitate to call (313 224-3491).

Very truly yours,



Norman L. White
Finance Director

June 23, 2009

MotorCity Casino Hotel
2901 Grand River
Detroit, MI 48201

Attention: Rhonda Cohen, Chief Operating Officer

Re: Payments to be made to the City of Detroit (the *City*) in respect of the below identified Casino

Dear Madam:

1. References to *You* and *Your*

- 1.1. MotorCity Casino Hotel is hereinafter referred to as *you*. *Your* has the correlative meaning.
- 1.2. As used herein, "you" and "your" also refer to your successors, if any, and any assigns of the below identified Development Agreement.

2. Applicability of these Instructions

These Instructions are applicable with respect to the casino currently known as MotorCity Casino Hotel and currently located at 2901 Grand River in Detroit, Michigan.

3. Certain Definitions

- 3.1. *Development Agreement* means the Revised Development Agreement, dated August 2, 2002 among the City, The Economic Development Corporation of the City of Detroit and you, any amendments thereto and any substitute for such Development Agreement.
- 3.2. *Gaming Act* means the Michigan Gaming Control and Revenue Act, MCL 432.201, *et seq.*; MSA 18.969(201), *et seq.*, as amended.
- 3.3. *Wagering Tax Revenue Statute* means Section 12 of the Gaming Act, being MCL 432.212, as amended.

4. Payments Subject to these Instructions

- 4.1. The following payments (collectively, the *Payments*) only are subject to these Instructions:
 - 4.1.1. taxes payable pursuant to Detroit City Code Section 18-14-3 pursuant to the Wagering Tax Revenue Statute; and
 - 4.1.2. interest and penalties payable pursuant to Detroit City Code Section 18-14-6(c); and
 - 4.1.3. amounts payable pursuant to Section 3.14(a)(iv) of the Development Agreement
- 4.2. For the avoidance of doubt, *Payments* does not include:

- 4.2.1. any payments pursuant to any other section of the Development Agreement or rights to reimbursement made or to be made under any Development Agreement; and
- 4.2.2. any municipal service fees authorized to be imposed by the City pursuant to Section 13 of the Gaming Act.
- 4.3. References to such sections of the Gaming Act, Wagering Tax Revenue Statute, Detroit City Code or the Development Agreement include any amendments thereto or any substitutes therefor.

5. Place and Manner of Payment

- 5.1. All Payments to be paid to the City shall be paid to U.S. Bank National Association (the *Custodian*) for the benefit of the City by wire transfer in immediately available funds at the office of the Custodian in New York, New York, for credit to the below identified account.

Wiring Instructions: ABA=U.S. BANK, Minneapolis (091000022)
FBO=FOR FURTHER CREDIT TO U.S. BANK, N.A.
AC=180121167365
Trust # 132742003 Detroit (MotorCity) Revenues
Contact: Renee Poradek (651) 495-4132

6. Discharge of Liability

Payments made to the Custodian pursuant to these Instructions shall have the same force and effect as if made to the City, and you shall have no further liability with respect to such Payments if made as herein provided.

7. Changes to these Instructions

- 7.1. No change to these Instructions shall be effective for any purpose without the prior written consent of the Counterparties.
- 7.2. The initial Counterparties are:
 - 7.2.1. UBS AG
 - 7.2.2. SBS Financial Products Company, LLC
 - 7.2.3. Merrill Lynch Capital Services, Inc.
- 7.3. As used herein, "Counterparties" includes any successors of the initial Counterparties and any assigns of certain interest rate swap agreements.
- 7.4. You are entitled to rely on any consent stating that it is signed by a financial institution stating that it is a "Counterparty" as such term is used herein without making any independent investigation.

8. Instructions are Irrevocable

These Instructions are irrevocable and shall continue in full force and effect unless changed in writing by the City with the prior written consent of the Counterparties as provided in Section 7 and you have received prior written notice of such change from the City and copies of the written consents of each Counterparty delivered as set forth in Section 10.

9. Termination

These Instructions shall terminate upon written notice of the Custodian to you as set forth in Section 10 stating that the Custodial Agreement has terminated.

10. Communications and Notices

All communications and Notices hereunder shall be in writing and, unless otherwise stated herein, mailed, sent or delivered:

(a) if to the Custodian, at

U.S. Bank National Association
535 Griswold, Suite 550
Detroit, Michigan 48226
Attention: Susan T. Brown

(b) if to you at

MotorCity Casino Hotel
2901 Grand River
Detroit, MI 48201
Attention: Chief Financial Officer

with copies to:

MotorCity Casino Hotel
2901 Grand River
Detroit, MI 48201
Attention: General Counsel

or to such other address as may be specified to the other in accordance with the provisions of this Section and shall be effective (i) if given by mail, three business days after such communication is deposited in the mail with first class postage prepaid or (ii) if given by overnight courier or personally delivered, when delivered to the person identified at the address specified in or pursuant to this Section.

11. Binding Effect

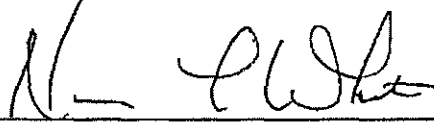
These Instructions are binding on you, your successors, if any, and any assigns of the Development Agreement.

12. Captions

The captions of the sections of these Instructions are for convenience of reference and do not affect the meaning of these Instructions.

City of Detroit,

By



Norman L. White
Finance Director

**Receipt re:
Irrevocable Instructions
dated June 23, 2009**

TO: Norman L. White, Finance Director
City of Detroit

The undersigned hereby acknowledges receipt of certain Irrevocable Instructions dated June 23, 2009, addressed to MotorCity Casino Hotel, a copy of which is attached hereto.

Dated: June 23, 2009

MOTORCITY CASINO HOTEL

By: Beverly L. Cook, Paralegal
signature
Beverly L. Cook
(please print name)

1122741_1.DOC

June 23, 2009

Greektown Casino
555 East Lafayette
Detroit, MI 48226

Attn: Cliff Vallier, Chief Financial Officer

Re: Payments to be made to the City of Detroit, Michigan (the *City*) pursuant to the Revised Development Agreement, dated August 2, 2002 among the City, Economic Development Corporation of the City of Detroit and Greektown Casino

Reference is made to the IRREVOCABLE INSTRUCTIONS, attached, that payments to be paid to the City shall be paid to U.S. Bank N.A. (the Custodian) for the benefit of the City.

The new wire instructions should be used for wires beginning on Wednesday, June 24, 2009.

Should you have any questions, do not hesitate to call (313 224-3491).

Very truly yours,



Norman L. White
Finance Director

June 23, 2009

Greektown Casino
555 East Lafayette
Detroit, MI 48226

Attention: Cliff Vallier, Chief Financial Officer

Re: Payments to be made to the City of Detroit (the *City*) in respect of the below identified Casino

Dear Sir:

1. References to *You* and *Your*

- 1.1. Greektown Casino is hereinafter referred to as *you*. *Your* has the correlative meaning.
- 1.2. As used herein, "you" and "your" also refer to your successors, if any, and any assigns of the below identified Development Agreement.

2. Applicability of these Instructions

These Instructions are applicable with respect to the casino currently known as Greektown Casino and currently located at 555 East Lafayette in Detroit, Michigan.

3. Certain Definitions

- 3.1. *Development Agreement* means the Revised Development Agreement, dated August 2, 2002 among the City, The Economic Development Corporation of the City of Detroit and you, any amendments thereto and any substitute for such Development Agreement.
- 3.2. *Gaming Act* means the Michigan Gaming Control and Revenue Act, MCL 432.201, *et seq*; MSA 18.969(201), *et seq.*, as amended.
- 3.3. *Wagering Tax Revenue Statute* means Section 12 of the Gaming Act, being MCL 432:212, as amended.

4. Payments Subject to these Instructions

- 4.1. The following payments (collectively, the *Payments*) only are subject to these Instructions:
 - 4.1.1. taxes payable pursuant to Detroit City Code Section 18-14-3 pursuant to the Wagering Tax Revenue Statute; and
 - 4.1.2. interest and penalties payable pursuant to Detroit City Code Section 18-14-6(c); and
 - 4.1.3. amounts payable pursuant to Section 3.16(a)(iv) of the Development Agreement
- 4.2. For the avoidance of doubt, *Payments* does not include:

- 4.2.1. any payments pursuant to any other section of the Development Agreement or rights to reimbursement made or to be made under any Development Agreement; and
- 4.2.2. any municipal service fees authorized to be imposed by the City pursuant to Section 13 of the Gaming Act.
- 4.3. References to such sections of the Gaming Act, Wagering Tax Revenue Statute, Detroit City Code or the Development Agreement include any amendments thereto or any substitutes therefor.

5. Place and Manner of Payment

- 5.1. All Payments to be paid to the City shall be paid to U.S. Bank National Association (the *Custodian*) for the benefit of the City by wire transfer in immediately available funds at the office of the Custodian in New York, New York, for credit to the below identified account.

Wiring Instructions: ABA=U.S. BANK, Minneapolis (091000022)
 FBO=FOR FURTHER CREDIT TO U.S. BANK, N.A.
 AC=180121167365
 Trust # 132742002 Detroit (Greektown) Revenues
 Contact: Renee Poradek (651) 495-4132

6. Discharge of Liability

Payments made to the Custodian pursuant to these Instructions shall have the same force and effect as if made to the City, and you shall have no further liability with respect to such Payments if made as herein provided.

7. Changes to these Instructions

- 7.1. No change to these Instructions shall be effective for any purpose without the prior written consent of the Counterparties.
- 7.2. The initial Counterparties are:
 - 7.2.1. UBS AG
 - 7.2.2. SBS Financial Products Company, LLC
 - 7.2.3. Merrill Lynch Capital Services, Inc.
- 7.3. As used herein, "Counterparties" includes any successors of the initial Counterparties and any assigns of certain interest rate swap agreements.
- 7.4. You are entitled to rely on any consent stating that it is signed by a financial institution stating that it is a "Counterparty" as such term is used herein without making any independent investigation.

8. Instructions are Irrevocable

These Instructions are irrevocable and shall continue in full force and effect unless changed in writing by the City with the prior written consent of the Counterparties as provided in Section 7 and you have received prior written notice of such change from the City and copies of the written consents of each Counterparty delivered as set forth in Section 10.

9. Termination

These Instructions shall terminate upon written notice of the Custodian to you as set forth in Section 10 stating that the Custodial Agreement has terminated.

10. Communications and Notices

All communications and Notices hereunder shall be in writing and, unless otherwise stated herein, mailed, sent or delivered:

(a) if to the Custodian, at

U.S. Bank National Association
535 Griswold, Suite 550
Detroit, Michigan 48226
Attention: Susan T. Brown

(b) if to you at

Greektown Casino
555 East Lafayette
Detroit, MI 48226
Attention: Cliff Vallier, Chief Financial Officer
with copies to:
Andrea Hansen, Esq.
222 N. Washington Square, Suite 400
Lansing, MI 48933

or to such other address as may be specified to the other in accordance with the provisions of this Section and shall be effective (i) if given by mail, three business days after such communication is deposited in the mail with first class postage prepaid or (ii) if given by overnight courier or personally delivered, when delivered to the person identified at the address specified in or pursuant to this Section.


11. Binding Effect

These Instructions are binding on you, your successors, if any, and any assigns of the Development Agreement.

12. Captions

The captions of the sections of these Instructions are for convenience of reference and do not affect the meaning of these Instructions.

City of Detroit,

By  _____
Norman L. White
Finance Director

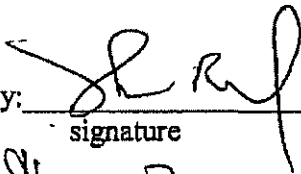
**Receipt re:
Irrevocable Instructions
dated June 23, 2009**

TO: Norman L. White, Finance Director
City of Detroit

The undersigned hereby acknowledges receipt of certain Irrevocable Instructions dated June 23, 2009, addressed to Greektown Casino, a copy of which is attached hereto.

Dated: June 23, 2009

GREEKTOWN CASINO

By: 
signature

Shawn Reed
(please print name)

1122742_1.DOC

June 23, 2009

MGM Grand Detroit, LLC
1777 3rd Street
Detroit, MI 48226

Attn: Ronald K. Holloway, V.P. and General Counsel

Re: Payments to be made to the City of Detroit, Michigan (the *City*) pursuant to the Revised Development Agreement, dated August 2, 2002 among the City, Economic Development Corporation of the City of Detroit and MGM Grand Detroit, LLC.

Reference is made to the IRREVOCABLE INSTRUCTIONS, attached, that payments to be paid to the City shall be paid to U.S. Bank N.A. (the Custodian) for the benefit of the City.

The new wire instructions should be used for wires beginning on Wednesday, June 24, 2009.

Should you have any questions, do not hesitate to call (313 224-3491).

Very truly yours,



Norman L. White
Finance Director

June 23, 2009

MGM Grand Detroit, LLC
1777 3rd Street
Detroit, MI 48226

Attention: Ronald K. Holloway, Vice President and General Counsel

Re: Payments to be made to the City of Detroit (the City) in respect of the below identified Casino

Dear Sir:

1. References to *You* and *Your*

- 1.1. MGM Grand Detroit, LLC is hereinafter referred to as *you*. *Your* has the correlative meaning.
- 1.2. As used herein, "you" and "your" also refer to your successors, if any, and any assigns of the below identified Development Agreement.

2. Applicability of these Instructions

These Instructions are applicable with respect to the casino currently known as MGM Grand Detroit, LLC and currently located at 1777 3rd Street in Detroit, Michigan.

3. Certain Definitions

- 3.1. *Development Agreement* means the Revised Development Agreement, dated August 2, 2002 among the City, The Economic Development Corporation of the City of Detroit and you, any amendments thereto and any substitute for such Development Agreement.
- 3.2. *Gaming Act* means the Michigan Gaming Control and Revenue Act, MCL 432.201, *et seq.*; MSA 18.969(201), *et seq.*, as amended.
- 3.3. *Wagering Tax Revenue Statute* means Section 12 of the Gaming Act, being MCL 432.212, as amended.

4. Payments Subject to these Instructions

- 4.1. The following payments (collectively, the *Payments*) only are subject to these Instructions:
 - 4.1.1. taxes payable pursuant to Detroit City Code Section 18-14-3 pursuant to the Wagering Tax Revenue Statute; and
 - 4.1.2. interest and penalties payable pursuant to Detroit City Code Section 18-14-6(c); and
 - 4.1.3. amounts payable pursuant to Section 3.16(a)(iv) of the Development Agreement
- 4.2. For the avoidance of doubt, *Payments* does not include:

- 4.2.1. any payments pursuant to any other section of the Development Agreement or rights to reimbursement made or to be made under any Development Agreement; and
- 4.2.2. any municipal service fees authorized to be imposed by the City pursuant to Section 13 of the Gaming Act.
- 4.3. References to such sections of the Gaming Act, Wagering Tax Revenue Statute, Detroit City Code or the Development Agreement include any amendments thereto or any substitutes therefor.

5. Place and Manner of Payment

- 5.1. All Payments to be paid to the City shall be paid to U.S. Bank National Association (the *Custodian*) for the benefit of the City by wire transfer in immediately available funds at the office of the Custodian in New York, New York, for credit to the below identified account.

Wiring Instructions: ABA=U.S. BANK, Minneapolis (091000022)
FBO=FOR FURTHER CREDIT TO U.S. BANK, N:A.
AC=180121167365
Trust # 132742001 Detroit (MGM Grand) Revenues
Contact: Renee Poradek (651) 495-4132

6. Discharge of Liability

Payments made to the Custodian pursuant to these Instructions shall have the same force and effect as if made to the City, and you shall have no further liability with respect to such Payments if made as herein provided.

7. Changes to these Instructions

- 7.1. No change to these Instructions shall be effective for any purpose without the prior written consent of the Counterparties.
- 7.2. The initial Counterparties are:
 - 7.2.1. UBS AG
 - 7.2.2. SBS Financial Products Company, LLC
 - 7.2.3. Merrill Lynch Capital Services, Inc.
- 7.3. As used herein, "Counterparties" includes any successors of the initial Counterparties and any assigns of certain interest rate swap agreements.
- 7.4. You are entitled to rely on any consent stating that it is signed by a financial institution stating that it is a "Counterparty" as such term is used herein without making any independent investigation.

8. Instructions are Irrevocable

These Instructions are irrevocable and shall continue in full force and effect unless changed in writing by the City with the prior written consent of the Counterparties as provided in **Section 7** and you have received prior written notice of such change from the City and copies of the written consents of each Counterparty delivered as set forth in **Section 10**.

9. Termination

These Instructions shall terminate upon written notice of the Custodian to you as set forth in Section 10 stating that the Custodial Agreement has terminated.

10. Communications and Notices

All communications and Notices hereunder shall be in writing and, unless otherwise stated herein, mailed, sent or delivered:

(a) if to the Custodian, at

U.S. Bank National Association
535 Griswold, Suite 550
Detroit, Michigan 48226
Attention: Susan T. Brown

(b) if to you at

Mr. Ronald K. Holloway
Vice President and General Counsel
MGM Grand Detroit, LLC
1777 3rd Street
Detroit, MI 48226

or to such other address as may be specified to the other in accordance with the provisions of this Section and shall be effective (i) if given by mail, three business days after such communication is deposited in the mail with first class postage prepaid or (ii) if given by overnight courier or personally delivered, when delivered to the person identified at the address specified in or pursuant to this Section.


11. Binding Effect

These Instructions are binding on you, your successors, if any, and any assigns of the Development Agreement.

12. Captions

The captions of the sections of these Instructions are for convenience of reference and do not affect the meaning of these Instructions.

City of Detroit,

By 
Norman L. White
Finance Director

1122690_1.DOC

**Receipt re:
Irrevocable Instructions
dated June 23, 2009**

TO: Norman L. White, Finance Director
City of Detroit

The undersigned hereby acknowledges receipt of certain Irrevocable Instructions dated June 23, 2009, addressed to MGM Grand Detroit, LLC, a copy of which is attached hereto.

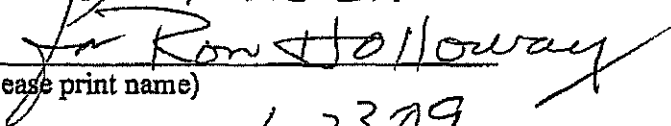
Dated: June 23, 2009

MGM GRAND DETROIT, LLC

By: 

signature

LOIS GRECCO


(please print name)

6-23-09

1122744_1.DOC



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
MICHIGAN GAMING CONTROL BOARD
DETROIT

RICHARD S. KALM
EXECUTIVE DIRECTOR

June 18, 2009

Mr. Michael Shaller
Shesky & Froelich, Ltd.
111 East Wacker Dr., Suite 2800
Chicago, IL 60601

RE: Irrevocable Instructions directing the three licensed Detroit casinos to electronically transfer City taxes to a custodial account

Dear Mr. Schaller:

We are in receipt of a letter from Shesky & Froelich Ltd., the City's outside gaming counsel, (i) transmitting to and advising the Board of certain irrevocable instructions (the "Irrevocable Instructions") directing the three licensed Detroit casinos to electronically transfer (the "Transfer") the portion of the City's money due under the Gaming Act and the Revised Development Agreement to a custodial account (the "Account") held by U.S. Bank National Association (the "Custodian") in connection with a certain Collateral Agreement dated as of June 15, 2009, by and among the City of Detroit, the Detroit General Retirement System Service Corporation, the Detroit Police and Fire Retirement System Service Corporation, the Custodian and certain counterparties; and (ii) advising the Board that the City Council of the City of Detroit has enacted an ordinance and taken all related action necessary to direct the three licensed Detroit casinos to make the Transfer to the Account.

Upon review of this matter, I do not find any compliance issues at this time and since no goods or services are being provided to the casinos, no licensing is required.

Sincerely,

Richard S. Kalm
Executive Director

RSK/db

Cc: Cindy Bliss, MGM Grand Detroit, LLC
Mike Roy & Cheryl Scott Dube, MotorCity Casino, LLC
Olisaeloka Dallah, Greektown Casino, LLC
John Page, MGCB
Andrea Hansen, Honigman, Miller, Schwartz & Cohn, LLP
Peter Ellsworth, Dickinson Wright, PLLC

EXHIBIT B

Contract Administration Agreement

Contract Administration Agreement 2006

among

Detroit Retirement Systems Funding Trust 2006,

Detroit General Retirement System Service Corporation

and

Detroit Police and Fire Retirement System Service Corporation,
severally and not jointly,

U.S. Bank National Association,

separately and not as Trustee of the Detroit Retirement Systems Funding Trust 2006

and the

Other Persons Party Hereto

Dated June 12, 2006

Table of Contents

Article I -- Definitions and Related Matters **1**

 Section 1.1. Certain Definitions 1

 Section 1.2. Other Definitions — This Agreement..... 2

 Section 1.3. Other Definitions — Service Contracts 2

 Section 1.4. Other Definitions — Trust Agreement..... 3

 Section 1.5. Business Days 3

 Section 1.6. Interpretation..... 3

Article II — Appointment; Grant of Security Interest **4**

 Section 2.1. Collection of Receivables..... 4

 Section 2.2. Appointment by Funding Trust..... 4

 Section 2.3. Appointment by Each Corporation 4

 Section 2.4. Grant of Security Interests..... 4

Article III — Representations and Warranties **6**

 Section 3.1. Incorporation by Reference..... 6

 Section 3.2. Corporation Property..... 7

 Section 3.3. General Representations and Warranties 7

 Section 3.4. Conveyance and Security Interests to the Funding Trust..... 7

 Section 3.5. Security Interests Granted the Specified Hedge Counterparties 8

 Section 3.6. Corporate Identification 8

Article IV — Receipt and Disposition of Receivables **9**

 Section 4.1. Property Acknowledgments; Payment Entitlements..... 9

 Section 4.2. Receipt of Service Payments; Determination of Property Interests 9

 Section 4.3. Prepaid Service Charges; Hedge Payables..... 10

 Section 4.4. Receipt and Disposition of Hedge Receivables and Investment Gain..... 10

 Section 4.5. Books and Records; Funds and Accounts; Trust Funds and Accounts..... 10

 Section 4.6. Distribution Dates 11

 Section 4.7. Distributions of Service Payments 11

 Section 4.8. Satisfaction and Priority of Payments 12

Article V — Corporation Covenants **12**

 Section 5.1. Concerning the Security Interests 12

 Section 5.2. No Conveyance or Assignment..... 13

 Section 5.3. Negative Pledge..... 13

 Section 5.4. Defense of Interests; Further Assurance 13

Article VI — Events of Default; Remedies **14**

 Section 6.1. Right of Enforcement..... 14

 Section 6.2. Events of Default..... 14

 Section 6.3. Remedies 14

 Section 6.4. Contract Administrator May File Proofs of Claim..... 14

 Section 6.5. Application of Money Collected..... 15

 Section 6.6. No Duty of Inquiry..... 15

 Section 6.7. Notice of Defaults. 15

 Section 6.8. Limitation on Suits by Certificateholders. 15

 Section 6.9. Control by Majority..... 16

Article X Concerning Each Insurer	31
Section 10.1. Actions by Insurer	31
Section 10.2. Party in Interest	31
Section 10.3. Amendments; Notice to Rating Agencies	31
Section 10.4. Reporting.....	31
Section 10.5. Fees and Expenses.....	32
Article XI Miscellaneous	32
Section 11.1. Addresses for Notices.....	32
Section 11.2. Amendment	33
Section 11.3. No Waiver; Remedies.	33
Section 11.4. Binding Obligation	33
Section 11.5. Assignment.....	33
Section 11.6. Third Party Beneficiaries	34
Section 11.7. Reliance on Representations and Warranties	34
Section 11.8. Governing Law.....	34
Section 11.9. Headings.....	34
Section 11.10. Integration.....	34
Section 11.11. Counterparts.....	34
Article XII	34
Section 12.1. Supplements	34
Section 12.2. Duties of Contract Administrator.....	34

Supplements

- Non-Tender Escrow Account
- Tender Account Supplement

Contract Administration Agreement 2006, dated June 12, 2006 (the *Agreement*), among the **Detroit Retirement Systems Funding Trust 2006** (the *Funding Trust*), the **Detroit General Retirement System Service Corporation** (the *GRS Corporation*) and the **Detroit Police and Fire Retirement System Service Corporation** (the *PFRS Corporation*), each a Michigan nonprofit corporation acting severally and not jointly, **U.S. Bank National Association**, separately and not as trustee of the Funding Trust (the *Contract Administrator*), and the **Persons** whose signatures appear on the signature pages hereto;

In consideration of the mutual promises contained herein and intending to be legally bound hereby, the parties hereto agree as follows:

Article I -- Definitions and Related Matters

Section 1.1. Certain Definitions

The following terms have the following respective meanings unless the context otherwise clearly requires:

Collateral means the Funding Trust Receivable Collateral, the Hedge Payables Collateral and the Hedge Receivables Collateral.

Contract Administrator means the bank identified in the first paragraph of this Agreement as the "Contract Administrator" *unless and until* a successor is appointed successor Contract Administrator pursuant to applicable provisions of this Agreement; *thereafter*, **Contract Administrator** means such successor.

Contract Agreement Deficiency means as of any date, an amount referred to in **clause Second, Fourth or Sixth of Section 8.03** of either **Service Contract**.

Corporation means, as the context may require, the GRS Corporation or the PFRS Corporation.

Creditor Liens means any and all liens and security interests granted by this Agreement in the Hedge Payables Collateral and by the Trust Agreement in the Funding Trust Receivables.

Default means any Event of Default or event that with the passage of time or the giving of notice, or both, would constitute an Event of Default.

Entitled Person or **Person Entitled** means the Person entitled to receive the proceeds of a specific Component.

Funding Rate means the rate at which Service Charges are determined for each Service Charge Class according to the applicable Funding Rate Methodology.

Funding Trust Receivable Collateral means the Funding Trust Receivables and all rights and interests with respect thereto granted by Article 9 of the UCC, including rights to proceeds and rights of enforcement.

GRS Corporation means the Person so defined in the first paragraph of this Agreement and the successors of such Person.

Hedge Payables Collateral means the amounts payable by the City under the Service Contracts in respect of Hedge Payables and all rights and interests with respect thereto granted by Article 9 of the UCC, including rights to proceeds and rights of enforcement.

Hedge Receivables Collateral means the amounts payable by any Specified Hedge Counterparty as Hedge Receivables and all rights and interests with respect thereto granted by Article 9 of the UCC, including rights to proceeds and rights of enforcement.

PFRS Corporation means the Person so defined in the first paragraph of this Agreement and the successors of such Person.

Receipt Day means a day on which the Contract Administrator receives an amount of money at or before the Payment Time *or if* the Contract Administrator receives an amount of money after the Payment Time on a day *then* the following day.

Service Contract means the GRS Service Contract or the PFRS Service Contract as the context may require.

Service Contract Priority Sections means Sections 8.02 and 8.03 of the each Service Contract.

Specified Hedge Counterparties means the Persons named in **Schedule 5** to the **Specific Terms** *subject to Section 8* of the **Specific Terms**.

UCC means the Uniform Commercial Code as in effect in the State of Michigan.

Section 1.2. Other Definitions — This Agreement

Terms defined elsewhere in this Agreement include the following:

<i>Term</i>	<i>Defined In</i>
Affected Certificate	Section 6.3
Deficit Interest Related Payments	Section 4.7
Deficit Principal Related Payments	Section 4.7
Distribution Date	Section 4.6
Interest Related Payments.....	Section 4.7
Principal Related Payments	Section 4.7
Redemption Related Payments	Section 4.7
Sinking Fund Related Payments	Section 4.7
Transfer Party Accession Event.....	Section 2.4

Section 1.3. Other Definitions — Service Contracts

Capitalized terms not defined herein and defined in either Service Contract are used herein as therein defined unless the context clearly otherwise requires. Such terms include:

<i>Term</i>	<i>Defined In</i>
Accrued Service Charges.....	Section 5.03
Closing Date	Section 3
Component.....	Section 1.03
Credit Insurance.....	Schedule of Credit Insurance to Specific Terms
Funding Rate Portion.....	Section 1.01
Funding Trust.....	Section 4
Hedge Counterparty.....	Section 1.01
Hedge Periodic Payable.....	Section 1.01

<i>Term</i>	<i>Defined In</i>
Hedge Payable	Section 1.01
Hedge Periodic Receivable.....	Section 1.01
Hedge Receivable	Section 1.01
Hedge Termination Payable	Section 1.01
Hedge Termination Receivable	Section 1.01
Index Rate Service Charges	Section 3
Insurer	Schedule of Credit Insurance to Specific Terms
Notice of Transfer Event	Section 8
Payment Time.....	Section 1.01
Rating Agency	Section 9.02
Service Payment	Section 1.03
Siebert.....	Section 8
Stated Hedge.....	Section 1.01
Third Party Beneficiary	Section 9.12
Transfer Party	Section 8
Trust Agreement.....	Section 1
Trustee	Section 1
Section numbers with a leading zero (e.g., 1.01) refer to sections in a Service Contract General Terms Section numbers without a leading zero (e.g., 1) refer to sections in a Service Contract Specific Terms.	

