

**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA**

SHAWMUT BANK, N.A., a national)
 banking association, formerly named)
 Shawmut Bank of Boston, N.A., as Trustee)
 under Collateral Trust Indenture dated as of)
 June 1, 1984,)

Plaintiff,)

vs.)

FOURTH STREET ASSOCIATES, an)
 Oklahoma limited partnership, formerly)
 named Mid-Continent Associates;)
 GREATER SOUTHWESTERN FUNDING)
 CORPORATION, a Delaware corporation;)
 RMM CORPORATION, a Delaware)
 corporation; BLYTHE EASTMAN PAINE)
 WEBBER SERVICING, INC., a Delaware)
 corporation; and READING & BATES)
 CORPORATION, a Delaware corporation,)

Defendants.)

 DAVID B. MAGILL and JOHN R.)
 ROBERSON, on behalf of themselves)
 and all others similarly situated,)

Plaintiffs in Intervention,)

vs.)

SHAWMUT BANK, N.A., a national)
 banking association, formerly named)
 Shawmut Bank of Boston, N.A., as Trustee)
 under Collateral Trust Indenture dated as)
 of June 1, 1984,)

Defendant in Intervention.)

“The Foreclosure Case”

Case No. CJ-94-03054

Judge Gasset

Master File No. CJ-94-1387

FOURTH AMENDED PETITION IN INTERVENTION

For their cause of action, John R. Roberson (“Roberson”) and David B. Magill (“Magill”), on behalf of themselves and all others similarly situated, allege and state as follows:

PARTIES

1. Roberson is an individual residing within Tulsa County, Oklahoma.
2. Magill is an individual residing within Tulsa County, Oklahoma.
3. Roberson and Magill (“Intervenors”) are holders of Serial Zero Coupon Series B Bonds of Greater Southwestern Funding Corporation (“Series B Bonds”) issued under the Collateral Trust Indenture dated as of June 1, 1984 (the “Trust Indenture”). The Series B Bonds are now in default, and the Intervenors have an absolute right under the Trust Indenture and the common law to immediate payment on their Bonds.
4. Plaintiff Shawmut Bank, N.A., now Fleet National Bank of Massachusetts, N.A. (“Fleet National Bank”), the Trustee under the Trust Indenture and the Plaintiff herein, has brought this foreclosure action pursuant to its authority under the Trust Indenture.
5. Defendant Greater Southwestern Funding Corporation (“Greater Southwestern”) is a Delaware corporation formed by PaineWebber, Inc. (“PWI”) solely to provide long-term permanent mortgage financing in connection with the net lease of corporate headquarters for Defendant Reading & Bates Corporation (“R&B”). Greater Southwestern is a wholly-owned subsidiary of PHC Corporation (“PHC”).
6. PHC, the parent company of Greater Southwestern, is a Delaware corporation. At the time the Series B Bonds were issued, PHC was owned 50% by John F. Perkowski (“Perkowski”) and 50% by William C. Bush (“Bush”), each of whom was at that time a Managing Director of PWI. Perkowski, Bush, and PWI together founded PHC.

7. PaineWebber Group Incorporated (“PWGI”) is the parent company of PWI. PWI is a Delaware corporation with its principal place of business in New York, New York and with offices in Tulsa, Oklahoma.

8. Defendant Fourth Street Associates (“Fourth Street”), an Oklahoma limited partnership, is an affiliate of PWGI. Fourth Street was formed solely to acquire, construct, own, and lease the property which is the subject of the foreclosure action in this case (hereinafter, the “Subject Property”), and its sole source of income was the rental payments from the Subject Property. The sole limited partner of Fourth Street is Mid-Continent Associates (“MCA”), which is in turn an Oklahoma limited partnership. MCA’s limited partners (the “MCA Limited Partners”) from 1984 to 1991 paid in excess of \$47.5 million for their limited partnership interests.

9. Defendant Blyth Eastman Paine Webber Servicing Inc. (“Blyth”), a Delaware corporation, is a wholly-owned subsidiary of PWI, and a predecessor in interest of RMM Corporation as to the Property.

10. Midtown Associates Limited Partnership (“Midtown”), the general partner of Fourth Street and of MCA, is a Massachusetts limited partnership organized in May, 1983 with its principal office located in the offices of PWGI or PWI. All of Midtown’s general and limited partners are officers, directors, or employees of PWGI, PWI, and of Blyth, or their affiliates.

11. AJ Corporation (“AJ”), is an affiliate of Blyth and PWGI. It is wholly owned by PaineWebber Leasing Corporation, which is wholly owned by PWGI.

12. Defendant RMM Corporation (“RMM”), a Delaware corporation, is an affiliate of PWGI, and a successor to Blyth. It was organized solely to engage in the transactions herein described, and was minimally capitalized. The general partners of Midtown are also officers and directors of RMM.

CLASS ACTION PREREQUISITES

13. Magill and Roberson bring this action individually and on behalf of the class of all those persons or entities who owned a Series B Bond on or before December 1, 1987 (date of the Reading & Bates default) and who continued to own a Series B Bond on or before the alleged agreement with Stephens Property Company which, on information and belief, was December 27, 1994, except that the proposed class shall exclude Stephens Property Company. The class of Series B Bondholders is so numerous that joinder of all members is impracticable.

