

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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In re a Petition for Instructions to )  
 Construe Basic Resolution 876 of )  
 The Port Authority of the City of )  
 Saint Paul. )

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**VERIFIED AMENDED PETITION OF THE PORT AUTHORITY OF THE CITY OF  
 SAINT PAUL FOR INSTRUCTIONS REGARDING ITS BASIC RESOLUTION 876  
 PURSUANT TO MINN. STAT. § 501B.16 AND 501B.25**

TO THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT:

Petitioner, The Port Authority of the City of Saint Paul, petitions the Court as follows:

**I. OVERVIEW OF THE 876 FUND**

1. Petitioner, The Port Authority of the City of Saint Paul (Port Authority), is a body politic and corporate, established pursuant to Minn. Stat. § 469.049.

2. The Port Authority is charged with promoting industrial and commercial development and increasing employment and the real estate tax base within the City of Saint Paul. To accomplish these objectives, the Port Authority is authorized, among other things, to acquire, lease or sell industrial, commercial or other revenue producing properties, enter into revenue agreements for the financing of individual properties and issue revenue bonds payable from revenues derived from such agreements.

3. The Port Authority is governed by a seven-member commission whose members are appointed by the Mayor of the City of Saint Paul with the consent of the Saint Paul City Council. Two of these members must be members of the Saint Paul City Council. The

commissioners must approve all policy and debt actions taken by the Port Authority, including the issuance of revenue bonds.

4. On February 14, 1974, the Port Authority adopted its Basic Resolution No. 876. The Basic Resolution created a Common Revenue Bond Fund (876 Fund) and established the terms by which all revenue bonds issued under the Basic Resolution (876 Bonds) would be repaid. Beginning in 1974, and continuing until May 31, 1991, the Port Authority issued more than \$428,000,000 of taxable and tax-exempt revenue bonds payable from the 876 Fund.

5. As required by Section 2-2 of the Basic Resolution, the Port Authority adopted a resolution to supplement the Basic Resolution for each issue of 876 Bonds, establishing the specific terms of the issue, such as principal amount, interest rate and repayment terms. Specifically, Section 2-2 of the Basic Resolution provides:

The AUTHORITY may from time to time...agree upon and approve the issuance and delivery of additional General Revenue Bonds, for any purpose authorized under the Act, including the refunding of any Prior Bonds, equally and ratably payable from the Net Revenues pledged and appropriated hereunder with the General Revenue Bonds heretofore authorized, but bearing such date or dates and interest rate or rates and with such maturities and redemption dates and premiums as may be determined.

6. The proceeds of 876 Bonds were used to fund real estate loans the Port Authority made to finance the acquisition, construction, renovation or equipping of 139 revenue producing properties located in and around Saint Paul. These loans were to be repaid through payments made by the user of the financed property (the borrower) under a revenue agreement, generally in the form of a financing lease. Under these revenue agreements, the borrowers agreed to make payments to the Port Authority in an amount at least equal to the principal and interest on the related series of 876 Bonds until the financing reached maturity, or the borrower prepaid the financing by delivering to the Port Authority at least the present value of all future payments that would otherwise come due.

7. As of June 30, 2006, 12 of these real estate loans made from the proceeds of 876 Bonds were still performing; 79 had been prepaid by the respective borrowers; 11 had reached their scheduled maturity; and 37 had defaulted with the related properties being repossessed by the Port Authority on behalf of the 876 Fund. Of the properties that have been repossessed by the Port Authority, as of June 30, 2006, 34 had been sold and three continue to be held by the Port Authority for the benefit of the 876 Fund. As of that same date, \$51,670,882 in principal amount of 876 Bonds remained outstanding.

8. The Port Authority has a contractual responsibility to provide oversight management to the 876 Fund. The Port Authority is not a guarantor, trustee or fiduciary with respect to the 876 Fund. Instead, under the Basic Resolution, the Port Authority has undertaken to collect revenues from the operation of 876 Fund properties; to enforce obligations of individual borrowers under their revenue agreements; to secure the best price obtainable, in the event of a sale of any repossessed properties; to draw on reserves whenever revenues are insufficient to pay principal and interest due on 876 Bonds; and to employ and maintain a professional staff to administer the operation of the Port Authority and the 876 Fund.

