



*Wells Fargo Bank, N.A.
Corporate Trust Services
Special Accounts Group
MAC N9303-110
Sixth & Marquette
Minneapolis, MN 55479*

December 21, 2009

**NOTICE TO HOLDERS OF
PORT AUTHORITY OF THE CITY
OF SAINT PAUL
TAX EXEMPT SENIOR LIEN
PARKING RAMP REVENUE BONDS
(FOURTH AND MINNESOTA PARKING RAMP PROJECT)
SERIES 2000-1 and 2000-7
and the
PORT AUTHORITY OF THE CITY
OF SAINT PAUL
TAXABLE SUBORDINATE LIEN
PARKING RAMP REVENUE BONDS
(FOURTH AND MINNESOTA PARKING RAMP PROJECT)
SERIES 2000-2**

**CUSIP Numbers:
793044 AC 2
793044 AE 8
793044 AD 0**

Wells Fargo Bank, National Association, serves as Indenture Trustee (the "Senior Bonds Trustee") under an Indenture dated as of May 1, 2000, as amended (the "Senior Bonds Indenture") between the Senior Bonds Trustee and the Port Authority of the City of Saint Paul (the "Issuer"), pursuant to which the Issuer's Tax Exempt Senior Lien Parking Ramp Revenue Bonds (the "Senior Bonds") were issued and outstanding. Wells Fargo Bank Minnesota, National Association, also serves as Indenture Trustee (the "Subordinate Bonds Trustee") under an Indenture dated as of May 1, 2000 (the "Subordinate Bonds Indenture") between the Subordinate Bonds Trustee and the Issuer, pursuant to which the Taxable Subordinate Lien Parking Ramp Revenue Bonds (the "Subordinate Bonds") were issued and outstanding. The Senior Bonds Trustee and the Subordinate Bonds Trustee sometimes are referred to collectively as the "Trustee." The Senior Bonds and the Subordinate Bonds sometimes are referred to herein together as the "Bonds."

Pursuant to a Lease Agreement dated as of May 1, 2000 (the "Lease Agreement") between the Issuer and Capital City Properties, a Minnesota not for profit corporation ("Capital City"), the Issuer loaned the proceeds of the Senior Bonds and the Subordinate

Notice to Holders of Capital City Bonds

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Bonds to the Tenant for the purpose of, among other things, financing the acquisition of land and construction of a new parking garage containing space for not less than 990 cars (the "Project"). The loan is evidenced by the Lease Agreement and by a Memorandum of Lease dated as of May 1, 2000 between the Issuer and the Tenant, which was recorded in the public records. The Lease Agreement is secured by a Senior Mortgage, Security Agreement and Fixture Financing Statement dated as of May 1, 2000, by and between the Issuer, the Tenant and the Senior Bonds Trustee; as well as by a Subordinate Mortgage, Security Agreement and Fixture Financing Statement dated as of May 1, 2000, by and between the Issuer, the Tenant and the Subordinate Bonds Trustee. The Bonds are special and limited obligations of the Issuer payable from revenues and income derived from the Project including, without limitation, all tolls, rentals, revenues, rates, fees, charges and other amounts (the "Gross Receipts").

The Gross Receipts are collected by the Project operator through the operation of the Project, but are pledged and assigned to the Trustee. The Trustee notified holders of previous court proceedings which took place in 2006 to amend the application of the Gross Receipts, to allow payment of the operating expenses of the Project before payment of debt service. Without the modification of the application of funds, the Project could not operate, and no revenues would have been realized from operations.

In a series of notices the Trustee has sent to holders since the court proceedings in 2006,¹ the Trustee described the operations of the Project, and disclosed that the payments made on the Senior Bonds have been paid for the last several years at least in part by drawing funds from the Debt Service Reserve Fund held as part of the trust estate. Such draws were necessary to allow interest payments on the Senior Bonds to be paid in full, as net revenues from operations of the Project were insufficient pay debt service. The last full payment of interest on the Senior Bonds was paid on June 1, 2009. The payment on the Senior Bonds which was due and payable on December 1, 2009, was a partial payment. The Trustee has retained \$150,000 in the Debt Service Reserve Fund (the "Set Aside Amount") in case of the need for remedial measures or other emergencies with respect to the Project in the future. The Set Aside Amount is the only amount now remaining in the Debt Service Reserve Fund, so future payments of debt service on the Senior Bonds will be wholly dependent on revenues from the operation of the Project.

