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10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF WASHINGTON

12 NUVEEN QUALITY INCOME MUNICIPAL
13 FUND, INC; NUVEEN PREMIUM INCOME
14 MUNICIPAL FUND 4, INC.; STRONG
15 MUNICIPAL BOND FUND, INC.; SMITH
16 BARNEY MUNICIPAL FUND LIMITED
17 TERM; SMITH BARNEY MUNICIPAL
18 HIGH-INCOME FUND; and VANGUARD
19 HIGH-YIELD TAX-EXEMPT FUND;

20 Plaintiffs,

21 v.

22 PRUDENTIAL SECURITIES
23 INCORPORATED, a Delaware
24 corporation; WALKER PARKING
25 CONSULTANTS/ENGINEERS, INC., a
26 Michigan corporation; FOSTER
27 PEPPER & SHEFELMAN PLLC, a
28 Washington professional limited
liability company; SPOKANE
DOWNTOWN FOUNDATION, a Washington
corporation; PRESTON GATES &
ELLIS, LLP, a Washington limited
liability partnership; CITIZENS
REALTY COMPANY, a Washington
corporation; RPS MALL, LLC, a
Washington limited liability
company; RPS II. LLC, a

No. *CS-01-0127-JLR*

ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-
PARTY CLAIM OF CITY OF
SPOKANE

DEMAND FOR JURY TRIAL

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 1

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1 Washington limited liability
2 company; RWR MANAGEMENT, INC., a
3 Washington corporation, doing
4 business as R.W. ROBIDEAUX AND
5 COMPANY; CITY OF SPOKANE,
6 WASHINGTON, a first-class charter
7 city of the State of Washington;
8 SPOKANE PUBLIC PARKING
9 DEVELOPMENT AUTHORITY, an
10 unregistered Washington
11 corporation doing business as
12 RIVER PARK SQUARE PARKING,

13 Defendants.

14
15 CITY OF SPOKANE,

16 Third-Party Plaintiff,

17 v.

18 ROY J. KOEGEN and ANNE KOEGEN, a
19 marital community, and PERKINS
20 COIE, LLP,

21 Third-Party Defendants.

22 The City of Spokane answers Plaintiffs' Complaint as
23 follows:

24 JURISDICTION AND VENUE

25 1. - 2. This defendant admits the allegations of
26 paragraphs 1 and 2.

27 SUMMARY OF COMPLAINT

28 3. This defendant lacks knowledge or information

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 2

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1 sufficient to form a belief as to the dollar value of the
2 Bonds purchased by the named plaintiffs or whether they
3 relied upon the Preliminary Official Statement and Official
4 Statement. This defendant admits the remaining allegations
5 of paragraph 3.
6

7 4. Answering paragraph 4, this defendant states that
8 the credit enhancement to be provided by the City of
9 Spokane was subject to the terms of Ordinance C31823,
10 including a clearly-stated contingency and in that sense
11 was not "unconditional." This defendant lacks knowledge or
12 information sufficient to form a belief as to the truth of
13 plaintiffs' allegations about what was "important" or
14 "critical" to prospective purchasers. This defendant
15 admits the remaining allegations of paragraph 4.
16

17 5. The City denies all of the allegations of
18 paragraph 5 that address the alleged knowledge, actions or
19 intentions of the City. The City lacks knowledge or
20 information sufficient to form a belief as to the truth of
21 the allegations as they pertain to other defendants.
22

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25
26 PARTIES

27 6. - 11. This defendant lacks knowledge or
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 3

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1 information sufficient to form a belief as to the truth of
2 the allegations of paragraphs 6 through 11.

3 12. Paragraph 12 requires no response by this
4 defendant.
5

6 13. This defendant admits the allegations of
7 paragraph 13.
8

9 14. This defendant admits that John C. Moore was a
10 Managing Director of Public Finance for Prudential
11 Securities at pertinent times, but lacks knowledge or
12 information sufficient to form a belief as to the truth of
13 the remaining allegations of paragraph 14.
14

15 15. This defendant admits the allegations of
16 paragraph 15.
17

18 16. This defendant admits the allegations of
19 paragraph 16, but states that it was not aware of certain
20 of the matters alleged by paragraph 16 at times pertinent
21 to its engagement of Walker or its adoption of Ordinance
22 C31823.
23

24 17. This defendant lacks knowledge or information
25 sufficient to form a belief as to the truth of the
26
27
28

1 allegations of the last two sentences of paragraph 17
2 pertaining to Walker's motives and intentions, but admits
3 the remaining allegations of paragraph 17.
4

5 18. This defendant lacks knowledge or information
6 sufficient to form a belief as to the truth of the
7 allegations of the last sentence of paragraph 18, but
8 admits the remaining allegations of the paragraph.
9

10 19.- 21. Answering paragraphs 19 through 21, this
11 defendant denies that any portions of the Official
12 Statement reviewed by its agents, and as to which they had
13 knowledge or information, were known or believed by them be
14 false or misleading. This defendant lacks knowledge or
15 information as to the terms of Prudential Securities'
16 engagement of Foster Pepper, or the circumstances of any
17 communication to the Plaintiffs of disclaimers as to its
18 role or engagement, sufficient to form a belief as to the
19 truth of the allegations of those paragraphs.
20
21
22

23 22. This defendant admits the allegations of
24 paragraph 22.
25

26 23. This defendant lacks knowledge or information
27 sufficient to form a belief as to the truth of the
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 5

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1 allegation about the Preston law firm's intentions, but
2 admits the remaining allegations of paragraph 23.

3
4 24. - 27. Answering paragraphs 24 through 27, this
5 defendant denies that any portions of the Official
6 Statement reviewed by its agents, and as to which they had
7 knowledge or information, were known or believed by them be
8 false or misleading. This defendant lacks knowledge or
9 information as to the terms of the Foundation's engagement
10 of the Preston law firm, or the circumstances of any
11 communication to the Plaintiffs of disclaimers as to its
12 role or engagement, sufficient to form a belief as to the
13 truth of the allegations of those paragraphs.
14
15

16
17 28. This defendant lacks knowledge or information
18 sufficient to form a belief as to the truth of the
19 allegation the Elizabeth Cowles is and was an owner of
20 Cowles Publishing, although it admits that she is a
21 principal of the company and believes her to have an
22 indirect ownership interest. This defendant admits the
23 remaining allegations of paragraph 28.
24
25

26 29. - 33. This defendant admits the allegations of
27 paragraphs 29 through 33.
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 6

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1 34. - 35. Answering paragraphs 34 and 35, this
2 defendant lacks knowledge whether R.W. Robideaux had
3 knowledge of the content of the Sabey Garage Report or
4 commented on it, but admits the remaining allegations of
5 paragraphs 34 and 35.
6

7 36. Answering paragraph 36, this defendant lacks
8 knowledge or information sufficient to form a belief as to
9 the truth of the allegation that Robideaux's acts or
10 omissions were committed as a scheme or artifice to
11 defraud. This defendant admits the remaining allegations
12 of paragraph 36.
13

14 37. This defendant admits the first sentence of
15 paragraph 37 and admits that it was encouraged by the
16 Developers to instruct appraisers Auble and Barrett to
17 perform an "investment value" appraisal based on the Walker
18 projections. It denies the remaining allegations of
19 paragraph 37.
20
21

22 38. Answering paragraph 38, this defendant denies the
23 partial and selective characterizations of the Ordinance
24 and opinion letters in deference to the full written
25 documents, which speak for themselves. This defendant
26
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 7

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1 admits that a reason for adopting the Ordinance was bond
2 counsel's recommendation that the Ordinance would serve as
3 a credit enhancement. This defendant denies all remaining
4 allegations of paragraph 38.
5

6 39. Answering paragraph 39, this defendant admits
7 that the Authority was created by Ordinance passed on
8 November 7, 1988, that it is governed by a five-member
9 board whose members are appointed by the Mayor and approved
10 by the City Council and admits that during the period the
11 Bonds were being underwritten and issued, two City Council
12 members, Orville Barnes and Roberta Greene, sat on the
13 Authority board. This defendant denies all remaining
14 allegations of paragraph 39.
15
16
17

18 40. Answering paragraph 40, this defendant admits
19 that at the time the Bonds were issued in September 1998,
20 the Authority engaged in no activities other than planning
21 activities relating to expected acquisition, by lease, of
22 the Garage. This defendant denies all remaining
23 allegations of paragraph 40.
24
25

26 41. Answering paragraph 41, this defendant states
27 that the authority of agents to act for the City is
28

1 strictly limited and controlled by applicable law and
2 express action and delegation and denies that any agent's
3 acts were ratified, adopted and approved except as
4 expressly provided by law or by proper legislative action.
5 This defendant admits the allegations as they relate to the
6 actions of Robideaux acting as an agent for the Developers.
7 This defendant lacks knowledge or information sufficient to
8 form a belief as to the truth of the allegations as they
9 relate to other defendants or their agents.
10
11

12 42. - 43. Answering paragraphs 42 and 43, this
13 defendant denies the allegations as they pertain to the
14 City. This defendant lacks knowledge and information
15 sufficient to form a belief as to the truth of the
16 allegations as they relate to other defendants.
17
18

19 GENERAL ALLEGATIONS
20 APPLICABLE TO ALL CLAIMS FOR RELIEF

21 44. - 45. Answering paragraphs 44 and 45, this
22 defendant denies that the Garage had previously served as
23 the dedicated parking facility for RPS Mall and never had
24 operating revenues in excess of \$1 million. This defendant
25 admits the remaining allegations of paragraphs 44 and 45.
26
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ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 9

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1 46. Answering paragraph 46, this defendant denies the
2 partial characterization of the conclusion of the 1993
3 parking survey in deference to the complete written
4 document, which speaks for itself. This defendant admits
5 the remaining allegations of paragraph 46.
6

7 47. - 50. Answering paragraphs 47 through 50, this
8 defendant states that the allegations are a partial, but
9 not a full, fair and complete characterization of
10 communications among the parties during the periods of time
11 identified. This defendant further denies that it had any
12 knowledge or belief during the periods identified that
13 projections were "artificially inflated" or that its
14 consultants, professionals or "public-private partner" were
15 providing other than their best, expert guidance on the
16 prospects for future garage operation. This defendant
17 otherwise admits the allegations of paragraphs 47 through
18 50.
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23 51. - 52. This defendant denies the allegations of
24 paragraphs 51 and 52.
25

26 53. Answering paragraph 53, this defendant admits
27 that the four assumptions identified were important to its
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ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 10

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1 projections of revenue. This defendant denies the
2 remaining allegations of paragraph 53 as they pertain to
3 the City and lacks knowledge and information sufficient to
4 form a belief as to the truth of the allegations as they
5 relate to other defendants.
6

7
8 54. Answering paragraph 54, this defendant admits
9 that Walker was issuing a "financial feasibility study" and
10 had a duty to evaluate the reasonableness of the
11 assumptions underlying its analysis. This defendant denies
12 the remaining allegations of paragraph 54 as they pertain
13 to the City and lacks knowledge and information sufficient
14 to form a belief as to the truth of the allegations as they
15 relate to other defendants.
16
17

18 55. Answering paragraph 55, this defendant admits the
19 allegations of the first sentence of the paragraph. This
20 defendant lacks knowledge or information sufficient to form
21 a belief as to the truth of the remaining allegations,
22 which were the sort of judgments as to which it was
23 required to rely on its expert consultants and "public-
24 private partner" for professional judgment.
25
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1 56. - 62. Answering paragraphs 56 through 62, this
2 defendant denies the allegations as they relate to the
3 City. This defendant lacks knowledge or information
4 sufficient to form a belief as to the truth of the
5 remaining allegations, which were the sort of judgments as
6 to which it was required to rely on its expert consultants
7 and "public-private partner" for professional judgment.
8

9
10 63. Answering paragraph 63, this defendant admits
11 that Dennis Beringer recommended that the City seek "fair
12 market value" appraisals of the garage and that an
13 "investment value" appraisal would result in a value which
14 was inflated in the sense that it would exceed a "fair
15 market valuation" and would thereby cause the Foundation to
16 pay more for the garage and for the ground lease than was
17 reasonable and fair. This defendant further admits that it
18 adopted the "investment value" appraisal approach at the
19 urging of Elizabeth Cowles and R.W. Robideaux. This
20 defendant denies the remaining allegations of paragraph 63.
21

22
23 64. - 70. Answering paragraphs 64 through 70, this
24 defendant admits that Auble and Barrett arrived at
25 "investment values" of over \$26 million for the Garage and
26
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ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 12

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1 denies the partial and selective characterizations of the
2 Auble and Barrett appraisals in deference to the full
3 written documents, which speak for themselves. The City
4 denies the remaining allegations of paragraphs 64 through
5 70.
6

7 71. Answering paragraph 71, this defendant admits
8 that the anticipation of a low interest rate due to the
9 expected tax-exempt status of the Bonds affected, and
10 increased, the "investment valuation" of the Garage. This
11 defendant denies the remaining allegations of paragraph 71.
12

13 72. This defendant denies the allegations of
14 paragraph 72.
15

16 73. Answering paragraph 73, this defendant admits
17 that on November 25, 1996, its City Council adopted
18 Resolution 96-144, denies the partial and selective
19 characterization of that resolution, which is a written
20 document and speaks for itself and denies the remaining
21 allegations and characterizations of paragraph 73.
22

23 74. Answering paragraph 74, this defendant admits the
24 allegations of the second sentence of the paragraph with
25 the exception of the characterization "major" which is
26
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 13

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1 vague; lacks knowledge or information sufficient to form a
2 belief as to the truth of the first sentence; denies the
3 allegations of the third sentence and states in connection
4 therewith that Sabey Corporation was known to be a major,
5 if not the major competitor of the planned River Park
6 Square Development and thereby subject to bias.
7

8
9 75. Answering paragraph 75, this defendant admits
10 that on or about December 10, 1996, Laurent D. Poole
11 provided the City with the identified reports, lacks
12 knowledge or information sufficient to form a belief as to
13 the truth of the remaining allegations of the first and
14 second sentences of the paragraph, and denies the partial
15 and selective characterization of the reports in deference
16 to the written documents, which speak for themselves.
17

18
19 76. Answering paragraphs 76, this defendant lacks
20 knowledge or information sufficient to form a belief as to
21 the allegation of what the Plaintiffs knew and denies the
22 remaining allegations of paragraph 76.
23

24
25 77. This defendant denies the partial and selective
26 characterization of the Report, which is a written document
27 and speaks for itself.
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 14

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1 78. This defendant denies the allegations of
2 paragraph 78 as they pertain to the City and lacks
3 knowledge or information sufficient to form a belief as to
4 the truth of the allegations as they pertain to other
5 defendants.
6

7 79. This defendant admits that the City Council
8 adopted Resolution 97-2 on January 13, 1997 (not 1998) but
9 denies the partial and selective characterization of the
10 Resolution, which is a written document and speaks for
11 itself.
12

13 80. - 84. Answering paragraphs 80 through 84, the
14 City denies the characterization of Coopers & Lybrand's
15 engagement, lacks knowledge or information sufficient to
16 form a belief as to what Coopers & Lybrand knew or
17 understood other than is disclosed by them in their report,
18 and denies the partial and selective characterization of
19 the Report in deference to the written document, which
20 speaks for itself.
21

22 85. Answering paragraph 85, this defendant admits
23 that it knew of the Coopers & Lybrand Report prior to
24 issuance of the Bonds, but states that due to delays caused
25
26
27
28

1 by others it was provided with the report only on the eve
2 of its adoption of Ordinance C31823 and after it had been
3 pressured, due to claimed emergencies, to adopt resolutions
4 preliminary to the ordinance; this defendant further states
5 that the Report was only one piece of the information it
6 had been collecting and considered in making decisions over
7 a period of many months. This defendant denies the
8 remaining allegations of paragraph 85.

11 86. - 88. Answering paragraphs 86 through 88, the
12 City admits that it adopted Ordinance C31823 on January 27,
13 1997, which was after it had received the Auble and Barrett
14 appraisals, the Sabey Corporation communications and the
15 Coopers & Lybrand report. This defendant denies the
16 remaining allegations of the paragraphs, including the
17 partial and selective characterizations of the Ordinance,
18 which is a written document and speaks for itself.

21 89. This defendant denies the allegations of
22 paragraph 89.

24 90. - 91. Answering paragraphs 90 and 91, this
25 defendant denies the allegations as they pertain to the
26 City. The City lacks knowledge or information sufficient
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 16

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1 to form a belief as to the truth of the allegations as they
2 relate to other defendants.