Section 1.4. Other Definitions — Trust Agreement

Capitalized terms not defined herein and defined in the Trust Agreement are used herein as therein defined unless the context clearly otherwise requires. Such terms include:

<i>Term</i>	<i>Defined In</i>
Principal Amount.....	Section 101
Funding Trust Receivable.....	Section 101
Corporation Request, Corporation Order or Corporation Consent.....	Section 101

Section 1.5. Business Days

If this Agreement requires an act to be performed on a day that is not a Business Day then such act shall be performed on the first day thereafter that is a Business Day with the same effect as if such act were performed on the day that such act was otherwise required to be performed.

Section 1.6. Interpretation

1.6.1. Words of the masculine gender include correlative words of the feminine and neuter genders.

1.6.2. Unless the context otherwise indicates, words importing the singular include the plural and vice versa.

1.6.3. Articles and Sections referred to by number or name refer to the corresponding Articles and Sections of this Agreement *unless* otherwise provided.

1.6.4. The terms *hereby*, *hereof*, *hereto*, *herein*, *hereunder* and any similar terms used in this Agreement refer to this Agreement as a whole and not to any particular portion thereof.

1.6.5. The word *or* is not exclusive.

1.6.6. The enumeration of things after the word *including* is to be interpreted as illustrative and not as restrictive.

1.6.7. References to sections of a Public Act, or to a Public Act as a whole, also include any amendments thereto unless otherwise indicated and analogous sections of Public Acts enacted as substitutes therefor.

Article II — Appointment; Grant of Security Interest

Section 2.1. Collection of Receivables

Each of the Corporations, the Specified Hedge Counterparties and the Funding Trust hereby appoint the Contract Administrator as its respective agent and attorney-in-fact to receive Service Payments.

Section 2.2. Appointment by Funding Trust

2.2.1. The Funding Trust hereby also appoints the Contract Administrator as its agent and attorney-in-fact to take such actions and exercise such rights and remedies as to Funding Trust Receivables as the Funding Trust is or may become entitled to exercise under law and in equity to enforce the payment thereof and otherwise realize Funding Trust Receivables. For the avoidance of doubt, all parties to this Agreement shall be entitled to enforce their respective rights.

Section 2.3. Appointment by Each Corporation

2.3.1. Each Corporation hereby also appoints the Contract Administrator as its agent and attorney-in-fact to enforce such Corporation's rights and remedies under the Stated Hedges, including the collection of Hedge Receivables from the Specified Hedge Counterparties under the respective Stated Hedges, and to take all such actions and exercise such rights and remedies as the respective Corporation is or may become entitled to exercise under the particular Stated Hedge and otherwise at law or in equity.

2.3.2. Each Corporation also appoints the Contract Administrator as its agent and attorney to take to perform all ministerial acts in the name and stead of such Corporation that are called for to be performed by such Corporation under the Service Contract subject to the specific limitations contained in **Article VII**.

2.3.3. Each Corporation further appoints the Contract Administrator to invest amounts received by the Contract Administrator as Costs of Issuance and Prepaid Service Charges in Authorized Investments in accordance with the Service Contract.

Section 2.4. Grant of Security Interests

2.4.1. Hedge Periodic Payables

2.4.1(1). Effective as of the Closing Date, to secure its payment obligations under its Stated Hedges, each Corporation hereby grants to each Specified Hedge Counterparty and the Transfer Party a security interest in and lien upon all of its right, title and interest

2.4.2(3). The Transfer Party acknowledges and agrees that the Hedge Termination Payables Security Interest granted it is enforceable against the Hedge Termination Payables Collateral *only* on and after the occurrence of the Transfer Party Accession Event.

2.4.2(4). Each Specified Hedge Counterparty agrees that the Transfer Party shall accede to all of the rights and remedies and be bound by all of the obligations of Seibert as a Specified Hedge Counterparty hereunder with respect to the Hedge Termination Payables Collateral upon the occurrence of the Transfer Party Accession Event and that thereupon Seibert shall have no further rights, obligations or remedies hereunder as a Specified Hedge Counterparty.

2.4.3. Hedge Periodic Receivables

2.4.3(1). Effective as of the Closing Date, to secure the City's obligations to the Funding Trust in respect of Service Charges, each Corporation hereby grants to the Funding Trust a security interest in and lien upon all of its right, title and interest in, to and under the amounts payable by any Specified Hedge Counterparty as a Hedge Periodic Receivable (a *Hedge Periodic Receivable Amount*), any interest earned thereon and all rights and interests with respect thereto granted by Article 9 of the UCC, including rights to proceeds and rights of enforcement (collectively, the *Hedge Periodic Receivables Security Interest*).

2.4.3(2). All of the parties hereto acknowledge that the Hedge Periodic Receivables Security Interest granted by each Corporation shall be deemed to give Funding Trust a first priority security interest in and an equal lien upon, all of the Corporations' right, title and interest in, to and under Hedge Periodic Receivable Amounts.

2.4.4. Hedge Termination Receivables

2.4.4(1). Effective as of the Closing Date, to secure the City's obligations to the Funding Trust in respect of Service Charges, each Corporation hereby grants to the Funding Trust a security interest in and lien upon all of its right, title and interest in, to and under the amounts payable by any Specified Hedge Counterparty as a Hedge Termination Receivable (a *Hedge Termination Receivable Amount*), any interest earned thereon and all rights and interests with respect thereto granted by Article 9 of the UCC, including rights to proceeds and rights of enforcement (collectively, the *Hedge Termination Receivables Security Interest*).

2.4.4(2). All of the parties hereto acknowledge that the Hedge Termination Receivables Security Interest granted by each Corporation shall be deemed to give the Funding Trust a first priority security interest an equal lien upon, all of the Corporations' right, title and interest in, to and under Hedge Termination Receivable Amounts.

Article III — Representations and Warranties

Each Corporation makes the representations and warranties contained in **this Article** for only itself and not for the other Corporation.

Section 3.1. Incorporation by Reference

3.1.1. Each of the Corporations makes the representations and warranties made by it in its Service Contract, on and as of the dates therein made, for the benefit of the Contract Adminis-

trator as if any reference therein to the "Service Contract" also included a reference to this Agreement for the mutual benefit of each other and for the benefit of the Underwriters, the Specified Hedge Counterparties, the Funding Trust and the holders from time to time of the Certificates.

3.1.2. Such representations and warranties, together with related definitions and ancillary provisions, are hereby incorporated herein, *mutatis mutandis*, with the same force and effect as if set forth in full herein.

Section 3.2. Corporation Property

Each Corporation represents and warrants for the benefit of the Contract Administrator, the Underwriters, the Funding Trust, the Specified Hedge Counterparties, the holders from time to time of the Certificates and the other Corporation that on the date hereof and on and as of the Closing Date its respective Service Contract and Stated Hedges are its property subject to no lien, charge, encumbrance or other interest *except* the rights of Third Party Beneficiaries as set forth in the Service Contracts and (i) the rights of the Funding Trust on and after the Closing Date to Funding Trust Receivables and Hedge Receivables, and ancillary rights, (ii) the rights of the Specified Hedge Counterparties on and after the Closing Date to Hedge Payables and ancillary rights and (iii) the security interest granted on and after the Closing Date to the Transfer Party in Hedge Payables.

Section 3.3. General Representations and Warranties

Each Corporation represents and warrants as follows for the benefit of the Contract Administrator, the Underwriters, the Funding Trust, the Specified Hedge Counterparties, the holders from time to time of the Certificates and the other Corporation.

3.3.1. The Corporation's name as indicated on the signature page of this Agreement is such Corporation's name as indicated on the public record of the Corporation's jurisdiction of organization which shows the Corporation to have been organized.

3.3.2. The Corporation is a "registered organization," within the meaning of Article 9 of the UCC, of the type and organized under the laws of the State of Michigan.

3.3.3. **Section 9.04** of the respective **Service Contract** accurately sets forth the Corporation's place of business or, if more than one place of business, its chief executive office as well as such Corporation's mailing address if different and such Corporation has not had any other place of business or, if more than one place of business, any other chief executive office since its formation.

Section 3.4. Conveyance and Security Interests to the Funding Trust

3.4.1. Each Corporation represents and warrants as follows for the benefit of the Contract Administrator, the Funding Trust and the other Corporation on and as of the Closing Date.

3.4.1(1). The transfer and assignment of the Funding Trust Receivables that the Trust Agreement purports to transfer, assign and otherwise convey to the Funding Trust is a valid and binding absolute transfer of the Funding Trust Receivables *provided* that such Corporation shall not be in breach of this representation and warranty if, contrary to

the intent of such Corporation, such transfer is hereafter determined to be a pledge of such property to the Funding Trust.

3.4.1(2). The security interest granted to the Funding Trust in the Funding Trust Receivables is a valid security interest to the extent of the rights of such Corporation's interests therein, and such security interest is a perfected, first priority security interest.

3.4.1(3). The security interest granted to the Funding Trust in the Hedge Receivables is a valid security interest therein, and such security interest is a perfected, first priority security interest.

3.4.2. (i) Each Corporation has not granted control (for purposes of Articles 8 and 9 of the UCC) over the Funding Trust Receivables and the Hedge Receivables, or any bank account or securities account in which they are held, to any Person other than the Funding Trust and (ii) each Corporation has not entered into any agreement granting control (for purposes of Articles 8 and 9 of the UCC) over the Hedge Receivables other than this Agreement or over the Funding Trust Receivables other than the Trust Agreement.

3.4.3. Each Corporation has never granted or permitted to exist, any lien, mortgage, pledge, charge, claim, encumbrance, easement, lease or security interest on the Hedge Receivables and Funding Trust Receivables, or any bank account or securities account in which they are held, in favor of any Person other than the Funding Trust.

Section 3.5. Security Interests Granted the Specified Hedge Counterparties

3.5.1. Each Corporation represents and warrants for the benefit of the Specified Hedge Counterparties and the other Corporation on and as of the Closing Date that the security interest granted to the Specified Hedge Counterparties in the Hedge Payables Collateral is a valid security interest therein, and such security interest is a perfected, first priority security interest.

3.5.2. (i) Each Corporation has not granted control (for purposes of Articles 8 and 9 of the UCC) over the Hedge Payables Collateral, or any bank account or securities account in which they are held, to any Person other than the Hedge Counterparties and (ii) each Corporation has not entered into any agreement granting control (for purposes of Articles 8 and 9 of the UCC) over the Hedge Payables Collateral other than this Agreement.

3.5.3. Each Corporation has never granted or permitted to exist, any lien, mortgage, pledge, charge, claim, encumbrance, easement, lease or security interest on the Hedge Payables Collateral, or any bank account or securities account in which they are held, in favor of any Person other than the Specified Hedge Counterparties.

Section 3.6. Corporate Identification

Each Corporation represents only as to its own organizational identification number as follows:

3.6.1. The organizational identification number of GRS Corporation is 793781.

3.6.2. The organizational identification number of PFRS Corporation is 793782.

Article IV — Receipt and Disposition of Receivables

Section 4.1. Property Acknowledgments; Payment Entitlements

For the avoidance of doubt, the following are statements of the property interests of the parties hereto in the Components of Service Payments.

4.1.1(1). Contract Administrator Payments are property of the Contract Administrator, and the Contract Administrator is the Person Entitled thereto.

4.1.1(2). Funding Trust Receivables are property of the Funding Trust, and the Funding Trust is the Person Entitled thereto.

4.1.1(3). Amounts payable by the City under **Section 7.02** of either **Service Contract** in respect of Hedge Periodic Payables are property of the Corporations, and pursuant to **Section 4.3.2** the Specified Hedge Counterparties are the Persons Entitled thereto.

4.1.1(4). Amounts payable by the City under **Section 7.02** of either **Service Contract** in respect of Hedge Termination Payables are property of the Corporations, and pursuant to **Section 4.3.3** the Specified Hedge Counterparties are the Persons Entitled thereto.

4.1.1(5). Hedge Periodic Receivables are the property of the Corporations, and pursuant to **Section 4.4.1**, the Funding Trust is the Person Entitled thereto, to the extent provided in such Section, and thereafter, pursuant to **Section 4.4.2**, each Corporation is the Person Entitled to any remaining portion of its respective Hedge Periodic Receivables.

4.1.1(6). Hedge Termination Receivables are the property of the Corporations, and pursuant to **Section 4.4.1**, the Funding Trust is the Person Entitled thereto, to the extent provided in such Section, and, thereafter, each Corporation is the Person Entitled to any remaining portion of its respective Hedge Termination Receivables.

Section 4.2. Receipt of Service Payments; Determination of Property Interests

4.2.1. Service Payments (including Prepaid Service Charges) shall be applied in accordance with the priorities set forth in the Service Contract Priority Sections.

4.2.2. On each Receipt Day that the Contract Administrator receives a Service Payment, the Contract Administrator shall properly determine the Components and pro-rata application thereof satisfied under the Service Contract Priority Sections by such Service Payment, and the Persons Entitled thereto, in accordance with the Service Contract and shall distribute such payments in accordance with **Section 4.7**.

4.2.3. At least one day prior to each Distribution Date for any Service Charges or Scheduled Payments, the Contract Administrator shall determine whether the amount available under this Agreement for such payment is sufficient to make the distribution as if no Contract Agreement Deficiency existed. If the Contract Administrator determines that the amount available under this Agreement for such payment is insufficient to make such distribution on such Distribution Date, the Contract Administrator shall deliver a notice (a **Shortfall Notice**) to each Insurer and the Trustee that states the amount of the shortfall and the respective amounts thereof attributable to Service Charges and Scheduled Payments.

4.2.4. At least one day prior to each Distribution Date for a Hedge Periodic Payable, the Contract Administrator shall determine whether the amount available under this Agreement for such payment is sufficient to pay such Hedge Periodic Payable. If the Contract Administrator determines that the amount available under this Agreement for such payment is insufficient to make such payment on such Distribution Date, the Contract Administrator shall deliver a notice to the Insurer and the applicable Specified Hedge Counterparty or Counterparties that states the amount of the shortfall.

Section 4.3. Prepaid Service Charges; Hedge Payables

4.3.1. Prepaid Service Charges received by the Contract Administrator shall be used to pay the first occurring Service Charges and Hedge Periodic Payables of each Corporation.

4.3.2. Receipts by the Contract Administrator of amounts paid by the City under **Section 7.02** of either **Service Contract** in respect of Hedge Periodic Payables shall be used to pay current and past due Hedge Periodic Payables, and once credited to the account referred to in **Section 4.5.1** shall not be subject to direction to any other use by the Corporation.

4.3.3. Receipts by the Contract Administrator of amounts paid by the City under **Section 7.02** of either **Service Contract** in respect of Hedge Termination Payables shall be used to pay current and past due Hedge Termination Payables and once credited to the account referred to in **Section 4.5.1** shall not be subject to direction to any other use by the Corporation.

Section 4.4. Receipt and Disposition of Hedge Receivables and Investment Gain

4.4.1. Hedge Receivables received by the Contract Administrator shall be used to satisfy the City's obligations in respect of then current or past due Service Charges not otherwise paid.

4.4.2. To the extent that a balance of a paid Hedge Receivable remains after application in accordance with **Section 4.4.1**, such balance shall be the property of the respective Corporation.

4.4.3. Gain from Authorized Investments received by the Contract Administrator from the investment of Costs of Issuance and Prepaid Service Charges shall be paid to the City.

Section 4.5. Books and Records; Funds and Accounts; Trust Funds and Accounts

4.5.1. The Contract Administrator shall maintain books and records properly showing satisfied Components. To facilitate maintaining proper records of ownership, the Contract Administrator shall establish the funds and accounts named in **Exhibit 4.5** and shall credit the respective Components pending distribution and shall distribute the amounts credited thereto on the respective Distribution Dates to the respective Entitled Persons.

4.5.2. In addition to bearing the name of the particular fund or account, each fund or account shall be captioned *Detroit Retirement Systems Funding Trust 2005* and shall identify the property owner(s) as set forth in **Exhibit 4.5**.

4.5.3. In addition to the funds and accounts required by **Exhibit 4.5**, the Contract Administrator may establish such other funds and accounts as it determines necessary or appropriate.

4.5.4. The funds and accounts required by **Exhibit 4.5**, and such other funds and accounts that the Contract Administrator establishes hereunder shall be held and administered as trust funds and accounts.

Section 4.6. Distribution Dates

Each of the following dates is a *Distribution Date*.

<u>Date</u>	<u>Component</u>
As and When Due	Contract Administrator Payments Amounts in respect of Hedge Periodic Payables Amounts in respect of Hedge Termination Payables
First day of a calendar month.....	Any Contract Agreement Deficiency
Service Charge Payment Dates	Service Charges
Scheduled Payments Dates	Regular Scheduled Payments
Sinking Fund Installment Dates.....	Sinking Fund Installments
Optional Prepayment Dates	Optional Prepayment Amounts Accrued Service Charges

Section 4.7. Distributions of Service Payments

On each Distribution Date, the Contract Administrator shall distribute the amount of the Components satisfied since the last such Distribution Date to the respective Entitled Persons.

4.7.1(1). If the Entitled Person is the Contract Administrator, the amounts of satisfied Components shall be paid to the Contract Administrator.

4.7.1(2). If the Entitled Person is the Funding Trust, the amounts of satisfied Components shall be distributed to the Funding Trust to be applied in accordance with the Trust Agreement.

(i) Amounts distributed to the Trustee representing satisfied Components constituting Service Charges and Accrued Service Charges described in **clause Second** of **Section 8.03** of each **Service Contract** shall be identified to the Trustee as *Deficit Interest Related Payments*;

(ii) Amounts distributed to the Trustee representing satisfied Components constituting Regular Scheduled Payments described in **clause Fourth** of **Section 8.03** of each **Service Contract** shall be identified to the Trustee as *Deficit Principal Related Payments*;

(iii) Amounts distributed to the Trustee representing satisfied Components constituting Sinking Fund Installments described in **clause Fourth** of **Section 8.03** of each **Service Contract** shall be identified to the Trustee as *Deficit Principal Related Payments*;

(iv) Amounts distributed to the Trustee representing satisfied Components constituting Service Charges described in **clause Third** of **Section 8.03** of each **Service Contract** shall be identified to the Trustee as *Interest Related Payments*;

(v) Amounts distributed to the Trustee representing satisfied Components constituting Regular Scheduled Payments and Sinking Fund Installments described in **clause Fifth of Section 8.03** of each **Service Contract** shall constitute and be identified to the Trustee as, respectively, *Principal Related Payments* and *Sinking Fund Related Payments*; and

(vi) Amounts distributed to the Trustee representing satisfied Components constituting Optional Prepayment Amounts and Accrued Service Charges described in **clause Eighth of Section 8.03** of each **Service Contract** shall be identified to the Trustee as *Redemption Related Payments*.

4.7.1(3). If the Entitled Persons are the Specified Hedge Counterparties, the amounts of satisfied Components constituting amounts in respect of Hedge Payables shall be paid to the Specified Hedge Counterparties to whom such amounts are owing in proportion to the amounts owed to each under the respective Stated Hedges.

4.7.1(4). If distributions are to be made on the same Distribution Date for two or more different priorities of Components pursuant to the Service Contract Priority Sections, no distribution shall be made in respect of a lower priority to the extent that each of the higher priorities is not satisfied in full.

Section 4.8. Satisfaction and Priority of Payments

4.8.1. Each party acknowledges that the Service Contract Priority Sections establish the order and priority of the payment of Components and the Persons Entitled to Components are entitled to receive those Components in the order and priority set forth in the Service Contract Priority Sections. Each party acknowledges it is undertaking and entering into the transaction which is the subject of this Agreement based on the understanding, and with the intent and effect of the Service Contract Priority Sections. Each party hereto agrees to be bound by the order and priority of the payments of Components set forth in Service Contract Priority Sections and the terms and provisions of the Service Contract Priority Sections are hereby incorporated into this Agreement by this reference as if the same were recited in its entirety.

4.8.2. Notwithstanding any other provision hereof, upon the occurrence of a payment default under the Service Contracts or this Agreement, to the extent that a party enforces its rights with respect to Collateral on which it has a Creditor Lien, such Collateral or the proceeds thereof may only be applied to satisfy payments of Components due and owing to the parties that have a Creditor Lien that secures payments of such Components.

Article V — Corporation Covenants

Each Corporation covenants with the Contract Administrator, the Funding Trust, the Specified Hedge Counterparties and with the other Corporation as provided in this Article.

Section 5.1. Concerning the Security Interests

5.1.1. The Corporation will not change its name, its place of business or, if more than one place of business, its chief executive office, or its mailing address or organizational identification number, if it has one, without providing prior written notice to the parties hereto at least ten Business Days prior to the effective date of any such change.

5.1.2. The Corporation will not, except as expressly permitted by this Agreement, change its type of organization, its jurisdiction of organization, its legal structure or its "location" as determined in Article 9 of the UCC, without the prior written consent of each of the other parties hereto (other than a Corporation).

Section 5.2. No Conveyance or Assignment

5.2.1. The Corporation shall not convey, transfer or assign Funding Trust Receivables under its Service Contract or any interest therein to any Person *other than* the Funding Trust as provided in the Trust Agreement.

5.2.2. The Corporation shall not convey, transfer or assign Hedge Payables under its Service Contract or any interest therein to any Person *other than* the Specified Hedge Counterparties as provided herein.

5.2.3. The Corporation shall not convey, transfer or assign any Stated Hedge or any interest therein to any Person *other than* as provided in the Service Contract.

Section 5.3. Negative Pledge

5.3.1. The Corporation hereby covenants never to grant, or permit to exist, any other pledge of, security interest in or lien upon the amounts payable by the City under **Section 7.02** of its **Service Contract** in respect of Hedge Periodic Payables, any "securities account" and/or any "deposit account" (as such terms are defined in Sections 8-501(1) and 9-102(cc) of the UCC).

5.3.2. The Corporation hereby covenants never to grant, or permit to exist, any other pledge of, security interest in or lien upon the amounts payable by the City under **Section 7.02** of its **Service Contract** in respect of the Hedge Termination Payables, any "securities account" and/or any "deposit account" (as such terms are defined in Sections 8-501(1) and 9-102(cc) of the UCC).

5.3.3. The Corporation hereby covenants never to grant, or permit to exist, any other pledge of, security interest in or lien upon the Funding Trust Receivables, any "securities account" and/or any "deposit account" (as such terms are defined in Sections 8-501(1) and 9-102(cc) of the UCC).

Section 5.4. Defense of Interests; Further Assurance

The Corporation agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all financing statements, if applicable, and will take all actions or cause all such actions to be taken as may be required by law or as shall reasonably be requested by any Hedge Counterparty or the Trustee for respectively, the attachment, perfection and/or continuance of any security interests granted by this Agreement or the Trust Agreement for the preservation and protection of all rights of, respectively, the Specified Hedge Counterparties under this Agreement or the Funding Trust under the Trust Agreement.

Article VI — Events of Default; Remedies

Section 6.1. Right of Enforcement

For the avoidance of doubt, all parties to this Agreement shall be entitled to enforce their respective rights except as otherwise provided in **Section 6.9** and **Article VIII**.

Section 6.2. Events of Default

Each of the following constitutes an “Event of Default”:

6.2.1(1). the City fails to pay any Funding Trust Receivables as and when the same shall become due under either Service Contract; or

6.2.1(2). an event occurs described in clause (i), (ii) or (iii) of Section 9.01 of either Service Contract (each, a *Service Contract Acceleration Clause*).

Section 6.3. Remedies

Upon the occurrence of an Event of Default and during the continuance thereof, the Contract Administrator may and shall, at the request of Certificateholders representing either:

(i) at least 25 percent in principal amount of Outstanding Certificates, the payments on which have not been made as a result of such Event of Default (*Affected Certificates*), or

(ii) at least 50 percent in principal amount of all Outstanding Certificates,

enforce the Service Contract under which the Event of Default occurred by such remedies as are available to the Contract Administrator.

Section 6.4. Contract Administrator May File Proofs of Claim

6.4.1. If an event occurs described in any Service Contract Acceleration Clause and a judicial proceeding is commenced in connection therewith, the Contract Administrator is entitled and empowered, by intervention in such proceeding:

6.4.1(1). to file and prove a claim for the whole amount of the Funding Trust Receivables then due and payable and to file such papers and documents as may be necessary or desirable in order to have the claims of the Contract Administrator (including any claim for reasonable compensation, expenses, disbursements and advances of the Contract Administrator, its agents or counsel) and of the Certificateholders allowed in such judicial proceeding; and

6.4.1(2). to collect and receive any amounts payable or deliverable on any such claims and to distribute the same;

and any trustee (or similar official) in any such judicial proceeding is hereby authorized by the Funding Trust to make such payments to the Contract Administrator, and in the event the Contract Administrator shall consent to making of such payments directly to the Trustee, to pay to the Contract Administrator any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Contract Administrator, its agents or counsel.

6.4.2. Nothing herein contained shall authorize the Contract Administrator to authorize or consent to or accept or adopt on behalf of any Certificateholder any plan of adjustment or

composition affecting the Certificateholders or the rights of any Holder, or to authorize the Contract Administrator to vote in respect of the claim of any Certificateholder in any such proceeding.

Section 6.5. Application of Money Collected.

Any money collected or received by the Contract Administrator pursuant to this Article shall be applied in the order of the Service Contract Priority Sections *except* as otherwise provided in **Section 4.8.2**.

Section 6.6. No Duty of Inquiry

6.6.1. The Contract Administrator is under no duty to inquire into the performance by the City of its obligations under the Service Contracts; however, *if* the Contract Administrator receives notice (a *Default Notice*) from Holders of either

(i) at least 25 percent in principal amount of the Outstanding Affected Certificates or

(ii) at least 50 percent in principal amount of all Outstanding Certificates

specifying the failure of the City to pay Funding Trust Receivables *then* the Contract Administrator shall give notice of such failure to the City and demand that such failure be remedied.

6.6.2. Upon receipt of any Default Notice, the Contract Administrator shall give notice to all Certificateholders and the Specified Hedge Counterparties that did not join in such Default Notice.

Section 6.7. Notice of Defaults.

6.7.1. Promptly upon obtaining actual knowledge of the occurrence of any Event of Default, the Contract Administrator shall give written notice of such Event of Default by mail to all Certificateholders, Specified Hedge Counterparties and Rating Agencies *unless* such Event of Default has been cured or waived.

6.7.2. Any Insurer who is not then in default under its Credit Insurance shall be entitled to receive all notices in respect of Certificates insured by it, and no notices under **Section 6.7.1** shall be sent to the Holders of such Certificates.

Section 6.8. Limitation on Suits by Certificateholders.

No Certificateholder shall have any right to institute any proceeding, judicial or otherwise, under or with respect to the Service Contract *unless*

6.8.1(1). such Holder has previously given written notice to the Contract Administrator of an Event of Default that is then continuing;

6.8.1(2). the Holders of either

(i) at least 25 percent in principal amount of the Outstanding Affected Certificates or

(ii) at least 50 percent in principal amount of all Outstanding Certificates

have made written request to the Contract Administrator to institute proceedings in respect of such Event of Default in its own name as Contract Administrator;

6.8.1(3). such Holder or Holders have offered to the Contract Administrator satisfactory indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

6.8.1(4). the Contract Administrator for 30 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

6.8.1(5). in the case of a written request made pursuant to **Section 6.8.1(2)** from the Holders of at least 25 percent in principal amount of the Outstanding Affected Certificates, no direction inconsistent with such written request has been given to the Contract Administrator during such 30-day period by the Holders of a greater percentage of the Holders of Outstanding Affected Certificates (for the avoidance of doubt, this paragraph does not apply when a written request has been made pursuant to **Section 6.8.1(2)** from Holders of at least 50 percent in principal amount of all Outstanding Certificates);

it being understood and intended that no one or more Holders of Certificates shall have any right in any manner to affect, disturb or prejudice the interest of the parties hereto or the rights of any other Holders of Certificates, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under any Service Contract, *except* in the manner herein provided and for the equal and ratable benefit of all Entitled Persons.

Section 6.9. Control by Majority

6.9.1. The Holders of a majority in principal amount of all Outstanding Certificates have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Contract Administrator to exercise any power exercisable by the Contract Administrator (including any proceeding instituted following the delivery of notice pursuant to **Section 6.8.1(2)**); *provided* that such direction is not in conflict with any rule of law or this Agreement.

6.9.2. Notwithstanding any other provision hereof, any Insurer not then in default under its Credit Insurance shall:

6.9.2(1). be treated as the Holder of Outstanding Certificates equal to the principal amount of Certificates insured by it for the purposes of actions permitted to be taken by Certificateholders under **this Article** and for the purpose of giving all other consents, directions and waivers that Certificateholders may give; and

6.9.2(2). control all actions that may be taken by any Specified Hedge Counterparty that is the beneficiary of such Credit Insurance, including for purposes of actions permitted to be taken by such Specified Hedge Counterparty under **this Agreement** and for the purposes of giving all other directions, consents and waivers that such Specified Hedge Counterparty may give.

Section 6.10. Actions by Beneficial Owners

6.10.1. For the purpose of providing any consent, waiver or instruction to the Contract Administrator, **Holder** and **Certificateholder** includes a Person who provides the Contract Administrator an affidavit of beneficial ownership of a Certificate together with satisfactory indemnity against any loss, liability or expense to the Contract Administrator to the extent that it acts on the affidavit of beneficial ownership (including any consent, waiver or instruction given by a Person providing such affidavit and indemnity).

6.10.2. The principal amount of Outstanding Certificates owned by a Beneficial Owner meeting the requirements of Section 6.10.1 shall be deemed held by such Beneficial Owner and *not* held by Certificateholders for the purposes of providing any consent, waiver or instruction to the Contract Administrator.