9. 876 Bonds are revenue bonds and are not backed by any tax revenues of the Port Authority, the City of Saint Paul, or any other governmental body. Instead, 876 Bonds are secured by and payable from sources specifically identified in the Basic Resolution. For the 876 Bonds that are now outstanding, those sources are the pooled revenues derived from the properties financed by the issuance of 876 Bonds, other lease revenues, net revenues from river operations and the reserves described in paragraph 11 below. When the individual series of 876 Bonds were issued, it was the expectation that the benefit of ownership of an 876 Bond would end at the latest when the bond matured, ordinarily at the end of its 20 to 30 year term. It was

also the expectation of the parties – the Port Authority as issuer and the 876 Bondholders – that the 876 program would end no later than when the last 876 Bond matured in 2022.

10. A central feature of the 876 Fund is the Common Revenue Bond Fund. Under the Basic Resolution, all "Available Net Revenues" are deposited in the Common Revenue Bond Fund and pledged to the payment of principal and interest due on the 876 Bonds. Under the Basic Resolution, Net Revenues include the monthly payments made by borrowers on their real estate loans and the net amounts the Port Authority receives from the operation of repossessed and certain other properties. All Net Revenues received from 876 Fund borrowers, repossessed properties or other sources of pledged revenues are commingled within the Common Revenue Bond Fund. Available Net Revenues generally consist of such commingled funds plus investment earnings.

11. In addition to the Common Revenue Bond Fund, the Basic Resolution created various reserve Funds that were also pledged to the payment of principal and interest on the 876 Bonds. These reserves have been depleted in making principal and interest payments to 876 Bondholders.

12. As additional security, the Port Authority has pledged revenues unrelated to the 876 Bonds that it receives from land leases and fleeting and tonnage lease revenues on the Mississippi River. Fleeting and tonnage leases convey use of the Port Authority's riparian rights in the Mississippi River, which allow the tenant to anchor barges along the river bank. After allowable expenses, the revenues from the land leases are projected to be \$1,334,000 in 2007, and the fleeting and tonnage lease revenues are projected to be \$235,000. These leases are not a guaranteed revenue stream, however, being subject to market risks and potential non-renewal.

These lease revenues are funds that could be used for other public purposes if not pledged to the 876 funds.

13. There are no default provisions in the Basic Resolution or in any of the Supplemental Resolutions. Thus, in the event that Net Revenues and Reserve Funds are ever insufficient to pay principal and interest in full when due, Section 5-8 of the Basic Resolution directs the Port Authority to apply such funds first to pay all interest then due, pro rata, and then to pay all principal then due, pro rata. The Net Revenues and Reserve Funds are currently insufficient to pay principal and interest in full when due.

## **II. CONCERN FOR 876 BONDS AND STEPS TAKEN TO IMPLEMENT RESTRUCTURING**

14. In September, 1991, because of a concern that borrower defaults could eventually lead to the depletion of all 876 Fund reserves, the Port Authority took a series of steps designed to inform the 876 Bondholders of the status of the 876 Fund and to address issues that were anticipated to result from the ongoing shortfall in Net Revenues. As one of its first steps, the Port Authority hired Springsted, Incorporated, an independent public financial advisory firm, to evaluate the status of the 876 Fund. In its report Springsted made the following observation:

Assuming that the performance of individual properties remains static as of December 6, 1991, the Fund demonstrates a need to access the reserves established for the payment of debt service in 1992. It exhausts all the reserves in the period ending December 1, 2000 and reaches a position in 2001 under which it is never again able to meet debt obligations on a current basis. From this point forward through the final maturity of outstanding obligations in 2022 the Fund does not become current on its obligations although there are still revenues to be collected under existing revenue agreements ....

15. On January 24, 1992, the Port Authority mailed the Springsted report to all known holders of 876 Bonds.

16. In 1992, the Port Authority also began meeting with institutions that it had been able to identify as holders of large principal amounts of 876 Bonds. Those institutional

bondholders asked the Port Authority to commission Kenneth Leventhal & Company to independently confirm the findings of the Springsted report. Leventhal was retained in July, 1992 and the Leventhal report was delivered to the Port Authority and institutional bondholders in October, 1992, confirming Springsted's conclusions in all material respects.

17. In 1992, given the projections of the Springsted and Leventhal reports, the Port Authority began to explore various restructuring options to avoid this eventual shortfall. The Port Authority continued to meet with institutional bondholders over the next several years to explore restructuring options. From 1993 to mid-1996, the Port Authority paid over \$2,000,000 in expenses from its own resources to find a way to restructure the 876 program to avoid the projected shortfall in Net Revenues and Reserve Funds. Unfortunately, no consensus was ever achieved on a restructuring proposal.