3 92. This defendant denies the allegations of
4 paragraph 92.
5

6 93. - 94. Answering paragraphs 93 and 94, this
7 defendant denies the allegations as they pertain to the
8 City. This defendant lacks knowledge or information
9 sufficient to form a belief as to the truth of the
10 allegations as they relate to other defendants.
11

12 95. - 96. This defendant lacks knowledge or
13 information sufficient to form a belief as to the truth of
14 the allegation that Prudential provided the Plaintiffs with
15 copies of the Official Statement. This defendant denies
16 the remaining allegations of paragraphs 95 and 96.
17

18 97. Answering paragraph 97, this defendant admits
19 that the rating agency Standard & Poors stated it would
20 give the Bonds a BBB- investment grade rating. This
21 defendant denies the remaining allegations of paragraph 97.
22

23 98. Answering paragraph 98, this defendant admits
24 that the renovation was expected to be conducted in two
25 phases and that Garage renovation and expansion was to
26
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28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 17

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1 occur in the first phase, and admits that parking revenues
2 were expected to increase as tenant space was increasingly
3 occupied. This defendant denies the remaining allegations
4 of paragraph 98, including, in some cases, because it lacks
5 knowledge or information sufficient to form a belief as to
6 the truth of the allegations.
7

8
9 99. Answering paragraph 99, this defendant admits
10 that before transfer of ownership of the Garage was
11 completed, AMC made objections in writings that were
12 circulated among certain defendants, and that in some cases
13 City employees were provided with copies of such writings,
14 which are written documents and speak for themselves. This
15 defendant denies the remaining allegations as they pertain
16 to the City and specifically denies that it was involved
17 in the transfer of ownership of the Garage.
18

19
20
21 100. Answering paragraph 100, this defendant denies
22 that it was a party to any agreement of the sort alleged or
23 that it had any right or opportunity to participate
24 therein, and denies the remaining allegations as they
25 pertain to the City. This defendant lacks knowledge or
26
27
28

1 information sufficient to form a belief as to the truth of
2 the allegations as they relate to other defendants.

3 101. This defendant denies the allegations of
4 paragraph 101 as they relate to the City, including the
5 characterization of the Authority as controlled by the
6 City. This defendant lacks knowledge or information
7 sufficient to form a belief as to the truth of the
8 allegations as they relate to other defendants.
9

10 102. Answering paragraph 102, this defendant denies
11 that delays in construction made it reasonably appear that
12 reduced Garage revenues were caused solely by construction
13 delays, but admits that construction delays could
14 reasonably appear to be one contributing factor. This
15 defendant admits the remaining allegations of paragraph
16 102.
17

18 103. This defendant admits that Standard & Poors
19 downgraded the Bonds on or about February 1, 2000 from BBB-
20 to BB-, but denies the partial and selective
21 characterization of the ratings report in deference to the
22 written document, which speaks for itself.
23
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1 104. This defendant lacks knowledge or information
2 sufficient to form a belief as to the truth of the
3 allegations of paragraph 104 and therefore denies the same.
4

5 105. This defendant denies the allegations of
6 paragraph 105, including as being vague in the use of the
7 description "new."
8

9 106. This defendant admits the allegations of
10 paragraph 106.

11 107. Answering paragraph 107, this defendant lacks
12 knowledge or information sufficient to form a belief as to
13 the truth of the allegations concerning Prudential's
14 characterization of the City Council's action on April 26,
15 2000. This defendant denies the remaining allegations of
16 paragraph 107.
17

18 108. - 109. This defendant lacks knowledge or
19 information sufficient to form a belief as to the truth of
20 the allegations of paragraphs 108 and 109.
21

22 110. This defendant denies Plaintiffs'
23 characterization "substantial amount of the fraud addressed
24 in this Complaint" and incorporates its foregoing denials.
25 This defendant admits the alleged timing of the KXLY and
26
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 20

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1 Camas magazine reports, as well as the establishment of
2 related web sites.

3 111. - 112. This defendant lacks knowledge or
4 information sufficient to form a belief as to the truth of
5 the allegations of paragraphs 111 and 112.
6

7 113. Answering paragraph 113, this defendant denies
8 any allegation that it was involved in concealment.
9

10 Defendant lacks knowledge or information sufficient to form
11 a belief as to the truth of the remaining allegations.
12

13 114. Defendants admit the allegations of paragraph
14 114.

15 115. Answering paragraph 115, this defendant admits
16 the allegations of the first sentence of the paragraph but
17 denies the remaining allegations.
18

19 116. - 117. Answering paragraphs 116 and 117, this
20 defendant denies the allegations as they pertain to the
21 City and lacks knowledge or information sufficient to form
22 a belief as to the truth of the allegations as they relate
23 to other defendants.
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FIRST CLAIM FOR RELIEF

118. This defendant incorporates its answers to the preceding paragraphs.

119. - 126. This defendant denies all allegations as they pertain to the City and any person or entity alleged or determined to be its employee or agent. The allegations relating to other parties require no response by this defendant.

SECOND CLAIM FOR RELIEF

127. This defendant incorporates its answers to the preceding paragraphs.

128. - 134. This defendant notes that paragraphs 128 through 134 require no response at this time by this defendant, but in any event denies all allegations to the extent they might be read to pertain to the City and any person or entity alleged or determined to be its employee or agent.

THIRD CLAIM FOR RELIEF

135. This defendant incorporates its answers to the preceding paragraphs.

1 3. Plaintiffs have failed to satisfy the condition
2 precedent of filing a 60-day notice of claim with the City
3 as required by applicable law.
4

5 4. Plaintiffs' claimed losses were caused by other
6 market factors and the acts or omissions of other parties,
7 and not by the acts or omissions of this defendant.
8

9 5. Plaintiffs' claims are barred by the doctrines of
10 res judicata or collateral estoppel.
11

12 6. Any damages suffered by Plaintiffs were the
13 proximate result of the negligence of persons other than
14 this defendant, for whom this defendant is not responsible.
15

16 7. This defendant is not jointly and severally
17 liable for any damages suffered by Plaintiffs.
18

19 8. Plaintiffs' claims are barred by laches.
20

21 9. Plaintiffs' claims are barred by the estoppel and
22 waiver.
23

24 COUNTERCLAIMS AND CROSS-CLAIMS

25 By way of counterclaim against the Plaintiffs and
26 cross-claim against the other defendants, the City of
27 Spokane alleges as follows:
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 24

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1 1.1 For many years the Developers have owned River Park
2 Square and the adjacent Parking Garage.

3 1.2 At some point in the early 1990s, the Developers
4 decided to redevelop River Park Square and the Parking Garage.
5 The redevelopment involved building a new and larger retail
6 space for Nordstrom (an existing tenant), adding new retail
7 stores and entertainment uses, and expanding the Parking
8 Garage.
9

10 1.3 By early 1995, the Developers began to empty River
11 Park Square of tenants so that it could be remodeled.
12

13 1.4 By early 1995, the Developers had hired Walker,
14 through Robideaux or other agents, to develop a pro forma
15 statement of net operating income for the Parking Garage.
16

17 1.5 Walker had previously provided consulting services
18 for other Nordstrom-related projects.
19

20 1.6 After the Developers and their agents had the pro
21 forma statements in hand, they approached the City about a
22 public-private partnership to redevelop River Park Square. By
23 no later than the first half of 1995, City representatives and
24 the Developers were engaged in extensive communication over
25 possible City contributions to the redevelopment project.
26
27
28

1 1.7 Initially, the Developers asked that the City apply
2 for a \$23 million \$108 HUD loan and a HUD EDI grant of \$3.6
3 million. The City agreed, although a loan request that size
4 would consume the entire \$108 community development loan funds
5 available to the City, pending repayment by the Developers.
6

7 1.8 HUD eventually approved Spokane's request for the
8 \$108 loan. HUD also made a \$1 million EDI grant to Spokane to
9 apply to a debt service reserve for its HUD loan.
10

11 1.9 Later in 1995, the Developers suggested that the City
12 assume financial responsibility for the renovations and
13 expansion of the Developers' Parking Garage.
14

15 1.10 Initially, the Developers, through their agents,
16 proposed to sell the existing Parking Garage to the City, lease
17 the real property under the Parking Garage to the City for the
18 useful life of the garage, and rely upon the City to build the
19 expansion and improvements. The costs were projected by the
20 Developers' agents to be as follows:
21
22

23	Sale price offered for existing garage:	\$4.8 million
24	Cost to City of structural improvements:	\$2 million
25	Lease rate offered for underlying ground:	\$320,000/year

26 The Developers projected that the City could accomplish what
27 was necessary to acquire, renovate and expand the Parking
28

1 Garage by issuing \$14 million in principal amount of revenue
2 bonds.

3
4 1.11 In a June 2, 1995 letter, Roy Koegen of Perkins Coie
5 LLP, Bond Counsel for the City (hereafter "Bond Counsel")
6 notified counsel to the Developers that the City would need to
7 retain a consultant independently to review projected revenues
8 and expenses for the project.

9
10 1.12 On June 12, 1995, the Spokane City Council (the
11 "Council") passed a resolution authorizing and directing the
12 City Manager to develop a proposal to acquire and develop the
13 Parking Garage through the issuance of revenue bonds. The
14 Council's resolution provided that the proposal should require
15 the issuance of no more than \$15 million in principal amount of
16 bonds, repayable exclusively from Parking Garage revenues. A
17 true and correct copy of Resolution 95-74, passed June 12, 1995
18 is attached as Exhibit A.

19
20
21
22 1.13 The Council recognized the need for independent
23 expertise on the financial feasibility of the Parking Garage
24 project, and on June 26, 1995 it authorized the City Manager to
25 negotiate a contract with Walker to conduct such a feasibility
26 study for the Parking Garage.
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 27

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1 1.14 The Council's resolution also authorized the City
2 Manager to contract for Walker to perform a construction review
3 of the Parking Garage.
4

5 1.15 Walker was known to the City to be the preeminent
6 national consulting firm on garage design and operations. The
7 Council necessarily would rely, and did rely, on Walker's
8 superior knowledge in making decisions about participating
9 financially in the Parking Garage project.
10

11 1.16 The contract between the Council and Walker expressly
12 recited the City's reliance on Walker's expertise, including
13 the fact that Walker's analysis would be included in any
14 Official Statement for bonds issued to finance the Parking
15 Garage acquisition, rehabilitation and expansion.
16
17

18 1.17 Among the expert services Walker was to provide were
19 to recommend a parking rate structure, project annual operating
20 expenses, and, on the basis of parking demand estimates it
21 would generate, project the annual net operating income for the
22 Parking Garage for a ten-year period.
23

24 1.18 Another service to be provided by Walker was to
25 provide its expert estimate of construction costs, contingency
26
27
28

1 costs, consulting fees and financing costs associated with the
2 Parking Garage renovation and expansion.

3
4 1.19 Walker committed by contract to perform its services
5 in accordance with generally accepted engineering and
6 consulting standards. In those cases where it relied upon
7 information or assumptions provided by others, it promised to
8 exercise its professional skill and judgment to determine the
9 reasonableness of that information or those assumptions. A
10 true and correct copy of the Consultant Agreement between the
11 City and Walker is attached as Exhibit B.
12
13

14 1.20 The Developers and their agents had made the case to
15 the City that a purchase price for the Parking Garage
16 determined by a traditional fair market value appraisal would
17 not adequately compensate the Developers for the value of the
18 Parking Garage where, through the Developers' substantial
19 promised investment in the adjacent retail center, they would
20 deliver a Parking Garage capable of generating greatly-
21 increased revenues.
22
23

24 1.21 The Developers persuaded the City to commission
25 appraisals that dropped customary appraisal consideration of
26 comparable sales, replacement cost and income analysis, and
27
28

1 which relied instead on a seldom-used projected income analysis
2 approach known as an "investment appraisal."

3
4 1.22 The "investment appraisal" approach dispensed with
5 income analysis based on historical performance or industry
6 norms, and instead relied on the income projections unique to
7 the project which had been prepared by Walker. It also
8 operated to transfer the benefit of the City's favorable
9 borrowing rate and lesser profit motive from the City to the
10 Developers. Thus, while a private investor would have insisted
11 on a lower purchase price in order to cover its higher
12 borrowing cost and desired rate of return, the City was
13 expected, through the investment appraisal approach, to forego
14 the lower "fair market value" purchase price that would have
15 been required by a private purchaser.
16
17
18

19 1.23 On April 9, 1996, in a project start-up meeting
20 between Walker and City staff, Walker was asked to meet, and
21 later that day did meet with the appraisers who may be engaged
22 to provide appraisals to the Council. The appraisers were told
23 during the meeting, with Walker representatives present, that
24 any appraiser engaged would be expected to render an investment
25 appraisal based on Walker's operating projections.
26
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28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 30

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1 1.24 Walker was on notice that its revenue projections
2 would be unusually material to the City in making
3 determinations whether to participate financially in the
4 Parking Garage project. Walker was on notice that its
5 projections would be relied upon not only in projecting the
6 future financial performance of the Parking Garage, but would
7 drive the values for the Parking Garage being provided by the
8 appraisers.
9

10
11 1.25 On June 14, 1996, Walker issued its feasibility
12 analysis ("the Feasibility Analysis"). The Feasibility
13 Analysis projected revenues from the renovated and expanded
14 Parking Garage at levels dramatically higher than historic
15 levels.
16
17

18 1.26 The City thereafter contracted with Walker to perform
19 a public use parking study for the Parking Garage. On October
20 16, 1996, Walker issued its public use study (the "Public Use
21 Study.") The Public Use Study concluded that parking demand
22 at public buildings located in the immediate vicinity of the
23 Parking Garage exceeded their parking capacity by 1,000 spaces,
24 and that patrons of these buildings would undoubtedly park in
25 the Parking Garage.
26
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 31

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1 1.27 Although Walker was hired to conduct independent
2 review, Walker did not disclose to the City in any meaningful
3 way, if at all, the existence and extent of its business
4 relationships with Nordstrom, the Developers and Robideaux, or
5 the existence of the prior study performed for the Developers
6 and Robideaux.
7
8

9 1.28 Neither the Developers nor Robideaux disclosed to the
10 City in any meaningful way, if at all, either Walker's prior
11 relationship with Nordstrom, the Developers and Robideaux, or
12 the existence of the prior study performed for the Developers
13 and Robideaux.
14

15 1.29 The revenues projected by Walker in the Feasibility
16 Analysis relied upon assumptions about rates and duration of
17 stay that were materially more aggressive than those employed
18 in its 1995 work for the Developers.
19

20 1.30 Walker's parking demand projections failed to account
21 meaningfully, if at all, for price competition by on-street
22 parking and other lots and garages, or, in the case of cinema
23 parking demand, for competition by movie theaters offering free
24 parking.
25
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28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 32

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1 1.31 Walker was aware in preparing its feasibility
2 analysis that validation programs for downtown parking had
3 varied in the past and that the details of any future
4 validation program had not been determined. Walker knew, or
5 could have determined and should have known, that there were
6 political and financial obstacles to the downtown business
7 improvement district's subsidizing a validation program at the
8 parking volumes Walker projected. On information and belief,
9 Walker did not attempt to determine from Robideaux or the
10 Developers whether retail tenants of the River Park Square
11 expected to bear the cost of subsidizing a validation program.
12

13
14 1.32 Walker represented in its feasibility study that
15 because of the uncertainties about any future validation
16 program, its assumption in formulating revenues was that there
17 would be no such program. On information and belief, while
18 Walker assumed no validation program would exist for purposes
19 of projecting that the Parking Garage operator would not
20 discount rates, it did not carry that "no validation program"
21 assumption through in to the balance of its work, including its
22 projection of a reasonable rate structure and parking volumes.
23 Walker did not disclose, in its Feasibility Analysis or
24
25
26
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ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 33

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1 otherwise, that its stated assumption that there would be "no
2 validation program" was being inconsistently applied.

3 1.33 Neither Walker, the Developers nor Robideaux
4 meaningfully disclosed to the City, if at all, the dramatic
5 difference between the assumptions and conclusions reached in
6 its 1995 work for the Developers and its June 1996 assumptions
7 and conclusions reported to the City.
8
9

10 1.34 Neither Walker, the Developers nor Robideaux
11 meaningfully disclosed to the City that Walker's 1996
12 assumptions and conclusions reported to the City were extremely
13 aggressive and there was substantial risk that the revenues
14 projected by its feasibility study might never be reached, even
15 if the retail portion of the River Park Square project proved
16 successful.
17
18

19 1.35 Although Walker, Robideaux and the Developers later
20 contended that a validation program was important to the Walker
21 projections (even though Walker said that it assumed no
22 validation program) neither Walker, Robideaux nor the
23 Developers disclosed to the City information about retail
24 tenants' and prospective retail tenants' attitudes and
25 understandings concerning parking costs and validation
26
27
28

1 programs. For example, and on information and belief,
2 Robideaux and the Developers knew or should have known that the
3 cinema tenant did not understand its patrons would be required
4 to pay to park in the Parking Garage, and knew or should have
5 known through its lease negotiations with other retail tenants,
6 including Nordstrom, that they were unlikely to be willing to
7 make any substantial contribution to a validation program.
8 Robideaux and the Developers failed to disclose this
9 information to the City.

10
11
12
13 1.36 By October 1996, City staff had reached a proposed
14 basis on which the City would participate in the Parking Garage
15 renovation and expansion. It was expected that the Developers
16 would oversee the renovation and expansion of the Parking
17 Garage. The City would issue revenue bonds sufficient to
18 purchase the renovated and expanded Parking Garage from the
19 Developers. The proposed approach was reflected in three
20 proposed ordinances, Ordinances 31763, 31764 and 31765. True
21 and correct copies of Ordinances 31763, 31764 and 31765 are
22 attached as Exhibit C.
23
24
25

26 1.37 Under the revenue bond approach as reflected in
27 Ordinances 31763, 31764 and 31765, the City would not pledge
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 35

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1 its general credit in payment of the Parking Garage bonds.