Article VII — Concerning the Contract Administrator

Section 7.1. Certain Duties and Responsibilities.

7.1.1. *Except* during the continuance of an Event of Default:

7.1.1(1). the Contract Administrator undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Contract Administrator and no permissive power or authority availability to the Contract Administrator shall be considered a duty; and

7.1.1(2). in the absence of bad faith on its part, the Contract Administrator may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, documents, other instruments or opinions furnished to the Contract Administrator and conforming to the requirements of this Agreement or the Service Contract; *but* in the case of any such certificates, documents, other instruments or opinions which by any provision hereof or thereof are specifically required to be furnished to the Contract Administrator, the Contract Administrator is under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement.

7.1.2. *If* an Event of Default occurs and is continuing, *then* the Contract Administrator shall exercise such of the rights and powers in respect of Funding Trust Receivables and use the same degree of care and skill in their exercise as a prudent corporate trustee would exercise or use under the circumstances.

7.1.3. No provision of this Agreement shall be construed to relieve the Contract Administrator from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, *except* that

7.1.3(1). **this subsection** shall not be construed to limit the effect of Section 7.1.1.

7.1.3(2). the Contract Administrator shall not be liable for any error of judgment made in good faith by an authorized officer of the Contract Administrator, *unless* it is proved that the Contract Administrator was negligent in ascertaining the pertinent facts;

7.1.3(3). the Contract Administrator shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of all Outstanding Certificates relating to the time, method and place of conducting any proceeding for any remedy available to the Contract Administrator, or exercising any trust or power conferred upon the Contract Administrator, by or under this Agreement; and

7.1.3(4). no provision of this Agreement shall require the Contract Administrator to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder, or in the exercise of any of its rights or pow-

ers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

7.1.4. Whether or not therein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Contract Administrator is subject to the provisions of this Article.

Section 7.2. Certain Rights of Contract Administrator.

Except as otherwise provided in Section 7.1.1:

7.2.1(1). The Contract Administrator may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

7.2.1(2). Any request, direction or consent of a Corporation mentioned in this Agreement shall be sufficiently evidenced respectively by a Corporation Request, Corporation Order or Corporation Consent.

7.2.1(3). Whenever in the administration of this Agreement, any Service Contract or any Stated Hedge the Contract Administrator shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Contract Administrator (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a certificate of a representative of the particular Corporation.

7.2.1(4). The Contract Administrator may consult with counsel, and the written advice of such counsel is full and complete authorization and protection in respect of any action taken, suffered or omitted by the Contract Administrator hereunder in good faith and in reliance thereon.

7.2.1(5). The Contract Administrator is under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request or direction of any of the Certificateholders pursuant to this Agreement, *unless* such Certificateholders shall have offered to the Contract Administrator reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

7.2.1(6). The Contract Administrator shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, or other paper or document, *but* the Contract Administrator, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

7.2.1(7). The Contract Administrator may execute any of its powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Contract Administrator shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

7.2.1(8). *Except* as provided in Section 7.3, the Contract Administrator shall have no duty to see to the recording, filing or registration of any instrument or document (in-

cluding financing or continuation statements or filing under tax or security laws) or any rerecording, refiling or re-registration.

7.2.1(9). The Contract Administrator shall have the right at any time to seek instructions concerning the administration of the Service Contracts from any court of competent jurisdiction.

7.2.1(10). The Contract Administrator shall not have any responsibility to examine or review and shall have no liability for the contents of any documents submitted to or delivered to any Certificateholder or any other Person in the nature of an official statement or offering circular, preliminary or final.

Section 7.3. Specific Duties of the Contract Administrator

Except during an Event of Default or as required by applicable law, the duties of the Contract Administrator are limited to the following:

7.3.1(1). deliver notice to the City to pay Hedge Payables pursuant to Section 7.02 of the respective Service Contract;

7.3.1(2). continue the financing statements filed with respect to the Funding Trust Receivables and Hedge Payables;

7.3.1(3). take such actions in the name and stead of either Corporation as may be required by **Section 5.4**;

7.3.1(4). the specific duties set forth in **Article II** to receive Service Payments;

7.3.1(5). the specific duties set forth in **Articles IV and VI**;

7.3.1(6). notify the City of any realized loss resulting from the investment of Investable Funds, demand immediate payment of such loss and receive payment of such loss;

7.3.1(7). pay to the City any realized gain from the investment of Investable Funds or otherwise apply such gain in accordance with **Section 7.04** of each **Service Contract**;

7.3.1(8). perform such duties, if any, as may be required to be performed by the Contract Administrator in the Specific Terms of a Service Contract;

7.3.1(9). the specific duties set forth in **Article X**;

7.3.1(10). receive, recognize and give effect to a Notice of Transfer Event; and

7.3.1(11). the specific duties set forth in **Article XII**.

Section 7.4. May Hold Certificates.

The Contract Administrator, in its individual or any other capacity, may become the owner or pledgee of Certificates with the same rights it would have if it were not Contract Administrator.

Section 7.5. Money Held in Trust.

Money held by the Contract Administrator in trust hereunder need not be segregated from other funds except to the extent required by law or by other provision of this Agreement. The Contract Administrator shall be under no liability for interest on any money received by it hereunder.

Section 7.6. Compensation and Reimbursement

7.6.1. The Contract Administrator is entitled to payment or reimbursement:

7.6.1(1). from time to time for reasonable compensation for all services rendered by it hereunder; and

7.6.1(2). except as otherwise expressly provided herein, upon its request, for all reasonable expenses, disbursements and advances incurred or made by the Contract Administrator in accordance with any provision of this Agreement (including, without limitation, the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Contract Administrator's negligence, willful misconduct or bad faith.

7.6.2. The Contract Administrator is also entitled to indemnification for, and to be held harmless against, any loss, liability or expense incurred without negligence, willful misconduct or bad faith on its part, arising out of or in connection with the acceptance or administration of this Agreement or the exercise of its powers hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

7.6.3. The compensation, expenses and indemnification of the Contract Administrator hereunder shall constitute Contract Administrator Payments, a Component of Service Payments as provided in the Service Contracts.

Section 7.7. Lien of Contract Administrator

The Contract Administrator shall not have any lien on any funds held by it under this Agreement.

Section 7.8. Corporate Contract Administrator Required; Eligibility.

7.8.1. There shall at all times be a Contract Administrator hereunder which is a trust company or bank with trust powers organized under the laws of the United States of America or of any state of the United States with a combined capital and surplus of at least \$50,000,000. *If* such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, *then* for the purposes of **this Section**, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

7.8.2. The Contract Administrator shall resign immediately in the manner and with the effect specified in this Article if it becomes ineligible under **this Section**.

Section 7.9. Replacement of Contract Administrator.

7.9.1. No Vacancy.

No resignation or removal of the Contract Administrator and no appointment of a successor Contract Administrator pursuant to this Article shall be effective until the successor Contract Administrator accepts its appointment as provided in **this Section**.

7.9.2. Resignation.

The Contract Administrator may resign at any time, but such resignation shall become effective only in accordance with **Section 7.9.1**, above. A resigning Contract Administrator shall give notice of its resignation to each Insurer.

7.9.3. Removal by Certificateholders.

7.9.3(1). The Holders of a majority in principal amount of Outstanding Certificates may remove the Contract Administrator by so notifying the Contract Administrator.

7.9.3(2). If the Contract Administrator becomes ineligible under **Section 7.8**, any Certificateholder may petition a court of competent jurisdiction for the appointment of a successor.

7.9.4. Appointment of Successor.

7.9.4(1). The retiring Contract Administrator or the Corporations may appoint a successor at any time prior to the date on which a successor Contract Administrator takes office.

7.9.4(2). If a successor Contract Administrator does not take office within 45 days after the retiring Contract Administrator resigns or is removed, any Certificateholder may petition a court of competent jurisdiction for the appointment of a successor Contract Administrator.

7.9.4(3). Within one year after a successor Contract Administrator appointed by the Corporations or a court of competent jurisdiction takes office, the Holders of a majority in principal amount of Outstanding Certificates may appoint a successor Contract Administrator to replace such successor Contract Administrator.

7.9.5. Acceptance of Appointment.

7.9.5(1). A successor Contract Administrator shall deliver written acceptance of its appointment to the retiring Contract Administrator, each of the other parties hereto and to each Insurer. Thereupon the resignation or removal of the retiring Contract Administrator shall be effective, and the successor Contract Administrator shall have all the rights, powers and duties of the Contract Administrator under the Trust Agreement.

7.9.5(2). The successor Contract Administrator shall mail a notice of its succession to the Certificateholders.

7.9.5(3). Upon the appointment of a successor Contract Administrator becoming effective as provided in **this Section**, the retiring Contract Administrator shall promptly transfer all property held by it as Contract Administrator to the successor Contract Administrator.

Section 7.10. Merger, Consolidation and Succession to Business.

7.10.1. If the Contract Administrator consolidates, merges or converts into, or transfers all or substantially all its corporate trust business to, another corporation, the successor corpora-

tion without any further act shall be the successor Contract Administrator *if* such successor corporation is eligible under **Section 7.8**.

7.10.2. The successor Contract Administrator may adopt the authentication of Certificates authenticated by the predecessor Contract Administrator and deliver such Certificates with the same effect as if the successor Contract Administrator had authenticated such Certificates.

Article VIII — Enforcement of Rights

Section 8.1. Effectiveness of Article

At any time of determination, **this Article** shall be in force and effective *if, but only if*, all Insurers are then in default under their respective Credit Insurance.

Section 8.2. Article Controlling

Whether or not herein expressly so provided, every provision of this Agreement relating to the enforcement of rights and remedies by any of the parties hereto, and their successors and assigns, is subject to the provisions of **this Article** notwithstanding anything in this Agreement to the contrary.

Section 8.3. Certain Definitions

Affected Parties means the Holders of Outstanding Certificates and Specified Hedge Counterparties affected by a particular Article 8 Event of Default; *affected Outstanding Certificates* and *affected Stated Hedges* have correlative meanings.

Article 8 Event of Default means any Event of Default described in Article VI or the City fails to pay any Hedge Payable as and when the same shall become due.

Controlling Affected Parties means on any particular date the Affected Parties in good standing having a majority of the Article 8 pro rata interests.

Enforcement Committee means the committee established pursuant to this Article.

Enforcement Officer means the same Person as the Person who is acting as Contract Administrator but in its separate capacity and not as Contract Administrator unless and until a successor Enforcement Officer is selected and thereafter *Enforcement Officer* means such successor.

Section 8.4. Determination of Article 8 Pro Rata

8.4.1. The *Combined Denominator* for determining Article 8 pro rata interests is the sum of (i) the total principal amount of all then affected Outstanding Certificates *and* (ii) the total of the maximum termination payments of the affected Specified Hedge Counterparties insured under the Credit Insurance.

8.4.2. When used with respect to affected Outstanding Certificates, *Article 8 pro rata* means a fraction, the numerator of which is the principal amount of the particular affected Outstanding Certificate and the denominator of which is the Combined Denominator.

8.4.3. When used with respect to affected Stated Hedges, *Article 8 pro rata* means a fraction, the numerator of which is the maximum termination payments of the particular affected

Specified Hedge Counterparty insured under the Credit Insurance and the denominator of which is the Combined Denominator.

8.4.4. Article 8 pro rata interests determined for the purposes of **Section 8.7.1(2)(i)**, shall be determined for all Certificateholders and all Specified Hedge Counterparties without consideration of whether or not they are affected by the particular Article 8 Event of Default.

Section 8.5. Determination of Good Standing

An Affected Party is in *good standing* as of any particular date when it, or it and all others acting with it on a collective basis, have met all requirements by the Enforcement Officer for contributions to payments of its fees, expenses and indemnification.

Section 8.6. Insurers

Any Insurer not in default under its Credit Insurance that is insuring Article 8 pro rata interests of an Affected Party shall be the only Affected Party with respect to those interests for all purposes of **this Article**.

Section 8.7. Duration of Exclusive Action Period

8.7.1. An Exclusive Action Period commences upon the occurrence of an Article 8 Event of Default and ends on the date the earliest of the following occur with respect to the particular Article 8 Event of Default:

8.7.1(1). the Enforcement Officer fails to call the initial meeting of the Enforcement Committee within the time required by **Section 8.9.1**;

8.7.1(2). at the initial meeting of the Enforcement Committee,

(i) less than 25% of the Article 8 pro rata interests of the Certificateholders and Specified Hedge Counterparties are in good standing and are present or

(ii) the Enforcement Committee does not authorize the Enforcement Officer to take action;

8.7.1(3). at a subsequent meeting of the Enforcement Committee, the Enforcement Committee properly directs the Enforcement Officer to discontinue taking all action;

8.7.1(4). at the time the Enforcement Officer gives notice to all Affected Parties that it properly intends to take no further action;

8.7.1(5). the Enforcement Officer has been directed to take one or more enforcement actions by the Enforcement Committee and does not commence any such action within 30 days after being so directed;

8.7.1(6). a final decision or judgment is rendered that does not require the City to pay the full amount of the Funding Trust Receivables or the Hedge Payables for which the action was commenced;

8.7.1(7). a final judgment against the City is not satisfied in full by the end of the City's fiscal year following the fiscal year in which such final judgment is rendered.

8.7.2. As used in this Section, a *proper direction* of the Enforcement Committee is a direction not contrary to **Section 8.10**, and a *proper action* of the Enforcement Officer is an action that is not contrary to a proper direction of the Enforcement Committee.

8.7.3. As used in this Section, a *final decision* or *judgment* is a judgment or decision for which the time for the appeal thereof has expired, and no appeal thereof has been taken.

Section 8.8. Other Actions Stayed

8.8.1. Except by acting through the Enforcement Committee, no Affected Party may take any action to enforce its rights with respect to a particular Article 8 Event of Default until the Exclusive Action Period terminates with respect to such Article 8 Event of Default.

8.8.2. Except by acting through the Enforcement Committee, no Affected Party may take any action during the Exclusive Action Period that purports to bind the Enforcement Officer without the prior authorization of the Enforcement Committee.

8.8.3. The Contract Administrator shall not take any action under **Article VI** with respect to a particular Event of Default until the Exclusive Action Period terminates with respect to such Event of Default.

Section 8.9. Establishment of Enforcement Committee

8.9.1. Within 30 days after having knowledge of an Article 8 Event of Default whether in its capacity as Enforcement Officer or indirectly as Contract Administrator, the Enforcement Officer shall notify the parties hereto and call the initial meeting of the Enforcement Committee.

8.9.2. If the Enforcement Officer will be requiring indemnity or any fees and anticipated expenses to be provided in advance of taking any action, the Enforcement Officer shall indicate such requirements in its notice.

8.9.3. Each party hereto attending the initial meeting shall establish to the satisfaction of the Enforcement Officer that it is an Affected Party and its Article 8 pro rata interests.

Section 8.10. Meeting Required

No action or direction of the Enforcement Committee is effective for any purpose of **this Article** *unless* it is duly authorized at a meeting of the Enforcement Committee.

Section 8.11. Notice of Meeting of Enforcement Committee

8.11.1. Notice shall be given not less than ten Business Days before a meeting of the Enforcement Committee.

8.11.1(1). Notice to the Holders of the affected Outstanding Certificates (including Beneficial Owners as provided in **Section 6.10**) shall be given as provided in **Section 6.7**, and all Beneficial Owners of such Outstanding Certificates shall be bound by any action properly taken at the meeting called in such notice.

8.11.1(2). Notice to the affected Specified Hedge Counterparties shall be given to them at their respective notice addresses in this Agreement.

8.11.2. Notice may be waived before, at or within two Business Days after a meeting. Any Person entitled to notice of a meeting shall be conclusively presumed to have had proper

notice of such meeting *if* such Person attends such meeting other than for the sole purpose of objecting to the holding of such meeting.

8.11.3. Any defect in the giving of notice shall not invalidate such notice or any action taken at a meeting pursuant thereto if a majority of Article 8 pro rata interests of , respectively, the affected Holders of Outstanding Certificates and the affected Specified Hedge Counterparties received or waived proper notice.

8.11.4. Each notice shall specify the time and location of the particular meeting and provide a summary statement of the purpose of the meeting.

8.11.4(1). Each meeting shall be held at a location determined by the Enforcement Officer in the City of Detroit, Michigan, or at such other city agreed to by the Enforcement Officer and concurrent majorities of the Article 8 pro rata interest of the Holders of affected Outstanding Certificates and of the affected Specified Hedge Counterparties.

8.11.4(2). A summary statement of the purposes of such meeting is not required to state any particulars thereof or the actions to be proposed thereat.

Section 8.12. Meetings of Enforcement Committee

8.12.1. No meeting of the Enforcement Committee shall be effective if it is not held pursuant to notice given in accordance with **Section 8.11**.

8.12.2. Only Affected Parties in good standing are permitted to vote at a meeting of the Enforcement Committee.

8.12.3. A single Affected Party in good standing present at a meeting of the Enforcement Committee constitutes a quorum for the purposes of that meeting.

8.12.4. The Enforcement Officer shall adjourn any meeting of the Enforcement Committee *sine die* at which a quorum is not present; *provided that*

8.12.4(1). the Enforcement Officer, at its election, may adjourn such meeting to a day certain not more than 10 days after the date of such meeting;

8.12.4(2). an adjourned meeting may only be adjourned *sine die*; and

8.12.4(3). an adjourned meeting is subject to the notice requirements of **Section 8.11**.

8.12.5. All actions at an Enforcement Committee meeting shall be taken by affirmative vote of a majority of the Article 8 pro rata interests of the Affected Parties present and voting at such meeting.

8.12.6. Meetings of the Enforcement Committee may be conducted by telephone so long as the participants in the meeting can concurrently speak to and hear each other.

8.12.7. Affected Parties in good standing may participate in a meeting in person or by representative or by telephone.

Section 8.13. Enforcement Committee Actions Binding

All actions properly taken by the Enforcement Committee or by the Enforcement Officer are binding on every Certificateholder and Specified Hedge Counterparty.

Section 8.14. Duties of Enforcement Officer

Subject to Section 8.18, the Enforcement Officer only has the duty to (i) call the initial meeting of the Enforcement Committee and (ii) follow proper directions of the Enforcement Committee.

Section 8.15. Control by Enforcement Committee

8.15.1. The Enforcement Committee shall direct the time, method and place of conducting any proceeding for any remedy available to the Enforcement Officer to exercise any power exercisable by the Enforcement Officer.

8.15.2. Except for calling the initial meeting of the Enforcement Committee, the Enforcement Officer shall only take such actions under **this Article** that are directed by the Enforcement Committee.

Section 8.16. Actions for Equal and Ratable Benefit

All actions of the Enforcement Officer shall be taken for the equal and ratable benefit of all Affected Parties in good standing.

Section 8.17. Application of Money Collected

All money collected by the Enforcement Officer shall be applied in accordance with the Service Contract Priority Sections.

Section 8.18. Certain Rights of the Enforcement Officer

The Enforcement Officer shall have the rights set forth in **this Section**.

8.18.1. The Enforcement Officer shall not be liable with respect to any action taken or omitted to be taken by it in accordance with any proper direction of the Enforcement Committee.

8.18.2. No provision of this Agreement shall require the Enforcement Officer to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

8.18.3. Whether or not expressly so provided, every provision of **this Article** relating to the conduct or affecting the liability of or affording protection to the Enforcement Officer is subject to the provisions of **this Section**.

8.18.4. The Enforcement Officer may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, instrument, opinion, report notice, request, direction, consent, order, bond, debenture or other paper or document believed by it to be genuine or to have been signed or presented by the proper party or parties.

8.18.5. Any direction of the Enforcement Committee shall be evidenced by a certificate of the officer of the Enforcement Committee charged with maintaining the official records of the Enforcement Committee stating in effect that the document purporting to be such direction is in fact a true and complete copy of a direction duly given by the Enforcement Committee at a meeting at which a quorum was present and acted throughout.

8.18.6. The Enforcement Officer (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, rely on a certificate of a representative of an Affected Party

8.18.7. The Enforcement Officer may consult with counsel, and the written advice of such counsel is full and complete authorization and protection in respect of any action taken or suffered or omitted by the Enforcement Officer hereunder in good faith and in reliance thereon.

8.18.8. The Enforcement Officer shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, instrument, opinion, report notice, request, direction, consent, order, bond, debenture or other paper or document, *but* the Enforcement Officer, in its discretion, may make such further inquiry or investigation into such facts or matters as it sees fit.

8.18.9. The Enforcement Officer may execute any of its powers under **this Article** or perform any duties under **this Article** either directly or through agents or attorneys, and the Enforcement Officer shall not be responsible for any negligence on the part of any such agent or attorney appointed with due care by it under **this Article**.

Section 8.19. Compensation and Reimbursement

8.19.1. The Enforcement Officer is entitled to payment or reimbursement:

8.19.1(1). from time to time for reasonable compensation for all services rendered by it hereunder; and

8.19.1(2). except as otherwise expressly provided herein, upon its request, for all reasonable expenses, disbursements and advances incurred or made by the Enforcement Officer in accordance with any provision of this Agreement (including, without limitation, the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Enforcement Officer's negligence, willful misconduct or bad faith.

8.19.2. The Enforcement Officer is also entitled to indemnification for, and to be held harmless against, any loss, liability or expense incurred without negligence, willful misconduct or bad faith on its part, arising out of or in connection with the acceptance or administration of this Agreement or the exercise of its powers hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

8.19.3. The compensation, expenses and indemnification of the Enforcement Officer hereunder shall be an Additional Service Payment under the Service Contracts.

Section 8.20. Corporate Enforcement Officer Required; Eligibility.

8.20.1. There shall at all times be an Enforcement Officer hereunder which is a trust company or bank with trust powers organized under the laws of the United States of America or of any state of the United States with a combined capital and surplus of at least \$50,000,000. *If* such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, *then* for the purposes of **this Section**, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

8.20.2. The Enforcement Officer shall resign immediately in the manner and with the effect specified in **this Article** if it becomes ineligible under **this Section**.

Section 8.21. Replacement of Enforcement Officer.

8.21.1. No Vacancy.

No resignation or removal of the Enforcement Officer and no appointment of a successor Enforcement Officer shall be effective until the successor Enforcement Officer accepts its appointment as provided in **this Section**.

8.21.2. Resignation.

8.21.2(1). The Enforcement Officer may resign at any time but only for a permitted reason, and such resignation shall become effective only in accordance with **Section 8.21.1**, above.

8.21.2(2). The Enforcement Officer may resign only if (i) it is no longer eligible under **Section 8.20.1** or (ii) it determines such resignation is necessary to resolve a conflict with its duties as Contract Administrator or Trustee.

8.21.3. Removal by Affected Parties.

8.21.3(1). The Enforcement Committee may remove the Enforcement Officer by so notifying the Enforcement Officer and the parties hereto.

8.21.3(2). If the Enforcement Officer becomes ineligible under **Section 8.20.1**, any Affected Party may petition a court of competent jurisdiction for the appointment of a successor.

8.21.4. Appointment of Successor.

8.21.4(1). The Enforcement Committee has the power to appoint a successor Enforcement Officer, but if the Enforcement Committee fails to act within 30 days after the retiring Enforcement Committee resigns or is removed, the retiring Enforcement Officer or an Affected Party (whoever is first to act) may appoint a successor.

8.21.4(2). If a successor Enforcement Officer does not take office within 45 days after the retiring Enforcement Officer resigns or is removed, any Controlling Affected Party may petition a court of competent jurisdiction for the appointment of a successor Enforcement Officer.

8.21.4(3). Within one year after a successor Enforcement Officer appointed other than by the Enforcement Committee pursuant to **Section 8.21.4(1)** or **Section 8.21.4(2)** takes office, the Enforcement Committee may appoint a successor Enforcement Officer to replace such successor Enforcement Officer.

8.21.5. Acceptance of Appointment.

8.21.5(1). A successor Enforcement Officer shall deliver written acceptance of its appointment to the retiring Enforcement Officer and to each of the other parties hereto. Thereupon the resignation or removal of the retiring Enforcement Officer shall be effective, and the successor Enforcement Officer shall have all the rights, powers and duties of the Enforcement Officer under **this Article**.

8.21.5(2). The successor Enforcement Officer shall mail a notice of its succession to all of the parties hereto.

8.21.5(3). Upon the appointment of a successor Enforcement Officer becoming effective as provided in **this Section**, the retiring Enforcement Officer shall promptly transfer all property held by it as Enforcement Officer to the successor Enforcement Officer.

Section 8.22. Merger, Consolidation and Succession to Business.

8.22.1. If the Enforcement Officer consolidates, merges or converts into, or transfers all or substantially all its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Enforcement Officer *if* such successor corporation is eligible under **Section 8.20.1**. The successor Enforcement Officer may adopt the authentication of Certificates authenticated by the predecessor Enforcement Officer and deliver such Certificates with the same effect as if the successor Enforcement Officer had authenticated such Certificates.

Section 8.23. Proof of Status

8.23.1. A Person (other than a Beneficial Owner) shall prove its status as an Affected Party by submitting an affidavit to the Enforcement Officer stating that such Person is a Certificateholder or a Specified Hedge Counterparty and stating such facts, sufficient in the reasonable judgment of the Enforcement Officer, as are necessary to show that it is an affected Certificateholder or Specified Hedge Counterparty.

8.23.2. A Beneficial Owner shall prove its status as an Affected Party by submitting an affidavit and indemnity to the Enforcement Officer meeting the requirements of **Section 6.10** (as if such requirements were in respect of the Enforcement Officer) and by including in such affidavit a statement of facts stating such facts, sufficient in the reasonable judgment of the Enforcement Officer, as are necessary to show that it is affected by the particular Article 8 Event of Default.

8.23.3. The principal amount of Outstanding Certificates owned by a Beneficial Owner meeting the requirements of **Section 8.23.2** shall be deemed held by such Beneficial Owner and *not* held by Certificateholders for the purposes of **this Article**.

Article IX — Agreements Among the Parties.

Section 9.1. Sharing Excess Payments Among the Parties

Each party hereto agrees with each other party hereto that if any such party receives payments in excess of or out of the order or priority established in the Service Contract Priority Sections, whether voluntary or involuntary, by realization upon security, through the exercise of any right of set-off or banker's lien (whether based on common law, statute, contract or otherwise) (excluding applications of funds pursuant to non-default contract rights), by counterclaim or cross action or by the enforcement of any right hereunder or under any of the Service Contracts, that any such amount shall be returned to the Contract Administrator for proper distribution in accordance with the amount, the order and priority as set forth in the Service Contract Priority Sections other than to the extent provided in **Section 4.8.2**.

Section 9.2. Independent Actions by the Parties

Except as otherwise provided in **Article VI** or **Article VIII**, nothing contained in this Agreement shall prohibit any Hedge Counterparty, the Funding Trust or any Certificateholders from exercising any rights, remedies or options it may have hereunder or under any Service Contract or at law or in equity, including, instituting legal action against the City, the Contract Administrator, any Corporation or any other party hereto to obtain a judgment or other legal process in respect of such Contract Payment, but any funds received from the City, the Contract Administrator, any Corporation or any other party hereto in connection with any recovery therefrom shall be subject to the terms of the Service Contract Priority Sections of the respective Service Contract; *provided* that, any action to enforce remedies with respect to Collateral may be taken only by the applicable Insurer, or if such Insurer is in default under its Credit Insurance, a party that has a Creditor Lien on such Collateral.

Section 9.3. Relation of Parties

9.3.1. This Agreement is entered into solely for the purposes set forth herein, and, except as otherwise provided herein, no party assumes any responsibility to any other party hereto to advise such other party of information known to such other party regarding the financial condition of any other party or of any other circumstances bearing upon the risk of nonpayment of any Contract Payment.

9.3.2. Each party specifically acknowledges and agrees that nothing contained in this Agreement is or is intended to be for the benefit of the City and nothing contained herein shall limit or in any way modify any of the obligations of the City to the parties.

Section 9.4. Acknowledgment of Documents

Each party hereto (i) expressly acknowledges the existence and validity of the Service Contracts and the Trust Agreement and that it has had an opportunity to review the Service Contracts and the Trust Agreement, (ii) agrees not to contest or challenge the validity of the Service Contracts and the Trust Agreement and (iii) agrees that the judicial or other determination of the invalidity of the Service Contracts and the Trust Agreement shall not affect the provisions of this Agreement.

Section 9.5. Notice of Certain Events

9.5.1. The Contract Administrator agrees that, within one day after obtaining actual knowledge of the City failing to pay any amounts in respect of any Hedge Payable, it shall notify each other party hereto of such occurrence.

9.5.2. The Contract Administrator shall give the other parties hereto a copy of any notice or other communication given by it to or received from any other party hereto or the City with respect to any Article 8 Event of Default (even though Article 8 may not be in effect at the time) or with respect to any other occurrence that would give any party hereto the right to exercise remedies under any such documents or this Agreement.

9.5.3. Each party shall, within one Business Day of its taking any action described in **Section 9.2**, give each other party hereto notice of the taking of such action.

Section 9.6. Remedies Not Waived.

No failure of a party hereto to perform any obligation or honor any agreement under this Agreement shall affect the obligations of the other parties under the Service Contracts or hereunder; *provided*, however, that the other parties hereto shall each have full right and power to enforce the obligations, covenants and agreements of each other party hereto directly against such other party by suit for specific performance or claims for damages or a combination of the foregoing. In the event of any dispute between or among any of the parties hereto arising out of this Agreement, the prevailing party or parties shall be entitled to recover from the losing party or parties, all fees, costs and expenses, including, without limitation, attorneys' fees, incurred by such prevailing party or parties in connection with such dispute.