The failure to pay the amount of principal and interest on the Senior Bonds amounted to a payment default under the Senior Bond Indenture, as a result of which the

¹ Previous notices have been dated in September and December, 2006; May 1, June 1, August 31, and December 1, 2007; June 1 and December 1, 2008; and April 30, June 1, August 27, September 23 and December 1, 2009. Bondholders should contact the Trustee if they have not seen the previous notices.

Trustee could declare the full amount of principal and interest due and to become due in the future on the Senior Bonds now due and payable. An action to declare all principal and interest on the Senior Bonds due and payable, including future principal and interest, is referred to as an “acceleration” of the debt.

As noted above, the Trustee also acts as Subordinate Bonds Trustee under the Subordinate Bonds Indenture. As of the date of this notice, the Subordinate Bonds Subaccount holds \$130,564.48. The language of the the Subordinate Bonds Indenture implies the Subordinate Bonds Subaccount of the Construction Fund should be used to pay the Senior Bonds upon acceleration but also contains inconsistent language indicating that the amount in the Subordinate Bonds Subaccount should be retained for the benefit of the holders of the Subordinate Bonds.

To clarify this inconsistency, and to obtain instructions from the court with jurisdiction over the trust estate with respect to acceleration and the Subordinate Bonds Subaccount of the Construction Fund, the Trustee has filed a Supplemental Petition for Instruction in the Administration of the Trust, a copy of which is enclosed herewith. **The Supplemental Petition is scheduled for hearing at 2:30 p.m. on February 3, 2010, in Courtroom C-400, Hennepin County Government Center**, to have the court consider the issues attendant to acceleration of the Bonds and use of the Subordinate Bonds Subaccount of the Construction Fund. A copy of the Order for Hearing is also enclosed. The address for the court appears below.

Any party in receipt of this Notice may direct questions by telephone to the Trustee at (612) 667-7337, or by mail addressed to:

Wells Fargo Bank, National Association
Corporate Trust Department – Attn: Virginia Anne Housum
MAC# N9303-120
Sixth and Marquette
Minneapolis, MN 55479-0069

Every holder of the Bonds will have the right to appear at the hearing, either with counsel or on their own, to express their views of the issues raised in the Trustee’s petition. The Trustee recognizes that most holders will not want to attend a hearing in Minneapolis, Minnesota, over this issue, and therefore we will present all comments received in writing or by telephone to the probate court.

If you wish to appear at the hearing, or submit a comment in writing, you can

Notice to Holders of Capital City Bonds
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submit it to the Trustee at the address below, or appear at the hearing, which will be held at:

Probate Court
Courtroom 431
Hennepin County Government Center
300 South Sixth Street
Minneapolis, Minnesota 55487

Any Bondholder who does not appear at the hearing will be bound by the Court's decision. If you are going to appear, please inform the Trustee in writing in advance, so we can be sure the Court is aware that there will be Bondholders in attendance.

Holders of the Securities should not rely on the Trustee as their sole source of information. The Trustee makes no recommendations and gives no investment or legal advice herein or as to the Securities generally.

December 21, 2009

WELLS FARGO BANK, National
Association, as Trustee for the holders of
Port Authority of the City of Saint Paul Tax
Exemption Senior Lien Parking Ramp
Revenue Bonds and Subordinate Lien
Parking Ramp Revenue Bonds

FILED

STATE OF MINNESOTA
COUNTY OF HENNEPIN

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340 PROCEEDINGS IN THE
FOURTH JUDICIAL DISTRICT COURT

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Other

**In re trusteeship created by the Port
Authority of the City of St. Paul**

File No.: 27-TR-CV-09-187

**ORDER FOR HEARING ON THIRD SUPPLEMENTAL PETITION OF WELLS
FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE, FOR
INSTRUCTION IN THE ADMINISTRATION OF A TRUST PURSUANT TO
MINN. STAT. § 501B.16**

TO THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT:

Wells Fargo Bank Minnesota, National Association, the Trustee herein,
having filed its Petition for Instruction in the Administration of a Trust Pursuant to Minn.
Stat. § 501B.16, and the Court having assumed jurisdiction of the proceeding in rem
under Minnesota Statutes § 501B.24, now, upon motion of Dorsey & Whitney LLP,
attorneys for Petitioner,

IT IS ORDERED:

1. Hearing upon said Petition be had by this Court at a special term thereof to
be held in Courtroom No. C-400 of the Hennepin County District Courthouse,

Minneapolis, Minnesota on February 3, 2010, at 2:30 p.m., or as soon thereafter as counsel can be heard.