2 Only Parking Garage revenues would be dedicated to repayment of
3 bond principal and interest.
4

5 1.38 The public hearing on the City's participation in the
6 off-street parking project, which was required, *inter alia*, by
7 RCW 35.86.050, was held on October 17, 1996. Ordinances 31763,
8 31764 and 31765 were before the Council for consideration at
9 that time.
10

11 1.39 A representative of Prudential Securities testified
12 at the public hearing that revenues derived from operation of
13 the Parking Garage would be applied first to pay operating
14 expenses, which he characterized as a typical flow of funds for
15 revenue bonds. The Prudential representative and the
16 Developers' representative also testified that to enhance the
17 creditworthiness of the bonds, the Developers had agreed that
18 payment of one operating expense - ground rent - would be
19 subordinated to payment of debt service.
20
21
22

23 1.40 Glen Edwards, a representative of Walker Parking,
24 also made a presentation at the public hearing, and testified
25 regarding the methodology employed by Walker to arrive at
26 "realistic" parking ratios. Edwards' testimony to the Council
27
28

1 on parking demand, as reported in the Transcript of Council
2 Proceedings (October 17, 1996) at p. 13, included the
3 following:
4

5 . . . The conclusion was that if the developments that are
6 on the table proceed, the parking demand will exceed the
7 parking supply during the week, during weekdays, during
8 the day will be - the garage, River Park Square, will fill
9 up and there will be 5,200 cars looking for a place to
10 park.

11 In the evening peak at 9:00, will be in the neighborhood
12 of 2- to 300 cars, the garage fills up and 2- to 300 cars
13 looking for a place to park.

14 On Saturday, which is the peak on the weekend, the garage
15 fills up - the demand is much higher on Saturday, and the
16 garage fills up and there will be 500 cars running around
17 looking for a place to park. So the demand is very high
18 on Saturday.

19 1.41 A number of citizens present at the October 17, 1996
20 public meeting testified against the City's financial
21 participation in the Parking Garage project, which was becoming
22 increasingly controversial. Most Council members viewed the
23 redevelopment project favorably, but stated that their support
24 of City financial participation was conditioned on being
25 satisfied of the project's viability and the City's protection
26 from financial risk.

27 1.42 It was resolved at the October 17, 1996 public
28 meeting to engage a second consultant to prepare a financial

ANSWER, COUNTERCLAIM, CROSS-
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OF CITY OF SPOKANE - 37

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1 study of the entire River Park Square project, as well as
2 financial review of the Walker studies and Parking Garage
3 appraisals.
4

5 1.43 By late October 1996, Coopers & Lybrand had been
6 identified to perform the study and review, and had submitted a
7 project proposal, including the extensive financial information
8 it would need in order to conduct its work. Coopers &
9 Lybrand's proposal projected that its work would take four to
10 six weeks to complete.
11

12 1.44 The Developers objected to providing much of the
13 financial information required by Coopers & Lybrand.
14 Negotiations then ensued towards developing a confidentiality
15 agreement under which the Developers would provide Coopers &
16 Lybrand with access to the necessary financial information.
17

18 1.45 Although the City's advance agenda for October 28,
19 1996 contemplated further consideration of the City revenue
20 bond proposal, consideration was deferred at that meeting. The
21 City later abandoned the concept of using revenue bonds to
22 purchase the garage.
23

24 1.46 At a meeting on November 25, 1996, City Manager Bill
25 Pupo testified on a new financing structure under which the
26
27
28

1 City would not be the issuer of Parking Garage revenue bonds.
2 Rather, a non-profit corporation would be established to issue
3 the bonds.
4

5 1.47 Pursuant to the provisions of IRS Revenue Ruling 63-
6 20, interest on the non-profit corporation's bonds would be
7 tax-exempt so long as the non-profit corporation was acquiring
8 the Parking Garage for a public purpose and would give the
9 Parking Garage to the City of Spokane, at no cost, once the
10 Parking Garage bonds were retired.
11

12
13 1.48 Mayor Jack Geraghty introduced discussion of the new
14 financing structure by testifying that following the public
15 meeting on October 17, 1996, the City had been looking at ways
16 to ensure a mechanism the would be "as risk-free to City
17 taxpayers as possible." The Developers' counsel testified at
18 the hearing that the structure arrived at over the prior month
19 as one that would minimize "City involvement" to the greatest
20 extent possible, in an effort to "distance the City in terms of
21 its financial exposure as much as possible."
22

23
24 1.49 In order to make this tax-advantaged financing method
25 available to the non-profit corporation, Pupo testified that
26 the City would need to agree to accept ownership of the Parking
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 39

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1 Garage once the bonds were fully repaid. Pupo also explained
2 during the course of the Council meeting that the City was
3 considering a contingent pledge to loan its parking meter
4 revenues, in the event Parking Garage revenues were
5 insufficient to make payment of operating expenses, including
6 ground rent.
7

8
9 1.50 Although attendance at the November 25, 1996 meeting
10 was low due to a severe ice storm suffered by Spokane the prior
11 week, the Council resolution approving the new financing
12 structure was prominently reported the next day in the City's
13 daily newspaper, owned by an affiliate of the Developers. The
14 Council action was described, in part, as follows:
15

16
17 After months of negotiations with developers, council
18 members settled on a way of helping fund redevelopment of
19 River Park Square that substantially limits the City's
20 responsibility.

21
22 Parking fees generated by the River Park Square garage
23 will pay for the revenue bond debt, operation and
24 maintenance, and ground and building leases. No tax
25 dollars will be used to repay the debt. When the debt is
26 paid, the city will own the garage.

27 The new funding arrangement was reached after the council
28 balked at issuing \$30 million worth of revenue bonds in
the city's name to pay for the garage. Under that
proposal, the city would have also rented the land under
the garage for 20 years.

1 "Three months ago, there was no way on earth I would've
2 supported it," said Councilman Mike Brewer of the previous
3 proposal. "We've come to a different solution. This can
4 work."

5 But the city has not been left completely out of the deal.
6 If money for operation and maintenance or the ground lease
7 falls short, the city will make up the difference with
8 money from its parking meters.

9 1.51 A mutually agreeable confidentiality agreement under
10 which Coopers & Lybrand could perform its review work was not
11 reached with the Developers until late December 1996.

12 Resolution of the confidentiality issues significantly delayed
13 Coopers & Lybrand's ability to obtain full financial
14 information and meaningfully commence its work.

15 1.52 Ordinance C-31823, the off-street parking ordinance
16 whereby the City would, *inter alia*, agree to accept title to
17 the Parking Garage in the future, agree to create a Parking
18 Meter Fund and agree to contingently pledge its Parking Meter
19 Revenues, had its first reading at the Council meeting of
20 January 13, 1997. A true and correct copy of Ordinance C-31823
21 is attached as Exhibit D.

22 1.53 The trigger for the City's contingent pledge to loan
23 Parking Meter Revenues as presented at that meeting and
24 thereafter adopted by the Council was as follows:
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26
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ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
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1 " . . . [I]n the event Parking Revenues [defined as "all
2 income, receipts and revenues received by the Authority
3 through the ownership and operation of the Facility,
4 including investments [sic] earnings on money in the
5 Revenue Fund"] are insufficient to make Ground Lease
6 Payments and pay Operating Expenses, the City shall loan
7 money from the Parking Meter Revenue Fund . . ."

8 By the terms of Ordinance C-31823, read at that meeting and
9 thereafter adopted by the Council, the City specifically did
10 not pledge any assets of the City to the payment of principal
11 of or interest on the bonds.

12 1.54 Under Ordinance C-31823, as read at the January 13
13 meeting and thereafter adopted, if Parking Revenues are less
14 than the sum of Ground Lease Payments and Operating Expenses,
15 then the contingency is satisfied. Under these circumstances,
16 the Ordinance provides that the City will loan funds to the
17 AUTHORITY to make up the deficiency in Parking Revenues.
18

19 20 1.55 If on the other hand, Parking Revenues are greater
21 than or equal to the sum of Ground Lease Payments and Operating
22 Expenses, then the contingency is not satisfied. Under these
23 circumstances, the Ordinance creates no obligation to loan
24 funds to the Authority, because there is no deficiency in
25 Parking Revenues.
26
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
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1 1.56 The Authority's inability to pay principal and
2 interest on the Foundation's bonds does not trigger the City's
3 contingent pledge to loan. Debt service is not part of the
4 comparison of Parking Revenues with the sum of Ground Lease
5 Payments and Operating Expenses. The language of the Ordinance
6 does not decrease or offset Parking Revenues by the amount of
7 debt service, nor does it augment Ground Lease Payments or
8 Operating Expenses by the amount of debt service.
9

10
11 1.57 The language that the City would "loan" money to the
12 Authority if the contingent pledge were triggered was
13 intentionally selected, reflecting a revision from a prior
14 draft of the ordinance that had provided the City would
15 "transfer" money to the Authority in that event.
16
17

18 1.58 At the January 13, 1997 meeting, testimony by Bond
19 Counsel and questioning by the mayor underscored the fact that
20 the contingent loan pledge would not cover any insufficiency of
21 the revenues to pay debt service. The testimony and
22 questioning appear at Transcript of Council Proceedings
23 (January 13, 1997) pp. 265-266 (emphasis added):
24
25

26 [BOND COUNSEL]: . . . [T]he money will not leave the City
27 of Spokane at any time unless the revenues received by the
28 public development authority from the garage and only at

ANSWER, COUNTERCLAIM, CROSS-
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1 that time are insufficient to pay, again, only lease
2 payments and operational costs.

3 There's not an obligation on behalf of the city to make
4 any deposits or to accumulate any money, it's only
5 available if and only if the garage revenues are
6 insufficient and, again, only insufficient to make rent or
7 lease payments and operating costs, not debt service.

8 THE MAYOR: Not debt service, that is important . . .

9 1.59 At the January 13, 1997 hearing, the parties'
10 reliance on the Walker projections was again underscored. Bond
11 Counsel testified as follows, according to the Transcript of
12 City Council Proceedings (January 13, 1997) at pp. 261-262:

13 [BOND COUNSEL]: When the bonds are repaid, the money
14 accumulated by the public development authority, which is
15 projected to be significant, will revert back to the City
16 of Spokane.

17 So not only will the City receive the garage unencumbered,
18 all accumulated revenues, after paying debt service,
19 operating costs and rent, will be accumulated and returned
20 to the city for street purposes.

21 2.57 Elizabeth Cowles, on behalf of the Developers,
22 conveyed the Developers' shared belief that the City's pledge
23 would not be triggered by financial operation of the Parking
24 Garage, testifying as follows according to the Transcript of
25 City Council Proceedings (January 13, 1997) at p. 279:

26 . . . [T]he city is not issuing the bonds, it's being done
27 by the Spokane Downtown Foundation, an independent non-
28

ANSWER, COUNTERCLAIM, CROSS-
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profit, it's private investors that will buy the bonds; it is garage revenue that will repay those bonds.

Fourth, the statement that we as a developer receiving a gift of public money or that this is simply corporate welfare, that is a very easy turn of phrase, and all I want to say is it's simply false and unfair.

The city is contingently pledging parking meter revenue, not tax money, and they're pledging it to the PDA. That money will only be used if the garage revenue is insufficient to cover land rent, operation and maintenance, and that is highly unlikely to happen, as Mr. Koegen pointed out.

Thus, the Developers clearly understood that the contingency that would trigger the City's pledge to loan involved a comparison of Parking Revenues and the sum of Ground Lease Payments and Operating Expenses.

1.60 Although the Council could not act on Ordinance C-31823 at the January 13, 1997 meeting, it did act on resolutions reflecting its intention to move toward adoption of the ordinance so long as the Coopers & Lybrand analysis did not identify some unforeseen unfeasibility.

1.61 Ordinance C-31823 was scheduled for final consideration at the Council meeting of January 27, 1997. Only on the eve of that final hearing did the Council receive the Coopers & Lybrand analyses.

1 1.62 Although the Coopers & Lybrand analyses raised new
2 questions about the project, which some citizens urged required
3 additional review and consideration, the Developers and the
4 Developers' agents insisted at the January 27, 1997 meeting
5 that a vote must be taken on the ordinance that night. The
6 Developers and their agents testified that a true emergency
7 existed and that any further delay, no matter how short, would
8 literally determine whether they could go forward with the
9 project. These representations of urgency were consistent with
10 representations that had been made by the Developers over the
11 prior couple of months that timing was becoming critical.

12 1.63 The City relied upon the representations of the
13 Developers and the Developers' agents that the Council must
14 make a final decision at the January 27, 1997 meeting.

15 1.64 In reliance on those representations of an emergency,
16 Council members were required to forego full or careful
17 consideration of the Coopers & Lybrand materials submitted to
18 them shortly prior to the January 27, 1997 Council meeting, in
19 deference to the conclusions of Walker.

20 1.65 The Council members' decision to defer to the
21 conclusions of Walker was reasonable in light of Walkers'

1 special expertise on parking matters, and the fact that the
2 Parking Garage, as to which Coopers & Lybrand claimed no
3 special expertise, was only one aspect of Coopers & Lybrand's
4 more far-ranging analysis.
5

6 1.66 At the conclusion of discussion of the project at the
7 January 27 hearing, the Council passed Ordinance C-31823,
8 committing the City, *inter alia*, to make loans to the Authority
9 from Parking Meter Revenue or other available funds in the
10 event Parking Revenues were insufficient to pay Operating
11 Expenses and Ground Rent.
12
13

14 1.67 True to characterizations of the new financing
15 structure at the November 25, 1996 Council meeting, Ordinance
16 C-31823 - if construed to mean what it says -- did
17 substantially reduce the City's financial exposure over the
18 prior revenue bond proposal. Parking Revenues were projected to
19 be well more than the sum of Operating Expenses and Ground
20 Rent.
21
22

23 1.68 Prior to the January 27, 1997 meeting at which
24 Ordinance C-31823 was adopted, some members of the Council had
25 become aware that lease arrangements between the as-yet-to-be
26 reactivated Authority and the Foundation were contemplated by
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 47

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1 the underwriter and Bond Counsel to reflect a flow of funds
2 under which the Authority would pay debt service prior to other
3 expenses. On information and belief, Coopers & Lybrand was
4 also apprised by Bond Counsel or others of this as-yet-
5 unadopted flow of funds. Any private understandings and
6 beliefs on the part of Council members about the flow of funds
7 were not disclosed at Council meetings in ways that would
8 contradict the language of the Ordinance and the public meeting
9 record and are irrelevant as a matter of law to the meaning of
10 Ordinance C31823.
11
12
13

14 1.69 In the Council's public meetings prior to the
15 adoption of Ordinance C-31823 the contingent pledge to loan was
16 consistently and repeatedly characterized, consistent with its
17 express terms, as involving only a comparison of Parking
18 Revenues with Operating Expenses and Ground Rent. Debt service
19 was never discussed as being a part of the comparison.
20
21

22 1.70 To have treated debt service as part of the
23 comparison would have reduced the revenue coverage for the
24 Ground Rent and Operating Expenses and increased the financial
25 risk to the City. In the public meetings prior to the adoption
26 of Ordinance C-31823 there was never any disclosure that
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 48

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1 discussions between some Council members and Bond Counsel
2 outside Council meetings, concerning the contemplated terms of
3 future agreements, were viewed as giving Ordinance C-31823
4 anything other than its plain meaning.
5

6 1.71 On January 21, 1997, the Mayor appointed and Council
7 approved Authority board members.
8

9 1.72 In May 1997, the Authority Board adopted its first
10 resolution, approving its first proposed form of agreement by
11 which the Authority would lease the Parking Garage from the
12 Foundation.
13

14 1.73 The proposed lease agreement included a flow of funds
15 provision under which revenues received by the Authority would
16 be applied first to pay debt service, second to pay ground
17 rent, third to pay operating expenses, and thereafter to make
18 other types of payments.
19

20 1.74 Subject to statutory limitations the Authority could,
21 for itself, agree to this flow of funds, but it could not
22 thereby increase the magnitude or change the trigger for the
23 City's contingent loan pledge. The new flow of funds would
24 leave the Authority hoping to pay Operating Expenses and Ground
25 Rent out of the last and least predictable of the new revenues.
26
27
28

1 Since the City's loan obligation would be measured by what was
2 needed to pay Operating Expenses and Ground Rent as the "first-
3 paid" expenses, not the "last paid" expenses, the Authority was
4 taking the risk that even with a City loan, it would not have
5 enough to pay all of its expenses.
6

7 1.75 The Authority's promise to pay debt service before
8 other expenses invited the possibility that Parking Revenues
9 would be sufficient to pay Operating Expenses and Ground Rent;
10 the City's contingent pledge to loan Parking Meter Revenues
11 would therefore not be triggered; and yet, through the
12 Authority's prior payment of debt service, Parking Revenues
13 left over after that payment (hereafter "Net Parking Revenues")
14 would not be enough to pay Operating Expenses and Ground Rent.
15
16

17 1.76 The Council was never asked to amend, and never did
18 amend Ordinance C-31283 to provide that the trigger for a loan
19 would be the insufficiency of Parking Revenues to pay Debt
20 Service, then Operating Expenses and then Ground Rent.
21
22

23 1.77 In November 1997, the Washington Supreme Court
24 rejected a facial challenge to the City's participation in the
25 Parking Garage project that had been filed by Citizens for
26 Leaders with Ethics and Accountability Now! (CLEAN). In its
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 50

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1 decision issued on November 13, 1997 in *CLEAN v. City of*
2 *Spokane*, reported at 133 Wn.2d 455, the Supreme Court held,
3
4 *inter alia*, that the public purpose cited by the City in
5 adopting Ordinance C-31823 was at least debatable and the
6 City's determination of public purpose was entitled to
7
8 deference; and that while the parking garage did not serve a
9
10 "fundamental purpose" of government, there was no facial
11
12 showing that the City intended to donate funds or that the
13
14 consideration being received was grossly inadequate. The
15
16 decision of the Supreme Court in *CLEAN* did not address the
17
18 constitutionality of Ordinance C-31823 as applied.