Section 9.7. Possession of Collateral.

Each party hereto agrees that, if at any time such party possesses Collateral or a Creditor Lien thereon, such party holds such Collateral or Creditor Lien for the benefit of all the parties that have a Creditor Lien on such Collateral.

Article X Concerning Each Insurer

Section 10.1. Actions by Insurer

An Insurer may exercise any power or right given it by this Agreement only if it is not then in default under its Credit Insurance.

Section 10.2. Party in Interest

Each Insurer shall be included as a party in interest and as a party entitled to (i) notify either Corporation, the Contract Administrator or any applicable receiver of the occurrence of an Event of Default and (ii) request the Contract Administrator or receiver to intervene in judicial proceedings that affect the Certificates, the Stated Hedges or the security therefor, *subject* to the terms of this Agreement. The Contract Administrator is required to accept notice of an Event of Default from such Insurer.

Section 10.3. Amendments; Notice to Rating Agencies

Any amendment or supplement to this Agreement or either Service Contract shall be subject to the prior written consent of each Insurer. Each Rating Agency shall receive notice of each amendment and a copy thereof at least 15 days in advance of its execution or adoption. Each Insurer shall be provided with a full transcript of all proceedings relating to the execution of any such amendment or supplement.

Section 10.4. Reporting

10.4.1. The Contract Administrator shall give each Insurer a copy of each Optional Redemption Notice it receives from a Corporation promptly upon the receipt thereof and, if known to the Contract Administrator, the CUSIP numbers of the Certificates affected thereby. The same information shall be provided to both Insurers.

10.4.2. The Contract Administrator shall provide each Insurer with such additional information as the Insurer may reasonably request from time to time that is known to the Contract Administrator.

Section 10.5. Fees and Expenses

10.5.1. The Corporation shall pay or reimburse each Insurer for any and all charges, fees, costs and expenses that the Insurer may reasonably pay or incur in connection with the following:

10.5.1(1). the administration, enforcement, defense or preservation of any rights or security hereunder or under any document contemplated hereby;

10.5.1(2). the pursuit of any remedies hereunder or under any document contemplated hereby or otherwise afforded by law or equity,

10.5.1(3). any amendment, waiver or other action with respect to or related to this Agreement or any document contemplated hereby whether or not executed or completed;

10.5.1(4). the violation by either Corporation of any law, rule or regulation or any judgment, order or decree applicable to it;

10.5.1(5). any advances or payments made by an Insurer to cure defaults of the Corporation hereunder or any document contemplated hereby; or

10.5.1(6). any litigation or other dispute in connection with this Agreement, any document contemplated hereby or the transactions contemplated hereby or thereby, other than amounts resulting from the failure of an Insurer to honor its payment obligations under its respective Credit Insurance.

10.5.2. Each Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of this Agreement or any document contemplated hereby.

10.5.3. The obligations of each Corporation to an Insurer shall survive discharge and termination of this Agreement or any document contemplated hereby.

10.5.4. Payments pursuant to this provision shall constitute an Additional Service Charge under each Service Contract payable as set forth in **Section 9.09** of each **Service Contract**.

Article XI Miscellaneous

Section 11.1. Addresses for Notices.

All notices and other communications provided for hereunder shall be in writing unless otherwise stated herein mailed, sent or delivered:

11.1.1(1). if to the City, at its address set forth in a Service Contract

11.1.1(2). if to a Corporation, at its address set forth in the respective Service Contract

11.1.1(3). if to the Contract Administrator, at
U.S. Bank National Association
535 Griswold, Suite 550
Detroit, Michigan 48226
Attention: Susan T. Payne

11.1.1(4). if to any of the following to the extent that it is a Rating Agency at the time,

Standard & Poor's Ratings Services
55 Water Street, 38th Floor
New York, New York 10041

Moody's Investors Service
99 Church Street
New York, New York 10007
Attention: Public Finance Group

Fitch Ratings
1 State Street Plaza
New York, New York 10004
Attention: Municipal Structured Finance

11.1.1(5). if to Financial Guaranty Insurance Company at
125 Park Avenue
New York, NY 10017
Attention: Risk Management

11.1.1(6). if to XL Capital Assurance Inc. at
1221 Avenue of the Americas
New York, NY 10020
Attention: Surveillance

11.1.1(7). if to a Specified Hedge Counterparty, at its address shown opposite its signature on a signature page hereto,

or to such other address as such Person may specify to the other Person and shall be effective (i) if given by mail, 3 Business Days after such communication is deposited in the mails with first class postage prepaid or (ii) if given by any other means, when delivered at the address specified in or pursuant to this Section.

Section 11.2. Amendment

This Agreement may be amended only by written instrument signed by the parties hereto.

Section 11.3. No Waiver; Remedies.

No failure on the part of the Contract Administrator to exercise, and no delay in exercising, any right hereunder shall be a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other further exercise thereof or the exercise of any other right.

Section 11.4. Binding Obligation.

This Agreement is binding upon the parties hereto and their successors and assigns.

Section 11.5. Assignment.

No assignment by any party of its interests herein shall be valid.

Section 11.6. Third Party Beneficiaries

11.6.1. Each of the Third Party Beneficiaries not a signatory hereto may rely on the respective representations and warranties of each Corporation as if such representations and warranties were made to it.

11.6.2. The covenants of each Corporation made herein are also made for the benefit of each of such Third Party Beneficiaries, each of whom may enforce the same as if it were a party hereto.

11.6.3. Any amendment that diminishes the rights and remedies of any such Third Party Beneficiary without the prior written consent of such Third Party Beneficiary is acknowledged to have the effect in fact of hindering, delaying and defrauding such Third Party Beneficiary.

Section 11.7. Reliance on Representations and Warranties

Each party to this Agreement and each Third Party Beneficiary shall be conclusively presumed to have relied upon the representations and warranties contained herein, and such reliance shall survive any investigation made by such Person.

Section 11.8. Governing Law

The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the law of the State of Michigan exclusive of its conflicts of law rules.

Section 11.9. Headings

Article and Section headings in the Service Contract are included herein for convenience of reference only and do not constitute a part of the Service Contract for any other purpose.

Section 11.10. Integration

This Agreement is intended by the parties as the final, complete and exclusive statement of the transactions evidenced by this Agreement. All prior contemporaneous promises, agreements and understandings relating to such transaction, whether oral or written, are deemed to be superseded by this Agreement, and no party is relying on any promise, agreement or understanding not set forth or referred to in this Agreement.

Section 11.11. Counterparts

This Agreement may be executed in multiple counterparts, *but* all such counterparts taken together shall evidence by one and the same original.

Article XII

Section 12.1. Supplements

12.1.1. Non-Tender Amount Supplement Agreement and the Tender Amount Supplement Agreement (each of which, a Supplement and together, the Supplements) appended hereto are made as part of the Agreement for all purposes, including **Article VII**.

Section 12.2. Duties of Contract Administrator

The Contract Administrator shall perform the duties set forth in each Supplement.

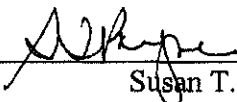
[Contract Administration Agreement]

In Witness Whereof, the parties hereto have set their respective hands on and as of the date first written above.

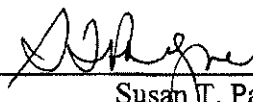
[Signatures appear on pages S-1 et seq.]

[Signature Page to Contract Administration Agreement among the Detroit Retirement Systems Funding Trust 2006, the Detroit General Retirement System Service Corporation and the Detroit Police and Fire Retirement System Service Corporation, severally and not jointly, U.S. Bank National Association, separately and not as Trustee of the Detroit Retirement Systems Funding Trust 2006, and the Other Persons Parties Hereto]

**Detroit Retirement Systems Funding Trust 2006
By U.S. Bank National Association, Trustee**

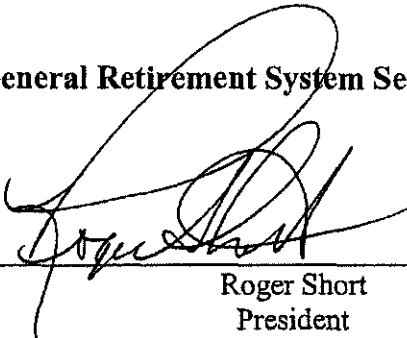
By  _____
Susan T. Payne
Vice President

U.S. Bank National Association,
separately and not as Trustee of the Detroit Retirement
Systems Funding Trust 2006

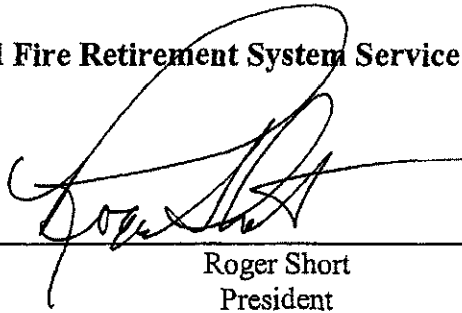
By  _____
Susan T. Payne
Vice President

[Signature Page to Contract Administration Agreement between the Detroit Retirement Systems Funding Trust 2006 the Detroit General Retirement System Service Corporation and the Detroit Police and Fire Retirement System Service Corporation, severally and not jointly, and U.S. Bank National Association, separately and not as Trustee of the Detroit Retirement Systems Funding Trust 2006 and the Other Persons Parties Hereto]

Detroit General Retirement System Service Corporation


By  _____
Roger Short
President

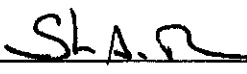
Detroit Police and Fire Retirement System Service Corporation

By  _____
Roger Short
President

[Signature Page to Contract Administration Agreement among the Detroit Retirement Systems Funding Trust 2006, the Detroit General Retirement System Service Corporation and the Detroit Police and Fire Retirement System Service Corporation, severally and not jointly, U.S. Bank National Association, separately and not as Trustee of the Detroit Retirement Systems Funding Trust 2006, and the Other Persons Parties Hereto]

UBS AG

By  _____
John J. Magovern
Director & Counsel
Region Americas Legal
Fixed Income Section

By  _____
Stephen A. Thatcher
Director and Counsel
Region Americas Legal
Fixed Income Section

UBS notice address is:

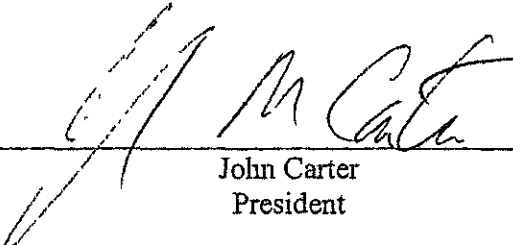
UBS Securities LLC
1285 Avenue of the Americas, 15th Floor
New York, New York 10019
Attention: Rhahime Bell
Facsimile: (212) 713-1303

and with a copy to:

UB AG, Stamford Branch
677 Washington Blvd.
Stamford, Connecticut 06912-0300
Attention: Legal Department
Facsimile: (203) 719-0680

[Signature Page to Contract Administration Agreement among the Detroit Retirement Systems Funding Trust 2006, the Detroit General Retirement System Service Corporation and the Detroit Police and Fire Retirement System Service Corporation, severally and not jointly, U.S. Bank National Association, separately and not as Trustee of the Detroit Retirement Systems Funding Trust 2006, and the Other Persons Parties Hereto]

SBS Financial Products Company, LLC

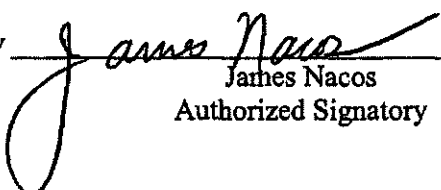
By  _____
John Carter
President

SBS Financial notice address is:

SBS Financial Products Company, LLC
100 Wall Street, 22ND Floor
New York, New York 10005
Attention: John Carter
Facsimile: (646) 576-9684

[Signature Page to Contract Administration Agreement among the Detroit Retirement Systems Funding Trust 2006, the Detroit General Retirement System Service Corporation and the Detroit Police and Fire Retirement System Service Corporation, severally and not jointly, U.S. Bank National Association, separately and not as Trustee of the Detroit Retirement Systems Funding Trust 2006, and the Other Persons Parties Hereto]

Merrill Lynch Capital Services, Inc.

By  _____
James Nacos
Authorized Signatory

Merrill Lynch Capital notice address is:

Merrill Lynch Capital Services, Inc.
Merrill Lynch World Headquarters
4 World Financial Center, 18TH Floor
New York, New York 10080
Attention: Swap Group
Facsimile: (646) 805-0218

with a copy to:

GMI Counsel
Merrill Lynch World Headquarters
4 World Financial Center, 12TH Floor
New York, New York 10080
Attention: Swaps Legal
Facsimile: (212) 449-6993

Funds and Accounts

12.2.1(1). Funds and Accounts Component to be Credited¹ Property Owners Entitled Person(s)

12.2.1(2). Interest Related Payments Fund

Deficit Service Charges Account..... Clause Second, Funding Trust Distributed to Trustee as Deficit Interest Related Payments on the Applicable Distribution Date

Deficit Hedge Periodic Payables Clause Second, the Corporations pro-rata Paid to the Specified Hedge Counterparties when due as Deficit Hedge Periodic Payables

Current Service Charges Account..... Clause Third, Funding Trust Distributed to Trustee as Interest Related Payments on the Applicable Distribution Date

Current Hedge Periodic Payables Clause Third, the Corporations pro-rata Paid to the Specified Hedge Counterparties when due as Hedge Periodic Payables

12.2.1(3). Principal Related Payments Fund

12.2.1(4). Deficit Principal Related Account Clause Fourth Funding Trust Distributed to Trustee as Deficit Principal Related Payments on the Applicable Distribution Date

12.2.1(5). Current Principal Related Account Clause Fifth Funding Trust Distributed to Trustee as Principal Related Payments and Sinking Fund Related Payments on the Applicable Distribution Date

¹ References to "Clauses" are to the Clauses set forth in Section 8.03 of the Service Contracts.

12.2.1(6). Funds and Accounts Component to be Credited Property Owner(s) Entitled Person(s)

Hedge Termination Payables Fund

Deficit Hedge Termination Payables Clause Sixth the Corporations pro-rata Paid to such Specified Hedge
 Account as their interests Counterparties when due as Deficit
 may appear Hedge Termination Payables

Current Hedge Termination Payables Clause Seventh the Corporations pro-rata Paid to Hedge Counterparties
 Account as their interests when due as Hedge
 may appear Termination Payables

Optional Prepayment Fund

Current Optional Prepayments Clause Eighth Funding Trust Distributed to Trustee as
 Account Redemption Related Payments on the
 Applicable Distribution Date

EXHIBIT C

Forbearance Agreement

FORBEARANCE AND OPTIONAL TERMINATION AGREEMENT

This FORBEARANCE AND OPTIONAL TERMINATION AGREEMENT (this “**Agreement**”) is entered into as of this 15th day of July, 2013, 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, each a “**Swap Counterparty**” and collectively the “**Swap Counterparties**”).

Capitalized terms used herein and not otherwise defined have the meanings ascribed to them under the Swap Agreements (as defined below).

RECITALS

WHEREAS, the Service Corporations and Swap Counterparties are party to swap transactions under certain ISDA Master Agreements (including, in the case of MLCS, pursuant to Transaction Transfer Agreements and, in any case, including the related Schedule and Credit Support Annex thereto and any Confirmations thereunder) as set forth in Schedule A attached to this Agreement (as applicable, the “**MLCS Swap Agreements**” and the “**UBS Swap Agreements**”) and the Service Corporations are party to transactions under certain ISDA Master Agreements (including the related Schedule and Credit Support Annex thereto and any Confirmations thereunder) entered into with SBS Financial Products Company, LLC as set forth in Schedule A attached to this Agreement (the “**SBS Swap Agreements**” and together with the MLCS Swap Agreements, the “**MLCS/SBS Swap Agreements**”; the MLCS/SBS Swap Agreements and UBS Swap Agreements are referred to collectively herein as the “**Swap Agreements**”);

WHEREAS, the City, the Service Corporations, U.S. Bank, National Association (as custodian) and the Swap Counterparties are party to a Collateral Agreement dated as of June 15, 2009 (the “**Collateral Agreement**”);

WHEREAS, the City is obligated pursuant to the Service Contracts to make certain payments thereunder in an amount equal to the amount due from the Service Corporations to the Swap Counterparties;

WHEREAS, pursuant to the Collateral Agreement, the City has pledged to the Service Corporations a first priority lien upon all of the City’s right, title and interest in the Pledged Property (as such term is defined in the Collateral Agreement) in order to secure the payment of all City Hedge Payables Related Obligations (as such term is defined in the Collateral Agreement);

WHEREAS, pursuant to the Collateral Agreement, the Service Corporations have

granted to the Swap Counterparties a security interest in all of their right, title and interest in, to and under the City Hedge Payable Related Obligations and the City Pledge (as such term is defined in the Collateral Agreement);

WHEREAS, the Governor of the State of Michigan determined on March 1, 2013 that a financial emergency existed in the City, and the Emergency Manager was appointed for the City on March 14, 2013;

WHEREAS, pursuant to the terms of each Swap Agreement, it is the view of the Swap Counterparties that one or more Events of Default and/or Additional Termination Events has occurred, with the Service Corporation as the Defaulting Party or sole Affected Party, and therefore each of SBS and UBS has the right to designate an Early Termination Date for the related Swap Agreements;

WHEREAS, pursuant to the terms of the UBS Swap Agreements, it is the view of UBS that UBS has the right (but not the obligation) to terminate the UBS Swap Agreements as described in Part 5(xx) of the Schedules to the UBS Swap Agreements;

WHEREAS, pursuant to the terms of the MLCS/SBS Swap Agreements, it is the view of MLCS that SBS has the right (but not the obligation) to terminate the SBS Swap Agreements as described in Part 5(t) of the Schedules to the SBS Swap Agreements; provided that SBS may not exercise such right without the consent of MLCS and is required to exercise such right at the direction of MLCS;

WHEREAS, the Service Corporations and City have asked each Swap Counterparty to forbear from exercising certain rights, including without limitation, rights under the Swap Agreements, during a certain period pursuant to this Agreement; and

WHEREAS, each Swap Counterparty is willing to do so upon the terms and subject to the conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Forbearance.

1.1. *Forbearance.* During the period (the “**Forbearance Period**”) commencing on the date hereof and terminating upon the occurrence of a Forbearance Period Termination Event (as defined in Section 1.3 below), each Swap Counterparty shall, subject to the terms and conditions hereof, forbear from:

- (a) issuing any notice designating an Early Termination Date with respect to any Swap Agreement; and

- (b) (i) instructing the Collateral Agreement Custodian to cease making payments to the City from the General Receipts Subaccount in accordance with Section 5.4 of the Collateral Agreement and (ii) giving notice to the Collateral Agreement Custodian pursuant to the Collateral Agreement of its obligation to cease making such payments.

1.2. *Affirmative Obligations During Forbearance Period.*

- (a) During the Forbearance Period, if a Liquidity Event has occurred and is continuing, the Swap Counterparties shall (a) use their best efforts to take any action reasonably requested by the City to cure such Liquidity Event, including supporting any action by the City or Service Corporations to obtain a turnover to the City of all amounts that would be paid to the City under the Collateral Agreement but for the application, or alleged application, of Section 5.4 of the Collateral Agreement or but for any action by the Collateral Agreement Custodian, whether or not such action has been purported to have been taken pursuant to Section 5.4, to withhold or delay such payments, *provided, however*, such best efforts shall not include any act that would, in the commercially reasonable judgment of the Swap Counterparties, (i) impose material costs, expenses or burden on the Swap Counterparties, (ii) impose reputational risk or material liability on either Swap Counterparty, or (iii) have an Adverse Effect (as such term is defined in Section 1.3(d) below) on the Swap Counterparties, (b) in the event of a bankruptcy with respect to the City, (x) support a motion or adversary proceeding for turnover to the City of all amounts that would be paid to the City under the Collateral Agreement but for the application, or alleged application, of Section 5.4 of the Collateral Agreement or but for any action by the Collateral Agreement Custodian, whether or not such action has been purported to have been taken pursuant to Section 5.4, to withhold or delay such payments, and (y) consent to use of cash collateral by the City of any amounts held under the Collateral Agreement that would be paid to the City but for the application, or alleged application, of Section 5.4 of the Collateral Agreement or but for any action by the Collateral Agreement Custodian, whether or not such action has been purported to have been taken pursuant to Section 5.4, to withhold or delay such payments, and (c) consent to the remittance to the City of the funds contemplated by the letter from the City to the Collateral Agreement Custodian in the form attached as Schedule B hereto.
- (b) For purposes of this Agreement, a "**Liquidity Event**" shall mean that (i) the City has not received payment of any and all amounts under the Collateral Agreement that would have been paid to the City from the General Receipts Subaccount or Holdback Account under the Collateral Agreement but for the application, or alleged application, of Section 5.4 of the Collateral Agreement or but for any action by the Collateral Agreement Custodian, whether or not such action has been purported to have been taken pursuant to Section 5.4, to withhold or delay such payments, or (ii) the Collateral Agreement Custodian has stated that it will not, or the City has reasonable grounds to believe that the Collateral Agreement Custodian may not, (a) make payment to the City from the General Receipts

Subaccount equal to the City Payment for such Month if the City were to pay the Collateral Agreement Custodian for deposit to the credit of the Holdback Account an amount equal to the Standard Holdback Requirement, (b) issue a Monthly Holdback Compliance Notice, or (c) remit to the City daily all amounts standing to the credit of the General Receipts Subaccount after issuance of a Monthly Holdback Compliance Notice. The existence of an outstanding instruction or direction by any person to the Collateral Agreement Custodian to refrain from paying amounts under the Collateral Agreement to the City shall constitute reasonable grounds for such belief.

- (c) Upon termination of the Forbearance Period, any and all rights of the City and the Service Corporations under this Section 1.2 shall terminate immediately without notice and the Swap Counterparties shall have the right to revoke any consents described herein and otherwise exercise any rights or remedies they may have under the Transaction Documents except with respect to amounts previously used by or remitted to the City in accordance with the terms of this Section 1.2.

1.3. Forbearance Period Termination Events. Each of the following events constitutes a “**Forbearance Period Termination Event**” upon delivery by a Swap Counterparty to the City and each Service Corporation of written notice of the occurrence thereof (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):

- (a) Delivery to the City and each Service Corporation of a written notice from a Swap Counterparty (given in its sole discretion and with a copy to the other parties hereto) terminating the Forbearance Period; provided that such notice may not be given prior to June 30, 2014.
- (b) (i) The occurrence of any Event of Default under Section 5(a)(i) of any Swap Agreement, (ii) any Service Corporation seeks to become a debtor under title 11, United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), or (iii) a petition to cause a Service Corporation to become a debtor under the Bankruptcy Code is filed by a Controlled Entity (as such term is defined in Section 2.1(a) hereof) and the City or the Emergency Manager caused such filing to be made.
- (c) A petition to cause a Service Corporation to become a debtor under the Bankruptcy Code is filed by a third party (except as provided in Section 1.3(b)(iii) above).
- (d) Occurrence of any Event of Default under Section 5(a)(iii) of any Swap Agreement, provided that such occurrence has an Adverse Effect on the Swap Counterparties. For purposes of this Agreement, an “**Adverse Effect**” on the Swap Counterparties shall (i) mean the occurrence or existence of any act, event or condition that, in the reasonable judgment of the Swap Counterparties, is likely to adversely affect their rights or

interests under any of the Transaction Documents in any material respect and (ii) exclude (1) any failure or refusal to pay any amounts under the 2006 Pension Funding Securities when due, and (2) the filing of a petition for relief under the Bankruptcy Code by the City.

- (e) Occurrence of any Additional Termination Event under Part 1(i)(ii)(1), (2), (6), or (7) of the Schedule to any Swap Agreement; provided, however, (x) an Additional Termination Event under Part 1(i)(ii)(1) of the Schedule to any Swap Agreement shall not constitute a Forbearance Period Termination Event if it occurs during the continuation of a Liquidity Event and prior to July 31, 2013, (y) the occurrence of an Additional Termination Event under Part 1(i)(ii)(2) of the Schedule to any Swap Agreement shall not constitute a Forbearance Period Termination Event to the extent the appropriation referenced therein equals at least the amount specified in clause (X) of such Part 1(i)(ii)(2) and (z) the occurrence of an Additional Termination Event under Part 1(i)(ii)(6) of the Schedule to any Swap Agreement shall not constitute a Forbearance Period Termination Event to the extent any third party litigation does not have an Adverse Effect on the Swap Counterparties.
- (f) Breach of any of the covenants contained in Section 2.1(a), 2.1(b), 2.1(d) or 2.2(a) herein
- (g) Other than as set forth in Section 1.3(f) above, breach (other than breach solely by the Swap Counterparties) of any of the covenants contained in Section 2 herein or any representations contained in Section 4 herein.
- (h) Without prejudice to Section 1.3(f) or (g) above, issuance by any court of competent jurisdiction of a judgment or order that would (i) render unlawful or invalid any of the Swap Agreements, Collateral Agreement or this Agreement or the performance thereunder or hereunder by the Emergency Manager, the City or a Service Corporation or any party acting for or on behalf of the Swap Counterparties, (ii) render unlawful or invalid any other Transaction Documents or the performance thereunder by the City or a Service Corporation or any party acting for or on behalf of the Swap Counterparties, if the impact thereof would impair the ability of a Service Corporation to make any payments when due under any Swap Agreements or impair any arrangement securing such payments, or (iii) require or allow any payment of principal or interest on the 2006 Pension Funding Securities to be paid prior to the scheduled payment date therefor.
- (i) Proposal of an ordinance by the Emergency Manager or the giving of public notice of a meeting of the City Council of the City at which an ordinance will be considered for adoption (provided the City Council of the City had at such time the requisite power and authority for such adoption), or approval by either house of any federal or state legislature of legislation, that if enacted or adopted into law would (i) render unlawful or

invalid any of the Swap Agreements, Collateral Agreement or this Agreement or the performance thereunder or hereunder by the Emergency Manager, the City or a Service Corporation or any party acting for or on behalf of the Swap Counterparties, (ii) render unlawful or invalid any other Transaction Documents or the performance thereunder by the City or a Service Corporation or any party acting for or on behalf of the Swap Counterparties, if the impact thereof would impair the ability of a Service Corporation to make any payments when due under any Swap Agreements or impair any arrangement securing such payments, or (iii) require or allow any payment of principal or interest on the 2006 Pension Funding Securities to be paid prior to the scheduled payment date therefor.

- (j) The City files a petition for relief under the Bankruptcy Code and any one of the following occurs: (i) within 60 days of filing the City fails to obtain a Court Order (as defined in Section 2.1(d) hereof), (ii) the Assumption Motion (as defined in Section 2.1(d) hereof) is denied, (iii) the petition for relief is dismissed and a new petition is not filed within 30 days following such dismissal, or (iv) the Court Order does not contain a waiver of the automatic stay as specified in Section 2.3 herein.
- (k) The effective date of the confirmation of the plan of adjustment in connection with any bankruptcy proceedings of the City.
- (l) Delivery on or before July 31, 2013 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; provided that on such date a Liquidity Event has occurred and is continuing.
- (m) Delivery 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; provided that (A) on such date an event described in 1.3(j)(ii) or (iii) has occurred or (B) the City files a petition for relief under the Bankruptcy Code and any one of the following occurs: (i) within 75 days of the filing the City fails to obtain a Non-Final Court Order or (ii) the City fails to obtain a Court Order prior to the Exercise Period End Date; provided further that the City has used its best efforts to obtain a Court Order in accordance with Section 2.1(d) hereof.

1.4. *Rights Following Forbearance Period.*

- (a) Upon the occurrence of a Forbearance Period Termination Event pursuant to Section 1.3(a), 1.3(b) or 1.3(f) hereof, the parties hereto shall be restored to their original rights and positions as they existed immediately prior to the Forbearance Period, and each Swap Counterparty shall immediately be entitled to exercise any rights and remedies in respect of any Event of Default, Termination Event, or Additional Termination Event that has occurred under the applicable Swap Agreement together

with any rights and remedies under the Definitive Documents relating thereto and giving effect to Section 2 of this Agreement.

- (b) If (i) the City has complied with Section 3.2 hereof but either Swap Counterparty is prohibited from exercising its Optional Termination Right (as defined in Section 3.5 hereof) because an Event of Default or Termination Event is then occurring with respect to which any Swap Counterparty is the Defaulting Party or sole Affected Party under any Swap Agreement or (ii) a Forbearance Period Termination Event (other than as set forth in Section 1.4(a) above) has occurred, the parties hereto shall be restored to their original rights and positions as they existed immediately prior to the Forbearance Period, and each Swap Counterparty shall immediately be entitled to exercise any rights and remedies in respect of any Event of Default, Termination Event, or Additional Termination Event that has occurred under the applicable Swap Agreement together with any rights and remedies under the Definitive Documents relating thereto *without* giving effect to Section 2 of this Agreement.