2. Notice of such hearing be given by publishing a copy of this Order one time in a legal newspaper of Hennepin County, Minnesota, at least 20 days before the date of the hearing and by mailing a copy thereof together with a copy of the said Petition to each party in interest at his last known address at least 15 days prior to said date.

3. The parties in interest are hereby referred to the Petition provided to them and on file in the office of the Court Administrator for a specification of the matters to be considered at said hearing.

Dated: December 16, 2009



<u>Marilyn J. Kaman</u>	<u>12-16-09</u>
Judge of the District Court	Date

Mark S. Thompson
District Court Administrator

Prepared by:

DORSEY & WHITNEY LLP
Todd C. Pearson, Esq. (#230935)
50 South 6th Street
Suite 1500
Minneapolis, MN 55402
Telephone (612) 340-2600

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Other
File No: C7-03-118

**In re trusteeship created by the Port
Authority of the City of Saint Paul**

THIRD SUPPLEMENTAL PETITION OF WELLS FARGO BANK, NATIONAL
ASSOCIATION, AS TRUSTEE, FOR INSTRUCTION IN THE ADMINISTRATION
OF A TRUST PURSUANT TO MINN. STAT. § 501B.16

TO THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT

Petitioner Wells Fargo Bank, National Association, as Trustee for the above described trust estate, by and through its undersigned attorneys, petitions the Court as follows:

1. Petitioner Wells Fargo Bank National Association (formerly known as Norwest Bank Minnesota National Association), as trustee (the "Trustee"), is a national banking association with its principal office in Minneapolis, Minnesota, duly established and existing, and authorized to accept and execute trusts.

2. This Court has jurisdiction over the administration of the trust estate created by the Indenture because the Trustee's principal place of business, and the place

of administration of the trust, is in Minneapolis, Minnesota. Minn. Stat. § 501B.17; *In re Florance*, 360 N.W.2d 626 (Minn. 1985).

3. The administration of the trust has been the subject of petitions for instruction filed with the Court by the Trustee in 2003 and again in 2006. The history of the issues regarding the administration of the above-entitled trust and this Court's involvement in dealing with those issues is described in the Appendix attached hereto, and provides context for the newest issue presented by this Third Supplemental Petition.

4. The Trustee is duly appointed, qualified and acting as Trustee under that certain Indenture of Trust dated as of May 1, 2000 (the "Senior Indenture") between the Port Authority of the City of Saint Paul (the "Issuer") and the Trustee, and under a separate Indenture of Trust dated May 1, 2000, between the Issuer and the Trustee (the "Subordinate Bonds Indenture"). A correct copy of the Senior Indenture is attached hereto as Exhibit 1, and a correct copy of the Subordinate Bonds Indenture is attached hereto as Exhibit 2

5. Pursuant to the Senior Indenture, the Issuer issued its \$17,205,000 Tax Exempt Senior Lien Parking Ramp Revenue Bonds (Fourth and Minnesota Parking Ramp Project) Series 2000-1 (the "2000-1 Bonds"). Pursuant to the Subordinate Bonds Indenture, the Issuer issued its \$4,600,000 Taxable Subordinate Lien Parking Ramp Revenue Bonds (Fourth and Minnesota Parking Ramp Project) Series 2000-2 (the "Subordinate Bonds"). The proceeds of the 2000-1 Bonds and the Subordinate Bonds were loaned to Capital City Properties, a 501(c)(3) affiliate of the Issuer (the "Tenant"),

for its use in financing the construction and equipping of a parking ramp in St. Paul, Minnesota (the "Project").