15 1.78 In August 1998 the Authority approved the final form
16
17 of its Parking Facility Lease Agreement with the Foundation.

18 1.79 In August and September 1998, on the eve of the
19
20 Foundation's signing a bond purchase agreement and going to
21
22 market with the bonds, the City was continuing to receive
23
24 assurances that the Walker projections remained not only
25
26 realistic, but conservative. At a Council meeting on August
27
28 31, 1998, Bond Counsel told the Council that, based upon the
29
30 projections from nationally recognized feasibility consultants
31
32 as discounted by the City, the Parking Garage would be very

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 51

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1 profitable, and it was determined that the City's ratepayers
2 and taxpayers would be better served if those profits came to
3 the City for street repairs and other purposes than go into the
4 hands of a private party.
5

6 1.80 In a letter to the Mayor and Council dated September
7 14, 1998, Bond Counsel reiterated that the transaction "has
8 been carefully thought out and prudently structured based upon
9 conservative estimates."
10

11 1.81 The bonds were sold in September 1998 and the
12 proceeds were invested pending completion of the Developers'
13 construction of the Parking Garage.
14

15 1.82 In or about June 1999, and prior to the Foundation's
16 purchase of the Parking Garage, a dispute developed between
17 American Multi-Cinema, Inc. ("AMC") and the Developers over the
18 cost of patron parking in the Parking Garage. AMC threatened to
19 pull out of the River Park Square project.
20
21

22 1.83 Cinema patrons had been projected by Walker to be an
23 important source of projected parking revenues.
24

25 1.84 In light of the threat, Counsel for the Authority or
26 the Foundation secured an agreement from the Developers to
27 guarantee certain parking garage revenues in the event AMC
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 52

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1 pulled out of the project. AMC thereafter agreed to remain a
2 tenant, and the guarantee never became effective.

3
4 1.85 Counsel for the Authority and/or the Foundation were
5 told that the Developers had reached a settlement with AMC, the
6 terms of which the Developers refused to disclose, including to
7 the City. On information and belief, information known to the
8 Developers about AMC's complaints and position was material to
9 the feasibility of the rate structure recommended by Walker for
10 the Parking Garage and tenant satisfaction with that rate
11 structure, and would have foretold problems with the rate
12 structure that would surface within weeks after the Parking
13 Garage opened.
14
15

16
17 1.86 The information known by the Developers about the AMC
18 dispute and its settlement was material, but was not shared
19 with all members of the City Council.
20

21 1.87 The Parking Garage opened in September 1999.

22 1.88 On or about September 27, 1999, the Authority took
23 possession of the Parking Garage from the Foundation.
24

25 1.89 Almost immediately, parking rates had to be reduced
26 from the rate structure recommended by Walker.
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 53

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1 1.90 Almost immediately, Parking Revenues proved
2 insufficient to pay Operating Expenses and Ground Rent.

3 1.91 On October 18, 1999, the Council by resolution
4 approved a loan of \$200,000 to the Authority and an agreement
5 that called for repayment on or about December 31, 2000.
6

7 1.92 In months thereafter, Parking Revenues remained
8 insufficient to pay Operating Expenses and Ground Rent. The
9 Council approved a loan in February 2000 in the amount of
10 \$80,000 to pay Keyser Marston Associates, Inc. ("KMA"), a
11 consultant, for a study of future garage revenues, and again in
12 June 2000 when additional funds were needed for the Keyser
13 Marston study.
14

15 1.93 By February 1, 2000, it had become clear that the
16 Parking Revenues would not come anywhere near to covering all
17 of the Authority's expenses.
18

19 1.94 The Foundation's bonds have been downgraded twice by
20 bond rating agencies, first on or about February 1, 2000 and
21 thereafter on or about April 18, 2000, due to the substantial
22 shortfall of actual revenues from the revenues projected by
23 Walker.
24
25
26
27
28

1 1.95 Unaudited Authority operating results for 2000
2 reflect a year-end loss of in excess of \$1.8 million. The
3 Authority projects continuing losses, including a projected
4 \$1.8 million projected loss for 2001.

6 1.96 In February 2000, KMA and TDA, Inc. (together
7 referred to as "Keyser Marston") were retained by the Authority
8 to prepare a projection of the Parking Garage's net income for
9 the years 2000 through 2019.

11 1.97 On April 26, 2000, Keyser Marston delivered its
12 report to the Council.

14 1.98 The operating revenue projected by Keyser Marston is
15 much less than the revenue projected by Walker's Feasibility
16 Analysis, but approximately the same as projections Walker had
17 made for the Developers and their agents before Walker was
18 hired by the City.

20 1.99 The report concluded that the expenses associated
21 with operation of the Parking Garage were significantly greater
22 than what most garages must bear. Among the expenses
23 identified by Keyser Marston as significantly higher than what
24 would be expected were (1) debt service, which reflected a
25 purchase price much higher than the typical cost of building a
26
27
28

1 parking garage and (2) ground rent, which appeared to be based
2 on the assumption that the garage would generate higher
3 revenues than were being produced.
4

5 1.100 Given actual revenues and reasonable projected
6 future revenues, the ground rent provided by the ground lease
7 between the Developers and the Foundation, and which the
8 Foundation assigned to the Authority, is far above market
9 values.
10

11 1.101 On April 18, 2000, the Authority requested a new
12 loan of \$450,000 from the Council.
13

14 1.102 The Council, after considering substantial
15 public testimony and the Keyser Marston report, determined that
16 there was no realistic expectation that the Authority would
17 ever be able to repay any loan that the City might make to the
18 Authority. In an April 26, 2000 letter to counsel for the
19 Developers from the Council's then-attorney, Harry Schneider of
20 Perkins Coie, Schneider said:
21
22

23 Pursuant to the Ordinance, the City assumed a contingent
24 obligation to loan funds from the Parking Meter Revenue
25 Fund to the PDA. The PDA is now in default under
26 controlling agreements with the Foundation and it is the
27 City's understanding that the PDA stands no realistic
28 chance of ever repaying any funds loaned to it, including
those funds requested on March 28, 2000. Accordingly, the
City's obligation to "loan" funds to the PDA does not

1 arise because any transfer of funds under the present
2 circumstances would constitute a gift rather than a loan,
3 and any such action by the City Council to make a gift
4 would run counter to the express provisions of the
Ordinance.

5 Schneider went on to state that if the City could receive
6 assurances that an advance could be repaid, it would be willing
7 to pursue appropriate loan arrangements. No assurances were
8 forthcoming from the Authority or other parties.
9

10 1.103 The City's bond rating was downgraded on June 6,
11 2000 because of its unwillingness to make loans to the
12 Authority.
13

14 1.104 As of May 2000, Parking Revenues collected by
15 the Authority remained insufficient to pay Operating Expenses
16 and Ground Rent. On May 9, 2000, the Developers filed a
17 mandamus action in Spokane County against City Manager Henry
18 Miggins and City Attorney James Sloane under Cause No. 00-2-
19 20 02777-4. Following an ex parte hearing, the Court ordered
21 Miggins and Sloane to make a prescribed advance or show cause
22 on May 24, 2000 why they should not do so.
23

24 1.105 Following the May 24, 2000 hearing, the Superior
25 Court issued a Writ of Mandamus and Order directing Miggins and
26 Sloane to loan an amount sufficient to pay Ground Lease
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 57

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1 payments and the operations and maintenance costs relating to
2 the facility as of May 24, 2000.

3 1.106 Mr. Miggins and Mr. Sloane appealed the Writ and
4 Order and requested direct review by the Washington Supreme
5 Court and a stay pending appeal.

6 1.107 Based on unaudited operating results for the
7 Parking Garage reported to the Authority for 2000, Parking
8 Revenues finally became sufficient to cover Operating Expenses
9 and Ground Rent in July 2000, although they proved insufficient
10 in September and October 2000. Parking Revenues were
11 sufficient to cover Ground Rent and Operating Expenses in
12 November and December 2000.

13 1.108 The Washington Supreme Court reversed the Superior Court's decision
14 in the mandamus proceeding and vacated the writ of mandamus on February 16, 2001.

19 II. CLAIMS

20 First Claim - Declaratory Relief Re Scope of Loan Pledge 21 (Against All Parties)

22 2.1 Third Party Plaintiff realleges and incorporates
23 the allegations of paragraphs 1.1 through 1.108 as if fully
24 set forth herein.

25 2.2 The contingent loan pledge created by Ordinance
26 C-31823 is triggered only in the event "Parking Revenues"
27

28 ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 58

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1 are insufficient to make "Ground Lease Payments" and pay
2 "Operating Expenses" as those terms are defined in the
3 Ordinance.
4

5 2.3 "Parking Revenues" were insufficient to make
6 "Ground Lease Payments" and to pay "Operating Expenses"
7 from the time the Parking Garage opened in September 1999,
8 through year-end 1999.
9

10 2.4 On information and belief, based on unaudited
11 financial results for 2000 recently made available through
12 the Authority, "Parking Revenues" were insufficient to make
13 "Ground Lease Payments" and pay "Operating Expenses" from
14 January through June 2000, and in September and October
15 2000. Based on those unaudited financial results, "Parking
16 Revenues" were sufficient to make "Ground Lease Payments"
17 and pay "Operating Expenses" for the first time in July
18 2000, and were thereafter sufficient to pay those expenses
19 in August, November and December 2000.
20
21
22

23 2.5 In Ordinance C-31823 the City specifically did
24 not pledge any assets of the City to the payment of
25 principal or interest on the Foundation's bonds.
26
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 59

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1 2.6 In the several public meetings at which the off-
2 street parking ordinance was addressed prior to its
3 enactment on January 27, 1997, the structure of the
4 transaction that would ultimately be reflected in Ordinance
5 C-31823 was described as a structure that would
6 "substantially reduce" the financial risk to the City over
7 a revenue bond structure.
8
9

10 2.7 In the several public meetings at which the off-
11 street parking ordinance was addressed prior to its
12 enactment on January 27, 1997, the structure of the
13 transaction that would ultimately be reflected in Ordinance
14 C-31823 was never described as one whose financial risk to
15 the City was substantially similar to the City's risks
16 under a revenue bond structure.
17
18

19 2.8 The agreement by the Authority to make priority
20 payment of debt service from its available revenues did not
21 and could not operate to change the trigger for, or
22 magnitude of, the City's contingent pledge to loan funds to
23 the Authority.
24
25

26 2.9 There is an actual and existing controversy between
27 Third Party Plaintiff and the Plaintiffs over the meaning of
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 60

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1 the contingent loan pledge of Parking Meter Revenues created by
2 Ordinance C-31823.

3 2.10 The controversy potentially exists with the other
4 Defendants as well, all of who have an interest in the subject
5 matter.
6

7 2.11 Third Party Plaintiff and the Defendants have genuine
8 and opposing interests in this controversy.
9

10 2.12 Third Party Plaintiff and Defendants have direct and
11 substantial interests in this controversy.
12

13 2.13 Judicial determination of this controversy will be
14 final and conclusive.

15 2.14 The City seeks a determination that the contingent
16 pledge to loan Parking Meter Revenues provided by §9 of
17 Ordinance C-31823 is triggered only if, and to the extent to
18 which, all income, receipts and revenues received by the
19 Authority through the ownership and operation of the Parking
20 Garage are insufficient to make Ground Lease Payments and pay
21 Operating Expenses; and neither the trigger for the pledge nor
22 its magnitude is affected by the Authority's later decision to
23 contract with others to make priority payment toward debt
24 service.
25
26
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 61

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1 2.21 If the Court does not declare Ordinance C-31823 to
2 have the meaning requested by Third Party Plaintiff's First
3 Claim for relief, Third Party Plaintiff seeks the following
4 determinations:
5

6 2.22 If a contract was formed by Ordinance C-31823, it
7 was a contract to make a loan. The loan pledge is
8 unenforceable on the basis of lack of essential terms and
9 lack of mutual assent to the same terms (no meeting of the
10 minds).
11

12 2.23 Following the enactment of Ordinance C-31823, the
13 Authority unilaterally contracted to subordinate the City's
14 right to repayment of any loan to a variety of other
15 payments, including "profit-sharing" payments to others; it
16 entered into a lease providing for excessive ground rent;
17 it has realized operating results that make it virtually
18 impossible that the Authority will ever be able to repay
19 even the principal amount of any City loan, let alone
20 interest; and it has failed or been unable to respond to
21 the City's request for reasonable and reliable assurances
22 of repayment, including through a mutually agreeable
23 recasting of the parties' rights and responsibilities under
24
25
26
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 63

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1 the controlling agreements. The loan pledge is
2 unenforceable on grounds of failure of consideration,
3 impossibility, commercial frustration, failure of a
4 condition precedent, breach of a condition subsequent and
5 anticipatory repudiation.
6

7 2.24 Since the January 1997 adoption of Ordinance C-31823,
8 the following events, which had not occurred and were therefore
9 not a part of the record before the Washington Supreme Court in
10 *CLEAN v. City of Spokane*, have occurred:
11

- 12 ▪ The parking revenues projected to be achieved by Walker
13 have proved grossly overstated;
- 14 ▪ The ground rent ultimately agreed between the Foundation
15 and the Developer is far in excess of a fair market
16 value rent;
- 17 ▪ The City's rights to repayment by the Authority of any
18 loan were subordinated in the Authority's facility lease
19 to a variety of other payments;
- 20 ▪ On information and belief, the Developers invested
21 materially less in the Parking Garage than was
22 represented to the City by the Developers and by Walker;
- 23
- 24
- 25
- 26
- 27
- 28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 64

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- If the Developers rely for the constitutionality of the contingent loan pledge on their investment in the overall River Park Square project then, on information and belief, the Developers invested materially less in the River Park Square project than had been represented to the City would be invested;
- It is substantially more likely than not, based on current operating results, that the Authority will never be able to operate profitably or ever repay any City loan and, unless the Court determines that the City's contingent pledge to loan Parking Meter Revenues has the meaning identified in the First Claim, the cost of the City's pledge will be in the tens of millions of dollars; and
- Given the reduced construction investment in the Parking Garage and the absence of revenues to fund the restoration account, the Parking Garage will not have the value in 2019 promised (unless the City fully finances the required maintenance and repair), and the requirement that the City take possession of, and

1 operate the Parking Garage beginning in 2019 has become
2 a burden rather than a benefit.

- 3
4 ■ Based upon the poor financial performance of the Parking
5 Garage, there is a substantial likelihood that, as a
6 result of a default, the Bondholders or Developers will
7 elect rights of foreclosure or the Authority will be
8 required to seek bankruptcy protection, and the
9 ownership of the Parking Garage will never transfer to
10 the City.
11

12
13 As the various participants have effectuated the River Park
14 Square project, the consideration received by the City for its
15 contingent loan pledge is grossly inadequate and any future
16 loans made under these circumstances could only be made with
17 donative intent, and Ordinance C-31823 is therefore
18 unconstitutional under Washington Constitution Art. 8, §7.
19

20
21 Third Claim - Professional Negligence and Negligent
22 Misrepresentation
(Against Defendant Walker)

23 2.25 Third Party Plaintiff realleges and incorporates
24 the allegations of paragraphs 1.1 through 2.24 as if fully
25 set forth herein.
26
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 66

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1 2.26 As a consultant and professional engineering
2 firm, Walker owed a duty to use the ordinary care, skill,
3 diligence, judgment and knowledge commonly possessed and
4 exercised by a reasonable, careful and prudent
5 consultant/engineer in the performance of its business.
6

7 2.27 Walker breached its duty to the City by failing
8 to exercise reasonable care and skill in the performance of
9 its work for the City.
10

11 2.28 Walker breached its duty to the City by providing
12 the City with misinformation, and by omitting to disclose
13 to the City a variety of information material to the City's
14 decision-making in the absence of which its reports to the
15 City were misleading. The City reasonably relied upon such
16 misinformation in the course of its decision making.
17

18 2.29 As a proximate result of Walker's negligence in
19 its work for the City, including its negligent
20 representations, the City has been damaged in an amount to
21 be proved at trial.
22

23
24 Fourth Claim - Breach of Contract
25 (Against Defendant Walker)
26

27 2.30 Third Party Plaintiff realleges and incorporates the
28 allegations of paragraphs 1.1 through 2.29 as if fully set

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 67

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601 WEST RIVERSIDE AVENUE
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1 forth herein.