14. There are questions of law and fact common to the claims of the class of Series B Bondholders.

15. The claims of Magill and Roberson are typical of the claims of the class of Series B Bondholders.

16. Magill and Roberson will fairly and adequately protect the interests of the class of Series B Bondholders.

17. The prosecution of separate action by or against individual Series B Bondholders would create a risk of inconsistent or varying adjudications, or adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

18. The Trustee has acted on grounds generally applicable to the class of Series B Bondholders.

19. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members. A class action is superior to other available methods for the fair and efficient adjudication of claims of the Series B Bondholders.

THE FACTS

A. The Bonds

20. From 1981 through at least 1984, exceptionally high interest rates in the United States caused conventional financing for commercial real estate projects to evaporate. During this time, PWI and its parent corporation, PWGI, sought to increase their business with investment banking clients (“Clients”). These developments led PWI to offer Clients a financing device that reduced their short-term borrowing costs for such projects, while assuring their continued control and eventual resumption of ownership of the property at less than its projected fair market value. The device was the so-called “credit net lease” partnership (the “Credit Net Lease Partnership”).

21. With the Credit Net Lease Partnership financing vehicle in its back pocket, PWGI commenced to court R&B as a client. Earlier in November of 1981, R&B had commenced construction on its Mid-Continent Tower project.

22. On June 30, 1982, a Financing Construction and Agency Agreement (the “Financing Agreement”) was entered between an R&B subsidiary, Mid-Continent Co., and what would become Fourth Street. By this Financing Agreement, Fourth Street undertook to provide financing for what would eventually become the Subject Property. The financing evolved to include the Credit Net Lease Partnership.

23. On June 30, 1982, Fourth Street acquired the Subject Property (except for the parking garage, the land on which it is located, and the tunnel, which were acquired later), including the construction in progress on the new tower to be cantilevered over the old Mid-Continent Building, from Mid-Continent Tower Co. for a cost of \$17,798,452.00, and simultaneously leased the Subject Property to Blyth pursuant to a long-term net lease (the “Master Lease”). Blyth, in turn, sub-leased the Subject Property to R&B pursuant to a long-term completely net sub-lease (the “Lease”).

Subsequently, Blyth assigned its interests as lessee under the Master Lease and as lessor under the Lease to RMM. The Master Lease and the Lease formed part of the collateral for the Series A and Series B Bonds herein described.

24. On or about June 7, 1984, Greater Southwestern issued and sold \$82,400,000.00 of the aggregate principal amount of 13.25% of the Series A Collateral Trust Bonds Due 1999 (“the Series A Bonds”), and the Series B Bonds which had an aggregated principal amount of \$189,000,000.00 (collectively “the Bonds”). The Series A Bonds were purchased for investment by a select few insurance companies and/or pension funds. The Series B Bonds which are the subject of the Petition in Intervention were purchased for \$7,884,608.00 for resale by PWI as underwriter.

25. The Bonds were issued under the Trust Indenture between Greater Southwestern and Shawmut Bank, N.A. (now Fleet National Bank).

26. Greater Southwestern loaned the proceeds of the sales of the Bonds to Fourth Street, the owner of the Subject Property. Purportedly to secure the loan, Fourth Street issued to Greater Southwestern Series A and Series B Mortgage Notes (the “Mortgage Notes”) with terms matching the terms of the Series A and Series B Bonds and purportedly secured the Mortgage Notes by granting to Greater Southwestern a first mortgage interest in the Subject Property (the “Mortgage”).

27. The Series A Bonds pay interest at an annual rate of 13.25% until maturity in 1999. The Series B Bonds have maturity dates ranging from 1999 to 2009, and are zero-coupon bonds, making no periodic interest payments, but instead were sold at a discount from their face value and were to be redeemed at their face value at their maturity dates.

28. The proceeds of the sale of the Bonds were loaned to Defendant Fourth Street, a PWI affiliate, pursuant to mortgages and mortgage notes, for the purpose of financing the acquisition of the Subject Property to serve as the international headquarters of R&B.

29. Both the Series A and Series B Bonds were secured by the collateral upon which the Trustee seeks to foreclose in this action. More specifically, the Bonds are secured by (i) the Mortgage Notes given by Fourth Street to Greater Southwestern, (ii) the first mortgage of the Mid-Continent Tower and associated real property which secures the Series A and Series B Mortgage Notes, (iii) the Master Lease between Fourth Street as lessor and RMM Corporation as lessee, (iv) the Lease between RMM as lessor and R&B as lessee, and (v) other collateral held by the Trustee (hereinafter, items i, ii, iii, iv, and v are referred to collectively as the “Trust Estate”). Money realized by the foreclosure and sale of the Trust Estate will be used to partially satisfy the claims of Bondholders such as the Intervenors.

30. The Intervenors and the Series B Bondholders are creditors based upon their status as holders of bonded obligations of the Defendants which are in default.

31. Under the Trust Indenture and the common law, the Intervenors and the Series B Bondholders have an absolute and unconditional right to payment in full on their Bonds, and the Trustee has an unconditional obligation to pay the Intervenors and the Series B Bondholders in full in the event of default, and not to prefer the Series A Bondholders over the Intervenors and the Series B Bondholders in the event of default.

B. The 1987 R&B Default and Restructuring

32. On December 1, 1987, R&B defaulted on the Lease, and an Event of Default under Article 9 of the Trust Indenture was declared on December 8, 1987 by the Trustee (the “R&B Default”).

33. R&B began negotiating an overall arrangement with its creditors, including the Trustee, at which negotiations the holders of the Series A Bonds were directly represented by counsel, but not the holders of the Series B Bonds. During these negotiations, the Trustee acted

solely upon the direction of the Series A Bondholders, and failed to consider the equal rights and interests of the Intervenor and the Series B Bondholders, contrary to the terms of the Trust Indenture, and in violation of the Trustee's fiduciary duty under the Trust Indenture and common law.