6. Pursuant to a Supplemental Indenture of Trust dated December 1, 2000, between the Issuer and the Trustee (the "Supplemental Indenture"), the Issuer issued its \$2,000,000 Tax Exempt Senior Lien Parking Ramp Revenue Bonds (Fourth and Minnesota Parking Ramp Project) Series 2000-7 (the "2000-7 Bonds"), the proceeds of which also were loaned to the Tenant for its use in financing the construction and equipping of the Project. The 2000-7 Bonds are on a parity with the 2000-1 Bonds, and together the 2000-1 Bonds and the 2000-7 Bonds are hereinafter referred to as the "Senior Bonds."

7. The Senior Bonds and the Subordinate Bonds are special and limited obligations of the Issuer payable from revenues and income derived from the Project including, without limitation, all tolls, rentals, revenues, rates, fees, charges and other amounts, as defined in the Indenture (the "Gross Receipts"). The Gross Receipts were pledged and assigned to the Trustee.

8. The Senior Indenture directs the Trustee to transfer funds from the Reserve Fund created under the Indenture to the Bond Fund if the amounts on deposit in the Bond Fund are not sufficient to pay any principal or interest amount when due to the holders of the Senior Bonds.

9. Under the original structure of the transaction, pursuant to Section 402(2) of the Senior Indenture (the "Waterfall"), the Trustee was required to make disbursements from the Bond Fund on a monthly basis first to the payment of principal

and interest on the Senior Bonds, and thereafter to an Operating Fund for the payment of the costs of operating the Project (the "Operating Costs").

10. The Project has never generated revenue sufficient to pay principal and interest when due on the Senior Bonds and pay Operating Costs. Under the terms of the original Management Contract for the Project, however, Standard Parking, the Manager, was obligated to pay all Operating Costs as they were incurred, and entitled to be reimbursed from the Operating Fund.

11. Standard Parking was unwilling to continue to advance funds for operating expenses. The Management Agreement with Standard Parking expired by its terms on May 31, 2006.

12. The Trustee was not able to identify any operator who would be willing to take financial responsibility for paying operating costs after May 31, 2006, unless such an operator had adequate assurance that all operating costs would be reimbursed or paid. Unless an operator was identified and engaged to manage the Project, the Project would have been forced to close.

13. The Trustee believed it would not be in the interest of bondholders to have the Project cease functioning, as it then would produce no revenues. However, neither the Trustee nor the Tenant could assure potential managers or operators that Project operating costs incurred after May 31, 2006 would be paid if debt service on the Senior Bonds or the 2000-7 Bonds was paid before operating costs.

14. For this reason, the Trustee believed that a permanent modification of the Waterfall was necessary to provide that the Gross Receipts would be available to pay or

reimburse the payment of Operating Costs prior to debt service, in order to allow the Project to be managed after May 31, 2006, and to stay open. Thus, the Trustee filed its Second Supplemental Petition that requested that the Court permanently modify the terms of Section 402(2)(a), (b) and (c) of the Indenture and order that the Waterfall would operate as follows going forward: (1) to the Tenant to pay or reimburse actual out of pocket operating costs incurred and paid by an operator in connection with the operation of the Project (subject to submission by operator to Tenant of documentation reasonably satisfactory to Tenant to support operator's request for reimbursement); (2) to interest and principal on the Senior Bonds (as currently set forth in more detail in Section 402(2)(a)); (3) to replenish the Reserve Fund (as currently set forth in more detail in Section 402(2)(b)); and (4) as specified in Section 402(2)(d) through (j) of the Indenture.

15. By Order dated June 12, 2006, the Court granted the relief requested by the Second Supplemental Petition. A new manager took over the operation of the Project, and continues to operate the Project today.

16. Since 2006, Gross Receipts have been sufficient to pay the operating costs of the Project, but insufficient to pay anything more than partial debt service on the Senior Bonds; no debt service has been paid on the Subordinate Bonds.

17. Since 2006, and pursuant to the terms of the Senior Indenture, the Trustee has made debt service payments on the Senior Bonds by transferring funds from the Reserve Fund to the extent that funds it held in the Bond Fund were not sufficient to pay debt service on the Senior Bonds when due.

18. The next Senior Bond debt service payment was due December 1, 2009, and there were insufficient funds in the Reserve Fund to enable the Trustee to pay all principal and interest due on the Senior Bonds. As a result, after December 1, 2009, there was a payment default on the Senior Bonds.

19. In light of the payment default which has occurred, the Trustee has determined to accelerate the Senior Bond indebtedness.