### **III. TENDER OFFERS**

18. In March, 1996, to meet certain federal tax law requirements and to facilitate the refinancing and sale of a 876 Fund property that had been repossessed in July, 1993, the Port Authority issued a tender invitation by which it offered to use at least \$20,000,000 of Prepaid Net Revenues to purchase 876 Bonds tendered in a modified Dutch auction proceeding. At the conclusion of this tender, the Port Authority used \$28,148,000 of Prepaid Net Revenues to purchase and retire \$31,815,000 of 876 Bonds. This purchase resulted in a principal savings to the 876 Fund of \$3,667,000 and removed future interest expense from the 876 Fund.

19. Following the 1996 tender offer, as commercial interest rates fell, a significant number of borrowers prepaid their obligations under their revenue agreements. Over 31 projects were prepaid. In addition the Port Authority sold a number of repossessed properties at prices which were in excess of the amounts which had previously been estimated. These prepayments

and property sales resulted in \$112,123,000 being deposited into the Prepaid Net Revenues or Special Funds accounts during the period from the close of 1996 until June 30, 2006.

20. On August 2, 2002, at the request of a large institutional bondholder, the Port Authority petitioned Ramsey County District Court for an order directing the Port Authority to use certain reserve funds to conduct another tender offer. Pursuant to a court order dated October 8, 2002, the Port Authority issued a tender invitation by which it offered to use at least \$51,000,000 of Prepaid Net Revenues to purchase 876 Bonds tendered in a modified Dutch auction proceeding. At the conclusion of the 2002 tender, the Port Authority used \$54,044,000 of Prepaid Net Revenues in the Reserve Fund to purchase and retire \$70,235,000 of 876 Bonds. This purchase resulted in a principal savings to the 876 Fund of \$16,191,000 and removed future interest expense from the 876 Fund.

21. Following the 2002 tender offer, and also pursuant to the October 2, 2002, court order, the Port Authority issued a Tender Invitation in January, 2004. Through the 2004 Tender, the Port Authority used \$18,240,000 of Prepaid Net Revenues and Special Funds to purchase and retire \$21,715,000 of 876 Bonds. This purchase resulted in a principal savings to the 876 Fund of \$3,475,000 and removed future interest expense from the 876 Fund.

#### **IV. CURRENT STATUS OF 876 BONDS**

22. Throughout the life of the 876 Fund, borrowers have, from time to time, defaulted on their obligations under their revenue agreements with the Port Authority. Under the terms of these revenue agreements and the Basic Resolution, the Port Authority is authorized to repossess and sell the defaulting property. The Port Authority is not entitled to increase charges payable by other borrowers who are not in default to make up any deficiency caused by borrowers who default. Unless the Port Authority is able to re-lease a repossessed property for an amount equal to or greater than prior debt service, or sell a repossessed property for an amount equal to or

greater than the principal amount that should have been paid by the defaulting borrower, the Net Revenues received by the Port Authority from that property will be less than originally expected. As a consequence, Available Net Revenues alone will be less than needed to pay principal and interest due on the outstanding 876 Bonds associated with the defaulting project.

23. Beginning in the 1980's, the cumulative impact of borrower defaults was sufficient to require the Port Authority to begin drawing on the 876 Fund reserves to pay the principal and interest coming due on 876 Bonds. Currently, the Port Authority is not able to make full principal or interest payments due on 876 Bonds.

24. As a result of prepayments or maturity of performing properties and the repossession and sale of defaulted properties, as of June 30, 2006, the 876 Fund consisted of 12 performing properties and three repossessed properties.

25. Port Authority projections, disclosed to holders of 876 Bonds most recently in the report for the year ended December 31, 2005, show that (a) Net Revenues and Reserve Funds are not sufficient to pay principal and interest due on the 876 Bonds in full; (b) all Reserve Funds are depleted; and (c) ongoing Net Revenues of the 876 Fund are unlikely ever again to be sufficient to allow full payment of principal or interest. On June 1, 2006, the Port Authority paid 100% of interest and 50.65% of principal due.

#### **V. 2004 COURT ORDER**

26. On October 27, 2004, the Court issued a second order to guide the Port Authority. Before the 2004 Order, each 876 Bond issued had its own provisions regarding the date on which the semi-annual and annual principal payments were due.