34. These negotiations resulted in a master Restructuring Agreement with R&B, that had as a concomitant part a Settlement Agreement (the "Agreement") among the holders of the Series A Bonds, Greater Southwestern, Fourth Street, and RMM. As a result of the Agreement, R&B was to vacate the Tower and be released from its remaining obligations in exchange for a payment of cash and securities to the Trustee. Pursuant to this Agreement the Trustee released portions of the collateral securing the Series B Bonds

35. The Trustee used these payments to pay past due interest and principal on the Series A Bonds only, and the Intervenor and the Series B Bondholders received no significant benefit whatsoever, contrary to the terms of the Trust Indenture.

36. Under the Agreement, PWI, through the AJ Guaranty, paid over \$6,000,000.00 towards past due interest and principal on the Series A Bonds, and on maintenance and refurbishment of the Subject Property. In consideration, the Trustee agreed to a standstill arrangement that, assuming certain conditions were met, gave Fourth Street until January 1, 1994 to reach certain minimal leasing and payment standards. This \$6,000,000.00 payment was a draw-down of the capital of AJ Corporation, for which it received a release from the holders of Series A Bonds of any further claim under the AJ Guaranty. Theretofore, the position of counsel for PWI had been that the AJ Guaranty could not be drawn upon by the Trustee. By this act, the Trustee was well aware of the availability of the AJ Guaranty to satisfy **all** or a portion of the indebtedness of the

Series B Bonds, and that if it were established that AJ Corporation's capital was fairly limited to \$10 million, this draw-down adversely affected the ultimate rights of the Series B Bondholders.

37. The Intervenors and the Series B Bondholders received no payments from the Agreement, in violation of the Trust Indenture.

38. During these negotiations, and at the time of entering into the Agreement, Defendants knew, and the Trustee knew, or should have known, but both Defendants and the Trustee omitted to disclose, that a default on the permanent financing was inevitable, and that there was no real hope of restructuring. The Defendants sought by their actions related to the Agreement to delay revelation of their scheme.

39. In connection with the Agreement, entered on or about September 1, 1989, (a) RMM executed a certain Pledge and Security Agreement by which all of RMM's rights in and to any leases covering any part of the Subject Property were assigned and pledged to Fourth Street; (b) Fourth Street in turn executed a Pledge and Security Agreement by which all of Fourth Street's rights to the RMM Pledge were assigned and pledged to Greater Southwestern; and (c) Greater Southwestern assigned and pledged its rights in the Fourth Street Pledge to the Trustee.

40. Further, on September 1, 1989, Fourth Street executed a financing statement (the "Fourth Street Financing Statement") covering certain collateral, which was then assigned to the Trustee by an Assignment of Financing Statement. Also on that date, RMM executed a financing statement (the "RMM Financing Statement") covering certain collateral, which was then assigned to the Trustee.

C. The 1994 Default and Illegal Sale and Foreclosure Action

41. In 1993 RMM again defaulted on the Master Lease; Fourth Street in turn defaulted on the Series A and Series B Mortgage Notes and thus on the Mortgage. Notice was issued by the

Trustee on July 12, 1994, under Section 6.1 of the Mortgage, that the entire aggregate principal of the Series A Notes and the Aggregate Compound Accreted Value (as defined in the Mortgage) of the Series B Notes, together with all accrued and unpaid interest thereon, were declared due and payable immediately by reason of one or more Events of Default (as defined in the Mortgage) (hereinafter the “Acceleration”).

42. Foreclosure proceedings were instituted by the Trustee in this Court on July 26, 1994, under this Case No. CJ-94-03054.

43. On information and belief, on December 27, 1994, the Trustee entered into secret and unlawful agreements with Stephens Property Company (“Stephens”), without seeking the Bondholder approval required under the Trust Indenture. Tab 1, Exhibit A, and Tab 3, Exhibit C.

44. The Trustee is seeking to foreclose on the Subject Property without following the procedures specified in Sections 9.04 and 9.16 of the Trust Indenture, to realize on the AJ Guaranty on behalf of the holders of Series B Bonds. Tab 2, Exhibit B.

45. In Sections 9.04 and 9.16, the Trust Indenture expressly restricts and limits the manner in which the Trustee may lawfully sell the Trust Estate. Tab 2, Exhibit B.

46. Based in part upon a certain Memorandum of Agreement filed in the land records of the Tulsa County Clerk and attached hereto under Tab 3 as Exhibit C, Intervenor believe that the Trustee has wrongfully already sold all or a substantial portion of the Trust Estate by private sale to Stephens, in direct contravention of the terms of the Trust Indenture and subject to illegal restrictions on the Trustee’s actions in this case, and, upon information and belief, without the approval of the Intervenor and the Series B Bondholders. Tab 1, Exhibit A, Sections 26 and 7a.

47. Intervenor believe that once this Court enters judgment upon the Series A and Series B Mortgage Notes and issues its decree of foreclosure, the Trustee, pursuant to its secret and

unlawful agreement with Stephens, will convey the Court's judgment and decree to Stephens in exchange for consideration which constitutes only a fraction of the face amount of the judgment. Armed with a judgment in excess of \$150,000,000.00, Stephens will be able to eliminate competitive bidding at the sheriff's sale of the Collateral, as Stephens will be able to better any cash bid less than the full amount of its judgment by "bidding in" the judgment it has purchased at deep discount.