2 2.31 Walker entered into contracts with the City in April
3
4 1996 and November 1996.

5 2.32 Under the terms of its contracts with the City,
6 Walker contracted to perform specific tasks identified in the
7 scope of services, and to do so in accordance with generally
8 accepted engineering and consulting standards, including in
9 assessing the reasonableness of assumption information provided
10 by others.
11

12 2.33 Walker breached its contracts with the City by
13 failing to perform the tasks identified, and by failing to
14 perform such tasks as were performed with the contracted-for
15 level of care.
16
17

18 2.34 As a consequence of Walker's breach of its contracts
19 with the City, the City has been injured and suffered damages
20 in an amount to be proven at trial.
21

22 Fifth Claim - Indemnification
23 (Against Defendant Walker)

24 2.35 Third Party Plaintiff realleges and incorporates the
25 allegations of paragraphs 1.1 through 2.34 as if fully set
26 forth herein.
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
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1 2.36 In its contracts with the City, Walker agreed to
2 indemnify and hold harmless the City, its officers and
3 employees, against all claims for damages, liabilities, costs
4 and expenses arising out of Walker's negligent conduct.
5

6 2.37 The City has been subjected to claims for damages,
7 liabilities, costs and expenses arising out of Walker's
8 negligent conduct. The City has previously tendered to Walker,
9 and Walker has declined to accept, defense of all claims now
10 pending or hereafter asserted arising out of its financial
11 participation in the Parking Garage transaction to Walker.
12

13 2.38 As a consequence of Walker's indemnification, Walker
14 is liable for any damages suffered by the City, in an amount to
15 be proved at trial.
16

17
18 Sixth Claim - Mistake and Commercial Frustration
19 (Against the Authority and Developers)

20 2.39 Third Party Plaintiff realleges and incorporates the
21 allegations of paragraphs 1.1 through 2.38 as if fully set
22 forth herein.
23

24 2.40 The City relied upon Walker's projections, which were
25 not merely material to its decision-making, but were, for all
26 intents and purposes, the sole source of information used in
27 determining a purchase price to be paid for the Parking Garage
28

ANSWER, COUNTERCLAIM, CROSS-
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1 and the Ground Rent that would be negotiated with the
2 Developers.

3
4 2.41 The Foundation relied upon Walker's projections,
5 which were, for all intents and purposes, the sole source of
6 information used in determining the purchase price to be paid
7 for the Parking Garage and the Ground Rent negotiated with the
8 Developers.
9

10 2.42 The Authority relied upon Walker's projections, which
11 were, for all intents and purposes, the sole source of
12 information used in determining the Ground Rent liability it
13 would agree to assume to the Developers and the Fixed Facility
14 Rent it would agree to pay to the Foundation.
15

16 2.43 The Developers relied upon Walker's projections,
17 which were, for all intents and purposes, the sole source of
18 information used in determining whether the purchase price and
19 Ground Rent they demanded from the Foundation was fair and
20 reasonable.
21

22 2.44 Both the \$26 million purchase price for the garage
23 and the \$780,000 ground rent for the Developers' underlying
24 land were predicated on the shared belief of the City, the
25 Foundation, the Authority and the Developers, based on the
26
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 70

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1 Walker report, that the Parking Garage would support the
2 parking rate structure proposed by Walker and could reasonably
3 be expected to generate revenues growing from \$4 to \$7 million
4 a year over the life of the Authority lease.
5

6 2.45 The parties' shared material assumption in this
7 connection proved to be seriously mistaken, and was material.
8

9 2.46 Alternatively, if other parties claim not to have
10 been mistaken or are proved not to have been mistaken, then the
11 mistake was a unilateral mistake on the part of the City, and
12 the fact that the City was mistaken in this respect was known or
13 should have been known to the other parties.
14

15 2.47 Although the City may have initially contracted
16 Walker's services to prepare the Feasibility Analysis, the
17 analysis was in aid of all parties to the transaction, others of
18 whom were likewise Walker clients, who shared in payment for the
19 expense for Walker's work and who repeatedly invoked the results
20 of the Walker Study in attempting to persuade the City to
21 participate and remain a participant in the Parking Garage
22 project. Under these circumstances, it can not be contended
23 that the City alone assumed a risk that the Walker projections
24 were mistaken.
25
26
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 71

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1 2.54 In the alternative and at a minimum, the Developers
2 owed the City the same duties of disclosure that apply to all
3 contracting parties, including duties of good faith and fair
4 dealing.
5

6 2.55 The Developers had a duty to disclose to the City
7 facts which were peculiarly within their knowledge, or which
8 could not readily have been determined by the City.
9

10 2.56 The Developers persuaded the City to undertake
11 substantial commitments to assist the Developers' renovation
12 and expansion of River Park Square.
13

14 2.57 Although the Developers were engaged in an ambitious
15 project to attract high-end retailers to the Spokane market,
16 and although the Developers' own risk might thereby be
17 increased and their return thereby lowered, that did not excuse
18 the Developers' duties to deal fairly with their public
19 partner, on a controversial project, as to which there was
20 significant public and Council concern that the City be
21 protected from financial risk.
22
23

24 2.58 The Developers and their agents breached their duties
25 to the City in failing to disclose facts known to them which
26 they knew may justifiably induce the City to refrain from
27
28

1 acting in the Parking Garage transaction. The failures to
2 disclose included (1) failing meaningfully to disclose their
3 prior relationship with Walker, (2) failing to disclose the
4 Walker pro formas privately prepared for the Developers or
5 their agents, (3) failing to disclose that Walker pro formas
6 prepared privately for the Developers or their agents relied
7 upon much less aggressive assumptions, (4) failing to disclose
8 information concerning the unlikelihood of retailer or other
9 third party subsidization of a validation program,
10 particularly at the parking volumes projected by Walker, and
11 (5) failing to disclose the nature of the dispute arising with
12 AMC or the terms of its resolution.

13
14
15
16
17 2.59 If the relationship of the parties is fiduciary or
18 quasi-fiduciary in nature, or a special relationship with
19 heightened duties of disclosure, then the Developers and their
20 agents had an absolute obligation to disclose the foregoing
21 matters.
22

23 2.60 To the extent that the foregoing matters were
24 material, there was an absolute obligation to disclose them.
25

26 2.61 Alternatively, the Developers and their agents knew
27 or should have known that their disclosure of the foregoing
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 74

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1 matters was necessary in order to prevent their prior
2 statements from being misleading.

3
4 2.62 The Developers and their agents breached their duties
5 to the City by misrepresenting, either innocently or culpably,
6 facts which they knew may justifiably induce the City to act in
7 the Parking Garage transaction, including the amount of private
8 investment the Developers would be making in the River Park
9 Square Project.

10
11 2.63 The City has been damaged by the breach by the
12 Developers and their agents of these duties, in an amount to be
13 proved at trial.
14

15 THIRD PARTY COMPLAINT AGAINST

16 ROY AND ANNE KOEGEN AND PERKINS COIE LLP

17
18 By way of third party complaint, the City of Spokane
19 alleges as follows:

20
21 1. Roy J. Koegen (Koegen) is a citizen of the State
22 of Washington residing within the Eastern District.

23
24 2. Anne Koegen is a citizen of the State of
25 Washington residing within the Eastern District. At all
26 times relevant to this third-party complaint, Roy and Anne
27

28
ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 75

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1 Koegen comprised a valid marital community under the laws
2 of the State of Washington.

3 3. All acts of Roy Koegen alleged in this third-
4 party complaint were authorized by and performed on behalf,
5 for the benefit, and with the knowledge and approval of the
6 marital community.
7

8 4. Perkins Coie LLP (Perkins Coie) is an active
9 Washington limited liability partnership in good standing
10 with the Secretary of State. Perkins Coie maintains offices
11 for the transaction of business and transacts business
12 within the Eastern District.
13

14 5. At all times relevant to this third-party
15 complaint, Koegen was a partner of Perkins Coie.
16

17 6. All acts of Koegen alleged in this third-party
18 complaint were authorized by and performed on behalf, for
19 the benefit, and with the knowledge and approval of Perkins
20 Coie.
21

22 7. At all times relevant to this third-party
23 complaint, an attorney-client relationship existed between
24 Koegen and the City, giving rise to a duty of care owed by
25 Koegen and Perkins Coie to the City.
26
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 76

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1 8. Koegen's representation of the City included, but
2 was not limited to, representation with respect to the
3 River Park Square (RPS) development.
4

5 9. Koegen never sought any limits on the scope of
6 matters with respect to the RPS development as to which the
7 City expected him to provide counsel and legal advice.
8

9 10. Although Koegen's authority to act in a way that
10 would bind the City was strictly limited by applicable law
11 and any express delegation of authority, the City did not
12 agree to any limits on the scope of matters with respect to
13 the RPS development as to which the City expected him to
14 provide counsel and legal advice.
15

16 11. Koegen did not disclose, nor did he seek waiver
17 of, any actual or potential conflicts of interest with the
18 City with respect to the RPS development.
19

20 12. Koegen failed to exercise the degree of care,
21 skill, diligence, and knowledge commonly possessed and
22 exercised by a reasonable, careful, and prudent lawyer in
23 the practice of law in this jurisdiction, thereby breaching
24 his duty of care, without limitation, in one or more of the
25 following ways:
26
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 77

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1 (a) By failing to advise the City that the Official
2 Statement contained or may contain materially
3 misleading information or inadequate disclosure of
4 material facts or risks, and that the City may thereby
5 be exposed to securities claims by purchasers of the
6 Bonds;
7

8 (b) By failing to require revisions, modifications or
9 additions to the Official Statement so that it would
10 fully disclose all material facts or risks and thereby
11 protect the City from exposure to claims by purchasers
12 of the Bonds;
13

14 (c) By providing repeated public assurances of the
15 adequacy of the Walker work and the City's
16 reasonableness in relying thereon;
17

18 (d) By advising the City Attorney to sign an opinion
19 letter regarding the issuance of Bonds by the Spokane
20 Downtown Foundation which included matters outside of
21 the City Attorney's reasonable scope of knowledge and
22 understanding and which described Ordinance C31823 in
23 ways which failed to track its actual terms and may,
24
25
26
27
28

1 as a result, be contended to mischaracterize the
2 City's duties under that ordinance;

3 (e) By failing, prior to the closing of the Parking
4 Garage purchase by the Foundation, to bring to the
5 attention of all City Council members certain adverse
6 developments which he knew or should have known
7 significantly compromised the financial feasibility of
8 the Garage;
9

10 (f) By allowing simultaneous representation of the
11 Authority to interfere with his representation of the
12 City; and
13

14 (g) By allowing his personal interest in attorney's
15 fees to be paid from the proceeds of the bonds issued
16 by the Foundation to interfere with his representation
17 of the City.
18

19
20 13. These and other breaches by Koegen have
21 proximately caused the City to suffer damages in an amount
22 to be proven at trial. Such damages include attorney's fees
23 and costs because the foregoing breaches by Koegen have
24 exposed the City to litigation. Such damages also include
25 damage to the City's bond and credit ratings.
26
27
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 79

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1 14. Perkins Coie and the marital community of Roy and
2 Anne Koegen are vicariously liable for the foregoing
3 breaches by Koegen, and each of them.
4

5 15. To the extent that the City is held liable for
6 damages as alleged in plaintiffs' complaint, the City has
7 rights of contribution and indemnification against both
8 Koegen, the marital community of Roy and "Jane Doe" Koegen,
9 and Perkins Coie pursuant to RCW 4.22.040-.050, RCW
10 21.20.430, and the common law.
11

12 WHEREFORE, Defendant and Third Party Plaintiff City of
13 Spokane prays as follows:
14

15 1. That the Plaintiffs' claims against it be dismissed
16 with prejudice and that they take nothing thereby,
17

18 2. If and to the extent of any recovery by the Plaintiffs
19 against this defendant, for a determination of this defendant's
20 limited fault and an allocation of responsibility to the other
21 named defendants and third party defendants,
22

23 3. For contribution against the other named defendants
24 and third party defendants,
25

26 4. For the declaration of the rights and duties of the
27 parties requested by the Third Party Plaintiff,
28

ANSWER, COUNTERCLAIM, CROSS-
CLAIMS AND THIRD-PARTY CLAIM
OF CITY OF SPOKANE - 80

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5. For its damages against Walker, the Developers and the third-party defendants, in an amount to be proved at trial,

6. For an award of its reasonable attorneys' fees and costs, and

7. For such other and further relief as the court deems just or equitable based upon its proofs.

DATED this 24 day of April, 2001.

RANDALL & DANSKIN, P.S.

By: Laurel H. Siddoway
Laurel H. Siddoway, WSBA #15550
George M. Ahrend, WSBA #25160
David J. Groesbeck, WSBA #24749

JURY DEMAND

Defendant and Third-Party Plaintiff City of Spokane demands a trial by jury of this action.

ANSWER, COUNTERCLAIM, CROSS-CLAIMS AND THIRD-PARTY CLAIM OF CITY OF SPOKANE - 81

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EXHIBIT A

RESOLUTION

NO. 95-74

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER AND CITY STAFF TO PROCEED WITH THE DEVELOPMENT OF A PROPOSAL FOR THE ACQUISITION AND DEVELOPMENT OF A PUBLIC PARKING GARAGE FACILITY ADJACENT TO SPOKANE FALLS AS A PART OF THE RIVERPARK SQUARE REDEVELOPMENT PROJECT.

WHEREAS, Citizen's Realty Company has proposed an \$80 million public/private partnership to finance the renovation activities in downtown Spokane; and

WHEREAS, the owners of Riverpark Square, Citizen's Realty Company and Lincoln Investment Company, have proposed the construction of a building to be leased to Nordstrom's Inc., an Atrium over the existing Post Street right-of-way, and the renovation of existing retail facilities adjacent to Post and Main Streets; and

WHEREAS, the City of Spokane has the authority to acquire and develop publicly parking facilities as a public use and public function; and

WHEREAS, public parking facilities will promote the growth and development of the downtown area which will increase payrolls, business productivity and property values with benefit to the public health, safety and welfare including increased tax revenues; and

WHEREAS, establishment of public parking facilities will further promote the public health, safety, convenience and welfare by expediting the movement of the public, and of goods in the City thereby preserving the significant investment in the downtown permitting a greater use of public facilities, congregation of the public and more intensive development of private property within the downtown area.

NOW, THEREFORE, BE IT RESOLVED that the City Manager and City staff are hereby authorized to develop a proposal to acquire a new public parking garage facility adjacent to Spokane Falls Boulevard between Lincoln Street and the Old City Hall Building in accordance with the following project concept:

1. The City would enter into an agreement with the property owners of the existing Riverpark Square Parking Garage providing for the acquisition, renovation and expansion of the existing parking facility to provide 566 additional parking spaces in an expanded public parking garage.

2. The City would fund all costs of acquisition and development of the new public parking garage through the issuance of a revenue bonds in an amount not to exceed \$15 million to be repaid over twenty-five years exclusively from parking garage revenues.

(Revised)
6-9-78

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H/15-1

3. The land necessary for the construction of the new parking garage facility would be leased from the private property owners, Citizens Realty Company, and Lincoln Investment Company paid by revenues derived from the operation of the public parking garage.

4. The City will not incur general indebtedness for the acquisition, development, or operation of the new public parking facility.

5. Upon completion of the renovation and expansion of the new public parking garage the City would be the owner and the operator of the expanded facility.

6. Operation of the parking garage would be contracted to a private vendor as provided by state law.

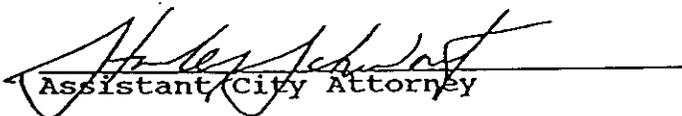
7. The City Manager and City staff are hereby authorized and directed to take all actions necessary to prepare for the implementation of this concept with final action to be accomplished upon the approval of all necessary agreements and documents contingent upon the Riverpark Square Redevelopment Project proceeding in a timely fashion following appropriate City regulatory review.

8. The City Manager is directed to prepare plans for the proposed development including a report to the City Council with all appropriate agreements which establish the method of financing, property acquisition, public development, the use of streets necessary for the improvements including vacating of streets and alleys with relocation of street utilities, and all other matters reasonably related thereto.

Adopted this 12th day of June, 1995.


City Clerk

Approved as to form:


Assistant City Attorney

w3js46

RES 95-74
- 1116-2

CONSULTANT AGREEMENT

THIS AGREEMENT is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City," and WALKER PARKING CONSULTANTS/ENGINEERS, INC., whose address is 150 Executive Park Boulevard, Suite 3750, San Francisco, California 94134, as "Consultant" collectively referred to herein as the "Parties".

W I T N E S S E T H:

The Parties agree as follows:

1. PERFORMANCE. The Consultant's work shall be in accordance with the "Scope of Services," attached hereto and made a part of this agreement for a PARKING STRUCTURE FINANCIAL FEASIBILITY STUDY, AND A CONDITION ASSESSMENT of the existing Riverpark Square Parking Garage and proposed garage expansion.