27. Exercising its authority to construe, interpret and reform the Basic Resolution and the underlying resolutions, the 2004 Order adjusted the payment terms in order to serve the intent of the parties under the Basic Resolution. Pursuant to the 2004 Order, the Port Authority

adjusted the interest payment dates for all outstanding 876 Bonds to June 1 and December 1 of each year.

28. The 2004 Order also directed the Port Authority to pay all costs of administering the Common Revenue Bond Fund from revenues of the Common Revenue Bond Fund.

## **VI. PROVISIONS REGARDING AMENDMENTS TO THE SUPPLEMENTAL RESOLUTIONS**

29. The Supplemental Resolutions that were adopted with each series of 876 Bonds incorporated the Basic Resolution by reference. Under the Supplemental Resolutions, the Port Authority was authorized, from time to time, and without the consent of or notice to the holders of the 876 Bonds, to supplement or amend the Supplemental Resolutions to, among other things: (a) cure any ambiguity or formal defect or omission in the Supplemental Resolution or (b) make any other change to the Supplemental Resolution which in the reasonable judgment of the Port Authority is not to the prejudice of any holders of 876 Bonds.

## **VII. THE COST OF ADMINISTERING THE 876 FUND**

30. The Port Authority has administered the 876 Fund since its inception in 1974. Among other things, the Port Authority must calculate the proper payment amounts due to each bondholder for interest and principal on a pro rata basis. Prior to the 2004 Order, the Port Authority had spent significant amounts of its own funds to administer the 876 Fund.

31. The 2004 Order allows the Port Authority to pay the cost of administering the 876 Bonds from Net Revenues deposited in the Common Revenue Bond Fund.

32. As noted, the 876 Bond reserves are depleted. As such, the Common Revenue Bond Fund performing assets, repossessed properties and the net revenues from the land and fleeting and tonnage lease revenues are the only source of payment to bondholders. The Port Authority expects to sell the repossessed parcels, as it has with all other previously repossessed

projects. The last performing lease will end in 2019, if not prepaid earlier by the borrower. Thereafter, land and fleeting and tonnage leases will be the only source of Net Revenues to the 876 Fund.

33. The annual cost of administering the fund in 2007 will be in excess of \$300,000. By 2020, these costs would be nearly 15 percent of the remaining revenue. The Net Revenue from these leases will be only a small fraction of principal and interest outstanding.

34. Currently, there are not enough revenues to make full payments to 876 bondholders. Further, as described above, over time there will be less and less available Net Revenues to 876 bondholders. As noted, the bondholders have no recourse against the Port Authority or any other entity in the event interest and principal on the 876 Bonds are not paid in full. The bondholders have no expectation of an economic return when the last 876 Bond-financed property is paid off.

#### **VIII. TAX TREATMENT OF LIQUIDATING EVENT**

35. Under the Basic Resolution, payments made to bondholders are allocated first as a payment of tax-exempt interest to the extent of accrued but unpaid interest and second as return of principal. Notably, for those covered by the alternative minimum tax, "tax-exempt interest" may not be exempt from all taxation.

36. In a private letter ruling in 2000, the Internal Revenue Service determined that prior to the liquidation of the 876 Bonds, all payments to 876 bondholders, to the extent there are resources to make any payments, may be allocated first to interest and second to principal. The Internal Revenue Service further determined that in the event that there was a liquidation of 876 Bonds, payments shall be allocated first to principal outstanding and second to interest outstanding at the time of such payment.

37. Under this IRS ruling "liquidation" means termination of the 876 Bonds for state law purposes. However, there is no established liquidation date for the bonds. Failure by the 876 Fund to make timely payment of principal and interest on the bonds is not an event of default, and no specific remedies are available to the bondholders in the event of such failure. There is no right to acceleration of principal with respect to any of the 876 Bonds, nor any right to foreclose on 876-funded properties.

38. Consequently, the 876 Bonds will never "liquidate" on their own terms even though the bondholders claims for debt service payments will become de minimus after the last underlying lease agreement terminates. As a result, in the ordinary course, the bondholders may never be able to recognize a capital loss on the 876 Bonds. Instead, they will continue to receive (if they receive anything at all) a small amount of interest.

**IX. REQUEST FOR A COURT ORDER ALLOWING THE PORT AUTHORITY TO LIQUIDATE THE 876 BONDS AND TERMINATE THE BASIC RESOLUTION**

39. Continued performance under the Basic Resolution is impractical and will cause an excessive and unreasonable burden on the Port Authority. The disproportionately high administrative costs and the limited resources to pay those costs were not reasonably known at the time the Basic Resolution was adopted or at the time 876 Bonds were issued. Moreover, the circumstances giving rise to the disproportionately high administrative costs and limited resources is not the sole responsibility of the Port Authority.