48. In addition to entering into a secret and unlawful agreement with Stephens to sell the Trust Estate by means of a private sale, the Trustee has failed to meet the standard of care prescribed for the Trustee's actions in the Trust Indenture inasmuch as the Trustee has failed to make reasonable efforts to maximize recovery under the Master Lease. In particular, the Trustee has made no attempt to enforce the Master Lease against PWI, the alter ego of RMM.

49. The Trustee's actions in contravention of the terms of the Trust Indenture will substantially decrease the amount of recovery of Intervenors and other Series B Bondholders. Hence Intervenors may intervene as a matter of right under 12 O.S. 1991, § 2024(A)(2) because they claim an interest relating to the Subject Property and to transactions which are the subject of this action and, as a practical matter, because the disposition of this action may impair or impede Intervenors' ability to protect their interests.

50. In addition to continuing to breach its fiduciary duty to the Intervenors and the Series B Bondholders by entering into a secret and unlawful agreement with Stephens to sell the Trust Estate by means of a private sale, the Trustee has failed to meet the standard of care prescribed for the Trustee's actions in the Trust Indenture inasmuch as the Trustee has failed to make reasonable efforts to maximize recovery under the Master Lease by pursuing claims for breach of the Master Lease against AJ Corporation, in addition to RMM, who may have liability for breach of the Master Lease.

51. The Trustee's actions in contravention of the terms of the Trust Indenture will substantially decrease the amount of recovery of Intervenor and the other Series B Bondholders.

52. In a foreclosure action this Court sits as a Court of equity. The wrongful actions of the Trustee as alleged herein disqualify the Trustee from the equitable relief it seeks by this action.

53. Intervenor are entitled to enforcement of remedies which are most advantageous to restoring the investments of the Intervenor and the Series B Bondholders to the position they should have been in but for the wrongful acts of the Trustee; and to those remedies most conducive to effectuating the purposes of the Trust Indenture.

54. On information, as of July 12, 1994, there was due and owing to the Trustee by its allegation under the terms of the notes and security documents the following amounts:

SERIES A NOTE: \$75,234,196.24, Principal Balance and \$40,957,933.60, Accrued Interest for a total of \$116,192,129.84. From and after July 12, 1994, the principal balance of the Series A Note has borne, and continues to bear, interest at the rate of Fifteen Percent per annum, or \$30,918.16 per day.

SERIES B NOTE: Compound Accreted Value as of July 12, 1994, \$42,483,291.38. From and after July 12, 1994, the Compound Accreted Value of the Series B Notes has borne and continues to bear, interest at the rate of Fifteen Percent per annum, or \$17,458.89 per day.

These amounts correspond with sums said to be due on the Series A and Series B Bonds, respectively.

55. The Prospectus stated the cost of the Subject Property upon completion was \$95,000,000.00, and PWI claimed in sales literature a value of \$110,000,000.00. On information, the Trustee now believes that the Subject Property and its related collateral is only worth

approximately \$10.5 million. This would evidence either a total collapse of property values in Tulsa, Oklahoma, or that the sale transaction was fraudulent.

56. The Trustee has failed to seek on behalf of the Intervenors and the Series B Bondholders a marshaling of assets by seeking performance by RMM, an alter ego of PWGI, on the Master Lease and Lease before foreclosure on the Subject Property, and has failed to take appropriate action to collect fully upon the AJ Guaranty.

**D. Failure of the Trustee to Represent the Rights
and Interests of the Series B Bondholders**

57. The acts and failures to act of the Trustee alleged herein were not fully and properly disclosed in a timely fashion to the Intervenors and the Series B Bondholders. The Intervenors relied completely upon the Trustee to represent them in the negotiations concerning the Restructuring Agreement in 1987-89, the amending of the Trust Agreement, and the 1994 Default as they had a right to do as the Trustee was their fiduciary. Because the Trustee failed to send them periodic information and updates (which the Trustee now claims were sent), the Intervenors had no notice of any facts which they could have known of the Trustee's wrongdoing and/or omissions.

58. Pursuant to the terms of the Trust Indenture and the common law, the Trustee had and still has a duty to take action to protect and enforce the Indenture and common law rights of all Bondholders, including Intervenors and the Series B Bondholders.

59. Under Section 9.06 of the Trust Indenture and under the common law, upon default in the payment of principal or interest, Greater Southwestern covenanted to pay the Trustee upon demand the principal and interest on the Series A and Series B Bonds, along with the costs and expenses of collection. Tab 2, Exhibit B. In the event that Greater Southwestern failed to pay such amounts, the Trustee was entitled to sue for and recover against Greater Southwestern and any other

obligor on the Bonds for the whole amount due and unpaid. The Trustee failed to do so upon the 1987 R&B Default, and upon the 1994 Default and Acceleration. Further, upon the 1987 R&B Default and the 1994 Default and Acceleration, the Trustee compromised the collateral under the Trust Indenture to the detriment of the Series B Bondholders.

60. The Intervenors and the Series B Bondholders have the **absolute and unconditional** right, pursuant to Section 9.12 of the Trust Indenture and the common law, to receive payment of the principal of (and premium, if any) and interest on their Bonds, which cannot be without their consent. The Trustee impaired the rights of the Intervenors and the Series B Bondholders after the 1987 R&B Default and after the Default and Acceleration in 1994.