2. TIME OF PERFORMANCE. This agreement shall take effect immediately upon execution and shall remain in effect until completion of all applicable contractual requirements, which shall occur no later than June 15, 1996, provided that all necessary factual information and drawings in the possession of the City and Riverpark Square Associates ("Developer") are made available to the Consultant in a timely manner.

3. MODIFICATIONS. The Consultant agrees to accept reasonable changes in the scope of work, with reasonable corresponding changes in compensation and time of performance, whenever the City determines it to be necessary or advisable. Such modification will become effective upon execution by the Parties of a written amendment to this agreement.

4. COMPENSATION. The City will pay the Consultant in accordance with the following fee schedule:

Financial Feasibility Study	\$20,000
Condition Assessment	\$17,000

Customary reimbursable expenses will be invoiced at actual cost and include such items as: materials testing, sustenance, transportation, toll telephone calls and FAX transmissions, postage, express delivery services, reproduction of reports and drawings, and similar project-related items. The Consultant will submit invoices to the City monthly and a final bill upon completion of services. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. The City agrees to pay a finance charge of one and one-half percent per month, or the maximum rate allowed by law, on past due amounts. In addition, in the event any amount is past due, the Consultant may, after giving ten (10) days written notice, withhold unissued work and suspend services under this agreement until paid in full.

5. TERMINATION. Either party may terminate this agreement by ten (10) days' written notice to the other party. In the event of such termination, the City shall pay the Consultant for all work previously authorized and performed prior to date of termination. The City is not obligated to pay any fees or expenses for specific work found by the City to be defective due to negligent acts or omissions on the part of the Consultant. In the event the City determines the Consultant's work to be defective, the City may withhold payments without interest accruing thereon for the period of dispute or until the work is no longer found to be defective.

6. LIABILITY. In the performance of this Agreement, the Consultant is an independent contractor and the Consultant, its officers, employee, agents, or shall not be considered an employee or agent of the City. The Consultant shall indemnify and hold harmless the City, its officers and employees, from and against all claims for damages, liability, cost and expense arising out of the negligent conduct of the Consultant, its officers, employees and subcontractors in connection with the performance of this Agreement, except to the extent that those claims arise from the negligence or willful conduct of the City, its officers and employees. The Consultant's indemnification shall include defense costs, attorneys' fees and liability incurred by the City, its officers, and employees in defending against such claims, whether or not litigation is instituted. The Consultant's indemnification of the City shall not be limited by any prior or subsequent declaration by the Consultant.

7. INSURANCE. The Consultant represents that it and its employees, agents and subcontractors, in connection with the performance of the contract, are protected against the risk of loss by the following insurance coverages:

- A. Statutory Worker's Compensation Insurance;
- B. Comprehensive or Commercial General Liability Insurance including Business Automobile Insurance coverage and Employer's Liability (Stop Gap) coverage in the amount of \$500,000 combined single limit, on the occurrence form, and naming the City of Spokane as an Additional Insured. The policy shall be primary to any policy which the City may otherwise carry ("Primary Coverage"), and treat the employees of the City in the same manner as members of the general public ("Cross-liability Coverage"); and
- C. Errors and Omissions insurance in the amount of \$500,000, unless the Errors and Omissions coverage is included in the General Liability policy.

The above policies shall be issued by companies that meet with the approval of the City's Risk Manager. The policies shall not be cancelled without at least thirty (30) days' written notice to the City as an Additional Insured.

The Consultant shall provide proof of insurance coverage prior to beginning performance of this Agreement through a Certificate of Insurance demonstrating the Additional Insured Coverage. The certificate shall be sent to the department representative and is subject to review and approval by the City's Risk Manager.

8. COMPLIANCE WITH LAWS. The Consultant shall comply with all applicable federal, state of Washington and local laws and regulations.

9. OWNERSHIP OF DOCUMENTS. All documents prepared or provided by the Consultant, including without limitation, drawings, non-paper information storage, such as, tape, film, optical memory, disk storage, CD Rom, and/or other computer memory devices, reports, estimates, specifications, field notes and data are and remain the property of the Consultant as instruments of service. The City reserves the right to inspect and copy at reasonable times, documents prepared by the Consultant pursuant to this Agreement.

10. ASSIGNMENTS. This agreement is binding on the Parties and their heirs, successors, and assigns. Neither Party may assign or transfer its interest, in whole or in part, without the other Party's prior written consent.

11. DISPUTES. This agreement shall be performed under the laws of the State of Washington. Any litigation to enforce this agreement or any of its provisions shall be brought in Spokane County, Washington.

12. NON-DISCRIMINATION. During the performance of this agreement, the Consultant and its subcontractors shall not discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age or the presence of any sensory, mental or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefits under this Agreement.

13. ANTI-KICKBACK. No officer or employee of the City having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in this Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement.

14. STANDARD PERFORMANCE. The Consultant shall perform its services in accordance with generally accepted engineering and consulting standards. It is acknowledged by the Parties that estimates or projections provided by the Consultant will be premised, in large part, upon assumptions provided by the City and others. While the Consultant will not independently investigate the accuracy of the assumptions or the information provided by the City or others, the Consultant will exercise its professional skill and judgment with due care in accordance with generally acceptable standards of practice to determine the reasonableness of the

information and assumptions. The Consultant is advised that the purpose of the work herein is to provide financial information and analysis to the City in order to acquire, improve, renovate and construct both the existing Riverpark Square Parking Garage and a new attached parking facility with an estimated 550 new parking spaces. The Consultant acknowledges and consents to the use of its final report in the City's preliminary and official statements issued in connection with any bonds, notes or other financial instruments issued by the City to construct new parking facilities and renovate the existing Riverpark Square Parking Garage.

15. BUSINESS LICENSE REQUIREMENT. Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid business license. The Consultant shall be responsible for contacting the City's Taxes and Licenses Department at (509) 625-6070, to obtain a business license. The Consultant shall NOT be deemed to engage in business with the City, and therefore exempt from the business license requirement for purposes of SMC 8.01.070; if (1) the business dealing arises solely as a result of a contract/purchase order with the City; (2) the City initiated the contact; (3) the Consultant does not otherwise engage in business activities in or with the City; and (4) the Consultant's contracts/purchase orders with the City in any calendar year do not have an accumulated value exceeding \$5,000. Businesses claiming this exemption shall certify to the City's Department of Taxes and Licenses that they neither solicit nor conduct any other business activities within the City and that the business contact with the City was initiated by the City.

SIGNED this 9th day of April, 1996.

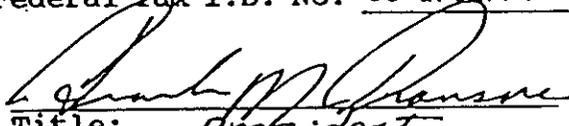
CITY OF SPOKANE

By: 
City Manager

Attest: 
Acting City Clerk

WALKER PARKING CONSULTANTS/
ENGINEERS, INC.

Federal Tax I.D. No. 38-1782774

By: 

Title: President

By: 

Title: Sr. Vice President

Approved as to form:


Assistant City Attorney

Attachment which are a
part of this Agreement:

Scope of Services - Financial Feasibility Study
Scope of Services - Condition Assessment

7-1-715

SCOPE OF SERVICES
FINANCIAL FEASIBILITY STUDY

1. Meet with the appropriate representatives from the City of Spokane and other pertinent parties to discuss and agree upon the study boundaries, study goals, financial criteria, current parking conditions and related parking issues.
2. Collect data describing the area's parking characteristics to more accurately assess the existing parking situation in the vicinity of the facility. This program will include the following:
 - a) Inventory competitive parking facilities, record rate structures, restrictions, etc.
 - b) Conduct occupancy counts for selected parking spaces within study area.
 - c) Determine turnover and duration characteristics at selected parking facilities.
 - d) Interview select merchants and business owners to discuss parking activity/needs.
 - e) Project user mix for retail, cinema and business users, volume turnover and length of stay of the parking facility's probable users, including hourly, daily and monthly patrons.
 - f) Interview the developer or owner of Riverpark Square.
3. Determine the hours of operation and parking rate structure for the proposed parking facility.
4. Using Consultant's database of operating expenses, project annual operating expenses for a ten-year period, including but not limited to: direct labor (cashiering, supervision, accounting, maintenance and security) fringe benefits, utilities, daily maintenance and structural maintenance (stated in a sinking fund for periodic major expenses)
5. Estimate construction costs, contingency costs, consulting fees and financing costs. The City shall provide financing assumptions related to the interest rate, loan term and the method of financing.
6. Based on the parking demand estimation generated by the Consultant, project the annual net operating income of the facility for a ten-year period. In addition, prepare a proforma statement of net operating income and debt service coverage and a proforma statement of projected cash flow for a ten-year period.
7. Prepare a draft report and discuss the findings with the City. Issue a final report which incorporates the City's comments. At the City's request, meet and discuss the parking feasibility study with the appropriate personnel.

SCOPE OF SERVICES
CONDITION ASSESSMENT

1. Review available structural and/or architectural drawings and specifications, to study details of the original construction. Review available reports pertaining to the current condition of the Riverpark Square Parking Facility (the "Facility").
2. Conduct a field observation of the physical condition of the Facility and collect samples for testing of concrete. The field observations will include a detailed visual examination and thorough chain drag survey of the floor slab areas of the entire structural system.
3. Based on conditions found during the course of Consultant's condition appraisal, recommend any repairs that are immediately necessary for the safety of users or protection of property.
4. Perform materials testing of concrete core and powder samples collected from the Facility. Testing to include:

- a) Petrographic (microscopic) examination to determine general concrete quality and/or air entrainment characteristics of the concrete. Representative locations will be selected for testing.

For typical parking structures, Consultant recommends a minimum of two petrographics examinations for a one supported level facility, three for a two level facility, or one test for every 50,000 to 100,000 square feet for a multi-level structure.

- b) Compressive strength testing of core samples removed from the concrete floor slab. Representative specimens will be obtained.

For typical parking structures, Consultant recommends a minimum of three compressive strength tests, or one test for every 35,000 to 50,000 square feet for a multi-level structure.

- c) Chloride ion content testing of powder samples to determine the extent of potential salt contamination. Representative high exposure (entrance lane) and light exposure (parking stall) locations will be sampled.

For typical parking structures, Consultant recommends a minimum of two chloride sample locations per supported level, or one test for every 10,000 to 15,000 square feet for a multi-level structure.

5. Evaluate all field observation and materials testing data.
6. Prepare a report which will document all work performed in field observations, materials testing and analysis of data, and description of alternative restoration programs and their associated service lives.

EXHIBIT C

ORDINANCE NO. C- _____
OFF STREET PARKING FACILITIES

AN ORDINANCE RELATING TO OFF STREET PARKING FACILITIES, PROVIDING FOR THE LEASE, PURCHASE AND TRANSFER TO THE CITY OF A NEW PARKING GARAGE LOCATED ADJACENT TO CIVIC CENTER FACILITIES, AUTHORIZING THE PREPARATION OF AGREEMENTS AND OTHER DOCUMENTS RELATING TO THE ACQUISITION OF OFF STREET PARKING FACILITIES.

RECITALS:

1. The City recognizes the public interest in sustaining the Spokane Downtown Central Business District ("CBD") as described in the Downtown Spokane Development Plan, prepared November 20, 1990, as the region's economic, cultural, and civic activity center.
2. The City has committed public finances and resources to the CBD by constructing, maintaining and operating numerous civic center facilities such as, Spokane City Hall, the Main Public Library, Riverfront Park, Agricultural Trade Center, Convention Center and Opera House, plus other infrastructure and service improvements in or adjacent to the CBD, which improve the character, role and function of the CBD in our region for Spokane citizens, employers, employees and visitors.
3. The provision of convenient, accessible, and attractive off street public parking in the CBD will provide a benefit to the civic center facilities, prevent and alleviate traffic congestion, improve vehicular access and circulation, directly and indirectly improve public safety and promote the use of municipal streets by facilitating the movement of vehicles in the CBD, all of which serves a public purpose.
4. The most efficient use of the CBD street system requires the availability of conveniently located off street parking for vehicles where large numbers of persons congregate.
5. The inability to temporarily park vehicles discourages the public from travel to and within the City of Spokane, from congregating at public events and from using civic center facilities.
6. Off street public parking is a necessary extension and ancillary to an efficient street system in the CBD.
7. The City is authorized by RCW Chapter 35.86 as a public purpose, to provide off street parking facilities.
8. The Spokane City Council, on June 12, 1995 adopted Resolution 95-74 which authorized and directed the City Manager to proceed with the development of a proposal for the

acquisition and development of a public parking facility, recognizing the public benefit that would accrue as a result of the City acquiring off street parking facilities; and on June 10, 1996, the Spokane City Council passed Resolution 96-77, which further directed City staff to represent the City in meetings with the owner of a downtown parking garage and to prepare a report for the City Council on the economic and legal feasibility of City acquisition of a off street parking facility.

9. Lincoln Investment Company of Spokane and Citizens Realty Company ("Lincoln") owns certain real property situated in the City of Spokane, which is proposed to be redeveloped into a two block mixed-use project containing, in addition to public parking facilities, approximately three hundred thousand square feet of gross area available for lease for new retail stores, restaurants and entertainment uses ("Project"), which will improve the CBD by promoting economic activity, increased public safety and revenue to the City.

10. The City finds that acquisition of off street parking facilities will provide convenient public parking for employees, users and visitors to City Hall, Riverfront Park, and the Main Branch of the Spokane Public Library as well as other municipal and governmental offices and facilities, some of which are connected to the existing off street parking facilities by a pedestrian skywalk system.

11. Lincoln intends to design and construct off street parking facilities to consist of an existing parking garage, plus an additional underground and above ground parking structure connected to the existing parking garage, with 1304 public parking spaces to serve the civic facilities and the parking needs of the CBD ("Parking Garage"). The provision of safe and reliable public parking will increase downtown activity and improve public safety.

12. The CBD has experienced a serious economic decline which affects the built environment and climate for civic facilities with remaining business operators facing reduced employment, all adversely affecting the citizens of the City and causing deterioration of the public and private investment in improvements and services in the CBD.

13. The Project is expected to contain 300,000 square feet of new retail, entertainment and other business uses, preserving and creating approximately 2800 jobs in Spokane.

14. The Project will improve public safety in the CBD, including the financial stability of the City by adding an estimated \$2.5 million in tax revenues per year, in addition to the direct revenues received by the City from operation of the Parking Garage.

15. The City will acquire the Parking Garage through the execution of a **PARKING GARAGE PURCHASE AND SALE AGREEMENT, GROUND LEASE**, which will provide the City with a valuable leasehold interest in land as part of the acquisition of the Parking Garage, **PARKING AGREEMENT** and **PARKING COVENANTS**, plus such other documents as are necessary to complete the transaction.

16. In order to finance the acquisition of the parking garage, the City will issue parking garage revenue bonds with debt service on the bonds paid by parking garage revenues with a contingent pledge of parking meter revenues, pursuant to RCW 35.86.020 and Chapter 35.41 RCW.

17. The City Council has received reports, including an economic feasibility analysis, from individuals and experts that support the acquisition of the off street parking facility for public purposes, reviewed plans for development of the Project as well as listened to public testimony concerning the parking needs in the CBD, projected parking garage revenue, benefits to the City and its citizens, and the transfer to the City of the Parking Garage and related property interests.

NOW, THEREFORE—THE CITY OF SPOKANE DOES ORDAIN:

Section 1.

The City Council makes the following findings and conclusions and incorporates the above recitals herein as findings of fact.

Section 2.

In accordance with RCW 35.86.050, a public hearing has been conducted on the acquisition by the City of the Parking Garage, including the presentation of reports related to the parking needs of Civic Facilities in the CBD, traffic impacts of the Project, economic projections of the Parking Garage revenue, and a description of the plans which relate to the development of the Parking Garage and the Project. Further, the City Council has considered testimony from members of the public, representatives of Lincoln, and experts employed by the City in connection with acquisition of the Parking Garage. Reports and plans relating to the Parking Garage have been presented and received by the City and are lodged in the Office of the City Clerk.

Section 3.

The City of Spokane, pursuant to RCW Chapter 35.86 and other laws of the state of Washington, shall, subject to Section 7 of this Ordinance, acquire for public parking purposes, the Parking Garage described in the plans and specifications on file in the Office of the City Clerk and a leasehold interest for property underneath the Parking Garage.

Section 4.

The public interest will be served by providing short term public parking in the CBD by acquisition of the Parking Garage through a **PARKING GARAGE PURCHASE AND SALE AGREEMENT**, **GROUND LEASE** and **BOND ORDINANCE** with operation of the Parking Garage in accordance with Parking Covenants and a Parking Agreement.

Section 5.

The leasehold interest in the land under the Parking Garage and the Parking Garage itself are valuable municipal assets which will benefit adjacent municipal properties including, but not limited to, Spokane City Hall, the Spokane Public Library, and Riverfront Park by providing safe, convenient and adjacent public parking.

Section 6.

The Parking Garage will improve public access to and circulation within the CBD, preventing congestion and facilitating private and public transportation within a part of the City that contains arterial streets by providing approximately 1304 spaces for use, all as set forth in the Walker report as supplemented, which is on file in the Office of the City Clerk. Further, the Parking Garage will also increase pedestrian activity by efficiently removing automobiles from the street, thereby contributing the viability and safety of pedestrian movement within the CBD.