20. Despite the general subordinated nature of the transactions, the Trustee's acceleration of the Senior Bond indebtedness raises an issue regarding the proper application of certain funds; specifically, whether those funds should be paid to holders of the Senior Bonds or to the holder of the Subordinate Bonds.

21. A "Construction Fund" was created under Section 403 of the Senior Indenture, and was part of the Senior Indenture Trust Estate. A Subordinate Bonds Subaccount of the Construction Fund was also created. Pursuant to the Subordinate Indenture, if the Senior Bonds are accelerated, "all sums then held by the Trustee as part of the Trust Estate" shall be applied first, to the payment of the Trustee's costs and expenses, and second to the payment of the whole amount then due and unpaid on the Senior Bonds (Section 603). Payments of principal and interest on the Senior Bonds are to be paid "without any preference or priority, ratably according to the aggregate amount so due".

22. The Senior Indenture also provides that, if the Trustee has accelerated the Senior Bonds, amounts in the Subordinate Bonds Subaccount of the Construction Fund "shall be transferred to the Subordinate Bonds Trustee." This provision is arguably

inconsistent with the provisions regarding the application of proceeds in Section 603 of the Subordinate Indenture. Compounding the arguable inconsistency, the Subordinate Indenture provides (Sub. Indenture Section 403(2)) that, if the Senior Bonds have been accelerated, “funds in the Subordinate Bonds Subaccount shall be returned to the Trustee and shall be deposited in the Bond Fund [the Subordinate Bonds Bond Fund].” The Subordinate Indenture is not explicit regarding whether the “Trustee” refers to the trustee for the Senior Indenture or the trustee for the Subordinate Indenture.

23. In the Trustee’s objective judgment, the arguable inconsistency is best resolved by the subordination provisions of the Subordinate Indenture (Sub. Indenture Section 4.10), which generally provide that if the Senior Bonds have not been paid in full, any sums that the Subordinate Bond Trustee would otherwise be entitled to receive will be turned over to the Senior Bond Trustee to be applied to the Senior Bonds. However, the Trustee recognizes that an alternative reasonable interpretation might plausibly be articulated, and thus the Trustee seeks this Court’s instructions regarding the appropriate application of such funds.

24. The Trustee also believes that it is in the best interest of the trust estate that the Trustee not disburse all of the funds it holds in the Reserve Fund, but rather retain \$150,000 to meet future contingencies that may arise with respect to the Project and the administration of the trust.

WHEREFORE, pursuant to the provisions of Minn. Stat. § 501B.16 and all other applicable law, Petitioner Wells Fargo Bank Minnesota, National Association, as Trustee, respectfully requests that this Court:

1. make and enter herein an Order designating the time and place when the respective parties in interest may be heard upon the matters set forth in this Petition; that notice of the hearing be served in the manner specified in the accompanying Order and as provided by Minn. Stat. § 501B.18;

2. undertake to represent all parties in interest who are unascertained or not in being, or who are minors or incapacitated, pursuant to the provisions of Minn. Stat. § 501B.19;

3. and that at such designated time and place this Court make a further Order as follows:

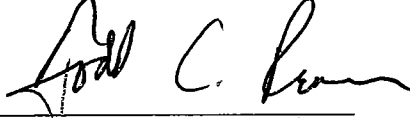
(a) direct the Trustee to apply all amounts in the Subordinate Bonds Subaccount toward payment of amounts due on the Senior Bonds;

(b) direct the Trustee to retain \$150,000 from the amount disbursed to meet future contingencies that may arise with respect to the Project and the administration of the trust; and

(c) granting such other and further relief as the Court may deem lawful, just, and proper.

Dated: December 15, 2009

DORSEY & WHITNEY LLP

By: 

Patrick J. McLaughlin

Attorney Reg. No. 71080

Todd C. Pearson

Attorney Reg. No. 230935

220 South Sixth Street

Minneapolis, MN 55402

Telephone (612) 340-2600

Attorneys for the Trustee

APPENDIX

1. Petitions for Instructions in the Administration of this trust were filed by the Trustee on January 16, 2003 in Case No. C9-03-7 (the "January 2003 Petition") and the Petition for Instructions filed on July 23, 2003 in Case No. C7-03-118 (the "July 2003 Petition").