61. Pursuant to Section 9.12 of the Trust Indenture and the common law, the Intervenors and the Series B Bondholders were entitled, after the 1987 R&B Default and after the 1994 Default and Acceleration, to have the Trustee exercise its fiduciary duty fairly and without prejudice to the Series B Bondholders. However, the Intervenors and the Series B Bondholders received virtually nothing toward their accreted value from the 1988 Settlement, and their right to receive the value of their Series B Bonds was further compromised and defeated by the acts and omissions of the Trustee upon the 1994 Default and Acceleration. Tab 2, Exhibit B.

62. Pursuant to Section 10.13 of the Trust Indenture and the common law, “in the event of default the Trustee shall set apart and hold in a special account for the benefit of the Holders of the Bonds, such money and property collected by the Trustee on behalf of all the Bondholders.” Tab 2, Exhibit B. The Trustee failed to comply with this provision of the Trust Indenture as to the Intervenors and the Series B Bondholders.

63. The Trust Indenture and the common law further provides that if the Trustee is required to account, that the funds and property held in the special account shall be apportioned

between the Trustee, the Series A and Series B Bondholders, so that they realize “the same percentage of their respective claims figured before crediting to the Trustee.”

64. Upon information and belief, subsequent to the R&B Default, the Trustee failed to set up the special account required by the Trust Indenture, or, in the alternative, has failed to notify the Intervenor and the Series B Bondholders of the existence of such account, and has acted solely in the interest of and to the sole benefit of the Series A Bondholders, to the detriment of the Intervenor and the Series B Bondholders.

65. Pursuant to Section 9.11 of the Trust Indenture, “no one or more Holders of the Bond shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Trust Indenture to affect, disturb, or prejudice . . . the rights of any other Holders of Bonds, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Trust Indenture, except . . . for the **equal and ratable benefit of all outstanding secured Bonds.**” (emphasis added) Tab 2, Exhibit B. Upon information and belief, the Trustee has failed to comply with this provision of the Trust Indenture as to the Intervenor and the Series B Bondholders.

66. Upon information and belief, the Trustee has failed to represent diligently and adequately the rights and interests of Series B Bondholders as against the holders of the Series A Bonds to the extreme detriment of the Intervenor and the Series B Bondholders, and has acted in collusion with the Defendants and the eight institutional Series A Bondholders, to the extreme detriment of the Intervenor and the Series B Bondholders.

67. Any demand upon the Trustee to fairly represent the interests of the Intervenor and Series B Bondholders in this foreclosure would be futile.

E. Breach of Fiduciary Duty by the Trustee

68. Pursuant to Section 10.01 (B) of Trust Indenture, in the Event of Default, the Trustee is required to “exercise such of the rights and powers vested in it by this Trust Indenture, and [to] use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.” Tab 2, Exhibit B. After the R&B Default and the Acceleration, the Trustee willfully and negligently acted and failed to act in such a manner as prudence required to fully protect the rights of the Intervenor and the Series B Bondholders.

69. Section 10.08 of the Trust Indenture provides that “If the Trustee has or shall acquire any conflicting interest, as defined in this Section . . . it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect hereinafter specified in this Article.” Tab 2, Exhibit B.

70. Upon information and belief, sometime in the early part of 1988, PWGI hired a Boston, Massachusetts law firm, Csaplar & Bok, purportedly to represent the interests of the Intervenor and the Series B Bondholders. This employment was, at a minimum, an acknowledgment by the Defendants of the Trustee’s fiduciary duty to a potentially diverse constituency consisting of holders of the Series A and Series B Bonds. The employment also represented a further concealment of the scheme by PWGI, which was known to and acquiesced in by the Trustee, because it conveyed a sense of security to the Series B Bondholders. The Trustee aided in this, while blocking any effectiveness of Csaplar & Bok, by not permitting Csaplar & Bok to represent the Intervenor and the Series B Bondholders in the restructuring negotiations, despite the fact that numerous and substantial conflicts of interest existed for the Trustee in representing simultaneously the interests of the Series A Bondholders and the Series B Bondholders.

71. In their letter of March 4, 1988 to the Series B Bondholders, Richard Hiersteiner (“Hiersteiner”) of Csaplar & Bok, stated for the firm that it did not “intend to replace the Trustee as a representative of your interest,” but rather expected “to participate in ongoing negotiations, and [to] consult with the Trustee and counsel for Series A Bondholders.” However, the Trustee intentionally and negligently failed in its duty to include counsel for the Intervenors and the Series B Bondholders in on-going negotiations and consultations, and failed to keep the Intervenors and the Series B Bondholders fully informed of the on-going negotiations. The Trustee failed and continues to fail to this day in its duty to represent, inform, and protect the investment of the Intervenors and the Series B Bondholders and this course of action and omission is intentional and negligent.

72. In a letter of May 9, 1988, Hiersteiner wrote to the counsel for the Series A Bondholders and stated, “As you know, if an amendment of modification to the [I]ndenture pursuant to which the Series B [B]onds are issued, to the underlying leases that secure the Series B Bonds, or to any number of other relevant documents is contemplated, the consent of the Series B Bondholders will be required.” As shown herein, certain of the acts mentioned by Hiersteiner in fact took place **without** the consent of the Series B Bondholders. A copy of this letter went directly to Mr. Max Goldsmith, an employee of the Trustee, and to John Thomas, Esq., a lawyer for the Trustee at the firm of Palmer & Dodge. (Hiersteiner now works for Palmer & Dodge.)