Section 7.

The financial transaction contemplated by the PARKING GARAGE PURCHASE AND SALE AGREEMENT, GROUND LEASE and other documents, will be financed through the issuance of Parking Garage Revenue Bonds with the debt service for such bonds paid by Parking Garage operating revenues. To acquire the Parking Garage, the City shall pay to Lincoln a purchase price in the amount of \$29,790,000.00. The City shall also pay rent in the annual amount of \$610,000.00 for the right to occupy the land upon which the Parking Garage is situated. The purchase price and ground rent shall be paid through Parking Garage revenues with a contingent pledge of parking meter revenues, pursuant to the City bond ordinance providing for the sale, issuance and delivery of Parking System Revenue Bonds (Riverpark Square Parking Facility).

Section 8.

The City Manager, the City Attorney and their designees, plus bond counsel, Perkins Coie are authorized in their reasonable judgment to take all acts as appropriate or necessary in order to carry out and complete the transactions contemplated by this ordinance. Notwithstanding the foregoing, the City shall not enter into any agreements or issue debt without the prior approval of the City Council by ordinance.

Section 9.

The City Clerk shall publish in the City's official newspaper, the title and text of this ordinance, which will be available for inspection in the Office of the City Clerk.

Section 10.

An emergency and urgency is declared to exist according to Section 19 of the Spokane City Charter, with the foregoing findings giving rise to the necessity for the immediate effectiveness of this ordinance.

PASSED the City Council this _____ day of _____, 1996.

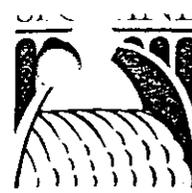
MAYOR

Attest: _____
City Clerk

Approved as to form:

Assistant City Attorney

9ss972



October 22, 1996

Clerk's File No.:
ORD C31763
ORD C31764
ORD C31765
CPR 96-2
PRO 95-25

COUNCIL ACTION MEMORANDUM

RE: EMERGENCY ORDINANCES C31763, C31764, AND C31765 -- RELATING TO THE PROPOSAL FOR THE CITY TO ACQUIRE AND OPERATE THE RIVER PARK SQUARE PARKING GARAGE

At its 6:00 p.m. Special Meeting on Thursday, October 17, 1996, the Spokane City Council held hearing on Emergency Ordinances C31763, C31764, and C31765. After hearing a presentation by City Staff on the proposal for the City to acquire and operate the River Park Square Parking Garage as a municipal facility, Council took the following action:

Motion by Mrs. Greene, seconded by Mrs. Holmes, that the City commission a financial feasibility study in order to evaluate the project as presented tonight and the City's acquisition of the Parking Garage; (and) further, staff is directed to scope the study including satisfying the HUD 108 Loan requirements and submit the report with staff recommendations to the Council no later than 30 days from tonight; carried unanimously (Mr. Anderson absent).

The Council then heard further presentations on the proposal. Presentations supporting the proposal were given by the developers of the River Park Square Project and representatives of the Chamber of Commerce, Downtown Spokane Partnership, Momentum, Convention and Visitors Bureau, and the Economic Development Council. Presentations opposing the proposal were given by Attorney Stephen Eugster [representing Richard Adams, George Prekeges, Spokane Research & Defense Fund and CLEAN (Citizens for Leaders with Ethics and Accountability Now!)] and Lauren Poole, Executive Vice President for Sabey Corporation.

Following the presentations, Council heard public testimony on the proposal from proponents, opponents, and those individuals with a neutral position.

At the conclusion of the public testimony, Mayor Geraghty advised that the Council will take the matters (Ordinances C31763, C31764, and C31765) under advisement, and they will be brought forward to the Council for action on Monday, October 28, 1996. No further public testimony will be taken on October 28, however, the Mayor advised that written testimony will be accepted until that date.

Terri L. Pfister
City Clerk

- c: City Manager
- Community Development
- City Attorney
- Perkins Coie

C31763



Legal Submitting Department Sloane Contact Person 6225 Phone Ext.

RECEIVED

- | | | |
|-----------------------|----------------------------|-------------------------|
| <u>CONSENT AGENDA</u> | <u>LEGISLATIVE SESSION</u> | <u>COUNCIL PRIORITY</u> |
| 0 Contract | 0 Resolution | 0 Economic Development |
| 0 Report | 0 Emergency Ordinance | 0 Growth Management |
| | 0 Final Reading Ordinance | 0 Neighborhoods |
| | 0 First Reading Ordinance | 0 Public Safety |
| | 0 Special Consideration | 0 Public Works |
| | 0 Hearing | 0 Service Delivery |

OCT 11 1996
 Clerk's Files: # _____
 Renewals: # _____
 Cross Reference: # _____
 ENG/LID: # _____
 BID: # _____

CITY CLERK'S OFFICE
SPOKANE, WA

NEIGHBORHOOD/COMMISSION/COMMITTEE NOTIFIED BY SUBMITTING DEPARTMENT: _____
Area Manager: _____

Action Taken: _____

AGENDA WORDING: An ordinance relating to off street facilities, providing for the lease, purchase and transfer to the City of a new parking garage adjacent to Civic Center facilities, authorizing the preparation of agreements and other documents relating to the acquisition of off street parking facilities.

BACKGROUND (Attach separate sheet if necessary): Spokane City Council on June 12, 1995 and on June 10, 1996 authorized and directed the City Manager to proceed with the development of a proposal for the acquisition and development of an off street public parking facility. The Off Street Parking Facility Ordinance follows the City Council receiving reports, including an economic feasibility analysis, reviewing plans for development, receiving public testimony and evaluating the public purpose served by the acquisition of an off street public parking garage. The ordinance further authorizes City staff to proceed with the negotiation of a PARKING GARAGE PURCHASE AND SALE AGREEMENT, GROUND LEASE, PARKING COVENANTS, and PARKING AGREEMENT, plus such other documents as are necessary to acquire the parking garage.

RECOMMENDATION: Approve.

FISCAL IMPACT: Expenditure - \$ _____ Budget Account: # _____
Revenue - \$ _____ # _____

LIST ATTACHMENTS AS FOLLOWS:
On file for Review in Office of City Clerk:

Include in Packets:

SIGNATURES OF SUBMITTING OFFICERS (sign legibly):

Department Head
James C. Sloane
Legal

Division Director

Finance
Peter J. [Signature]
for City Manager

DISTRIBUTION AFTER COUNCIL ACTION:
City Manager
Community Development
City Attorney
Perkins Coie

COUNCIL ACTION:
SEE COUNCIL ACTION MEMORANDUM DATED 10-22-96 FOR COUNCIL ACTION ON 10-17-96

OCTOBER 28, 1996:
Ordinance C31763 was withdrawn from October 28, 1996, Current Agenda.

C31763



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SPOKANE, WASHINGTON, CREATING A SYSTEM OF PARKING FACILITIES; PROVIDING FOR THE SALE, ISSUANCE AND DELIVERY OF THE CITY'S PARKING SYSTEM REVENUE BONDS (RIVER PARK SQUARE PARKING FACILITY), IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$28,000,000, TO FINANCE THE ACQUISITION OF A PARKING FACILITY ADJACENT TO CITY HALL; FIXING THE DATE, FORM, SCHEDULE OF MATURITIES, INTEREST RATES, TERMS AND COVENANTS OF THE BONDS; PROVIDING FOR THE REGISTRATION AND AUTHENTICATION OF THE BONDS; PROVIDING FOR THE COLLECTION, HANDLING AND DISPOSITION OF PARKING REVENUES; CREATING AND ADOPTING CERTAIN FUNDS AND ACCOUNTS; ESTABLISHING CERTAIN COVENANTS BETWEEN THE CITY AND THE REGISTERED OWNERS; PROVIDING FOR THE ISSUANCE OF FUTURE PARITY BONDS; ESTABLISHING CERTAIN EVENTS OF DEFAULT; AUTHORIZING THE CITY MANAGER TO EXECUTE A BOND PURCHASE CONTRACT WITH THE UNDERWRITER; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

C 31764

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Exhibit "A": Form River Park Bond

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SPOKANE, WASHINGTON, CREATING A SYSTEM OF PARKING FACILITIES; PROVIDING FOR THE SALE, ISSUANCE AND DELIVERY OF THE CITY'S PARKING SYSTEM REVENUE BONDS (RIVER PARK SQUARE PARKING FACILITY), IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$28,000,000, TO FINANCE THE ACQUISITION OF A PARKING FACILITY ADJACENT TO CITY HALL; FIXING THE DATE, FORM, SCHEDULE OF MATURITIES, INTEREST RATES, TERMS AND COVENANTS OF THE BONDS; PROVIDING FOR THE REGISTRATION AND AUTHENTICATION OF THE BONDS; PROVIDING FOR THE COLLECTION, HANDLING AND DISPOSITION OF PARKING REVENUES; CREATING AND ADOPTING CERTAIN FUNDS AND ACCOUNTS; ESTABLISHING CERTAIN COVENANTS BETWEEN THE CITY AND THE REGISTERED OWNERS; PROVIDING FOR THE ISSUANCE OF FUTURE PARITY BONDS; ESTABLISHING CERTAIN EVENTS OF DEFAULT; AUTHORIZING THE CITY MANAGER TO EXECUTE A BOND PURCHASE CONTRACT WITH THE UNDERWRITER; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

CITY OF SPOKANE
Spokane County, Washington

PARKING SYSTEM REVENUE BONDS
(RIVER PARK SQUARE PARKING FACILITY)
NOT TO EXCEED \$28,000,000 PRINCIPAL AMOUNT

THE CITY OF SPOKANE DOES ORDAIN:

WHEREAS, the City of Spokane, Washington (the "City"), is a first-class charter city duly organized and existing under and by virtue of the Constitution and the laws of the State of Washington and the Charter of the City;

WHEREAS, the City is authorized by RCW 35.86.010 to provide off-street parking facilities that are operated in accordance with RCW 35.86A.120;

WHEREAS, the City is authorized by RCW 35.86.020 and chapter 35.41 RCW to issue revenue bonds to finance the acquisition and construction of off-street parking facilities;

WHEREAS, the City Council (the "Council") has heretofore found that the area bounded by Post Street, Main Avenue, Lincoln Street and Spokane Falls Boulevard (the "Project Area") is characterized by vacant buildings and land that has not been developed to its highest and best use;

WHEREAS, Lincoln Investment Company of Spokane and Citizens Realty Company (the "Seller"), as owners of the property within the Project Area, have proposed a two-block mixed use redevelopment project (the "Project") which, according to the Seller, will contain approximately 300,000 square feet of gross leasable area for new retail stores, restaurants and entertainment uses;

WHEREAS, the City received a report from Walker Parking Consultants/Engineers, Inc., dated June 14, 1996, projecting that the Project, if constructed and leased as proposed by the Seller, will cause a need for additional public parking within the vicinity of the Project Area;

WHEREAS, during times of poor weather, the only off-street public parking facilities available within reasonable walking distance from City Hall and the City's main library are the parking lot adjacent to City Hall and the parking lot beneath the library;

WHEREAS, the Council has heretofore found that it is necessary to acquire an off-street public parking facility in the vicinity of Spokane Falls Boulevard and Post Street to (i) improve vehicular access to City Hall, the City's main library and Riverfront Park, (ii) prevent traffic congestion in the City's downtown area, especially in light of the proposed Project, (iii) improve vehicular access to the City's downtown area, and (iv) decrease the demand on the City's limited number of on-street parking spaces;

WHEREAS, the Seller has proposed to sell the City a 1304-stall off-street parking garage consisting of the following facilities, all of which are to be interconnected, (i) the existing River Park Square parking garage, which will be remodeled by the Seller, (ii) an underground parking garage along Main Avenue between Post and Lincoln Streets, and (iii) a seven-level above-ground and one-level below-ground parking structure along Spokane Falls Boulevard between Post and Lincoln Streets (the "Facility");

WHEREAS, the Seller has proposed further to lease to the City the ground on which the Facility is to be situated;

WHEREAS, the Council, on October 17, 1996, held a public hearing on the economic survey for and plans of the Facility pursuant to the requirements of RCW 35.86.050;

WHEREAS, the Council hereby determines that the best interests of the City and the inhabitants thereof will be furthered by creating of a system of City-owned parking facilities to increase the availability of off-street parking spaces serving City park and civic center facilities; and

WHEREAS, pursuant to the provisions of RCW 43.80.120, the State Finance Committee of the State of Washington from time to time designates certain financial institutions to act as the fiscal agent for the State of Washington and any political subdivisions who so designate, and the fiscal agent and the City wish to establish the procedures pursuant to which the fiscal agent will carry out its duties;

NOW, THEREFORE, IT IS HEREBY FURTHER ORDAINED, as follows:

**ARTICLE I:
DEFINITIONS**

Section 1.01: Definitions.

As used in this Ordinance, the following terms have the meanings provided in this Section 1.01. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words imparting the singular number shall include the plural number and vice-versa unless the context shall otherwise indicate.

"Accreted Value" shall mean with respect to any Capital Appreciation Bonds (i) as of any Valuation Date, the amount set forth for such date in any ordinance authorizing such Capital Appreciation Bonds, and (ii) as of any date other than a Valuation Date, the sum of (a) the Accreted Value on the preceding Valuation Date and (b) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from such preceding Valuation Date to the next succeeding Valuation Date, calculated based on the assumption that Accreted Value accrued during any semiannual period in equal daily amounts on the basis of a year of twelve 30-day months, times (2) the difference between the Accreted Values for such Valuation Dates.

"Acquisition" or "Acquire" shall include purchase, securing, lease, receipt by gift or grant, condemnation, transfer or other acquirement, or any combination thereof.

"Adjusted Net Parking Revenues" shall mean the Net Parking Revenues for a period of any 12 consecutive months out of the 36 months immediately preceding the date of delivery of any Future Parity Bonds, as adjusted by an independent certified public accountant or independent parking consultant to take into consideration changes in Net Parking Revenues estimated to occur due to one or more of the following factors:

(1) any increase or decrease in Net Parking Revenues that would result if any change in rates and charges adopted prior to the date of such certificate and subsequent to the beginning of such 12-month period had been in force during the full 12-month period; and/or

(2) any increase or decrease in Net Parking Revenues that is estimated to result from any additions, betterments and improvements to and extensions of any facilities of the Parking System which (a) became fully operational during such 12-month period, (b) were under construction at the time of such certificate, or (c) will be constructed from the proceeds of the Future Parity Bonds to be issued.

"Annual Debt Service" shall mean the amount accruing in a given Fiscal Year for the payment of the principal of and interest on the Outstanding Bonds (except interest to be paid from the proceeds of any Bonds), subject to the following:

(a) if a Derivative Product is executed in connection with a series of Bonds that has the effect of converting the Variable Interest Rate thereon to a synthetic fixed

rate of interest, then for purposes of calculating Annual Debt Service, the assumed interest rate for such Bonds shall be the synthetic fixed rate of interest payable by the City under the Derivative Product for the term of the Derivative Product;

(b) if a Derivative Product is executed in connection with a series of Bonds that has the effect of converting the fixed rate of interest thereon to a synthetic Variable Interest Rate, then for purposes of calculating Annual Debt Service, the assumed interest rate for such Bonds shall be the synthetic Variable Interest Rate payable by the City under the Derivative Product for the term of the Derivative Product;

(c) for the purpose of calculating the interest on Variable Interest Rate Bonds in any Fiscal Year, the interest rate on such Bonds shall be calculated on the assumption that such Bonds will bear interest during such period at the Average Interest Rate;

(d) with respect to any Term Bonds, the words "principal of and interest on the Outstanding Bonds" shall be deemed to exclude from "principal" an amount of Term Bonds equal to the mandatory deposits of money into any sinking fund account to provide for payment of the principal of such Term Bonds prior to their maturity date, and from "interest" the interest on such Term Bonds subsequent to the date of the respective deposits, and to include in lieu thereof all mandatory sinking fund deposits as of the date required and interest on the Term Bonds provided for by such deposits only to the dates of the respective deposits;

(e) for purposes of making such calculation, the principal and interest portions of the Accreted Value of Capital Appreciation Bonds and the Appreciated Value of Deferred Income Bonds becoming due at maturity or by virtue of a mandatory sinking fund deposit into the Debt Service Account shall be included in the calculations of accrued and unpaid and accruing interest or principal in such manner and during such period of time as is specified in any ordinance authorizing such Capital Appreciation Bonds or Deferred Income Bonds; and

(f) for the purpose of calculating the principal and interest on Option Bonds in any Fiscal Year, such Bonds shall be assumed to mature on the stated maturity date or mandatory redemption date thereof.

"Appreciated Value" shall mean, with respect to any Deferred Income Bonds, (i) (a) as of any Valuation Date, the amount set forth for such date in any ordinance authorizing such Deferred Income Bonds, and (b) as of any date other than a Valuation Date, the sum of (1) the Appreciated Value on the preceding Valuation Date and (2) the product of (A) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from such preceding Valuation Date to the next succeeding Valuation Date calculated based on the assumption that Appreciated Value accrues during any semiannual period in equal daily amounts on the basis of a year of twelve 30-day months, times (B) the difference between the Appreciated Value for such Valuation

Date, and (ii) as of any date of computation on and after the Interest Commencement Date, the Appreciated Value on the Interest Commencement Date.