2. Covenants of the Parties.

2.1. *Covenants of the City and Service Corporations.* Each of the City and the Service Corporations hereby covenants and agrees, which covenants and agreements shall, except as otherwise provided in Section 1.4, survive the termination of the Forbearance Period, as follows:

- (a) Unless the Swap Counterparties have given their express written consent, and so long as the Swap Counterparties are not in breach of their obligations hereunder, the City and each Service Corporation (i) shall not commence litigation, assert any defense in litigation or take any other judicial, legislative, or executive action that may have the effect of (A) setting aside, avoiding, rejecting, modifying, terminating, amending, revising, disapproving, limiting, or otherwise disrupting or rendering ineffective any of this Agreement, the Collateral Agreement, the Swap Insurance Policies, the Swap Agreements, the 2006 Transaction, the City Pledge, the Service Corporation Security Interest, the Service Corporation Pledge, the lien created by the Authorizing Ordinance, or any other part of the Definitive Documents or the Settlement Transaction (collectively, the “**Transaction Documents**”) to the extent such litigation or action would have an Adverse Effect on the Swap Counterparties or (B) causing any payment of principal or interest on the 2006 Pension Funding Securities to be paid prior to the scheduled payment date therefor, it being agreed and understood that neither (1) any failure or refusal to pay any amounts under the 2006 Pension Funding Securities when due nor (2) the filing of a petition for relief under the Bankruptcy Code by the City shall constitute a breach or violation of this clause (B) and (ii) shall not cause the City, a Service Corporation or any entity or person under the control of the City

or the Emergency Manager (any such entity or person, a “**Controlled Entity**”) to commence litigation, assert any defense in litigation or take any other judicial, legislative, or executive action that may have any of the effects referenced in Section 2.1(a)(i)(A) or (B).

- (b) Unless the Swap Counterparties have given their express written consent, and so long as the Swap Counterparties are not in breach of their obligations hereunder, the City and each Service Corporation shall timely and diligently defend against any litigation or other judicial action that is commenced by a third party (including, without limitation, any Controlled Entity), or any legislative action that is taken, that may have any of the effects referenced in Section 2.1(a)(i)(A) or (B).
- (c) Each of the City and each Service Corporation hereby ratifies and agrees to comply with all applicable provisions of the Transaction Documents to the extent that failure to do so would have an Adverse Effect on the Swap Counterparties.
- (d) If the City or a Service Corporation seeks to become or becomes a debtor under the Bankruptcy Code, the City and such Service Corporation (as applicable) shall (A) (i) file a motion, in form and substance reasonably satisfactory to the Swap Counterparties, to assume this Agreement (the “**Assumption Motion**”) pursuant to section 365 of the Bankruptcy Code on the date of the filing of a petition for relief under the Bankruptcy Code and (ii) use best efforts to obtain entry of a final and non-appealable order, in form and substance reasonably satisfactory to the Swap Counterparties, granting the Assumption Motion (an “**Assumption Order**”) or (B) use best efforts to obtain entry of a final and non-appealable order, in form and substance reasonably satisfactory to the Swap Counterparties, with respect to this Agreement pursuant to Rule 9019 under the Bankruptcy Code (a “**Rule 9019 Order**”) and together with the Assumption Order, a “**Court Order**”).
- (e) If the City or a Service Corporation seeks to become or becomes a debtor under the Bankruptcy Code, the City and such Service Corporation (as applicable) shall schedule any amounts due and owing to any Swap Counterparty (or its transferees or assigns) pursuant to or related to the Swap Agreements, the Collateral Agreement and this Agreement as undisputed, fully secured claims pursuant to section 506 of the Bankruptcy Code and treat any amounts due thereunder or hereunder as allowed, fully secured claims for any and all purposes under any plan for the City or such Service Corporation (as applicable).
- (f) The City and each Service Corporation shall provide each Swap Counterparty with immediate oral and written notice of the occurrence of any Forbearance Period Termination Event.

- (g) At the request of the Swap Counterparties following the occurrence of both (i) a Forbearance Period Termination Event described in Section 1.4(a) above and (ii) either a Termination Event or Event of Default under a Hedge where the Swap Counterparty is not the sole Affected Party or Defaulting Party, the City and each Service Corporation shall authorize, approve and consent to payment to the Swap Counterparties from the Pledged Property to meet the obligations owing to the Swap Counterparties under the Hedges and the Transaction Documents; subject to prior appropriation by either the City Council of the City (provided the City Council of the City had at such time the requisite power and authority for such appropriation) or by the Emergency Manager pursuant to Section 2.2 (b)(iv) of the Pledged Property in an amount sufficient to pay the obligations owing to the Swap Counterparties under the Hedges and the Transaction Documents.
- (h) At the request of the Swap Counterparties following the occurrence of a Forbearance Period Termination Event described in Section 1.4(a) above, if the Collateral Agreement Custodian refuses or fails to make a payment from the Pledged Property as provided in Section 2.1(g) above, the City and each Service Corporation shall support any reasonable action by the Swap Counterparties to obtain relief, including relief pursuant to the remedies specified in Section 11.2 of the Collateral Agreement.

2.2. *Covenants of the Emergency Manager.* The Emergency Manager hereby covenants and agrees, which covenants and agreements shall, except as otherwise provided in Section 1.4, survive the termination of the Forbearance Period, as follows:

- (a) Unless the Swap Counterparties have given their express written consent, and so long as the Swap Counterparties are not in breach of their obligations hereunder, the Emergency Manager (i) shall not, and shall not authorize or permit the City to, commence litigation, assert any defense in litigation or take any other judicial, legislative, or executive action that may have any of the effects referenced in Section 2.1(a)(i)(A) or (B) and (ii) shall not cause the City, a Service Corporation or any Controlled Entity to commence litigation, assert any defense in litigation or take any other judicial, legislative, or executive action that may have any of the effects referenced in Section 2.1(a)(i)(A) or (B).
- (b) Unless the Swap Counterparties have given their express written consent, and so long as the Swap Counterparties are not in breach of their obligations hereunder, the Emergency Manager shall exercise all powers, authorities and privileges vested in the Emergency Manager under applicable law and, as required from time to time in the performance thereof, shall immediately execute and deliver each authorization, approval, appropriation, direction, instruction or consent by the

Emergency Manager, acting in the official capacity as Emergency Manager, that is necessary:

(i) subject to Section 2.2(b)(iii) with respect to the City Payments, to cause the City and the Service Corporations to perform all covenants, obligations and duties of the City and the Service Corporations, respectively, under the Transaction Documents, unless the failure to perform will not have an Adverse Effect on the Swap Counterparties,

(ii) to cause the City or the Service Corporations to avoid the occurrence of a Forbearance Period Termination Event described in Sections 1.3(b), 1.3(d), 1.3(e), 1.3(f), 1.3(g) or 1.3(i) of this Agreement,

(iii) to cause the City to make all City Payments as and when required under the Collateral Agreement and, to the extent necessary, to make one or more appropriations or make one or more amendments to then existing appropriations in amounts that are sufficient to pay in full, and which may be used exclusively for payment of, such City Payments, and

(iv) following the occurrence of both (A) a Forbearance Period Termination Event described in Section 1.4(a) above and (B) either a Termination Event or Event of Default under a Hedge where the Counterparty is not the sole Affected Party or Defaulting Party thereunder, to make one or more appropriations or make one or more amendments to then existing appropriations of the Pledged Property in amounts that are sufficient to pay in full, and which may be used exclusively for payment of, the obligations owing to the Swap Counterparties under the Hedges and the Transaction Documents.

2.3. *Specific Performance of Covenants.* The City, the Service Corporations and the Emergency Manager acknowledge and agree that the rights acquired by the Swap Counterparties under this Section 2 are unique and that irreparable damage to the Swap Counterparties would occur in the event that any of the provisions of this Section 2 were not performed in accordance with their specific terms as required by the Agreement or were otherwise breached. Accordingly, the Swap Counterparties shall be entitled to an injunction or injunctions to prevent any breach or nonperformance of this Section 2 and to an order or orders of specific performance of the terms and provisions of this Section 2. Furthermore, in the event of nonperformance under this Section 2, it is acknowledged that mandamus is an appropriate remedy and the Emergency Manager shall not contest such mandamus remedy, and if the City is then a debtor under the Bankruptcy Code, the Emergency Manager shall promptly seek to waive the automatic stay with respect to such remedy.

2.4. *Further Assurances.* Each party hereto hereby covenants and agrees, which covenant and agreement shall survive the termination of the Forbearance Period, that such party will execute such further documents and take such further actions

as reasonably necessary to implement and carry out the intent of this Agreement.

3. **Right to Direct Termination.**

3.1. *Optional Termination Right.* Subject to the terms and conditions of this Agreement:

- (a) UBS and the City hereby agree that the City shall have the right, but not the obligation, exercisable on any Business Day during the Exercise Period, to direct UBS to exercise its Optional Termination Right, under all (but not less than all) of the UBS Swap Agreements (the “**UBS Termination Right**”).
- (b) MLCS and the City hereby agree that the City shall have the right, but not the obligation, exercisable on any Business Day during the Exercise Period, to direct MLCS to exercise or cause to be exercised the Optional Termination Right under all (but not less than all) of the MLCS/SBS Swap Agreements (the “**MLCS Termination Right**” and together with the UBS Termination Right, the “**Termination Rights**”). MLCS hereby acknowledges that MLCS has the right to direct SBS to exercise the Optional Termination Right.

3.2. *Exercise of Termination Rights.*

- (a) The City may exercise the Termination Rights only once, by providing both UBS and MLCS with written notice (the “**Optional Termination Notice**”) on a day (the “**Optional Termination Notice Date**”) that is at least seven (7) Business Days and not more than ten (10) Business Days prior to the proposed date of termination set forth in the Optional Termination Notice (the “**Optional Termination Date**”). The Optional Termination Date must be the same date for both the UBS Termination Right and the MLCS Termination Right and shall occur prior to the Exercise Period End Date. Such Optional Termination Notice shall be accompanied by evidence reasonably satisfactory to each of UBS and MLCS that the City will have funds on the Optional Termination Date sufficient to pay in cash the Optional Termination Amounts as set forth in Section 3.3 below (the “**Supporting Information**”). Delivery of an Optional Termination Notice, if accompanied by proper Supporting Information, shall be irrevocable.
- (b) Provided that an Optional Termination Notice and the Supporting Information are properly delivered pursuant to Section 3.2(a) above, and provided further that no Event of Default or Termination Event is then occurring with respect to which any Swap Counterparty is the Defaulting Party or sole Affected Party under any Swap Agreement (it being understood that, subject to Section 3.2(d) hereof, the Service Corporations may waive any such Event of Default or Termination Event), each of UBS

and MLCS shall (i) deliver or cause to be delivered written notice to each Service Corporation exercising its Optional Termination Right in accordance with the terms of its Optional Termination Provision as of the Optional Termination Date and (ii) take such other actions as may be necessary or required to give effect to the Optional Termination Provision.

- (c) If the City exercises the Termination Rights and complies with all the terms of this Agreement, (i) no Swap Counterparty will present any payment notice, notice of nonpayment, or other presentation of claim under a Swap Insurance Policy to a Swap Insurer as a result of the exercise of the Termination Rights and (ii) each Swap Counterparty will irrevocably waive all future rights to do so. In furtherance of the foregoing, each Swap Counterparty hereby agrees, severally and not jointly, to indemnify and hold harmless each Service Corporation and the City from any and all claims, damages, liabilities, costs and expenses, including reasonable counsel fees (in each case, regardless of whether such rights arise by way of contribution, reimbursement, subrogation or otherwise), resulting directly from and caused by a breach by such Swap Counterparty of its obligations under this Section 3.2(c).
- (d) The City hereby agrees that if it exercises the Termination Rights with respect to any Swap Agreement, it must exercise the Termination Rights with respect to the full notional amount of all Swap Agreements with respect to the Swap Counterparties simultaneously.
- (e) If the City has not exercised the Termination Rights on or prior to the termination of the Exercise Period, the Termination Rights shall expire.

3.3. *Payment of Optional Termination Amount.*

- (a) On or before the second Business Day following the Optional Termination Date, the City shall pay to UBS an amount in cash equal to the Optional Termination Amount with respect to all UBS Swap Agreements.
- (b) On or before the second Business Day following the Optional Termination Date, the City shall pay to MLCS an amount in cash equal to the Optional Termination Amount with respect to all MLCS/SBS Swap Agreements.
- (c) For the avoidance of doubt, each party hereto acknowledges that no Service Corporation will owe an amount to any Swap Counterparty under any Swap Agreement in connection with the election to exercise the Optional Termination Right other than any Unpaid Amounts (without duplication of Unpaid Amounts paid by the City as a component of the Optional Termination Amount).
- (d) If a third party (including, without limitation, any Controlled Entity) alleges through litigation, judicial action, or otherwise, that all or a portion of the Optional Termination Amount paid to UBS or MLCS hereunder

must be shared with other creditors of the City or of either Service Corporation (or any person acting for or on behalf of such creditors), then the City shall, at the request of the Swap Counterparties, support any reasonable action by the Swap Counterparties in defending against any such litigation or other judicial action that is threatened or commenced by such third party to the extent such action does not impose any further duty or liability on the City.

- (e) The City, the Service Corporations and the Swap Counterparties agree that the payment by the City and acceptance by the Swap Counterparties of the Optional Termination Amounts shall constitute the application of funds by the Swap Counterparties pursuant to the contract rights granted hereunder.

3.4. *Effect of Payment of Optional Termination Amount.*

Upon payment in full by the City of the Optional Termination Amount to each of the Swap Counterparties:

- (a) each of the Swap Counterparties and the Service Corporations shall be released and discharged from further obligations to each other under the Swap Agreements and their respective rights against each other thereunder shall be terminated;

- (b) the City Pledge, the Service Corporation Security Interest and the Service Corporation Pledge shall be satisfied and discharged;

- (c) this Agreement shall terminate *without* giving effect to Section 2 of this Agreement; *provided*, that such termination shall not affect the respective obligations of the parties under Sections 3.3(c), 3.3(d), 5, 8, 10 and 11 of this Agreement, which shall survive; and

- (d) in accordance with Section 14.4(a) of the Collateral Agreement, the Swap Counterparties shall deliver to the Collateral Agreement Custodian, and MLCS shall cause SBS to deliver to the Collateral Agreement Custodian, confirmation of the payment in full of all obligations of the Service Corporations and the City to the Swap Counterparties and SBS under the Swap Agreements and the Collateral Agreement.

3.5. *Definitions related to Optional Termination Right.*

“**Applicable Percentage**” shall mean, with regard to the delivery of an Optional Termination Notice by the City in accordance with Section 3.2, (i) if the Optional Termination Notice Date occurs on or prior to the First Payment Adjustment Date, 75%, (ii) if the Optional Termination Notice Date occurs after the First Payment Adjustment Date and on or prior to the Second Payment Adjustment Date, 77%, and (iii) if the Optional Termination Notice Date occurs after the Second Payment Adjustment Date and prior to the Exercise Period End Date, 82%; *provided, however*, that if the City shall have received a Non-Final Court Order and the Swap

Counterparties do not expressly waive the requirement of a Court Order to begin the Exercise Period, the Applicable Percentage shall be determined with respect to the Non-Final Court Order Date rather than the Optional Termination Notice Date.

“Exercise Period” shall mean the period from and including the Exercise Period Start Date to but excluding the Exercise Period End Date.

“Exercise Period End Date” shall mean the earlier to occur of (i) a Forbearance Period Termination Event and (ii) March 14, 2014.

“Exercise Period Start Date” shall mean the date of this Agreement; *provided, however*, that if the City shall have not exercised the Termination Rights and paid in full in cash to each Swap Counterparty its respective Optional Termination Amount prior to the City filing a petition for relief under the Bankruptcy Code, the Exercise Period Start Date shall mean the date on which the City obtains a Court Order, unless the requirement for such order is expressly waived in writing by each Swap Counterparty.

“First Payment Adjustment Date” shall mean October 31, 2013.

“Mid-Market Amount” shall mean an amount for each Swap Agreement determined by the Swap Counterparties as of the Optional Termination Date according to a methodology that is agreed to by the City and based upon the present value of amounts due under the Swap Agreement 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, as adjusted to take into account three (3) basis points of breakage costs.

“Non-Final Court Order” shall mean an order from the Bankruptcy Court that, but for such order not being final and non-appealable, would constitute a Court Order.

“Non-Final Court Order Date” shall mean the date on which the Bankruptcy Court issues a Non-Final Court Order.

“Optional Termination Amount” shall mean the sum of (a) the product of the Mid-Market Amount and the Applicable Percentage and (b) all Unpaid Amounts due and owing to the Swap Counterparties under the Swap Agreements.

“Optional Termination Provision” shall mean (i) with respect to the MLCS/SBS Swap Agreements, Part 5(t) of the Schedule to such Swap Agreements and (ii) with respect to the UBS Swap Agreements, Part 5(xx) of the Schedule to such Swap Agreements.

“Optional Termination Right” shall mean a Swap Counterparty’s right to optionally terminate all transactions, in whole, pursuant to the applicable Optional Termination Provision.

“Second Payment Adjustment Date” shall mean November 15, 2013.

4. **Representations and Agreements of the Parties.**

(a) Each Service Corporation represents to the Swap Counterparties (which representations shall be deemed to be repeated as of the date on which the City delivers an Optional Termination Notice and on the Optional Termination Date) that:

- i. It is duly organized and validly existing under the laws of Michigan;
- ii. It has the power to execute and deliver this Agreement and to perform its obligations hereunder and it has taken all necessary action to authorize such execution, delivery and performance;
- iii. Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- iv. All governmental (including, without limitation, from the Treasurer of the State of Michigan) and Emergency Manager consents and approvals except as otherwise contemplated by Section 2.1(d) hereof that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents and approvals have been complied with; and
- v. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to enforceability to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) The City represents to the Swap Counterparties (which representations shall be deemed to be repeated as of the date on which the City delivers an Optional Termination Notice and on the Optional Termination Date) that:

- i. It is a municipal corporation of the State of Michigan;
- ii. It has the power to execute and deliver this Agreement and to perform its obligations hereunder and it has taken all necessary action to authorize such execution, delivery and performance;

- iii. Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and
- iv. All governmental (including, without limitation, from the Treasurer of the State of Michigan) and Emergency Manager consents and approvals except as otherwise contemplated by Section 2.1(d) hereof that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents and approvals have been complied with; and
- v. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to enforceability to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(c) Each Swap Counterparty represents to the Service Corporations and the City (which representations shall be deemed to be repeated as of the Optional Termination Date) that:

- i. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and in good standing;
- ii. It has the power to execute this Agreement, to deliver this Agreement and to perform its obligations under this Agreement and it has taken all necessary action to authorize such execution, delivery and performance;
- iii. Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- iv. All governmental consents that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

- v. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to enforceability to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(d) Each of the parties hereto acknowledges that the representations contained herein relate solely to this Agreement and that nothing contained herein shall be or be deemed to be a representation with respect to any other agreement or transaction.

5. Forbearance not a waiver.

Except as expressly provided herein, each party hereby expressly reserves the right to exercise at any time any rights and/or remedies such party has and/or to which such party is entitled under the Transaction Documents. The parties acknowledge and agree that one or more Event(s) of Default, Potential Event(s) of Default and/or Termination Event(s) may have occurred under the Transaction Documents, and may occur from time to time after the date hereof, and this Agreement (except to the limited extent expressly provided herein) preserves, and does not constitute a waiver of any right, power or privilege that the parties to this Agreement are entitled to exercise as a result of any such Event of Default, Potential Event of Default or Termination Event under the Transaction Documents. The failure of a party to exercise at any time any rights and/or remedies it has and/or to which it is entitled under the Transaction Documents, including any right to designate an Early Termination Date or to give notice under, or to insist on the strict performance of the Transaction Documents by any other party to, such Transaction Document (including, without limitation, the Collateral Agreement Custodian) will not be construed as an estoppel, waiver, modification or limitation on any right (including, without limitation, any right to designate in the future an Early Termination Date based upon the occurrence of any Event of Default or Termination Event).

6. Public Disclosure. The City agrees to make the terms of this Agreement publicly available not later than July 19, 2013 and shall not object to or interfere with the public disclosure of such terms by the Swap Counterparties on or after such date.

7. Time is of the Essence Time is of the essence as to the performance of all obligations herein.

8. Governing Law and Jurisdiction THIS AGREEMENT, AS WELL AS ANY MATTER ARISING OUT OF, RELATING TO OR INCIDENTAL TO THIS AGREEMENT, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY PRINCIPLES OF CONFLICTS OF LAW THEREOF THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION, PROVIDED, HOWEVER, THAT THE CORPORATE POWERS AND LEGAL CAPACITY OF THE CITY AND EACH SERVICE CORPORATION SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MICHIGAN.

With respect to any suit, action or proceedings relating to this Agreement, each party irrevocably submits to the extent permitted by law the non-exclusive jurisdiction of the courts of the State of New York and United States District Court located in the Borough of Manhattan in New York City and of the courts of the State of Michigan and the United States District Court for the Eastern District of Michigan.

9. **Notices** Any notice provided for hereunder shall be given in accordance with Section 14.1 of the Collateral Agreement and shall be effective within the time periods set forth therein. A copy of each notice given hereunder shall be given contemporaneously to all other parties to this Agreement. Nothing in this Agreement (including any reference to the Collateral Agreement or otherwise) shall require any notice hereunder to be given to any person not a party to this Agreement.

10. **Successors and Assigns** Prior to the expiration of the Forbearance Period, neither Swap Counterparty may assign its rights or obligations under this Agreement to another party without the prior written consent of the City and the other Swap Counterparty. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective, successors transferees and assigns.

11. **WAIVERS OF JURY TRIAL** TO THE EXTENT PERMITTED BY LAW, THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.

12. **Counterpart Execution** This Agreement may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together, shall constitute one and the same original. Facsimile or other forms of electronic signatures shall be binding, the same of as the original of such document.

13. **Miscellaneous**(a) This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supercedes all oral communications with respect thereto.

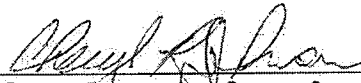
(b) No modification, amendment or waiver of this Agreement shall be effective for any purpose unless it is made by written instrument signed by all of the parties hereto; provided that the Emergency Manager shall not be required to be a party to such amendment at any time that the City has full power and authority to sign such amendment without any authorization or approval of the Emergency Manager.

(c) No person or entity, other than the parties who have signed this Agreement, shall have any rights or interests hereunder, regardless of whether such person or entity is a party to, or has any rights or interests under, any agreement or instrument referenced herein, whether as third party beneficiary or otherwise.


(d) A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and (except as expressly provided herein) a single or partial exercise of any right, power or privilege will not be presumed to

preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

DETROIT GENERAL RETIREMENT
SYSTEM SERVICE CORPORATION

By: 
Name: Cheryl R. Johnson
Title: President

DETROIT POLICE AND FIRE RETIREMENT
SYSTEM SERVICE CORPORATION

By: 
Name: Cheryl R. Johnson
Title: President

THE CITY OF DETROIT

By: _____
Name:
Title:

EMERGENCY MANAGER OF THE CITY OF
DETROIT

By: _____
Name:


DETROIT GENERAL RETIREMENT
SYSTEM SERVICE CORPORATION

By: _____
Name:
Title:

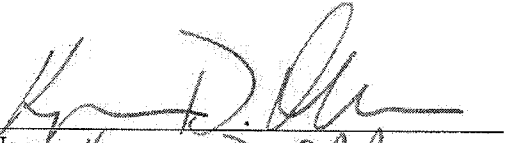
DETROIT POLICE AND FIRE RETIREMENT
SYSTEM SERVICE CORPORATION

By: _____
Name:
Title:

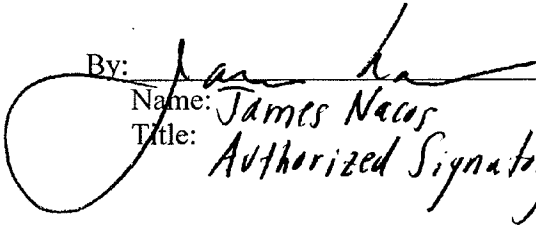
THE CITY OF DETROIT

By: 
Name: KEVYN D. ORR
Title: EMERGENCY MANAGER

EMERGENCY MANAGER OF THE CITY OF
DETROIT

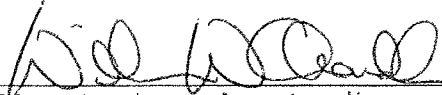
By: 
Name: KEVYN D. ORR

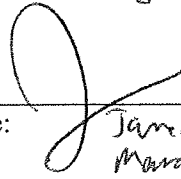
MERRILL LYNCH CAPITAL SERVICES,
INC.

By: 
Name: James Nicos
Title: Authorized Signatory

[FORBEARANCE AGREEMENT]

UBS AG

By: 
Name: William W. Chandler
Title: Managing Director

By: 
Name: James Fegan
Title: Managing Director

[SIGNATURE PAGE - FORBEARANCE AND OPTIONAL TERMINATION AGREEMENT]

SCHEDULE A

SCHEDULE OF SWAP AGREEMENTS

1. ISDA Master Agreement (including the Schedule thereto) dated as of May 25, 2005, between PFRS and SBS and the Confirmation thereunder dated June 7, 2006 (bearing Reference No. SBSFPC-0010) and the related Transaction Transfer Agreement by and among PFRS, SBS and MLCS (as amended, modified or supplemented to the date hereof).
2. ISDA Master Agreement (including the Schedule thereto) dated as of May 25, 2005 between PFRS and SBS and the Confirmation thereunder dated June 7, 2006 (bearing Reference No. SBSFPC-0011) and the related Transaction Transfer Agreement by and among PFRS, SBS and MLCS (as amended, modified or supplemented to the date hereof).
3. ISDA Master Agreement (including the Schedule thereto) dated as of May 25, 2005 between DGRS and SBS and the Confirmation thereunder dated June 7, 2006 (bearing Reference No. SBSFPC-0009) and the related Transaction Transfer Agreement by and among DGRS, SBS and MLCS (as amended, modified or supplemented to the date hereof).
4. ISDA Master Agreement (including the Schedule thereto) dated as of June 7, 2006 between DGRS and SBS and the Confirmation thereunder dated June 7, 2006 (bearing Reference No. SBSFPC-0012) and the related Transaction Transfer Agreement by and among DGRS, SBS and MLCS (as amended, modified or supplemented to the date hereof).
5. ISDA Master Agreement between DGRS and UBS, dated as of June 7, 2006, including the Schedule and Credit Support Annex thereto and the Confirmations thereunder, dated June 7, 2006, bearing UBS AG Reference No. 37380291 (as amended, modified or supplemented to the date hereof).
6. ISDA Master Agreement between PFRS and UBS, dated as of May 25, 2005, including the Schedule and Credit Support Annex thereto and the Confirmations thereunder, dated June 7, 2006, bearing UBS AG Reference No. 37380351 as amended, modified or supplemented to the date hereof).
7. ISDA Master Agreement between PFRS and UBS, dated as of May 25, 2005, including the Schedule and Credit Support Annex thereto and the Confirmations thereunder, dated June 7, 2006, bearing UBS Reference No. 37380313 as amended, modified or supplemented to the date hereof).
8. ISDA Master Agreement between DGRS and UBS, dated as of May 25, 2005, including the Schedule and Credit Support Annex thereto and the Confirmations

thereunder, dated June 7, 2006, bearing UBS Reference No. 37380341 as amended, modified or supplemented to the date hereof).

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13-53846 Doc 17 Filed 07/18/13 Entered 07/18/13 23:47:19 Page 241 of 245

13-53846-swr Doc 3051-3 Filed 03/17/14 Entered 03/17/14 23:05:16 Page 26 of 30

SCHEDULE B

WRITTEN INSTRUCTIONS TO CUSTODIAN UNDER COLLATERAL AGREEMENT

July [], 2013

Via Email, Facsimile and Courier

U.S. Bank National Association
535 Griswold, Suite 550
Detroit, Michigan 48226
Attention: Susan T. Brown

To Whom It May Concern:

Reference is made to the Collateral Agreement dated as of June 15, 2009, among the City of Detroit, the Detroit General Retirement System Service Corporation and Detroit Police and Fire Retirement System Service Corporation, severally and not jointly, U.S. Bank National Association, as Custodian and the Other Persons Party thereto (the "*Collateral Agreement*"). Capitalized terms used but not defined herein have the meanings assigned to such terms in the Collateral Agreement.

The City of Detroit hereby instructs the Custodian to release the amounts in the General Receipts Subaccount to the City in the amount of the City Payment for each Month and, after receipt by the Custodian of the City Payment for that Month and beginning on the second Business Day following the date on which the Custodian gives its Monthly Holdback Compliance Notice to the City and the Counterparties for that Month, remit to the City daily all amounts standing to the credit of the General Receipts Subaccount during that Month.

IN WITNESS WHEREOF, the undersigned has duly executed these Written Instructions to Custodian Under Collateral Agreement as of the date first above written.

THE CITY OF DETROIT

By: _____
Name:
Title:

[Counterparties' Signature Page Follows]

The Counterparties consent to the remittance to the City of the funds contemplated by the above instructions, subject to the Counterparties' right to withdraw such consent prospectively upon notice to the City and the Custodian.

MERRILL LYNCH CAPITAL SERVICES,
INC.