73. In a letter of December 30, 1988, Hiersteiner advised the Intervenors and the Series B Bondholders that pursuant to Trust Indenture the Series A and Series B Bonds were equally and ratably secured. However, the Trustee has failed, and continues to fail to act in such a manner as to represent and protect the equal and ratable interests of the Intervenors and the Series B Bondholders.

74. Upon information and belief, under the Agreement the Trustee received certain “debt securities” and certain cash payments to be held for the benefit of the Series A and B Bondholders.

The exact terms of the Agreement were never presented to the Intervenors and the Series B Bondholders, nor have they received subsequent complete reports from the Trustee as to the amounts received pursuant to the Agreement, or the amounts anticipated to be received in the future under the Agreement; nor were the Intervenors and the Series B Bondholders asked to approve the Agreement, although the Trust Indenture does not authorize either the Trustee or the Series A Bondholders to act on behalf of the Intervenors and the Series B Bondholders or to compromise their rights to recovery upon default.

75. As part of the Agreement, the Series A Bondholders and the Trustee agreed to “stand still” and not to take any remedial actions against Fourth Street or the Subject Property until January 1, 1994, provided that Fourth Street remained in compliance with the covenants of the Bondholders’ mortgage and the terms of the Agreement. The Intervenors and the other Series B Bondholders were not contacted by the Trustee to obtain their consent to the Agreement, in violation of the terms of the Trust Indenture.

76. The Trustee intentionally failed and neglected to obtain approval of the Agreement from the Intervenors and the other Series B Bondholders, and of the documents executed by the Trustee in fulfillment of the Agreement.

77. Upon information and belief, at the time of the Agreement, neither the Trustee nor the Series A Bondholders undertook a formal appraisal of the Tower, nor did the Trustee undertake an investigation of the feasibility of the business and financial plan embodied in the Agreement, thereby failing to act as a prudent person, in violation of its duty under the Trust Indenture.

78. Upon information and belief, the Series A Bondholders received virtually the entire benefit of the Agreement, to the detriment of the Intervenors and the Series B Bondholders, and in contravention of the terms of the Trust Indenture requiring the Trustee to hold any monies, proceeds,

or other collateral received (except monies under the letter of credit) after an “Event of Default,” either the 1987 or 1994 Defaults, for the benefit of all the Bondholders.

79. The Trustee failed to inform the Intervenors of the full impact of the Agreement on their investment and that of the Series B Bondholders. Further, the Trustee intentionally failed to advise the Intervenors and the Series B Bondholders of their rights upon default and restructuring and acted without their consent to amend the Trust Indenture and to impair their rights under the Trust Indenture. Due to the Trustee’s continuing failure to inform the Intervenors and the Series B Bondholders, they lacked information upon which to assess the fairness of the allocation of benefits and burdens between the Series A Bondholders and the Intervenors and the Series B Bondholders.

80. Upon information and belief, subsequent to the R&B Default, the Trustee wilfully and negligently failed to represent fairly and adequately the interests of the Intervenors and the Series B Bondholders and, in fact, intentionally preferred the interests of the Series A Bondholders over the Intervenors and the Series B Bondholders, breaching the terms of the Trust Indenture, to the extreme detriment of the Intervenors and the Series B Bondholders.

81. PWI, through its employed counsel, Csaplar & Bok, and the Trustee, intentionally concealed from the Series B Bondholders that the Agreement included a \$6,000,000.00 payment made by PWI because of the AJ Guaranty. Indeed, in its purported report to the Series B Bondholders, dated August 9, 1991, the Trustee reported that there had been a “contribution” by Fourth Street of \$6,000,000.00, and failed to relate that this was derived from the AJ Guaranty, and that the Series A Bondholders had given a full release as a result. This was an intentional misrepresentation and a concealment of facts, which has continued to the present.

F. Causation

82. The Trustee is continuing to breach its fiduciary duty to the Series B Bondholders through its secret arrangement with Stephens Property Company and through this foreclosure action.

83. The Intervenors and the Series B Bondholders have lost or will lose virtually their entire investments in the Series B Bonds and have little, if any, possibility of receiving **any** significant return even of principal on those investments. The Trustee's acts and omissions have exacerbated the losses of the Series B Bondholders on their bonds.

G. Concealment of the Scheme

84. The Trustee has concealed crucial facts as alleged above, and intentionally, knowingly, and fraudulently engaged in the subterfuge of the Csaplar & Bok representation.

85. The Trustee intentionally and fraudulently concealed information concerning its conflicts of interest, lack of equal and appropriate representation of the interests of the Intervenors and the Series B Bondholders, and the improper amendment of the Trust Indenture.

86. A confidential, fiduciary relationship existed between the Trustee and the Intervenors and the Series B Bondholders during all times pertinent hereto, and the statute of limitations is tolled until the Intervenors and the Series B Bondholders have actual notice of the fraudulently concealed activities of the Trustee.

87. The Trustee intentionally or negligently failed to mail its so-called information letters to the Intervenors and the Series B Bondholders, which it now represents to this Court were sent. These letters, even if received by the Intervenors and the Series B Bondholders, did not reveal the Trustee's wrongdoing. The Intervenors and the Series B Bondholders did not have actual notice of the Trustee's wrongdoing until subsequent to May 1, 1995 through their attorney's investigation.

88. Had the Trustee disclosed its conflicts of interest, lack of independent representation of the interests of the Intervenors and the Series B Bondholders, and the role of the AJ Guaranty in the Agreement, legal or equitable actions would have been earlier filed. These facts only came to the Intervenors' attention through their attorney's investigation subsequent to May 1, 1995. These claims are brought while the Trustee continues to engage in and profit from its breaches of fiduciary duty and negligence. The Trustee is hereby estopped from asserting that these claims are not timely.