40. The purpose of the Basic Resolution and the 876 Bonds will be frustrated if continued calculation of and payment of negligible amounts of interest must be made in perpetuity at disproportionately high administrative cost. Under the Basic Resolution 876 Bonds were not intended by the parties to continue on in perpetuity. Yet, as presently structured the 876 Bonds may never have a liquidating event that terminates their existence. Monies that could

be used on other public projects or distributed to 876 bondholders will be wasted to administer the program. Moreover, 876 bondholders could receive the tax benefit of a capital loss.

41. The purpose for which the Basic Resolution was enacted and the 876 Bonds issued will cease when the final payment would have been made on the 876 Bond-financed property, which would have been in 2022. There is no material purpose to be served by continuation of the Basic Resolution.

42. What the Port Authority proposes to do is engage Piper Jaffray & Co. as a placement agent to solicit proposals from third parties to purchase the revenue streams that are currently pledged to payment on the 876 Bonds, namely: (a) the Port Authority's right under the leases to the remaining performing properties; and (b) the right to net revenue from land, fleeting and tonnage leases through 2022, when the 876 Fund would ordinarily have ended. The Port Authority then proposes to take the proceeds derived from the sale of these revenue streams, as well as the proceeds from the sale of repossessed properties or additional lease prepayments, and to distribute all the proceeds ratably to the holders of 876 Bonds, in exchange for the cancellation of those 876 Bonds. This Court has the power to construe the terms of the Basic Resolution to deem this exchange a "liquidating" event.

43. The hearing the Port Authority seeks will be under Minn. Stat. § 501B.16. Notice to all parties will be provided consistent with Minn. Stat. § 501B.18. For the purpose of the hearing on this Petition, the Port Authority believes that the only parties other than the Port Authority who are or may be interested or may claim to have an interest in this proceeding are the holders of 876 Bonds. The Port Authority will retain the services of a qualified firm to distribute notice of the hearing on this Petition to as many bondholders as is feasible. The Port Authority also proposes to provide additional notice through publication of the notice of hearing

in the Saint Paul Legal Ledger, the Saint Paul Pioneer Press, the Star Tribune and The Bond Buyer.

44. Following the hearing, the Port Authority seeks an Order authorizing the Port Authority to solicit proposals for the purchase of revenue streams described in paragraph 42 above. The Port Authority will then ask that another proceeding be set to allow this Court to review the proposed offers to determine that the procedure used by the Port Authority in soliciting and choosing purchasers obtained the best price reasonably available.

WHEREFORE, pursuant to the provisions of Minn. Stat. §§501B.16, 501B.24, and all other applicable law, Petitioner Port Authority of the City of Saint Paul, respectfully requests that this Court 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; that the Court 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; and that at such designated time and place this Court make a further Order binding on all holders and beneficial owners of 876 Bonds as follows:

- (1) Confirming and approving the Port Authority's administration of the 876 Fund from September 7, 2004, through the date of this petition; and
- (2) Approving the timing and form of notice of the hearing as complying with the requirements of Minn. Stat. §501B.18 and providing holders and beneficial owners of 876 Bonds with sufficient notice of the hearing on the Petition and the issues raised therein;

- (3) Authorizing the Port Authority to retain Piper Jaffray and Co. to serve as placement agent to solicit offers from third parties for the revenue streams that contribute currently to Net Revenues, with the ultimate aim of distributing the proceeds of those asset sales to 876 bondholders as a liquidation of their 876 Bonds;
- (4) Granting such other and further relief as the Court may deem appropriate herein.

PETITIONER

Dated: \_\_\_\_\_

THE PORT AUTHORITY OF THE CITY OF  
SAINT PAUL

By \_\_\_\_\_

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STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF RAMSEY            )

Laurie J. Hansen, being duly sworn, deposes and states that she is the Chief Financial Officer of the Port Authority of the City of Saint Paul, Petitioner in the above-entitled proceedings; that she has read the foregoing petition and knows the contents thereof; that the same is true of her own knowledge, except as to those matters therein stated on information and belief, and as to those matters she believes them to be true.

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Laurie J. Hansen

Subscribed and sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 2006.

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Notary Public