By: _____
Name:
Title:

UBS AG

By: _____
Name:
Title:

By: _____
Name:
Title:

cc: City of Detroit Law Department
First National Building, Suite 1650
660 Woodward Avenue
Detroit, Michigan 48226
Attn: Corporation Counsel

Jones Day
222 East 41st Street
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Joel Telpner

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New York, NY 10022
Attn: Claude LeBlanc

EXHIBIT D

Excerpts from 8/30/2013 Deposition of Kevyn D. Orr

In The Matter Of:

City of Detroit

Kevyn Orr

August 30, 2013



Bingham Farms/Southfield • Grand Rapids
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw

Original File ORR_KEVYN.txt

Min-U-Script® with Word Index

1 not the City might have billions of dollars of art
2 sitting in its art institute; is that your testimony?

3 A. No. My testimony is that I understand it as valuable.
4 The exact value of it is to be determined.

5 Q. And you made no effort to sell any of that art prior
6 to engaging in the negotiations with the Swap
7 counterparties, correct?

8 A. No. That's true.

9 Q. What about federal aid? Did you attempt -- did you
10 attempt to obtain federal aid prior to the June 4
11 commencement of negotiations with the Swap
12 counterparties?

13 A. I don't know if it was prior to or around that time.
14 It may have been. We may have sought federal aid
15 prior to that.

16 Q. And you conveyed the seriousness of the situation to
17 whomever you spoke to at the federal government?

18 A. Yes, I believe the federal government was aware of the
19 seriousness of the situation.

20 Q. And the federal government was also unwilling to
21 provide aid to the City of Detroit; is that your
22 testimony?

23 A. Yes, direct aid.

24 Q. Let me ask you some questions about the service
25 corporations. The service corporations are two

1 entities that have long names that I'll only say to
2 you if you want -- really want me to.

3 A. We'll stipulate I know what you mean by the service
4 corporations.

5 Q. And there are two of them?

6 A. There are two.

7 Q. Okay.

8 A. Police and Fire General Services.

9 Q. There you go. So you already know them and you said
10 the names. So the two service corporations are
11 parties to the forbearance agreement, correct?

12 A. Yes.

13 Q. And Mr. Buckfire testified yesterday, I'll represent
14 to you, that his understanding is that you directed
15 the service corporations to execute the forbearance
16 agreement and they did so; is that correct?

17 A. No.

18 Q. Okay. Were there arms' length negotiations with the
19 service corporations?

20 A. To the best of my knowledge, there was.

21 Q. And who led those?

22 A. I'm not quite sure. I know that -- in response to
23 your question, I did not direct a service corporation.
24 They were organized by the City. And they are managed
25 by City employees, but I had no direct -- I gave no

1 direct instruction to either of the service
2 corporations.

3 Q. Okay. So my question was about negotiations with the
4 service corporations.

5 A. Right.

6 Q. Who conducted the arms' length negotiations with the
7 service corporations on behalf of the City?

8 A. I'm not sure.

9 Q. Well, you know it wasn't you?

10 A. Yes, it wasn't me.

11 Q. And did you ever direct Mr. Buckfire to engage in
12 direct negotiations with the service corporations?

13 A. No. I directed Mr. Buckfire to do whatever needed to
14 get done to get the agreement in principle resolved
15 and signed. That's what I did, but I did -- said
16 nothing specific. Just to be responsive to your
17 question, said oh, go talk to the service
18 corporations, there was nothing that specific.

19 Q. So to the extent there was a negotiation that needed
20 to be had, it was his job to go have it?

21 A. It was his or someone else on my -- on my
22 reorganization team's job, yeah, sure.

23 Q. Well, did you direct anyone else on your team to go
24 negotiate with the service corporations?

25 A. No. Once we reached an agreement in principle, I

EXHIBIT E

Excerpts from 1/3/2014 Hearing Transcript

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
. January 3, 2014
Debtor. . 9:00 a.m.

.

EVIDENTIARY HEARING RE. MOTION OF THE DEBTOR FOR A FINAL ORDER PURSUANT TO 11 U.S.C. SECTIONS 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) APPROVING POST-PETITION FINANCING, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY CLAIMS STATUS AND (III) MODIFYING AUTOMATIC STAY (DKT#1520)

MOTION OF THE 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 (DKT#17)

CORRECTED MOTION 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 (DKT#157)

BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

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Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 (Recess at 12:19 p.m. until 2:02 p.m.)

2 THE CLERK: All rise. Court is in session. Please
3 be seated.

4 THE COURT: Looks like everyone is here. You may
5 proceed, sir.

6 MR. ARNAULT: Thank you, your Honor. Before we
7 begin, I've been asked by my fellow objectors to obtain a
8 minute count if that's okay.

9 THE COURT: Yes. It'll take me a minute to do that.
10 Why don't you proceed, and then when I'm ready to give it to
11 you, I will give it to you?

12 MR. ARNAULT: Sounds good. Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MR. ARNAULT:

15 Q Good afternoon, Mr. Orr. How are you?

16 A Good afternoon. I'm fine.

17 Q My name is Bill Arnault, and I represent Syncora. We met
18 the other day at your deposition.

19 A Yes.

20 Q So to begin, I'd like to just go over a few questions
21 about your understanding of the objectives and some of the
22 effects of the forbearance agreement, and I know Ms. English
23 asked you some of those questions, but I just want to link
24 that with the forbearance agreement and the sixth amendment.

25 A Yes.

1 Q So to begin, your understanding is that the forbearance
2 agreement releases all claims that the swap counterparties,
3 the service corporations, and the city may have against one
4 another; right?

5 A Yes.

6 Q In addition, it is also your understanding that the
7 forbearance agreement resolves any defaults that exist under
8 the collateral agreement and the amended swaps; right?

9 A Yes.

10 Q And the result of the forbearance agreement is that the
11 city and the swap counterparties will be able to perform
12 under the forbearance agreement without being subject to any
13 liability to any third parties; correct?

14 A With the exception of any possible regulatory or criminal
15 enforcement, yes.

16 Q Mr. Orr, you took a deposition in this case; correct?

17 A Yes.

18 Q And at that deposition you told the truth; correct?

19 A Yes.

20 Q All right. If you could flip to page 141 of your August
21 30th deposition --

22 A Yes.

23 Q If you could look at line 14 through 20, please. Just
24 let me know when you're there.

25 A Page 131?

1 Q Page 141.

2 A 141.

3 Q Line 14.

4 A Yes.

5 Q "Question: Okay. And the result of the
6 forbearance agreement is that the city will be able
7 to perform under the forbearance agreement without
8 being subject to any liability to any third party?

9 Answer: That is my understanding.

10 Question: And so will the swap counterparties;
11 correct?

12 Answer: That is my understanding."

13 Were you asked those questions, and did you give
14 that response?

15 A Yes.

16 Q And so that immunity from liability, that's one of the
17 values of this agreement to both the city and the swap
18 counterparties; right?

19 A Yes.

20 Q Now, moving on to some of your objectives as part of the
21 negotiations, as part of the initial negotiations, one of
22 your objectives was to get the swap counterparties to waive
23 their cash strapping rights on an interim basis so that the
24 city could access the casino revenues; right?

25 A Yes.

EXHIBIT F

Complaint of City of Detroit

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

-----X
In re : Chapter 9
: :
CITY OF DETROIT, MICHIGAN, : Case No. 13-53846
: :
Debtor. : Hon. Steven W. Rhodes
: :
-----X
CITY OF DETROIT, MICHIGAN, : Chapter 9
: :
Plaintiff, : Adversary Proceeding No. 14-_____
: :
vs. : Hon. Steven W. Rhodes
: :
DETROIT GENERAL RETIREMENT :
SYSTEM SERVICE CORPORATION, :
DETROIT POLICE AND FIRE :
RETIREMENT SYSTEM SERVICE :
CORPORATION, DETROIT :
RETIREMENT SYSTEMS FUNDING :
TRUST 2005, and DETROIT :
RETIREMENT SYSTEMS FUNDING :
TRUST 2006 :
: :
Defendants. :
-----X

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, the City of Detroit, for its complaint seeking declaratory and injunctive relief, says:

PARTIES

1. The City of Detroit (“the City”) is a Michigan municipal corporation located in Wayne County. The City is a home rule city organized under PA 279 of 1909, as amended, the Home Rule City Act, MCL 117.1, *et seq.* The City has home rule power under the State Constitution of 1963, PA 279, and the 2012 Charter of the City of Detroit, subject to the limitations on the exercise of that power contained in the State Constitution, City Charter, or imposed by statute.

2. Defendant Detroit General Retirement System Service Corporation is a non-profit Michigan corporation created by the City in April 2005 for the ostensible purpose of providing financial assistance to the City in meeting its unfunded accrued actuarial liabilities to defendant Detroit General Retirement System.

3. Defendant Detroit Police and Fire Retirement System Service Corporation is a non-profit Michigan corporation created by the City in April 2005 for the ostensible purpose of providing financial assistance to the City in meeting its unfunded accrued actuarial liabilities to defendant Detroit Police and Fire Retirement System.

4. Defendant Detroit Retirement Systems Funding Trust 2005 is a trust created and existing under Michigan law for the purpose of issuing Certificates of Participation in 2005 to provide funding for the unfunded accrued actuarial

liabilities of the Detroit General Retirement System and the Detroit Police and Fire Retirement System (collectively, the “Retirement Systems”).

5. Defendant Detroit Retirement Systems Funding Trust 2006 is a trust created and existing under Michigan law for the purpose of issuing Certificates of Participation in 2006 to provide funding for the refinancing of certain 2005 Certificates of Participation.

VENUE AND JURISDICTION

6. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). As described more fully herein, an actual case and controversy under 28 U.S.C. § 2201(a) exists between the parties. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

7. The City of Detroit has established two pension plans for its employees. The first, for the benefit of its uniformed police and fire fighters, is the Detroit Police and Fire Retirement System (“PFRS”). The second, for the benefit of other City employees, is the Detroit General Retirement System (“GRS”). At all relevant times, Article 9, Section 24, of the Michigan Constitution required that, outside of bankruptcy, the City’s obligations to the PFRS and GRS be fully funded and paid down, in part, on an annual basis.

8. By 2005, the City had fallen behind in making its contributions to the Retirement Systems. As a result, according to the City's 2005 Comprehensive Annual Financial Report, the PFRS had unfunded accrued actuarial liabilities ("UAAL") of \$783 million and the GRS had UAAL of \$914 million, for a total of almost \$1.70 billion, at the end of the 2004 fiscal year. Facing lawsuits from the Retirement Systems to enforce its payment obligations, the City decided to raise the necessary funds by borrowing them.

9. Like all other municipalities in Michigan, the City was subject to a strict limitation on the amount of indebtedness it could incur. In particular, Section 4a of the Home Rule City Act ("HRCA"), MCL 117.4a, set maximum limits on a city's net indebtedness at the greater of: (1) ten percent of the assessed value of all the real and personal property in the city; or (2) fifteen percent of the assessed value of all the real and personal property in the city if that portion of the total amount of indebtedness incurred which exceeded ten percent was or had been used solely for the construction or renovation of hospital facilities. According to a calculation prepared by the City's Finance Department, the City had only \$660 million remaining under its debt limit as of May 2, 2005. *See* Offering Circular for \$1,440,000,000 Taxable Certificates of Participation Series 2005, at B-44 (May 25, 2005) ("2005 Offering Circular"), attached hereto as Exhibit A.

10. In 2005 and at all times since then, the sums the City of Detroit needed to borrow to satisfy its obligations to the PFRS and the GRS would have exceeded the debt limits set by Section 4a of the HRCA. The City was therefore unable to fund its UAAL shortfall through the issuance of debt, such as the sale of bonds to the public. Instead, the City began searching for a means of borrowing money by structuring a transaction that would evade the HRCA's debt limit. In the end, the City—at the prompting of investment banks that would profit handsomely from the transaction—decided to embark upon transactions to sell so-called “Certificates of Participation” (“COPs”) to investors.

Structure of the COPs

11. Because the HRCA's debt limit prohibited the City from borrowing the amounts it needed to satisfy the UAAL of the PFRS and the GRS, the City's investment bankers convinced the City to enter into a transaction calculated to allow the City to avoid calling its new borrowings “debt.” At the investment bankers' suggestion, the City did this by (a) creating two shell entities called “Service Corporations,” (b) having the Service Corporations create a trust to sell the COPs to investors, (c) requiring the Service Corporations and the trust to remit the proceeds of the COPs sale to the Retirement Systems, (d) arranging to have the Service Corporations pay the trust the monies required to service the interest upon and retire the principal of the COPs, and (e) agreeing to pay the Service

Corporations the monies they would need to satisfy their obligations to the trust. *See* 2005 Offering Circular at 1(Ex. A). The City was advised that, by characterizing its payments to the Service Corporations as contractual obligations, the funds it borrowed by issuance of the COPs would somehow not amount to debt. Four series of these COPs were sold to the public in this way, two in 2005 and two in 2006.

Service Corporations

12. As the first step, in April 2005, City officials incorporated two non-profit corporations—defendants Detroit General Retirement System Service Corporation and Detroit Police and Fire Retirement System Service Corporation. The stated purpose of these Service Corporations was to provide assistance to the City in funding its UAAL to the two retirement systems. City of Detroit Ordinance No. 05-05 (Feb. 4, 2005), attached hereto as Exhibit B.

13. The board of each Service Corporation consisted of five *ex officio* directors, all of whom were members of the City government—the City’s Finance Director, Budget Director, and Corporation Counsel, plus two members of the City Council. The City ordinance establishing the Service Corporations explained that the Service Corporations were “acting as an instrumentality and enterprise of the City and performing an important public purpose by assisting the City to meet its constitutional obligations with respect to the particular Retirement System.” *Id.*

But, in truth, the Service Corporations were simply pass-through entities that were created to enable the City to circumvent legal prohibitions against further borrowing. The Service Corporations' sole purpose in the COPs transaction was to make a one-time payment to the Retirement Systems to reduce the City's UAAL obligations. *See* GRS Service Contract 2005, General Terms and Conditions §§ 4.01, 4.03(a), 4.04 (May 25, 2005), attached hereto as Exhibit C. However, even this obligation was expressly conditioned upon the Service Corporations receiving sufficient funds from the next shell entity—the “Funding Trust”—that would sell the COPs to investors. *Id.* § 4.03(a). The Service Corporations, in other words, were without independent economic substance.

14. The Service Corporations also existed only on paper. Upon information and belief, after their initial organizational meetings, the boards of the two Service Corporations never regularly met, never maintained minutes of any meetings, did not keep books and records, and observed no other formalities of corporate existence.

The Service Contracts

15. On May 25, 2005, the City entered into a “Service Contract” with each Service Corporation. *See, e.g.*, GRS Service Contract 2005 (Ex. C). In the Service Contracts, the City promised to make a series of periodic payments (the “City Payments”) to the Service Corporations in an amount sufficient to pay the

interest and principal due on the COPs. However, on the closing date of the transaction (less than ten days after they entered into the Service Contracts with the City), the Service Corporations irrevocably transferred their entire right to receive the City Payments to defendant Detroit Retirement Systems Funding Trust 2005. *See* Trust Agreement § 201 (June 2, 2005) (“2005 Trust Agreement”), attached hereto as Exhibit D. Thus, the sole ongoing function of the Service Corporations disappeared almost as soon as it was created.

16. The purpose, design, and effect of the 2005 Service Contracts was to allow the City to borrow money in violation of the HRCA and other state laws by characterizing the City Payments as “contractual obligations,” rather than debt service. At the time the \$1.44 billion of Certificates of Participation were issued in 2005, the City had only approximately \$660 million remaining under its HRCA debt limit, and thus could not issue traditional debt to cover the \$1.70 billion pension shortfall. The 2005 COPs transaction was intended to allow the City to borrow about \$780 million that it was not permitted to borrow under the HRCA.

17. In addition, the Service Contracts created in the 2005 COPs transaction and the COPs themselves did not comply with the Revised Municipal Finance Act, PA 34 of 2001, MCL 141.2101, *et seq.* (“RMFA”). For example, under the RMFA, the City was required to obtain approval of the Michigan Department of Treasury before undertaking a debt financing of the magnitude and

Payments and directed that the Trust could not transfer or assign these rights to another party. *Id.* § 201.²

20. Each COPs certificate represented a proportional interest in the stream of City Payments the 2005 Funding Trust was to receive. The 2005 Funding Trust was obligated to sell the COPs to investors, and to remit the proceeds from the sale of the COPs to the Service Corporations for onward payment to the Retirement Systems in satisfaction of the City's UAAL. Thereafter, the role of the 2005 Funding Trust was to receive the City Payments and pay the holders of the COPs the interest and principal they were due.

Issuance of the COPs

21. The 2005 Trust Agreement provided for the issuance of two series of these COPs. The first was COPs Series 2005-A, which totaled \$640 million and paid a fixed rate of interest. The second was COPs Series 2005-B, which totaled \$800 million and paid a variable rate of interest. Each of the two series of COPs represented an undivided proportionate interest in the 2005 Funding Trust's right to receive the City Payments under the 2005 Service Contracts.

² The City was not a party to the Trust Agreements and has no direct contractual relationship with the 2005 Funding Trust or the 2006 Funding Trust. However, the 2005 and 2006 Funding Trusts are express third party beneficiaries of the 2005 and 2006 Service Contracts and have the right to enforce the City's promises under the Service Contracts. *See, e.g.*, GRS Service Contract 2005, General Terms and Conditions §§ 9.12(a)(4), (b).

22. The two series of the 2005 COPs were sold to the public in May and June of 2005, raising \$1.44 billion, and the 2005 Funding Trust, after accounting for the costs of the transaction and the generous fees paid to bankers and others, turned over \$1.37 billion of the proceeds to the Service Corporations, who in turn distributed them to the PFRS and the GRS. Shortly thereafter, the City began making its City Payments to service the obligations of the 2005 Funding Trust under the COPs.

23. At the time the 2005 COPs were issued, the City's advisors justified the COPs structure on the ground that the Service Contracts did not create indebtedness for the City because the City Payments were being made in exchange for future services by the Service Corporations. However, the Service Corporations provided no significant services to the City in the years following the COPs transactions, and none are expected in the future. Indeed, the Service Contracts themselves make clear that the Service Corporations' only services to the City consisted in acting as a conduit for paying over the proceeds of the COPs sales to the Retirement Systems. *See, e.g.*, GRS Service Contract 2005, General Terms and Conditions §§ 4.01, 4.02, 4.03 (Ex. C). The periodic City Payments were thus not being made to compensate the Service Corporations for any ongoing services, but rather solely to pay the principal and interest due on the COPs.

24. City officials turned a blind eye to the requirements of state law and to the City's desperate financial condition. The 2005 Trust Agreement was executed on behalf of both Service Corporations by Sean K. Werdlow, who was at that time the Finance Director of the City, as well as the President of both the GRS Service Corporation and the PFRS Service Corporation. Upon information and belief, shortly after closing the 2005 COPs transaction, Mr. Werdlow left employment of the City and joined SBS Financial Products Company, LLC, one of the investment banks that engineered the 2005 COPs deal.

25. Among investment banks, the COPs transaction was celebrated as a clever circumvention of the law. In fact, a leading industry publication—*The Bond Buyer*—named the 2005 COPs transaction as one of the most innovative financings of the year. See Elizabeth Carvlin, *Detroit Uses COPs to Shift Pension Burden and Set a Few Records*, *The Bond Buyer*, Dec. 29, 2005, at 28A, attached hereto as Exhibit G. That publication explained that the City had to rely on “a unique combination of legal precedents . . . dating back to the 19th century” because it lacked the legal authority to issue the COPs without having them count against its debt limit. *Id.* Although these 19th century cases involved nothing like the exotic financial instruments making up the COPs transaction, the transaction was extolled within the investment banking community for its creativity in evading the state-imposed debt limits by taking the concept of a contract for future services further

than ever before. The 2005 COPs transaction was the largest municipal financing ever offered in Michigan. *Id.*

2006 COPs Transaction

26. When the 2005 COPs were issued, the PFRS and the GRS required that the City fund any UAAL over 13 years and 20 years, respectively. On or about February 8, 2006, and March 30, 2006, however, the governing boards of both Retirement Systems increased the amortization period of the UAAL to 30 years. To take advantage of this longer amortization schedule, the City determined to have additional COPs issued to replace certain of the 2005 COPs.

27. In a resolution dated April 26, 2006, the City provided for execution of new Service Contracts with the Service Corporations and approved the form of a Trust Agreement for a new funding trust, defendant Detroit Retirement Systems Funding Trust 2006 (“2006 Funding Trust”). *See, e.g.*, GRS Service Contract 2006 (June 7, 2006), attached hereto as Exhibit H; Trust Agreement (June 12, 2006), attached hereto as Exhibit I (“2006 Trust Agreement”). The function of the 2006 Funding Trust was to float a \$949 million issue of two new series of 2006 COPs to fund a replacement of the full \$800 million of variable rate Series 2005-B COPs and \$104 million of fixed rate Series 2005-A COPs, plus the fees and costs of the transaction.

28. As in the earlier transaction, the City entered into Service Contracts with the Service Corporations; the Service Corporations irrevocably transferred all their rights to receive payments from the City to the 2006 Funding Trust; and the Trust issued and sold new COPs to the public in two series—COPs Series 2006-A totaling \$149 million and carrying a fixed rate of interest and COPs Series 2006-B totaling \$800 million and carrying a variable rate of interest. The Service Corporations used the proceeds of the sale of the 2006 COPs to refund all of the variable rate 2005 COPs, to refund a portion of the fixed rate 2005 COPs, to pay the costs of issuing the new COPs, and to pay even more fees to its lawyers and bankers.

29. At the time the \$949 million of 2006 COPs were issued, the City was already approximately \$803 million over its debt limit. *See* Offering Circular for \$948,500,000 Taxable Certificates of Participation Series 2006, at B-38 (June 7, 2006), attached hereto as Exhibit J (identifying the amount available under the City's debt limit as of May 2, 2006, to be \$637 million, without including the 2005 COPs). Thus, the HRCA did not permit the City to borrow *any* of the \$949 million it raised through the sale of the 2006 COPs. In fact, even after proceeds of the 2006 COPs were used to retire the \$800 million of principal outstanding on the Series 2005-B COPs and \$104 million of the principal outstanding on the Series 2005-A COPs, the City was still about \$848 million over its debt limit. Moreover,

as with the 2005 COPs, the City failed to satisfy the requirements of the RMFA for the issuance of debt and was not authorized by any other state law to incur the debt.

Effect Of The COPs Transaction Upon The City Of Detroit

30. As of today, there is approximately \$503 million in principal outstanding on the Series 2005-A COPs, which have fixed interest rates of between 4.848 and 4.948 percent and maturity dates that range between 2013 and 2025. Another \$149 million in principal is outstanding on the Series 2006-A COPs, which have fixed interest rates of 5.989 percent and maturity dates that range between 2034 and 2035. Finally, about \$800 million in principal is outstanding on the Series 2006-B COPs, which carry variable interest rates of 3M LIBOR plus 0.30 to 0.34 percent and maturity dates that range between 2019 and 2034. Thus, the total amount of the outstanding COPs is approximately \$1.45 billion.

31. The economic reality of the COPs transactions was that they were municipal bond offerings by the City, with the Service Corporations and the Service Contracts serving as the instrumentalities by which the City hoped to evade the requirements of state law for the issuance of that debt. The COPs sale provided the City with an immediate benefit of approximately \$1.44 billion, which was used to pay the City's obligations to the two Retirement Systems and the costs of the transaction. The City, in turn, promised—by its City Payments to the

Funding Trusts through the Service Corporations—to make payments, over time, in an amount exactly sufficient to cover the interest on and principal of the COPs. There was no reason or purpose behind the convoluted structure of the COPs deals other than to avoid the HRCA’s debt limit and the strictures of the RMFA.

32. The debt burden created by the Service Contracts in the COPs transaction has put the very, fatal strains upon the City’s finances that the HRCA’s debt limit and the RMFA’s review requirements were imposed to prevent. In addition, to hedge the City’s exposure to the floating interest rates on the 2006 COPs, the Service Corporations entered into interest rate swap contracts with some of the banks that also helped to engineer the COPs transaction. In 2009, the City was required to directly assume the Service Corporations’ obligations to the banks under the swaps, with further, disastrous financial consequences.

Detroit’s Bankruptcy

33. On December 6, 2011, the Michigan Department of the Treasury began a preliminary review of the City’s financial condition pursuant to state law. On December 21, 2011, the State Treasurer informed the Governor that “probable financial stress” existed in the City, due to, among other things, cash-flow shortages, repeated deficit spending, and an improper reliance on borrowing. In response, the Governor appointed a financial review team to examine the City’s financial condition, which reported to the Governor on March 26, 2012, that the

City was “in a condition of severe financial stress.” This finding led to the establishment of a consent agreement between the City and State of Michigan that gave certain oversight powers to a financial advisory board created for the City and placed conditions on the City’s ability to borrow more funds.

34. On February 19, 2013, a second financial review team determined that the City was in a “local government financial emergency” due to its critical cash position, its repeated deficits, and its more than \$14 billion in long-term liabilities. After reviewing the report, the Governor agreed with this determination, and requested that the Local Emergency Financial Assistance Loan Board appoint an Emergency Financial Manager for the City. Kevyn D. Orr was appointed to this position on March 15, 2013.³

35. Consistent with his duties under state law, Mr. Orr began a detailed review of the City’s financings after being appointed. By early June 2013, it became clear to Mr. Orr that the City could not maintain adequate cash liquidity if it made the June 14 COPs payment of almost \$40 million. As a result, Mr. Orr instructed that payments on the COPs be suspended along with payments on most other unsecured liabilities. The impending cash crisis and the need to

³ On March 28, 2013, Kevyn D. Orr became the emergency manager (the “Emergency Manager”) with respect to the City pursuant to Section 9(10) of Public Act 436 of 2012, the Local Financial Stability and Choice Act, MCL 141.1541, *et seq.* (“PA 436”). Under Section 18(1) of PA 436, the Emergency Manager acts exclusively on behalf of the City in the Bankruptcy Case. MCL 141.1558.

comprehensively restructure \$18 billion in debt led the City to file a petition for bankruptcy under chapter 9 of the Bankruptcy Code, 11 U.S.C. § 901, *et seq.*, on July 18, 2013.

COUNT I – DECLARATORY JUDGMENT

36. The City of Detroit adopts by reference the allegations of paragraphs 1 through 35.

37. The 2005 and 2006 COPs transactions were nothing more than borrowings by the City of Detroit, thinly disguised as a back-to-back series of contract payments.

38. The Service Corporations are a sham. The City has received no material services from the Service Corporations since the COPs transactions were completed and does not expect to receive any such services in the future. Similarly, the Funding Trusts were, and are, simply conduits for selling and servicing the City's debt.

39. The 2005 and 2006 COPs transactions as a whole and the 2005 and 2006 Service Contracts in particular resulted in the City incurring net indebtedness that exceeded the municipal debt ceiling established by Section 4a(2) of the HRCA. There is no judicial or statutory exception exempting the City from the limits set by Section 4a(2).

40. The COPs transactions and the Service Contracts also resulted in the creation of City debt that was not authorized by the RMFA or any other state law.

41. The 2005 and 2006 Service Contracts are thus illegal under Michigan law, and the Service Contracts and all other contractual or other obligations incurred by the City in connection with the COPs transactions are unenforceable and void *ab initio*.

42. An actual and existing controversy has arisen between the parties as to their respective rights and obligations under the Service Contracts. A declaratory judgment is necessary to guide the City of Detroit's future conduct and to preserve its legal rights.

43. Plaintiff seeks a declaratory judgment that the Service Contracts are illegal, void, and of no effect whatsoever, and that the City has no enforceable obligation to continue making the City Payments to the Service Corporations or to the Funding Trusts.

COUNT II – DECLARATORY JUDGMENT

44. The City of Detroit adopts by reference the allegations of paragraphs 1 through 43.

45. The City of Detroit filed a petition for chapter 9 bankruptcy on July 18, 2013. The City was determined to be eligible to become a debtor under chapter 9 by an order of this Court dated December 5, 2013.

46. On June 14, 2013, the City failed to make a payment due on the COPs, and has paid no amounts under the Service Contracts on account of the COPs since that date. The City currently owes approximately \$1.45 billion in principal on the 2005 and 2006 COPs.

47. The Trustee of the Funding Trusts and the Contract Administrator for the 2005 and 2006 COPs transactions have appeared and participated in the City's bankruptcy case. The transactional documents created in the 2005 and 2006 COPs transactions give the Contract Administrator the power to file a proof of claim in the City's bankruptcy case for the whole amount of the City Payments owed to the Funding Trusts. *See* Contract Administration Agreement 2005 § 6.4.1 (Ex. E); Contract Administration Agreement 2006 § 6.4.1 (Ex. F).

48. An actual case or controversy has arisen between the City and the Defendants regarding whether a valid and enforceable right to payment by the City exists under the Service Contracts. A declaratory judgment is necessary to guide the City of Detroit's future conduct with regard to its chapter 9 plan of adjustment, and to preserve its legal rights in connection with demands thereunder.

49. Plaintiff seeks a declaratory judgment that any claims based on the City's obligations to make the City Payments under the Service Contracts on account of the COPs should be disallowed pursuant to 11 U.S.C. § 502(b)(1)

because the agreements creating those obligations are unenforceable, void, and of no effect whatsoever, or other such relief as the Court deems just and appropriate.