FIRST CLAIM FOR RELIEF: NEGLIGENCE AND GROSS NEGLIGENCE

**Count 1: Negligence and Gross Negligence:
1987 Default and Restructuring Agreement**

89. The Intervenors and the Series B Bondholders reallege Paragraphs 1 through 88.

90. Under the terms of the Trust Agreement, and in particular Section 10.01(B) and under the common law, in case of an Event of Default, the Trust is required to use the same degree of care and skill in the exercise of the rights and powers vested in it by the Trust Indenture as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. Tab 2, Exhibit B.

91. The Trustee intentionally and negligently failed to exercise the required degree of skill and care in representing the rights and interests of the Intervenors and the Series B Bondholders following the 1987 Event of Default and in negotiating the Restructuring Agreement.

92. The intentional and negligent acts and omissions of the Trustee constitute gross negligence, and thereby damaged the Intervenors and the Series B Bondholders.

93. Punitive damages should be awarded against the Trustee.

**Count 2: Negligence and Gross Negligence:
1994 Default and Acceleration**

94. The Intervenors and the Series B Bondholders reallege Paragraphs 1 through 93.

95. Under the terms of the Trust Agreement, and in particular, Section 10.01(B) and under the common law, in case of an Event of Default, the Trust is required to use the same degree of care and skill in the exercise of the rights and powers vested in it by the Trust Indenture as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. Tab 2, Exhibit B.

96. The Trustee intentionally and negligently failed to exercise the required degree of skill and care in representing the interests of the Intervenors and the Series B Bondholders following the 1994 Event of Default and Acceleration and in seeking the foreclosure and negotiating the sale of the Subject Property at issue herein, and, upon information and belief, without Bondholder approval.

97. The Intervenors and the Series B Bondholders have been damaged thereby.

**SECOND CLAIM FOR RELIEF: BREACH OF FIDUCIARY DUTY
AND REMOVAL OF THE TRUSTEE**

**Count 3: Breach of Fiduciary Duty by the Trustee:
1987 Default and Restructuring Agreement**

98. The Intervenors and the Series B Bondholders reallege Paragraphs 1 through 97.

99. After the 1987 R&B Default and during the negotiations which resulted in the 1988 Restructuring Agreement, the Trustee failed to communicate with the Intervenors and the Series B Bondholders, or to apprise them of their rights and interests in the Restructuring.

100. In negotiating the Restructuring Agreement, the Trustee acted solely to the benefit of the Series A Bondholders and to the detriment of the Series B Bondholders in violation its fiduciary duties as Trustee under the Trust Agreement and the common law to protect equally the interests of all Bondholders, as required by Section 9.16 of the Trust Agreement. Tab 2, Exhibit B.

101. The Intervenors and the Series B Bondholders have been damaged by the Trustee's breach of its fiduciary duty.

**Count 4: Breach of Fiduciary Duty by the Trustee:
1994 Default and Acceleration**

102. The Intervenors and the Series B Bondholders reallege Paragraphs 1 through 101.

103. In carrying out its duties under the Trust Agreement and the common law, the Trustee had and continues to have a fiduciary duty to the Intervenors and the Series B Bondholders. Under the Trust Agreement and common law, in the event of default, the Intervenors and the Series B Bondholders have an absolute right to payment on their Bonds. In this case, the Subject Property is the primary source from which the Intervenors and the Series B Bondholders can receive payment.

104. After the 1994 Default and Acceleration, the Trustee breached its fiduciary duty by entering into a secret agreement to sell the Subject Property without obtaining permission from the Intervenors and the Series B Bondholders or without determining whether the sale would be unjustly prejudicial to the Intervenors and the Series B Bondholders, and, upon information and belief, without Bondholder approval, in violation of its duties under the Section 9.16 of the Trust Agreement, and under the common law. Tab 2, Exhibit B, and Tab 3, Exhibit C.

105. The Intervenors and the Series B Bondholders have been damaged thereby.

106. The Intervenors are entitled to enforcement of such remedies which are most advantageous to restoring the investments of the Intervenors and the Series B Bondholders to the position they should have been in, but for the wrongful acts of the Trustee, and to those remedies most conducive to effectuating the purposes of the Trust Indenture.

107. For its acts and omissions, punitive damages should be assessed against the Trustee.

Count 5: Removal of the Trustee

108. The Intervenors and the Series B Bondholders reallege Paragraphs 1 through 107.

109. Pursuant to the Trust Indenture, Oklahoma law applies to the Trustee and to the funds obtained by the Trustee on behalf of the Series A Bondholders and the Intervenor and the Series B Bondholders.

110. Trusts are within the exclusive jurisdiction of the Court, and the Court has the inherent right and duty to supervise the conduct and actions of the Trustee. The Court has the authority in a proper case to require an accounting and to remove or discharge the Trustee for cause.

111. The Trustee has submitted itself to the jurisdiction and authority of the Court in seeking the assistance of the Court in obtaining the foreclosure while *in pari delicto*.

112. On information and belief, the Trustee has acted and is continuing to manage and to act in a wrongful manner prejudicing the rights of the Intervenor and the Series B Bondholders as alleged herein.

113. The irreconcilable conflicts of interest have existed from the time of purchase of the Series B Bonds by the Intervenor and the Series B Bondholders as between the Trustee and the Intervenor and the Series B Bondholders, and between the Series A Bondholders and the Intervenor and Series B Bondholders.