2. A correct copy of the Supplemental Indenture is attached as Exhibit 3 to the January 2003 Petition and the July 2003 Petition.

3. The Issuer and the Tenant entered into that certain Lease Agreement dated May 1, 2000 (the "Lease"), pursuant to which the Issuer leased the Project to the Tenant. A correct copy of the Lease is attached as Exhibit 4 to the January 2003 Petition and the July 2003 Petition.

4. Until 2006, the Project was managed by APCOA/Standard Parking, Inc. ("Standard") pursuant to that certain Management Contract between the Tenant and Standard dated May 1, 2000, as amended by a certain First Amendment to Management Contract between the Tenant and Operator dated May 15, 2001 (as amended, the "Management Contract"). A correct copy of the Management Agreement, as amended, is attached as Exhibit 5 to the January 2003 Petition and the July 2003 Petition. The Management Contract expired on May 31, 2006.

5. Pursuant to Section 402(2) of the Senior Indenture (the "Waterfall"), the Trustee is required to make disbursements from the Bond Fund on a monthly basis in the following order of priority: (a) to retain in the Bond Fund an amount equal to one-sixth (1/6) of the interest due on the Senior Bonds at the next semi-annual interest payment date and one-twelfth (1/12) of the principal due on the Senior Bonds at the next annual principal payment date; (b) to restore any amounts withdrawn from the Reserve Fund; (c) to transfer to the Tenant a budgeted amount for deposit into the Operating Fund for payment of the Project's operating costs; and (d) thereafter,

as set forth in Section 402(2)(d) through (j) of the Indenture. The Operating Fund is defined in the Indenture as “the fund by that name created by Section 5 of the Management Contract and held and administered by the Tenant [Capital City] for the payment of Operating Costs.”

6. Under the terms of the Management Contract, Standard was obligated to pay all Operating Costs as they were incurred, and entitled to be reimbursed from the Operating Fund held and administered by the Tenant for the Operating Costs incurred and paid by Standard in connection with the operation of the Ramp (subject to submission by Operator to Tenant of documentation reasonably satisfactory to Tenant to support Operator’s request for reimbursement). Standard was obligated to pay all Operating Costs for the Project as they were incurred, even if there are not sufficient funds in the Operating Fund to fully reimburse Standard.

7. By 2003, the Trustee had determined that, in the event that the Project ceased operations, no revenue would be available to pay debt service on the Senior Bonds or the Subordinate Bonds, and that a modification of the Waterfall would be necessary in order to keep the Project operating, a necessity for it to generate revenue to pay even a portion of the debt service on the Senior Bonds. The Trustee did not have the authority under the Indenture to modify the Waterfall. The Trustee filed the January 2003 Petition to obtain the instructions of this Court to the Trustee regarding appropriate actions.

8. Based on financial projections from Standard, the January 2003 Petition recommended that the modification of the Waterfall expire on December 31, 2007. Bremer Business Finance Corporation (“Bremer”), the holder of the Subordinate Bonds, contacted the Trustee and expressed objections to the relief requested by the January 2003 Petition. The Trustee thereafter decided to withdraw the January 2003 Petition in order to allow all interested parties to evaluate available information and to allow additional time to determine whether a

consensus resolution would be possible. On February 27, 2003, the Court entered an order dismissing the January 2003 Petition and, accordingly, Case. No. C9-03-7.

9. When it became apparent that no consensus would be reached, the Trustee filed the July 2003 Petition to obtain the instructions of this Court to the Trustee regarding appropriate actions. The July 2003 Petition was assigned Case. No. C7-03-118.

10. On or about August 20, 2003, Bremer filed an objection to the relief requested by the July 2003 Petition (the "Bremer Objection").¹

11. By Order dated September 8, 2003, and recommended by Referee Richard Wolfson, Judge Patricia L. Belois ordered modification in the Waterfall as requested; provided, however, that the distribution priority would be reinstated on the earlier of May 31, 2004, or the date on which \$175,000 had been advanced from the Reserve Fund to pay principal and interest on the Senior Bonds.

12. The modification of the Waterfall directed by the Order expired as of May 31, 2004 and, thereafter, Standard continued to fund Operating Costs, and, pursuant to the Waterfall required in Section 402(2), Gross Receipts were applied to pay all Senior Bond debt service and to restore the Reserve Fund to its required balance.