COUNT III – INJUNCTIVE RELIEF

50. The City of Detroit adopts by reference the allegations of paragraphs 1 through 49.

51. In order to ensure that complete and effective relief is afforded to the plaintiff, the City of Detroit seeks preliminary, temporary and permanent injunctive relief enjoining defendants, and each of them, from taking any act that (a) would require, or purport to require, the City to make City Payments or provide distributions under a plan of adjustment to either of the Service Corporations or either of the Funding Trusts or (b) deprive the City of any benefit it is due.

Wherefore, the Plaintiff prays that the Court:

A. Enter judgment declaring the Service Contracts illegal, unenforceable, and void *ab initio* because they contemplated and effectuated the accrual of further indebtedness by the City of Detroit in violation of Section 4a(2) of the HRCA and the creation of debt not authorized by the RMFA or any other state law; and

B. Enter orders preliminarily, temporarily, and permanently enjoining defendants, or any of them, from taking any actions to enforce or pursue any terms, claims, rights, or other obligations under the Service Contracts relating to the

COPs transactions or taking any action to interfere with any benefit that is due to the City.

Respectfully submitted,

Dated: January 31, 2014

/s/ Robert S. Hertzberg

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Deborah Kovsky-Apap (P68258)
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ATTORNEYS FOR THE CITY OF DETROIT

EXHIBIT G

Amended and Restated Schedule to the ISDA Master Agreement

AMENDED AND RESTATED SCHEDULE
DATED AS OF JUNE 26, 2009

to the
1992 ISDA Master Agreement
Local Currency Single Jurisdiction

dated as of
June 7, 2006
between

UBS AG
("Party A")

and

**DETROIT GENERAL RETIREMENT
SYSTEM SERVICE CORPORATION,**
a not-for-profit corporation organized
under the laws of the State of Michigan
("Party B")

**Part 1.
Termination Provisions**

In this Agreement:

(a) **"Specified Entity"** means in relation to Party A for the purpose of:

Section 5(a)(v),	NONE
Section 5(a)(vi),	NONE
Section 5(a)(vii),	NONE
Section 5(b)(ii),	NONE

and in relation to Party B for the purpose of:

Section 5(a)(v),	NONE
Section 5(a)(vi),	NONE
Section 5(a)(vii),	NONE
Section 5(b)(ii),	NONE

(b) **"Specified Transaction"** will have the meaning specified in Section 12 of this Agreement.

(c) The **"Cross Default"** provisions of Section 5(a)(vi) of this Agreement, as modified below, will apply to Party A and to Party B. Section 5(a)(vi) of this Agreement is hereby amended by the addition of the following at the end thereof:

"provided, however, that notwithstanding the foregoing, an Event of Default shall not occur under either (1) or (2) above if, as demonstrated to the reasonable satisfaction of the other party, (a) the event or condition referred to in (1) or the failure to pay referred to in (2) is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to such party to enable it to make the relevant payment when due; and (c)

such relevant payment is made within three Business Days following receipt of written notice from an interested party of such failure to pay.”

If such provisions apply:

“Specified Indebtedness” means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of any money.

“Threshold Amount” means:

- (i) with respect to Party A, an amount equal to 2% of shareholders’ equity (howsoever described) of Party A as shown on the most recent annual audited financial statements of Party A and
- (ii) with respect to Party B, \$10,000,000.

(d) **The “Credit Event Upon Merger”** provisions of Section 5(b)(ii) will apply to Party A and Party B, amended as follows:

“Credit Event Upon Merger” shall mean that a Designated Event (as defined below) occurs with respect to a party, any Credit Support Provider of the party or any applicable Specified Entity (any such party or entity, “X”), and such Designated Event does not constitute an event described in Section 5(a)(viii) but the creditworthiness of X, or, if applicable, the successor, surviving or transferee entity of X, is materially weaker than that of X immediately prior to such event. In any such case the Affected Party shall be the party with respect to which, or with respect to the Credit Support of which, the Designated Event occurred, or, if applicable, the successor, surviving or transferee entity of such party. For purposes hereof, a Designated Event means that, after the date hereof:

- (i) X consolidates, amalgamates with or merges with or into, or transfers all or substantially all its assets to, or receives all or substantially all the assets or obligations of, another entity; or
- (ii) any person or entity acquires directly or indirectly the beneficial ownership of equity securities having the power to elect a majority of the board of directors of X or otherwise acquires directly or indirectly the power to control the policy-making decisions of X,”

(e) **The “Automatic Early Termination”** provision of Section 6(a) will not apply to Party A or Party B.

(f) **“Payments on Early Termination”**. For the purpose of Section 6(e) of this Agreement:

- (i) Market Quotation will apply.
- (ii) The Second Method will apply.

(g) **“Termination Currency”** means U.S. Dollars.

(h) There shall be added to Section 5(a) of the Agreement the following Events of Default:

“(ix) Authority; Repudiation. Party B shall cease to have authority to make payments under this Agreement or any Transaction subject to this Agreement, or any government entity having jurisdiction over Party B shall enact any legislation which would have the effect of repudiating this Agreement or any Transaction subject to this Agreement.”

“(x) Amounts payable by Party B to Party A hereunder shall cease to be payable and secured in accordance with the terms specified in Part 4(b)(ii)(g) of this Schedule.”

(i) **“Additional Termination Event”** will apply to Party A and to Party B. In addition to the Additional Termination Events set forth in Part 5 of this Schedule, the following shall constitute Additional Termination Events.

(i) **Party A Additional Termination Events.** Party A or its Credit Support Provider’s long-term senior unsecured debt rating from (a) S&P is withdrawn, suspended or falls below “BBB-”, or (b) Moody’s is withdrawn, suspended or falls below “Baa3”.

For purposes of the foregoing Termination Event in this Part 1(i)(i), the sole Affected Party shall be Party A and all Transactions shall be Affected Transactions.

(ii) **Party B Additional Termination Events.**

(1) The City Payments made in any Month, in aggregate, are less than the Holdback Requirement for such Month; or

(2) The City fails to make an appropriation in the City’s final annual budget adopted pursuant to and in compliance with the City Charter prior to the commencement of any Fiscal Year and to maintain such appropriation without limitation, transfer or reduction throughout such Fiscal Year, on a line item basis authorizing exclusively payment of the City Payments and as a “first budget” obligation, of an amount at least equal to the Regular Custodian Payments scheduled to become due during the Fiscal Year plus an amount equal to *the greater* of (X) the amount of the Hedge Periodic Payables under the Hedges scheduled to become due during the Fiscal Year without giving effect to any netting and (Y) for the first Fiscal Year commencing July 1, 2009, \$49,936,975 and, for each subsequent Fiscal Year thereafter, \$50,736,975; or

(3) The Quarterly Coverage as of the end of any Month is less than 1.75; or

(4) Either (1) the unenhanced rating on the 2006 Pension Funding Securities assigned by S&P falls below “BB” or the unenhanced rating on the 2006 Pension Funding Securities assigned by Moody’s falls below “Ba2” and as of the immediately preceding Month’s end the Quarterly Coverage is 2.15

or less, or (2) the unenhanced rating on the 2006 Pension Funding Securities assigned by S&P is withdrawn, suspended or reduced below "BB-" or the unenhanced rating on the 2006 Pension Funding Securities assigned by Moody's is withdrawn, suspended or reduced below "Ba3"; or

- (5) At any time following a Ratings Upgrade, the unenhanced rating on the 2006 Pension Funding Securities is withdrawn, suspended or reduced below "BBB-" by S&P or withdrawn, suspended or reduced below "Baa3" by Moody's; or
- (6) The City, a Service Corporation, or a third party shall commence litigation or take any other judicial action, or any legislative action is taken, to set aside or avoid or limit the 2006 Transaction, the City Pledge, the Service Corporation Security Interest, or the Service Corporation Pledge or any other part of the Definitive Documents or the Settlement Transaction (other than with respect to a Developer Agreement), or if the Authorizing Ordinance or any part thereof shall be amended (without the consent of Party A), revoked, rescinded, nullified or suspended for any reason; or
- (7) The City shall rescind, reduce or cease to impose the tax currently imposed as of the Amendment Effective Date by Section 18-14-3 of the Detroit City Code or the City, within two Business Days following the earlier to occur of notice from the Collateral Agreement Custodian that a taxpayer has inadvertently or erroneously paid the Wagering Tax Property directly to the City or the Finance Director learning of such payment, shall fail to transfer by wire transfer in same day funds to the Collateral Agent Custodian for deposit into the General Receipts Subaccount such payment. However, the rescinding of such tax shall not result in a Termination Event hereunder if such tax is then collected by the State of Michigan pursuant to Section 12(1) of the Wagering Tax Revenue Statute and an amount of such collections equal to or greater than the tax imposed as of the Amendment Effective Date is paid to the Collateral Agreement Custodian under arrangements satisfactory to Party A; or
- (8) The City fails to pay any Service Charges, Accrued Service Charges, Regular Scheduled Payments or Sinking Fund Installments as and when due and payable under either Service Contract; or
- (9) The City fails to pay when due any principal of, or interest on, any indebtedness for borrowed money, other than Excluded Indebtedness, aggregating \$1,000,000 or more or any other event shall occur the effect of which is to cause, or to permit the holder or holders of such indebtedness (or a trustee or agent on behalf of such holder or holders) to cause such indebtedness to become due, or to be prepaid in full (whether by redemption, purchase, offer to purchase or otherwise), prior to its stated maturity, in each case after giving effect to any applicable grace period requiring notice or the lapse of time or both; or

- (10) The City fails to pay any judgment or judgments aggregating \$1,000,000 or more, excluding judgments (1) on appeal and being contested in good faith, (2) for which the City has reached an agreement with the judgment creditor as to the timing and manner of payment that does not involve the imposition of any additional ad valorem property taxes above the Property Tax Threshold and with which agreement the City is in compliance or (3) for which the City is diligently making arrangements for payment and the delay in payment will not result in the City being held in contempt of court for nonpayment or in the imposition of a lien on the City's general funds or the imposition of any additional ad valorem property taxes in excess of the Property Tax Threshold; or
- (11) The City commences a case or files a petition seeking relief under the Bankruptcy Code or any other insolvency law or procedure, consents to an order of relief in any such proceeding or to the filing of any such petition, seeks or is subject to the appointment of a receiver or an emergency financial manager for all or any substantial part of its assets or makes an assignment for the benefit of its creditors, or if the Governor of the State of Michigan determines that a financial emergency exists in the City.

For purposes of the foregoing Termination Events in this Part 1(i)(ii), the sole Affected Party shall be Party B and all Transactions shall be Affected Transactions.

(j) **Default Rate.** Notwithstanding anything to the contrary in the Agreement, the Default Rate applicable to any amount owed by Party B to Party A during the Term Payment Period shall be LIBOR plus 9% (the "Specified Default Rate"), where "LIBOR" is determined (i) with respect to the remainder of the first Fiscal Year following a Specified Additional Termination Event, as the arithmetic average of USD-LIBOR-BBA (as defined in the 2006 ISDA Definitions, with a Designated Maturity of three months) as of the close of business on the fifteenth (15th) day of the three calendar months immediately preceding such Specified Additional Termination Event and, (ii) with respect to each subsequent Fiscal Year, as the arithmetic average of USD-LIBOR-BBA (as defined in the 2006 ISDA Definitions, with a Designated Maturity of three months) as of the close of business on the fifteenth (15th) day of March, April and May of the immediately preceding Fiscal Year.

(k) **Remedies.** In addition to all other remedies available hereunder and which remain unaffected hereby, following the designation of an Early Termination Date hereunder resulting from an Event of Default or Termination Event with respect to which Party B is the Defaulting Party or sole Affected Party, as the case may be, Party A shall have the remedies available to it as a secured party to enforce the Service Corporation Pledge, the Service Corporation Security Interest and the City Pledge. Such remedies of Party A as a secured party under the Service Corporation Pledge and Service Corporation Security Interest shall include the exercise of all rights and remedies otherwise available to the Service Corporations as secured parties under the City Pledge, including the right to cause the Pledged Property to be applied to the obligations owing to Party A hereunder up to the amounts then appropriated. Furthermore, such remedies include the right to cause the Pledged Property to be applied to the obligations owing to the

Swap Counterparties under the Hedges up to the amounts then appropriated and, to the extent that not all amounts for all obligations owing to the Swap Counterparties have been appropriated, the right to use judicial process to obtain appropriations and to exercise any other equitable remedies available to the Swap Counterparties against the Service Corporations and the City, as a Michigan home rule city, in respect of such unappropriated amounts; provided, however, that if an Early Termination Date is designated by Party A hereunder as a result of a Specified Additional Termination Event, Party A shall forbear from exercising any remedies as a secured party against the Pledged Property during the Term Payment Period.

(l) ***Waiver and Rescission.*** As of the Amendment Effective Date, Party A waives its right to declare an Early Termination Date, and hereby rescinds any previously delivered notice of Termination Event and/or designation of an Early Termination Date, in connection with the Additional Termination Event set forth, prior to the Amendment Effective Date, in Part 5(ii)(b)(Z) of the Schedule to this Agreement.

(m) ***Amendment Effective Date Representations of Party B.*** Party B hereby further represents that, as of the Amendment Effective Date:

- (i) The City has given an Irrevocable Instruction to each Casino Licensee and Developer.
- (ii) No action, proceeding or investigation has been instituted, nor has any order, judgment or decree been issued or proposed to be issued by any court, agency or authority to set aside, restrain, enjoin or prevent the consummation of any transaction contemplated hereby or seeking material damages against the City, a Service Corporation or either Swap Counterparty in connection with the amendment and restatement of the Schedule to this Agreement or the Settlement Transaction.

(n) ***Indemnification.***

(i) To the extent permitted by law, Party B shall defend and hold harmless Party A from and against any and all losses, damages, liabilities, and expenses incurred and paid (each, a "liability") by Party A arising out of or resulting from the commencement or continuation of any litigation, judicial action, or legislative action of the kind described in Part 1(i)(ii)(6) hereof.

(ii) If, for so long as this Agreement is in effect, Party A has actual notice or knowledge of any claim or loss for which indemnification by Party B is asserted, Party A shall give to Party B written notice within such time as is reasonable under the circumstances, describing such claim or loss in reasonable detail. However, any delay or failure of Party A to give the notice shall not affect Party B's indemnification obligations except to the extent that Party B was prejudiced by the delay or failure.

(iii) If a demand or claim for indemnification is made hereunder with respect to losses the amount or extent of which is not yet known or certain, then the notice of demand for indemnification shall so state, and, where practicable, shall include an estimate of the amount of the losses.

(iv) In the case of actual notice of indemnification hereunder involving any litigation, arbitration or legal proceeding, Party B shall have responsibility to, and shall employ counsel, and shall assume all expense with respect to, the defense or settlement of such claim.

(v) Notwithstanding Party B's assumption of the defense, Party A shall have the right to employ separate counsel and to participate in the defense of such action, and Party B shall bear the reasonable out of pocket fees, costs and expenses of such separate counsel if:

- (1) other than under Part 1(i)(ii)(6) hereof, a Termination Event or Event of Default has occurred hereunder, other than a Specified Additional Termination Event;
- (2) other than under Part 1(i)(ii)(6) hereof, the Term Period End Date has occurred;
- (3) the result of the use of counsel chosen by Party B to represent Party A would present such counsel with a conflict of interest;
- (4) the actual or potential defendants in, or targets of, any such action include Party A and Party A shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to Party B;
- (5) Party B shall not have employed counsel reasonably satisfactory to Party A to represent Party B within a reasonable time after notice of the institution of such action; or
- (6) Party B, in its discretion, shall authorize Party A to employ separate counsel at Party B's expense.

Party B shall not be liable under this Agreement for any amount paid by Party A to settle any claims or actions if the settlement is entered into without Party B's consent which may not be unreasonably withheld or delayed. Each of Party A and Party B hereby agrees and acknowledges that any amount in respect of indemnification payable by Party B to Party A in accordance with this Part 1(n) is an expense that may not be claimed and is not payable under the Swap Insurance Policy.

Part 2. Agreement to Deliver Documents

For the purpose of Sections 3(d) and 4(a) of this Agreement, each party agrees to deliver the following documents:

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
Party A and Party B	Evidence of the authority and true signatures of each official or representative signing this Agreement or, as the case may be, a Confirmation, on its behalf.	On or before execution of this Agreement and each Confirmation forming a part of this Agreement.	Yes
Party A	Opinion of Counsel to Party A in a form reasonably satisfactory to Party B.	On or before execution of this Agreement.	No
Party B	Covered Indenture as hereinafter defined.	On or before execution of this Agreement.	Yes
Party B	Certified copy of the resolution of Party B's Board of Directors (or equivalent authorizing documentation) authorizing the execution and delivery of this Agreement and each Confirmation and performance of its obligation hereunder.	On or before execution of this Agreement.	Yes
Party B	A copy of Party B's audited annual financial statements prepared in accordance with generally accepted accounting principles within the United States.	On or before the 365 th day after the end of Party B's fiscal year.	Yes
Party B	A copy of the City's audited annual financial statements prepared in accordance with generally accepted accounting principles within the United States.	Within 15 days of public availability, but in any case no later than 365 days after the end of the City's fiscal year.	Yes
Party B	A copy of the City's quarterly financial statements.	If and when the City prepares such quarterly reports, when such quarterly reports become	Yes

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
		publicly available.	
Party B	Opinion of legal counsel to Party B substantially in the form and substance acceptable to Party A.	On or before execution of this Agreement.	No
Party B	Commitment to issue each Swap Insurance Policy (as such term is defined in Part 4 hereof).	On or before the execution of this Agreement with respect to the initial Insured Rate Swap Transaction hereunder, and thereafter on or before the Trade Date of each subsequent Insured Rate Swap Transaction.	No
Party B	Swap Insurance Policy and the Opinion of counsel to the Swap Insurer with respect to such Swap Insurance Policy.	On or before the delivery of the related 2006 Pension Funding Securities to the underwriters with respect to the initial Insured Rate Swap Transaction hereunder, and thereafter on or before execution of the Confirmation evidencing each subsequent Insured Rate Swap Transaction.	No
Party B	Confirmations, updates and additional documentation concerning the opinion of counsel, board resolutions and certificates delivered pursuant to each of the foregoing documents to be delivered as Party A may	Prior to the Effective Date of each Transaction after the initial Transaction hereunder.	Yes

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
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reasonably request.

Party B	Certified copy of the Service Contract together with an opinion of Certificate Counsel in form and substance satisfactory to Party A which addresses each of the Sources of Payment set forth in Section 3(g) of this Agreement.	On or before execution of the Service Contract.	No
Party B	Authorizing Ordinance	On or prior to the Amendment Effective Date	No
Party B	An opinion of Lewis & Munday, a Professional Corporation, special counsel to the City and Party B, in form and substance satisfactory to Party A, including customary opinions given in connection with municipal financing transactions and addressing the items identified on <u>Exhibit A</u> hereto next to such counsel's name	On or prior to the Amendment Effective Date	No
Party B	An opinion of the City Corporation Counsel, in form and substance satisfactory to Party A, addressing the items identified on Exhibit A hereto next to such counsel's name.	On or prior to the Amendment Effective Date	No
Party B	An opinion of Orrick, Herrington & Sutcliffe LLP, special counsel to the City, in form and substance satisfactory to Party A, addressing the items identified on Exhibit A hereto next to such counsel's name.	On or prior to the Amendment Effective Date	No
Party B	An opinion of special tax counsel to the City, in form and substance	On or prior to the Amendment Effective	No

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
	satisfactory to Party A, addressing the items identified on Exhibit A hereto next to such counsel's name.	Date	
Party B	To the extent not duplicative with any other document to be delivered in this Part 2, each document required to be delivered under Section 2.4 of the Collateral Agreement.	On or prior to the Amendment Effective Date	Yes

**Part 3.
Miscellaneous**

- (a) **Addresses for Notices.** For the purposes of Section 10(a) of this Agreement:
- (i) All notices or communications to Party A shall, with respect to a particular Transaction, be sent to the address, telex number, or facsimile number reflected in the Confirmation of that Transaction, and any notice for purposes of Sections 5 or 6 shall be sent to:
 - UBS Securities LLC
677 Washington Boulevard
Stamford, Connecticut 06901
Attn: Municipal Derivatives
Tel: 203-719-1689
Fax: 203-719-1417
 - and
 - UBS AG, Stamford Branch
677 Washington Boulevard
Stamford, Connecticut 06901
Attn: Legal Department
Fax: 203-719-0680
 - (ii) All notices or communications to Party B shall be sent in care of the Contract Administrator to the address as set forth in Section 11.1 of the Contract Administration Agreement.
 - (iii) A copy of all notices or communications to either Party A or Party B shall be sent to the address, or facsimile number reflected below:

Syncora Guarantee Inc.
(formerly known as XL Capital Assurance Inc.)
1221 Avenue of the Americas
New York, New York 10020-1001
Attention: Surveillance
Facsimile: (212) 478-3597

(b) **Offices.** Party A, if it enters into a Transaction through an Office other than its head or home office represents to Party B that, notwithstanding the place of booking office or jurisdiction of incorporation or organization, the obligations of Party A are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by Party A on each date on which a Transaction is entered into.

(c) **Calculation Agent.** The Calculation Agent is Party A, unless otherwise specified in a Confirmation in relation to the relevant Transaction.

(d) **Credit Support Document.** The Credit Support Annex attached hereto is a Credit Support Document with respect to Party A for all purposes hereunder and is incorporated herein by this reference. The Service Contracts and the Contract Administration Agreement (collectively, the "Covered Indenture") and the Collateral Agreement are Credit Support Documents with respect to Party B.

(e) **Credit Support Provider.** Credit Support Provider means: None.

(f) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York; provided, however, that the corporate powers and legal capacity of Party B shall be governed by and construed in accordance with the laws of the State of Michigan.

(g) **Jurisdiction.** Section 11(b)(i) of this Agreement is deleted in its entirety and replaced by the following:

"submits to the extent permitted by law to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in Borough of Manhattan in New York City and of the courts of the State of Michigan and the United States District Court for the Eastern District of Michigan; and"

(h) **Waiver of Immunities.** Section 11(c) of this Agreement is deleted in its entirety and replaced by the following:

"**Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues, all immunity on the grounds of sovereignty or other similar grounds from (i) suit in a breach of contract action, (ii) relief by way of injunction, order for specific performance or for recovery of property and (iii) execution or enforcement of any judgment to which it or its revenues might otherwise be entitled in any Proceedings, and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any such Proceedings."

- (i) ***Netting of Payments.*** Subparagraph (ii) of Section 2(c) of this Agreement will apply.
- (j) ***"Affiliate"*** will have the meaning specified in Section 12 of this Agreement.

Part 4.
Other Provisions

(a) **Set-off.** Without affecting the provisions of the Agreement requiring the calculation of certain net payment amounts, all payments under this Agreement will be made without set-off or counterclaim; provided, however, that upon the designation of any Early Termination Date, in addition to and not in limitation of any other right or remedy (including any right to set off, counterclaim, or otherwise withhold payment or any recourse to any Credit Support Document) under applicable law the Non-defaulting Party or Non-affected Party (in either case, "X") may without prior notice to any person set off any sum or obligation (whether or not arising under this Agreement and whether matured or unmatured, whether or not contingent and irrespective of the currency, place of payment or booking office of the sum or obligation) owed by the Defaulting Party or Affected Party (in either case, "Y") to X or any Affiliate of X against any sum or obligation (whether or not arising under this Agreement, whether matured or unmatured, whether or not contingent and irrespective of the currency, place of payment or booking office of the sum or obligation) owed by X or any Affiliate of X to Y and, for this purpose, may convert one currency into another at a market rate determined by X. If any sum or obligation is unascertained, X may in good faith estimate that sum or obligation and set-off in respect of that estimate, subject to X or Y, as the case may be, accounting to the other party when such sum or obligation is ascertained.

(b) **Additional Representations.**

- (i) The first sentence of Section 3 is amended to read in its entirety as follows:

"Each party represents to each other party (which representations will be deemed to be repeated on each date on which a Transaction is entered into and, in the case of the representations in Section 3(a), 3(e) and 3(f) of this Agreement, at all times until the termination of this Agreement) the following:"

- (ii) Section 3 is amended by adding the following subsections (e), (f) and (g) thereto:

(e) **Non-Speculation.** Party B represents and warrants to Party A that this Agreement has been, and each Transaction hereunder will be, entered into for purposes of managing of its borrowings or investments or in connection with a line of business and not for the purpose of speculation;

(f) **Eligible Contract Participant.** Each party is an "eligible contract participant" under, and as defined in, Section 1a(12) of the Commodity Exchange Act, as amended (7 U.S.C. § 1a(12)); and

(g) **Sources of Payment.** As provided in the Contract Administration Agreement, all payments due under this Agreement from Party B to Party A are payable from and secured by amounts owing by the City to Party B pursuant to

the Service Contract in respect of Hedge Payables. Such amounts are payable by the City from all available revenues of the City's General Fund (as delineated in the City's audited financial statements). If the City were to fail to pay any amount owing in respect of a Hedge Payable when due, Party A (or the Contract Administrator, if authorized by Party A to so act on Party A's behalf) could pursue remedies against the City to enforce that contractual obligation and the City would be required to pay any resulting judgment against it. If the City were to fail to provide for payment of any such judgment, a court can compel the City to raise the payment through the levy of taxes, as provided in the Revised Judicature Act of 1961, Act No. 236 of the Michigan Public Acts of 1961, as amended (Michigan Compiled Laws Section 600.6093), without limit as to rate or amount. In addition, all amounts due from Party B hereunder are secured by and payable from the Pledged Property (including, but not limited to, amounts held in the Holdback Account) in accordance with the terms of the Collateral Agreement.

(c) **Additional Agreement.**

Compliance with Covered Indenture. Party B will observe, perform and fulfill each provision in the Covered Indenture applicable to Party B. Party B hereby agrees not to amend, supplement, modify or waive any provision of the Covered Indenture without the consent of Party A if such amendment, supplement, modification or waiver would: (i) change any of the payment times, amounts, obligations, terms or any other payment-related provision in any Service Contract applicable to the City; (ii) impair any right Party B may have under the Service Contract to enforce payments from the City, or impair any right Party A may have under the Covered Indenture to enforce its security interest granted therein or any other right thereunder; or (iii) permit the creation of any new lien ranking prior to or on a parity with, or terminate, or deprive Party A of the security afforded to it by Sections 8.02 and 8.03 of the Service Contracts or Section 2.4 of the Contract Administration Agreement (collectively, the "Incorporated Provisions"). The Incorporated Provisions are hereby incorporated by reference and made a part of this Agreement to the same extent as if such provisions were set forth herein. Any amendment, supplement, modification or waiver of any of the Incorporated Provisions without the prior written consent of the other party hereto shall have no force and effect with respect to this Agreement. Any amendment supplement or modification for which such consent is obtained shall be part of the Incorporated Provisions for purposes of this Agreement. Party B shall not assign or transfer its right or obligations under the Covered Indenture without the prior written consent of the other party hereto and the Swap Insurer.

(d) **Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):

(i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a

recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction.

- (ii) Assessment and Understanding. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.
- (iii) Status of Parties. The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.

(e) **Waiver of Jury Trial. EACH PARTY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT.**

(f) Consent to Recording. Each party (i) consents to the recording of all telephone conversations between trading, operations and marketing personnel of the parties and their Affiliates in connection with this Agreement or any potential Transaction; (ii) agrees to give notice to such personnel of it and its Affiliates that their calls will be recorded; and (iii) agrees that in any Proceedings, it will not object to the introduction of such recordings in evidence on grounds that consent was not properly given.

(g) Scope of Agreement. The Transactions entered into between the parties between June 7, 2006 and June 13, 2006 and any other specific Specified Transactions designated in writing by the parties hereto after the date hereof, shall be subject to the terms hereof.

(h) Indemnification Limited to Extent of Applicable Law. The parties acknowledge that Party B's authority to indemnify Party A, as required by Section 9 of the Agreement, for expenses, fees and taxes may be limited by Michigan law and Party B's obligation to indemnify Party A could be limited to the extent of applicable law.

(i) Additional Definitions. Section 12 is hereby amended by adding the following definitions:

“2006 Funding Trust” shall have the meaning specified in the Collateral Agreement.

“2006 Pension Funding Securities” shall have the meaning specified in the Collateral Agreement.

“2006 Transactions” shall have the meaning specified in the Collateral Agreement.

“Accounts” shall have the meaning specified in the Collateral Agreement.

“Accrued Service Charges” shall have the meaning specified in the Service Contracts.

“Amendment Effective Date” means June 26, 2009.

“Authorizing Ordinance” shall have the meaning specified in the Collateral Agreement.

“Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq.

“Casino Licensee” shall have the meaning specified in the Collateral Agreement.

“City” means the City of Detroit, Michigan.

“City Charter” means the Charter of the City of Detroit, Michigan.

“City Clerk” means the Clerk of the City of Detroit, Michigan.

“City Council” means the Council of the City of Detroit, Michigan.

“City Payment” shall have the meaning specified in the Collateral Agreement.

“City Pledge” shall have the meaning specified in the Collateral Agreement.

“Closing Date” shall have the meaning specified in the Collateral Agreement.

“Collateral Agreement” means that certain Collateral Agreement dated as of June 15, 2009, among Party A, Party B, PFRS, SBS, the City, U.S. Bank National Association and Merrill Lynch Capital Services, Inc.

“Collateral Agreement Custodian” means the person identified as the “custodian” under the Collateral Agreement and any successor thereto.