114. Subsequent to the 1987 and 1994 Events of Default, the Trustee has acted and continues to act to protect its own interests and those of the Series A Bondholders, and has acted and continues to act wrongfully and in collusion with the Defendants and the Series A Bondholders, to the extreme detriment of the Series B Bondholders, for their sole advantage and gain, in violation of the Trust Indenture and the common law.

115. Under the common law of Oklahoma the Trustee must account to the Intervenor and the Series B Bondholders:

- a. For the amount and disposition of funds paid to the Trustee subsequent to the R&B default, and for the disbursement of such funds, including but not limited to the funds paid to the Trustee and to the Series A Bondholders; and
- b. For acts or failures to act on behalf of the Intervenors and the Series B Bondholders.

116. If, in the course of the account, the Court finds (a) that the Trustee has failed to preserve and protect the interests of the Intervenors and the Series B Bondholders; (b) that the Trustee has wrongfully acted or failed to act, so as to harm the interests of the Intervenors and the Series B Bondholders; or (c) that the Trustee has a conflict of interest as defined by the Trust Indenture and/or the laws of Oklahoma, then the Trustee should be immediately removed by the Court and a successor Trustee appointed. No prejudice to the rights of the Series A Bondholders will result from the appointment of a successor Trustee.

THIRD CLAIM FOR RELIEF:
BREACH OF THIRD-PARTY BENEFICIARY CONTRACT

**Count 6: Breach of Third-Party Beneficiary Contract:
1997 Default and Restructuring Agreement**

117. The Intervenors and the Series B Bondholders reallege Paragraphs 1 through 116.

118. Intervenors and the Series B Bondholders are intended third-party beneficiaries of the Trust Indenture between Greater Southwestern and the Trustee, as well as under certain other mortgages, leases, and subleases which were assigned to the Trustee pursuant to the Agreement.

119. In negotiating the 1988 Restructuring Agreement, the Trustee acted without proper authority under the Trust Agreement, and in particular Section 9.09, 9.11, and 9.12 of the Trust Agreement, to the detriment of the Series B Bondholders in violation of the Trust Agreement, and

their rights under common law including but not limited to the absolute right of the Series B Bondholders to payment upon an Event of Default. Tab 2, Exhibit B.

120. The Intervenors and the Series B Bondholders have been damaged thereby.

**Count 7: Breach of Third-Party Beneficiary Contract:
1994 Default and Acceleration**

121. The Intervenors and the Series B Bondholders reallege Paragraphs 1 through 120.

122. Intervenors and the Series B Bondholders are intended third-party beneficiaries of the Trust Indenture between Greater Southwestern and the Trustee, as well as under certain other mortgages, leases, and subleases which were assigned to the Trustee pursuant to the Agreement. The Property upon which the Trustee seeks to foreclose is the collateral for payment of the Bonds owned by the Intervenors and the Series B Bondholders.

123. Upon information and belief subsequent to declaration of the 1994 Event of Default and Acceleration, the Trustee entered into a contract for sale of the Subject Property without the prior consent of the Holders of a majority of the principal amount of the Outstanding Bonds, in violation of Section 9.04 and Section 9.16 of the Trust Agreement. Tab 2, Exhibit B, and Tab 3, Exhibit C.

124. Under the terms of Section 9.12 of the Trust Indenture and under the common law, the Intervenors and the Series B Bondholders have an unconditional right to receive principal and interest on such Bonds as they hold, notwithstanding any other provision in the Trust Indenture, and to sue for the enforcement of such right. Tab 2, Exhibit B.

125. Upon information and belief, the Trustee has breached the terms of the Trust Agreement as to the Intervenors and the Series B Bondholders by entering into a “secret” contract of sale with Stephens, without the prior consent of the Holders of a majority of the principal amount of the Outstanding Bonds. Tab 1, Exhibit A, Sections 26 and 7a. On February 11, 1998, in-house

attorney for Stephens, John Prather, confirmed to an attorney for Roberson that Stephens regarded the contract of sale as valid and enforceable.

126. The Intervenors and the Series B Bondholders are damaged thereby.

WHEREFORE, Intervenors individually, and on behalf of the Series B Bond Purchasers and the Series B Bondholders respectfully pray for this Court to enter judgment, as follows:

- (1) Denying an equitable decree of foreclosure as now sought;
- (2) For Intervenors and the Series B Bondholders, and against the Trustee, for breach of fiduciary duty, for gross negligence, for actual and compensatory damages in excess of \$10,000.00, for punitive damages, prejudgment interest, and for other just and appropriate equitable relief;
- (3) For disgorgement of all fees, income, or other benefits derived by Defendants or the Trustee from the sale of the Series B Bonds, or as a result of any transaction involving or excluding the Intervenors and the Series B Bond Purchasers;
- (4) For damages to the Intervenors and the Series B Bondholders as third-party beneficiaries;
- (5) For an accounting by the Trustee of all transactions by, with, or on behalf of the Intervenors and the Series B Bondholders, and if the facts support it, removal of the Trustee.
- (6) For other just and appropriate relief.

JURY TRIAL DEMANDED ON LEGAL CAUSES.

Laurence L. Pinkerton (OBA #7168)
Judith A. Finn (OBA #2923)
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(918) 587-1800

CERTIFICATE OF SERVICE

I, Judith A. Finn, do hereby certify that on the ____ day of May, 2002, I caused to be mailed a true and correct copy of the above and foregoing *Fourth Amended Petition in Intervention*, proper postage thereon fully prepaid to:

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