13. Following the expiration of the modification of the Waterfall distribution priority as set forth in the Order, Standard continued to fund Operating Costs, as required under the terms of the Management Contract. As of March, 2005, Standard had accumulated over \$1,500,000 in Operating Costs it had paid under the Management Contract but which had not been reimbursed,

¹ The caption of the Bremer Objection, as well as the Trustee's response to the Bremer Objection, lists the wrong number (Case No. as C9-03-7). It is unknown whether those documents ever made their way to the correct court file (i.e., Case. No. C7-03-118).

and it was clear that Standard would likely continue to accumulate unreimbursed Operating Costs under the Management Contract until the date of its expiration on May 31, 2006 (Standard's accumulated unreimbursed Operating Costs are hereinafter defined as the "Advanced Costs").

14. By March 2005, Standard indicated to the Trustee that it was willing to extend the Management Contract to undertake management of the Project after May 31, 2006, if the Waterfall was modified permanently to provide for the payment of Operating Costs of the Project from Gross Receipts on a current basis prior to Senior Bond debt service, beginning June 1, 2006, and if a portion of the Gross Receipts was applied to repay a portion of the Advanced Costs.

15. The Trustee filed a Supplemental Petition for Instructions dated March 31, 2005 (the "First Supplemental Petition"), to seek instruction regarding issues related to the Waterfall and the termination of the Management Agreement on May 31, 2006.² The Trustee was willing to proceed to a hearing on the First Supplemental Petition only if Standard could demonstrate that its departure from the management of the Project after May 31, 2006 was likely to produce the result Standard predicted from its departure, namely a reduction in Gross Receipts by approximately \$300,000 per year. Standard was unable to substantiate such a projected reduction in Gross Receipts to the satisfaction of the Trustee and, accordingly, the Trustee decided to withdraw the First Supplemental Petition prior to the scheduled hearing.

² The First Supplemental Petition also erroneously sets forth the case number that had been assigned to the January 2003 Petition (i.e., (Case No. as C9-03-7) rather than had been assigned to the July 2003 case number (i.e., Case. No. C7-03-118).

16. If the operating costs of the Project were not paid, the Project would be required to cease operations. If the Project ceased to operate, it would have generated no revenue, and there would have been no Gross Receipts available to pay any part of the debt service on the Bonds.

17. As noted above, the Management Agreement terminated on May 31, 2006, and following the termination of the Management Agreement, Standard had no further obligation to pay Operating Costs or to operate the Project.

18. The Trustee was not able to identify any operator who would be willing to take financial responsibility for paying operating costs after May 31, 2006, unless such an operator had adequate assurance that all operating costs would be reimbursed or paid. Unless an operator was identified and engaged to manage the Project, the Project would have been forced to close.

19. Neither the Trustee nor the Tenant could assure potential managers or operators that Project operating costs incurred after May 31, 2006 would be paid if debt service on the Senior Bonds or the 2000-7 Bonds was paid before operating costs.

20. For this reason, the Trustee believed that a permanent modification of the Waterfall was necessary to provide that the Gross Receipts will be available to pay or reimburse the payment of operating costs prior to debt service, in order to allow the Project to be managed after May 31, 2006, and to stay open. Thus, the Trustee filed its Second Supplemental Petition that requested that the Court permanently modify the terms of Section 402(2)(a), (b) and (c) of the Indenture and order that the Waterfall would be as follows going forward: (1) to the Tenant to pay or reimburse actual out of pocket operating costs incurred and paid by an operator in connection with the operation of the Project (subject to submission by operator to Tenant of documentation reasonably satisfactory to Tenant to support operator's request for

reimbursement); (2) to interest and principal on the Senior Bonds (as currently set forth in more detail in Section 402(2)(a)); (3) to replenish the Reserve Fund (as currently set forth in more detail in Section 402(2)(b)); and (4) as specified in Section 402(2)(d) through (j) of the Indenture.

21. By Order dated June 12, 2006, the Court granted the relief requested by the Second Supplemental Petition.

**EXHIBITS AVAILABLE UPON WRITTEN REQUEST TO
THE ATTENTION OF:**

Virginia A. Housum
Wells Fargo Corporate Trust
MAC N9303-120
Sixth and Marquette
Minneapolis, MN 55479