“Contract Administration Agreement” means the Contract Administration Agreement 2006 dated June 12, 2006 among Detroit Retirement Systems Funding Trust 2006, Detroit General Retirement System Service Corporation and Detroit Police and Fire Retirement System Service Corporation, severally and not jointly, U.S. Bank National Association, separately and not as Trustee of the Detroit Retirement Systems Funding Trust 2006 and the Hedge Counterparties Named Therein.

“Counterparty(ies)” shall have the meaning specified in the Collateral Agreement.

“Covered Indenture” means the Service Contracts together with the Contract Administration Agreement.

“Definitive Documents” shall have the meaning specified in the Collateral Agreement.

“Detroit General Retirement System Service Contract” means the Detroit General Retirement System Service Contract dated June 7, 2006 between Party B and the City.

“Detroit Police and Fire Retirement System Service Contract” means the PFRS Service Contract dated June 7, 2006 between the Detroit Police and Fire Retirement System Service Corporation and the City.

“Developer” shall have the meaning specified in the Collateral Agreement.

“Developer Agreement” shall have the meaning specified in the Collateral Agreement.

“Excluded Indebtedness” shall have the meaning specified in the Collateral Agreement.

“Finance Director” shall have the meaning specified in the Collateral Agreement.

“Fiscal Year” shall have the meaning specified in the Collateral Agreement.

“General Receipts Subaccount” shall have the meaning specified in the Collateral Agreement.

“Hedge” shall have the meaning specified in the Collateral Agreement.

“Hedge Payable” shall have the meaning specified in the Service Contracts.

“Hedge Periodic Payables” shall have the meaning specified in the Service Contracts.

“Holdback Account” shall have the meaning specified in the Collateral Agreement.

“Holdback Requirement” shall have the meaning specified in the Collateral Agreement.

“Irrevocable Instructions” shall have the meaning specified in the Collateral Agreement.

“MCL” means the Michigan Compiled Laws.

“Month” shall have the meaning specified in the Collateral Agreement.

“Moody’s” means Moody's Investors Service, Inc.

“Office” means a branch or office of a party, which may be such party's head or home office.

“PFRS” means the Detroit Police and Fire Retirement System Service Corporation.

“Pledged Property” shall have the meaning specified in the Collateral Agreement.

“Property Tax Threshold” shall have the meaning specified for the “Threshold” in the Collateral Agreement.

“Quarterly Coverage” shall have the meaning specified in the Collateral Agreement.

“Ratings Upgrade” shall have the meaning specified in the Collateral Agreement.

“Regular Custodian Payment” shall have the meaning specified in the Collateral Agreement.

“Regular Scheduled Payments” shall have the meaning specified in the Service Contracts.

“Revenues” shall have the meaning specified in the Collateral Agreement.

“S&P” means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

“SBS” means SBS Financial Products Company, LLC.

“Service Charges” shall have the meaning specified in the Service Contracts.

“Service Contracts” means the Detroit General Retirement System Service Contract and the Detroit Police and Fire Retirement System Service Contract.

“Service Corporations” means Party B and PFRS.

“Service Corporation Pledge” shall have the meaning specified in the Collateral Agreement.

“Service Corporation Security Interest” shall have the meaning specified in the Collateral Agreement.

“Settlement Transaction” shall have the meaning specified in the Collateral Agreement.

“Sinking Fund Installments” shall have the meaning specified in the Service Contracts.

“Specified Additional Termination Event” means each of the Additional Termination Events specified in Parts 1(i)(ii)(3), 1(i)(ii)(4), 1(i)(ii)(5), 1(i)(ii)(9) and 1(i)(ii)(10) of this Amended and Restated Schedule.

“Specified Event” shall have the meaning specified in the Collateral Agreement.

“Swap Counterparties” means, collectively, Party A and SBS and their respective successors and assigns.

“Swap Insurance Policy” means the Insurance Policy issued by the Swap Insurer with respect to the Transaction(s) between Party A and Party B entered into pursuant to this Agreement.

“Swap Insurer” means Syncora Guarantee Inc. (formerly known as XL Capital Assurance Inc).

“Term Payment Period” shall have the meaning specified in the Collateral Agreement.

“Term Period End Date” shall have the meaning specified in the Collateral Agreement.

“Wagering Taxes” shall have the meaning specified in the Collateral Agreement.

“Wagering Tax Property” shall have the meaning specified in the Collateral Agreement.

“Wagering Tax Revenue Statute” means the Michigan Gaming Control and Revenue Act, being MCL 432.201 et seq., MSA 18.969(201), et seq., as amended.

Part 5.
Insurer Provisions

The following provisions shall apply to any Transactions for which the Swap Insurance Policy has been issued by the Swap Insurer, for the account of Party B, as principal, and Party A, as beneficiary (the “Insured Rate Swap Transactions”):

(i) Designation of Early Termination Date. Notwithstanding anything to the contrary in Section 6 of this Agreement, if any:

(a) Event of Default in respect of any Insured Rate Swap Transaction under this Agreement occurs; or

(b) Termination Event (other than the Additional Termination Events set forth in Part 5(ii) below) in respect of any Insured Rate Swap Transaction under this Agreement occurs;

then, in either such case, neither Party A nor Party B shall designate an Early Termination Date pursuant to Section 6 of this Agreement in respect of any such Insured Rate Swap Transaction without the prior written consent of the Swap Insurer.

(ii) Party B Additional Termination Events. The following shall each constitute an Additional Termination Event:

(a) the Swap Insurer fails to meet its payment obligations under the Swap Insurance Policy and such failure is continuing with respect to the Swap Insurer under the Swap Insurance Policy; or

(b) the Swap Insurer fails to have a claims-paying ability rating of at least “A-” from S&P or a financial strength rating of at least “A3” from Moody’s; provided, however, that additionally:

(X) an Event of Default has occurred or is continuing with respect to Party B as the Defaulting Party; or

(Y) a Termination Event has occurred or is continuing with respect to Party B as the Affected Party; or

(c) An Insurer Event has occurred and is continuing provided, however, that additionally:

(X) an Event of Default has occurred or is continuing with respect to Party B as the Defaulting Party: or

(Y) a Termination Event has occurred or is continuing with respect to Party B as the Affected Party.

Any of the following shall be considered an "Insurer Event":

- (1) the Swap Insurer is in conservation, liquidation or receivership under the New York Insurance Laws; or
- (2) the Swap Insurer (a) fails to have (1) a claims-paying ability rating of at least "AAA" from S&P, or (2) a financial strength rating of at least "Aaa" from Moody's; and (b) fails to pay obligations for indebtedness for money borrowed or to meet then-current policy obligations for which claims have been properly presented in an aggregate amount in excess of \$100,000,000, which failure to make payment (in whole or in part) is not due to: (u) administrative error; (v) Swap Insurer action to contest a claim; (w) an order from, or action by, a regulator of the Swap Insurer which forbids, delays or impedes such payment, except in connection with a Swap Insurer insolvency, conservation or receivership; (x) the occurrence of an act of God which prevents such payment; (y) the usual mechanisms or channels employed to make such payment being unavailable to the Swap Insurer through no fault of the Swap Insurer; (z) a statute, rule or order (including, but not limited to exchange controls) which forbids, delays or impedes either (i) such payment, other than in connection with a Swap Insurer insolvency, conservation or receivership, or (ii) the acquisition of, or payment in, a currency required in order to make such payment.

For purposes of any Additional Termination Event described under this Part 5(ii), the sole "Affected Party" shall be Party B.

(iii) Insurer Directed Termination. Notwithstanding anything in this Agreement, if an Event of Default under this Agreement occurs with respect to Party B as the Defaulting Party or any Termination Event under this Agreement occurs with respect to Party B as the Affected Party, then the Swap Insurer (so long as it has not failed to make any payment under the terms and conditions of the Swap Insurance Policy) shall have the right (but not the obligation) upon notice to Party A to designate an Early Termination Date with respect to Party B with the same effect as if such designation were made by Party A. For purposes of the foregoing sentence, an Event of Default with respect to Party B shall be considered to be continuing, notwithstanding any payment by the Swap Insurer under the Swap Insurance Policy. Party A and Party B acknowledge that, except as the Swap Insurance Policy may be otherwise endorsed, unless (x) the Swap Insurer designates an Early Termination Date (as opposed to merely consenting to such designation by one of the parties) or (y) an Additional Termination Event specified in Part 5(ii)(a) or (b) has occurred, payments due from Party B because an Early Termination Date has been designated will not be insured. In any event, the parties acknowledge that pursuant to the Swap Insurance Policy that (i) the amount payable by the Swap Insurer in respect of payments due from Party B because an Early Termination Date has been designated by the Swap Insurer shall not be limited in amount, and (ii) the amount payable by the Swap Insurer in respect of payments due from Party B because an Early Termination Date has been designated by Party A shall not exceed the amount specified in the Swap Insurance Policy.

(iv) Amendments. Section 8(b) of the Agreement is hereby amended by (A) adding the words “or any Credit Support Document” after the word “Agreement” in the first line thereof and (B) adding the phrase “and the Swap Insurer” following the words “parties” in the third line thereof.

(v) Transfers/Assignments. Notwithstanding Section 7 of the Agreement, neither party may transfer, assign or delegate its rights or duties with respect to an Insured Rate Swap Transaction under the Agreement, unless it receives the prior written consent of the Swap Insurer; provided, however, that Party A may assign or delegates its rights and duties without the Swap Insurer’s prior written consent to a party (a) that meets the definition of “Reference Market Maker” (other than the ratings requirement set forth therein) and that has long-term senior unsecured debt ratings at least in the single –A category from Moody’s and S&P or the Credit Support Provider of such party has claims paying ability ratings or financial strength ratings at least in the single – A category from Moody’s and S&P and (b) that assumes the rights and duties of Party A pursuant to a master agreement that is substantially similar to this Agreement and in form and substance satisfactory to the Swap Insurer; and provided, further, that Party A may make such an assignment or delegation to an affiliate of Party A if Party A or its Credit Support Provider, provides a guarantee of the Insured Rate Swap Transaction that is acceptable in form and substance to the Swap Insurer.

(vi) No Suspension of Payments, Notwithstanding Section 2(a)(iii) of this Agreement, Party A shall not suspend any payments due under an Insured Rate Swap Transaction under Section 2(a)(iii) of the Agreement unless Party A has designated an Early Termination Date pursuant to the terms hereof.

(vii) No Netting. Notwithstanding Section 2(c) of this Agreement, in no event shall either Party A or Party B be entitled to net its payment obligations in respect of the Insured Rate Swap Transactions against the payment obligations of the other party in respect of other Transactions under this Agreement if such Transactions are not Insured Rate Swap Transactions, nor may either Party A or Party B net the payment obligations of the other party under Transactions that are not Insured Rate Swap Transactions against the payment obligations of such party under Insured Rate Swap Transactions, it being the intention of the parties that their payment obligations under Insured Rate Swap Transactions be treated separate and apart from all other Transactions. Section 6(e) of this Agreement shall apply to all Insured Rate Swap Transactions with the same effect as if the Insured Rate Swap Transactions constituted a single master agreement, Notwithstanding Section 6(e) of this Agreement, the amount payable under Section 6(e) of this Agreement upon the termination of any Insured Rate Swap Transactions shall be determined without regard to any Transactions other than the Insured Rate Swap Transactions, it being the intention of the parties that their payment obligations under the Insured Rate Swap Transactions be treated separate and apart from all other Transactions unless otherwise agreed to in writing by the Swap Insurer.

(viii) No Set-off for Counterclaim. In no event shall either Party A or Party B be entitled to set-off its payment obligations in respect of an Insured Rate Swap Transaction against the payment obligations of the other party (whether by counterclaim or otherwise) under any other agreement(s) between Party A and Party B or instrument(s) or undertaking(s) issued or executed by one party to, or in favor of, the other party, if such obligations are not Insured Rate Swap Transactions, or net the payment obligations of the other party that are not with respect to

Insured Rate Swap Transactions against the payment obligations of such party under Insured Rate Swap Transactions, it being the intention of the parties that their payment obligations under Insured Rate Swap Transactions be treated separate and apart from all other obligations. Notwithstanding Section 6(e) of this Agreement, the amount payable under Section 6(e) of this Agreement upon the termination of any Insured Rate Swap Transaction shall be determined without regard to any obligation other than those under the Insured Rate Swap Transactions, it being the intention of the parties that their payment obligations under the Insured Rate Swap Transactions be treated separate and apart from all other obligations unless otherwise specified in such other obligation and agreed to in writing by the Swap Insurer.

(ix) Party A — Notice of Rating Downgrade, Suspension or Withdrawal. Party A shall provide written notice to Party B and to the Swap Insurer of any downgrade, withdrawal or suspension of Party A's long-term senior unsecured debt rating, within 15 Business Days of the occurrence of such event. Failure of Party A to provide such notice shall not constitute an Event of Default under this Agreement.

(x) Representations and Agreements. Each party agrees that each of its representations and agreements in this Agreement is expressly made to and for the benefit of the Swap Insurer.

(xi) Third-party Beneficiary. Party A and Party B hereby each acknowledge and agree that the Swap Insurer shall be an express third-party beneficiary (and not merely an incidental third-party beneficiary) of this Agreement and of the obligations of each such party under any Insured Rate Swap Transaction, and as such, entitled to enforce the Agreement and the terms of any such Insured Rate Swap Transaction against such party on its own behalf and otherwise shall be afforded all remedies available hereunder or otherwise afforded by law against the parties hereto to redress any damage or loss incurred by the Swap Insurer including, but not limited to, fees (including professional fees), costs and expenses incurred by the Swap Insurer which are related to, or resulting from any breach by such party of its obligations hereunder.

(xii) Policy Coverage. Party A and Party B hereby acknowledge and agree that the Swap Insurer's obligation with respect to Insured Rate Swap Transactions shall be limited to the terms of the Swap Insurance Policy, Notwithstanding Section 2(d) or any other provision of this Agreement, the Swap Insurer shall not have any obligation to pay interest on any amount payable by Party B under this Agreement.

(xiii) Subrogation. Party A and Party B hereby acknowledge that to the extent of payments made by the Swap Insurer to Party A under the Swap Insurance Policy, the Swap Insurer shall be fully subrogated to the rights of Party A against Party B under the Insured Rate Swap Transaction to which such payments relate, including, but not limited to, the right to receive payment from Party B and the enforcement of any remedies. Party A hereby agrees to assign to the Swap Insurer its right to receive payment from Party B under any Insured Rate Swap Transaction to the extent of any payment thereunder by the Swap Insurer to Party A. Party B hereby acknowledges and consents to the assignment by Party A to the Swap Insurer of any rights and remedies that Party A has under any Insured Rate Swap Transaction or any other document executed in connection herewith.

(xiv) Isolation of Insured Rate Swap Transactions in Designating an Early Termination Date.

(a) Notwithstanding Section 6 of this Agreement, any designation of an Early Termination Date in respect of non-Swap Insurer Insured Rate Swap Transactions by Party A or Party B shall not apply to any Insured Rate Swap Transactions under this Agreement, unless expressly provided in such designation and agreed to in writing by the Swap Insurer.

(b) Notwithstanding Section 6 of this Agreement, any designation of an Early Termination Date in respect of the Insured Rate Swap Transactions by the Swap Insurer or by Party A or Party B shall apply only to the Insured Rate Swap Transactions and not to any other Transaction under this Agreement, unless expressly provided in such designation and agreed to in writing by the Swap Insurer. Nothing contained in this Part 5(xiv) shall affect the rights of Party A under this Agreement to designate an Early Termination Date in respect of any Transaction that is not an Insured Rate Swap Transaction, which designation shall not apply to the Insured Rate Swap Transactions.

(xv) Expenses. Party B agrees to reimburse the Swap Insurer immediately and unconditionally upon demand for all reasonable expenses incurred by the Swap Insurer in connection with the issuance of the Swap Insurance Policy and the enforcement by the Swap Insurer of Party B's obligations under this Agreement and any other documents executed in connection with the execution and delivery of this Agreement, including, but not limited to, fees (including professional fees), costs and expenses incurred by the Swap Insurer which are related to, or resulting from, any breach by Party B of its obligations hereunder.

(xvi) Notices. A copy of each notice or other communication between the parties with respect to this Agreement must be forwarded to the Swap Insurer by the party distributing such notice or other communication and any such notice or other communication shall not be effective as to the parties hereto until it has been received by the Swap Insurer.

(xvii) Reference Market-makers. The definition of "Reference Market-makers" set forth in Section 12 of the Agreement shall be amended in its entirety to read as follows:

"Reference Market-makers" means four (4) leading dealers in the relevant swap market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time of deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among dealers having an office in the same metropolitan area. The rating classification assigned to any outstanding long-term senior debt securities of such dealers shall be at least (1) "A1" or higher as determined by Moody's, (2) "A+" or higher as determined by S&P or if not rated by one of S&P or Moody's, (3) an equivalent investment grade rating determined by a nationally-recognized rating service acceptable to both parties, provided, however, that in any case, if Market Quotations cannot be determined by four (4) such dealers, the party making the determination of the Market Quotation may designate, with the consent of the other party and the Swap Insurer, one (1) or more leading dealers whose long-term senior debt bears a lower investment grade rating or the parties may agree, with the consent of the Swap Insurer, to use fewer than four (4) leading dealers.

(xviii) Party A Delivery of Legal Opinion. Party A will be required to deliver a legal opinion with respect to its power and authority to enter into the Agreement and to the enforceability of the Agreement, satisfactory in form and substance to the Swap Insurer, with the Swap Insurer as an addressee.

(xix) Additional Representations of Party B. Party B hereby further represents to Party A (which representations will be deemed to be repeated by Party B at all times until the termination of this Agreement) that:

- (i) This Agreement has been, and each Transaction hereunder will be (and, if applicable, has been), entered into for the purposes of managing its borrowings and not for purposes of speculation.
- (ii) Party B has taken all steps necessary or advisable to create the security and source of payment for Party B's obligations hereunder described in Section 3(g) of the Agreement.
- (iii) Any Transaction entered into pursuant to this Agreement together with any transactions that Party B has or may enter into with Party A and/or with any or all other parties does not and will not violate or exceed any limits or restrictions contained in any authorizations, approvals or resolutions of the board of directors, shareholders or other authorized body of Party B.
- (iv) The execution and delivery by Party B of this Agreement, each Confirmation and any other documentation relating hereto, and the performance of Party B of its obligations hereunder and thereunder, are in furtherance, and not in violation, of the municipal purposes for which Party B is organized pursuant to the laws of the State of Michigan.
- (v) This Agreement and each Transaction hereunder do not constitute any kind of investment by Party B that is proscribed by any constitution, charter, law, rule, regulation, government code, constituent or governing instrument, resolution, guideline, ordinance, order, writ, judgment, decree, charge, or ruling to which Party B (or any of its officials in their respective capacities as such) or its property is subject.

(xx) Optional Early Termination. Party A shall have the right to terminate one or more Transactions hereunder, either in whole or in part, on any Business Day; *provided* that no Event of Default or Termination Event is then occurring with respect to which Party A is the Defaulting Party or sole Affected Party, by providing at least five (5) Business Days' prior written notice to Party B of its election to terminate and its designation of the effective date of termination (the "Party A Optional Early Termination Date"). On the Party A Optional Early Termination Date, Party A shall determine the amount payable in connection with such termination as the greater of (i) zero and (ii) the amount calculated in accordance with Section 6(e) of the Agreement, as if (A) the Party A Optional Early Termination Date were the Early Termination Date with respect to the terminated Transaction(s) or portion thereof, (B) the terminated Transaction(s) were the sole Affected Transaction(s), (C) Party B were the sole Affected Party and (D) Second Method

and Loss applied. For the avoidance of doubt, in no event will Party B owe any amount to Party A in connection with an election by Party A to exercise its option under this Part 5(xx), other than any Unpaid Amounts

[Intentionally left blank. Signature page follows.]

Please confirm your agreement to the terms of the foregoing Schedule by signing below.

UBS AG

**DETROIT GENERAL RETIREMENT SYSTEM
SERVICE CORPORATION**

By: Marie-Anne Clarke By: _____

Name:	Marie-Anne Clarke	Name: Norman L. White
Title:	Executive Director and Counsel	Title: President
Date: June 26, 2009	Region Americas Legal Fixed Income Section	Date: June 26, 2009

By: _____

Name:	James B. Fuqua
Title:	Managing Director and Counsel
Date: June 26, 2009	Region Americas Legal

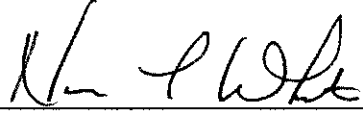
Please confirm your agreement to the terms of the foregoing Schedule by signing below.

UBS AG

**DETROIT GENERAL RETIREMENT SYSTEM
SERVICE CORPORATION**

By: _____

Name:
Title:
Date:

By:  _____

Name: Norman L. White
Title: President
Date: June 26, 2009

By: _____

Name:
Title:
Date:

SCHEDULE OF OPINIONS

<p>Lewis & Munday, a Professional Corporation</p>	<ul style="list-style-type: none"> • The Settlement Transaction will not cause the City to violate or exceed any applicable debt limit or constitute or create any “indebtedness” of the City within the meaning of any limitation of the Home Rule City Act (Act 279 of the Public Acts of Michigan of 1909, as amended) or any Michigan constitutional or other non-tax statutory or City Charter limitation, • the Authorizing Ordinance was duly adopted in accordance with state law and City Charter requirements, is in effect as of the Closing Date, has not been amended, and is valid, binding, and enforceable (subject, in each case, to bankruptcy and other customary exceptions), • the City Pledge, including the lien of the City Pledge established pursuant to the Authorizing Ordinance, is valid, binding and enforceable and the Service Corporation Pledge is valid, binding, enforceable and perfected (subject, in each case, to bankruptcy and other customary exceptions), • the definitive agreements entered into in connection with the Settlement Transaction are valid, binding and enforceable (subject, in each case, to bankruptcy and other customary exceptions), • the pledge and use of Pledged Property as contemplated in the Settlement Transaction will constitute authorized purposes under the Wagering Tax Revenue Statute (including, if applicable at the time, any regulation or ordinance, other than the Authorizing Ordinance, relating thereto), the Authorizing Ordinance and Section 18-14-1 et seq. of the Detroit City Code, • the pledge and use of the Pledged Property as contemplated by the Settlement Transaction does not and shall not “supplant existing...local expenditures” as prohibited by Section 12(14) of the Wagering Tax Revenue Statute, • the Settlement Transaction and any other transactions to be consummated in connection therewith are not subject to approval by vote of the electors of the City and are not
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	<p>subject to any right of referendum by City electors; and</p> <ul style="list-style-type: none"> any actions taken by the City Council, in connection with the Settlement Transaction, by resolution, in lieu of ordinance, are fully valid, binding and enforceable against the City, notwithstanding that such actions were taken by resolution instead of by ordinance (subject, in each case, to bankruptcy and other customary exceptions).
Orrick, Herrington & Sutcliffe LLP	The Wagering Tax Property constitute "special revenues" as defined in Bankruptcy Code §902(2) with respect to any case under Chapter 9 of the Bankruptcy Code in which the City or a Service Corporation is the debtor (subject to assumptions, qualifications, and limitations as are customary for bankruptcy opinions).
Special tax counsel to the City	Consummation of the Settlement Transaction (including any amendments of the Service Contracts in connection therewith) will not result in (i) the 2006 Funding Trust being treated as other than a grantor trust under Subpart E, Part I of Subchapter J of the Internal Revenue Code of 1986, as amended, (ii) the Service Charges and Regular Scheduled Payments failing to constitute payments in respect of indebtedness for U.S. federal income tax purposes, or (iii) otherwise any modifications, adverse to the City, the Service Corporations, the holders of the 2006 Pension Funding Securities or the Counterparties, to the conclusions reached in the tax opinions given in connection with the outstanding transactions.
City Corporation Counsel	Relying upon certifications of the City Clerk, the City Charter and any amendments thereto were duly approved by a majority of the City electors voting thereon and the City Charter and any such amendments have not been rescinded in whole or in part as of the Closing Date (subject to bankruptcy and other customary exceptions).

Capitalized terms used but not otherwise defined in this Exhibit A shall have the meanings ascribed to them in them in the Collateral Agreement.

EXHIBIT H

ISDA Master Agreement

ISDA[®]

International Swap Dealers Association, Inc.

MASTER AGREEMENT

dated as of June 7, 2006

UBS AG
("Party A")

and

DETROIT GENERAL
RETIREMENT SYSTEM
SERVICE CORPORATION,
a not-for-profit corporation
organized under the laws of the
State of Michigan
("Party B")

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows: —

1. Interpretation

- (a) *Definitions.* The terms defined in Section 12 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) *Inconsistency.* In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) *Single Agreement.* All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

2. Obligations

(a) *General Conditions.*

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable: —

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of branches or offices through which the parties make and receive payments or deliveries.

(d) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into) that:—

(a) **Basic Representations.**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under

this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) *No Violation or Conflict*. Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) *Consents*. All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) *Obligations Binding*. Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) *Absence of Certain Events*. No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) *Absence of Litigation*. There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) *Accuracy of Specified information*. All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) *Furnish Specified Information*. It will deliver to the other party any forms, documents or certificates specified in the Schedule or any Confirmation by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) *Maintain Authorisations*. It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) *Comply with Laws*. It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

5. Events of Default and Termination Events

(a) *Events of Default*. The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

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(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) or to give notice of a Termination Event) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (ii) below or an Additional Termination Event if the event is specified pursuant to (iii) below:—

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified

Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(iii) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iii) **Right to Terminate.** If: —

(1) an agreement under Section 6(b)(ii) has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality other than that referred to in Section 6(b)(ii), a Credit Event Upon Merger or an Additional Termination Event occurs,

either party in the case of an Illegality, any Affected Party in the case of an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) **Effect of Designation.**

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(d) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment), from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default:—

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party over (B) the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) **Second Method and Market Quotation.** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party less (B) the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) *Termination Events.* If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Unpaid Amounts owing to X less (II) the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate.* The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

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Any purported transfer that is not in compliance with this Section will be void.

8. Miscellaneous

(a) *Entire Agreement.* This 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.

(b) *Amendments.* No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) *Survival of Obligations.* Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) *Remedies Cumulative.* Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) *Counterparts and Confirmations.*

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) *No Waiver of Rights.* A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) *Headings.* The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

9. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

10. Notices

(a) *Effectiveness.* Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

(i) if in writing and delivered in person or by courier, on the date it is delivered;

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(ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(v) if sent by electronic messaging system, on the date that electronic message is received, unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

11. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably: —

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

12. Definitions

As used in this Agreement:—

"**Additional Termination Event**" has the meaning specified in Section 5(b).

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"Affected Party" has the meaning specified in Section 5(b).

"Affected Transactions" means (a) with respect to any Termination Event consisting of an Illegality, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

"Affiliate" means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"Applicable Rate" means:—

- (a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;
- (b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;
- (c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and
- (d) in all other cases, the Termination Rate.

"consent" includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

"Credit Event Upon Merger" has the meaning specified in Section 5(b).

"Credit Support Document" means any agreement or instrument that is specified as such in this Agreement.

"Credit Support Provider" has the meaning specified in the Schedule.

"Default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

"Defaulting Party" has the meaning specified in Section 6(a).

"Early Termination Date" means the date determined in accordance with Section 6(a) or 6(b)(iii).

"Event of Default" has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

"Illegality" has the meaning specified in Section 5(b).

"law" includes any treaty, law, rule or regulation and **"lawful"** and **"unlawful"** will be construed accordingly.

"Local Business Day" means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

“Loss” means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party’s legal fees and out-of-pocket expenses referred to under Section 9. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

“Market Quotation” means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the “Replacement Transaction”) that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

“Non-default Rate” means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

“Non-defaulting Party” has the meaning specified in Section 6(a).

“Potential Event of Default” means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“Reference Market-makers” means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

"Scheduled Payment Date" means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

"Set-off" means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

"Settlement Amount" means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

"Specified Entity" has the meaning specified in the Schedule.

"Specified Indebtedness" means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

"Terminated Transactions" means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

"Termination Event" means an Illegality or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

"Termination Rate" means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

"Unpaid Amounts" owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been) but for Section 2(a)(iii) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been

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44a
required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the fair market values reasonably determined by both parties.

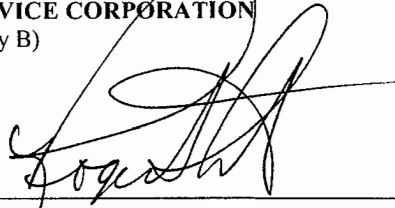
IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

UBS AG
(Party A)

By: _____
Name: _____
Date: _____

By: _____
Name: _____
Date: _____

**DETROIT GENERAL RETIREMENT SYSTEM
SERVICE CORPORATION**
(Party B)

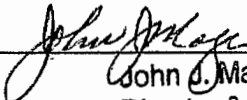
By:  _____
Name: _____
Date: _____

required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the fair market values reasonably determined by both parties.

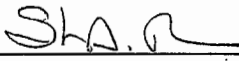
IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

UBS AG
(Party A)

**DETROIT GENERAL RETIREMENT SYSTEM
SERVICE CORPORATION**
(Party B)

By: 
Name: John J. Magovern
Director & Counsel
Date: Region Americas Legal
Fixed Income Section

By: _____
Name: _____
Date: _____

By: 
Name: Stephen A. Thatcher
Director and Counsel
Date: Region Americas Legal
Fixed Income Section