"Assessment Bonds" shall mean the amount of the Bonds Outstanding at any time that is equal to the aggregate principal amount of nondelinquent Assessments remaining to be paid into the Bond Fund at such time plus the principal amount of Assessments previously paid and on deposit in the Bond Fund.

"Assessment Income" shall mean the principal of and interest on Assessments levied in any local improvement district and pledged to be paid into the Bond Fund. In the case of Assessments payable in installments, Assessment Income shall be allocated to the years in which it would be received if the unpaid principal balance of each assessment roll were paid in equal principal amounts over the remaining number of installments with interest on the declining balance at the times and at the rate provided in the ordinance confirming such assessment roll.

"Assessments" shall mean any special assessments which may be levied in any local improvement district of the City created for the Acquisition, construction or installation of additions and betterments to and extensions of the Parking System, if such assessments are pledged to be paid into the Bond Fund, and includes any installments of assessments and any interest or penalties which may be due thereon.

"Average Annual Debt Service" shall mean the average amount of the Annual Debt Service in each Fiscal Year for the period from the date of such calculation until the final maturity date of the Bonds then Outstanding.

"Average Interest Rate" shall mean, for any Variable Interest Rate Bonds, the weighted average interest rate applicable to such Variable Interest Rate Bonds during the immediately preceding 12-month period; or, if such Variable Interest Rate Bonds have not been Outstanding for a period of 12 months, the higher of: (i) the most current actual interest rate on such Variable Interest Rate Bonds; or (ii) the most recently published variable interest rate for municipal bonds with similar terms and credit ratings published in *The Bond Buyer*.

"Bond Fund" shall mean the City's Parking System Revenue Bond Fund created by Section 5.03 of this Ordinance.

"Bond Purchase Contract" shall mean the contract between the City and the Underwriter specifying the terms and conditions of the sale and delivery of the River Park Bonds by the City to the Underwriter.

"Bond Register" shall mean the books or records maintained by the Registrar containing the name and mailing address of the Registered Owner of each River Park Bond and the principal amount and number of each of the River Park Bonds held by each Registered Owner.

"Bonds" shall mean the River Park Bonds and any Future Parity Bonds, and may include bonds, notes, warrants, certificates of indebtedness or any other evidence of indebtedness issued on a parity with the River Park Bonds.

"Capital Appreciation Bonds" shall mean any Bonds on which interest is payable only at the maturity or prior redemption of such Bonds. For the purposes of (i) receiving payment of the redemption price, if any, of a Capital Appreciation Bond that is redeemed prior to maturity, or (ii) computing the principal amount of Bonds held by the Registered Owner of a Capital Appreciation Bond in giving to the City or the Registrar any notice, consent, request, or demand pursuant to this Ordinance for any purpose whatsoever, the principal amount of a Capital Appreciation Bond shall be deemed to be its Accreted Value.

"Capitalized Interest Account" shall mean the account of that name created in the Construction Fund by Section 5.01 of this Ordinance.

"City" shall mean City of Spokane, Washington.

"City Manager" shall mean the City's City Manager or, if the position of City Manager has been removed from the City Charter, the Mayor.

"City Payment" shall mean any payment required to be made by or on behalf of the City under a Derivative Product.

"Clerk" shall mean the de facto or de jure City Clerk, or other officer of the City who is the custodian of the seal of the City and of the records of the proceedings of the Council, or her successor in functions, if any.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and any temporary or final Treasury Regulations promulgated thereunder.

"Council" shall mean the City Council, as the same may be duly constituted from time to time.

"Construction Fund" shall mean the "Parking System Construction Fund" created by Section 5.01 of this Ordinance.

"Debt Service Account" shall mean the account of that name created in the Bond Fund by Section 5.03 of this Ordinance.

"Default Trustee" shall mean the Default Trustee, if any, qualified, appointed and acting pursuant to Section 7.02 of this Ordinance.

"Defeasance Obligations" shall mean "government obligations" as now or hereafter defined in RCW 39.53.010.

"Deferred Income Bonds" shall mean any Bonds on which accruing interest is not paid prior to the Interest Commencement Date specified in the ordinance authorizing their issuance

and the Appreciated Value for such Bonds is compounded semiannually on the Valuation Date for such Deferred Income Bonds.

"Derivative Facility" shall mean a letter of credit, an insurance policy, a surety bond or other credit enhancement device, given, issued or posted as security for the City's obligations under one or more Derivative Product.

"Derivative Payment Date" shall mean any date specified in the Derivative Product on which a City Payment is due and payable under the Derivative Product.

"Derivative Product" shall mean either:

(a) a written contract or agreement between the City and a Reciprocal Payor under which (i) the City's obligations are conditioned on the performance by the Reciprocal Payor of its obligations under the agreement; (ii) the City is obligated to pay, on one or more scheduled and specified Derivative Payment Dates, the City Payments in exchange for the Reciprocal Payor's obligation to pay or to cause to be paid to the City, on scheduled and specified Derivative Payment Dates, the Reciprocal Payments; (iii) net Reciprocal Payments are to be made directly into the Bond Fund; (iv) the City Payments are either specified to be one or more fixed amounts or are determined as provided by the Derivative Product; and (v) the Reciprocal Payments are either specified to be one or more fixed amounts or are determined as set forth in the Derivative Product; or

(b) one or more maturities of a City obligation (i) simultaneously issued with (ii) equal principal amounts maturing and to be retired on the same dates and in the same amounts, and (iii) Variable Interest Rates, which, taken together, result in an irrevocably fixed interest rate obligation for the term of such City obligation.

"DTC" shall mean The Depository Trust Company, a limited-purpose trust company organized under the laws of the State of New York.

"Engineer" shall mean an independent licensed professional engineer (or firm of licensed professional engineers) selected by the City and having a favorable reputation for skill and experience with off-street parking facilities in such of the following as are relevant to the purposes for which they are retained: (a) engineering and operations, and (b) design of rates.

"Event of Default" shall mean those events described as Events of Default in Section 7.02 of this Ordinance.

"Facility" shall mean the seven-level above ground and one-level below ground off-street parking facility in the vicinity of Spokane Falls Boulevard and Post Street.

"Fiscal Year" shall mean a year beginning January 1 and ending December 31, or such year as may later be fixed by law.

"Future Parity Bonds" shall mean any Bonds of the City issued after the date of issuance of the River Park Bonds that have a lien upon the Net Parking Revenues for the payment of the principal thereof and interest thereon equal to the lien upon the Net Parking Revenues for the payment of the principal of and interest on the River Park Bonds.

"Ground Lease" shall mean the Ground Lease between the Seller and the City regarding the real property underlying the Facility.

"Interest Commencement Date" shall mean, with respect to any particular Deferred Income Bonds, the date specified in the ordinance authorizing such Bonds (which date must be prior to the maturity date for such Bonds) after which interest accruing on such Bonds shall be payable semiannually, with the first such payment date being the applicable interest payment date immediately succeeding such Interest Commencement Date.

"Investment Securities" shall mean any investment permitted for the City's money under the laws of the State of Washington.

"Letter of Representations" shall mean the letter setting forth certain understandings of the City and the Registrar regarding DTC's services with respect to the River Park Bonds.

"Maximum Annual Debt Service" shall mean an amount equal to the greatest Annual Debt Service for the then current or any future Fiscal Year.

"Mayor" shall mean the de facto or de jure Mayor of the City or presiding officer or titular head of the City, or his successor in functions, if any.

"Net Parking Revenues" shall mean, for any period, the excess of Parking Revenues over Operating Expenses for such period, excluding from the computation of Parking Revenues (i) any profit or loss derived from the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets of the Parking System, or resulting from the early extinguishment of debt; (ii) insurance and condemnation proceeds; and (iii) any other extraordinary, nonrecurring income or contribution.

"NRMSIR" shall mean any municipal securities information repository that is formally recognized in writing by the SEC as a "nationally recognized municipal securities information repository" for purposes of Rule 15c2-12.

"Operating Expenses" shall mean all of the City's expenses incurred with respect to operating and maintaining the Parking System, including, without limiting the generality of the foregoing, (i) payments to the City for services rendered to the Parking System by other departments or offices of the City; (ii) the fees and expenses of registering, authenticating transferring and exchanging the Bonds; (iii) the fees and expenses of wiring or otherwise making payments on the Bonds; (iv) reasonable fees and expenses incurred by the City to determine compliance with federal tax laws, including the obligation, if any, to pay arbitrage rebate to the United States government; (v) the costs of complying with any undertaking necessary to allow the purchasers of the Bonds comply with Rule 15c2-12; and (vi) the costs of preparing and providing any notice required to be given by the City on account of the

Bonds. The term "Operating Expenses" shall not include any extraordinary, nonrecurring expenses, any costs or expenses for new construction, interest, amortization, any allowance for depreciation or any taxes or payments in lieu of taxes upon the properties or earnings of the Parking System payable to the City.

"Option Bonds" shall mean those Bonds, including (but not limited to) Variable Interest Rate Bonds, that the Registered Owner thereof may, at its option, demand payment of the principal and accrued interest thereof or the purchase of such Bonds by or on behalf of the City in advance of their otherwise scheduled dates for the payment of principal and interest thereon.

"Outstanding", when used with reference to a series of Bonds, as of any particular date, shall mean all such Bonds that have been issued, executed, authenticated and delivered under this Ordinance or any ordinance authorizing Bonds, except (i) Bonds that have been canceled because of payment or redemption prior to their stated dates of maturity, and (ii) any Bond (or portion thereof) deemed to have been paid or defeased pursuant to the ordinance under which it was issued.

"Parking Revenues" shall mean all income (including investment income and earnings on money in the Bond Fund and investment income and earnings on money in any Construction Fund subaccount that is deposited into the Revenue Account), receipts and revenues received by the City through the ownership and operation of the Parking System, but shall not include Assessment Income or investment income restricted to a particular purpose inconsistent with its use for the payment of debt service (including investment income derived pursuant to a plan of debt refunding).

"Parking System" shall mean system of off-street parking facilities described in Section 2.01 of this Ordinance.

"Participants" shall mean those broker-dealers, banks and other financial institutions from time to time for which DTC holds the River Park Bonds as securities depository.

"Permitted Encumbrances" shall mean: (i) liens securing claims of contractors, subcontractors, suppliers of goods, materials, equipment or services, or laborers or other like liens arising in the ordinary course of business which are paid or discharged within 60 days of the due date thereof, or which are being contested in good faith by appropriate proceedings so long as such proceedings would be permitted by the last sentence of this definition; (ii) deposits made in the ordinary course of business to secure the performance of tenders, statutory obligations, bids, leases, or government contracts and performance bonds, (iii) fee and expense arrangements with trustees, fiscal agents, providers of Reserve Account Facilities, insurers of the payment of Bonds, providers of letters of credit to pay or secure Bonds, and similar obligations; (iv) attachment and judgment liens, so long as the same shall have been duly stayed or discharged prior to the earlier of the commencement of proceedings for the enforcement thereof or 30 days after such lien attached, so long as such judgment or attachment shall have been discharged within 30 days after the expiration of any such stay and so long as such proceedings would be permitted by the last sentence of this definition; (v) liens in respect of taxes, assessments, governmental charges or levies on the Parking System, on which interest

and penalties have not yet accrued or which are being contested in good faith by appropriate proceedings, so long as such proceedings would be permitted by the last sentence of this definition and provided that assessments may be paid in installments if permitted by law; (vi) the liens of this Ordinance or any ordinance authorizing Bonds and any other liens, pledges or assignments or other encumbrances for the benefit of the Registered Owners; (vii) existing easements and title exceptions described in a title insurance policy at the time of the Acquisition of property; and (viii) such utility, access and other easements, rights of way, restrictions, exceptions, minor defects or irregularities in or clouds on title or encumbrances not arising out of the borrowing of money or the securing of advances of credit as may be required by law or may be deemed necessary or advisable by the City and which will not, in the opinion of the Council, interfere with or impair in any material respect the utility, operation, use or value of the Parking System. A contest referred to in the preceding sentence shall be permitted only if such contest stays the execution or enforcement of the lien, charge or encumbrance being contested and does not: (i) materially adversely affect the ability of the City to perform its respective obligations under this Ordinance or any ordinance authorizing Bonds, (ii) increase the risk of any sale, forfeiture or loss of the Parking System or any portion thereof, or (iii) increase the risk of imposition of any penalties or liabilities, whether civil or criminal, upon the City (other than normal accrual of interest) or any material penalties or liabilities upon the City.

"Promissory Note" shall mean the note or other obligation tendered by the City to the Seller representing the remaining portion of the purchase price of the Facility.

"Rate Stabilization Account" shall mean the City's Parking System Rate Stabilization Account created within Revenue Fund by Section 5.02 of this Ordinance.

"Reciprocal Payment" shall mean any payment to be made to, or for the benefit of, the City under a Derivative Product by the Reciprocal Payor.

"Reciprocal Payor" a person that: (i) has (or whose obligations are unconditionally guaranteed by a party that has), as of the date of the Derivative Product, at least an investment grade rating from a rating agency; (ii) enters into a Derivative Product with the City; and (iii) is obligated to make Reciprocal Payments to the City under such Derivative Product.

"Registered Owner" shall mean the person in whose name the River Park Bonds shall be registered in the Bond Register in accordance with the terms of this Ordinance; provided, if used in the context of Future Parity Bonds, such term shall include the registered owners of such Bonds, if any.

"Registrar" shall mean either of the Washington State Fiscal Agents in Seattle, Washington, or New York, New York, or their successors in functions, as now or hereafter designated.

"Renewal and Replacement Account" shall mean the City's Parking System Renewal and Replacement Account created within Revenue Fund by Section 5.02 of this Ordinance.

"Reserve Account" shall mean the account of that name created in the Bond Fund pursuant to Section 5.03 of this Ordinance.

"Reserve Account Facility" shall mean a surety bond, insurance policy or letter of credit that constitutes all or a part of the Reserve Account Requirement, provided such surety bond, insurance policy or letter of credit satisfies the conditions set forth in subsection D of Section 5.03 of this Ordinance.

"Reserve Account Requirement" shall mean an amount equal to the lesser of (1) the Maximum Annual Debt Service, (2) 125 percent of the Average Annual Debt Service and (3) 10 percent of the original principal amount (as defined under the Code) of each series of Bonds then Outstanding.

"Revenue Account" shall mean the City's Parking System Revenue Account created within Revenue Fund by Section 5.02 of this Ordinance.

"Revenue Fund" shall mean the City's Parking System Revenue Fund created by Section 5.02 of this Ordinance.

"River Park Bonds" shall mean the herein authorized "Parking System Revenue Bonds (River Park Square Parking Facility)".

"Rule 15c2-12" shall mean Rule 15c2-12 of the SEC, as amended.

"SEC" shall mean the Securities and Exchange Commission or any successor in functions thereto.

"Serial Bonds" shall mean any Bonds other than Term Bonds.

"Term Bonds" shall mean any Bonds designated as Term Bonds in the ordinance authorizing their sale and issuance (or in the Bond Purchase Contract with respect to the River Park Bonds), the principal of which is scheduled to be paid, in part, from mandatory sinking fund deposits into the Debt Service Account.

"Treasurer" shall mean the City Treasurer or, if the City should have no Treasurer, the chief financial officer of the City.

"Underwriter" shall mean, with respect to the River Park Bonds, Prudential Securities Incorporated, of Seattle, Washington, or such other investment banking firm as the Council may hereafter select to be the initial purchaser of the River Park Bonds.

"Valuation Date" shall mean (i) with respect to any Capital Appreciation Bonds, the date or dates set forth in any ordinance authorizing such Bonds on which specific Accreted Values are assigned to the Capital Appreciation Bonds, and (ii) with respect to any Deferred Income Bonds, the date or dates prior to the Interest Commencement Date set forth in any ordinance authorizing such Bonds on which specific Appreciated Values are assigned to the Deferred Income Bonds.

"Variable Interest Rate" shall mean a variable interest rate to be borne by a series of Bonds or any one or more maturities within a series of Bonds. The method of computing such variable interest rate shall be specified in the ordinance authorizing such Bonds and shall be based on (i) a percentage or other function of an objectively determinable interest rate (e.g., a prime lending rate) or a function of such objectively determinable interest rate that may be in effect from time to time or at a particular time or times, except that there may be an initial rate specified, in each case as provided in the ordinance authorizing such Bonds, or (ii) a stated interest rate that may be changed from time to time as set forth in the ordinance authorizing such Bonds. The ordinance authorizing such Bonds shall also specify either (i) the particular periods of time or manner of determining such periods of time for which each value of such variable interest rate shall remain in effect or (ii) the times upon which any change in such variable interest rate shall become effective.

"Variable Interest Rate Bonds" shall mean, for any period of time, Bonds (including, but not limited to, Option Bonds) which during such period bear a Variable Interest Rate, except that Bonds the interest rate on which shall have been fixed for the remainder of the term thereof shall no longer be Variable Interest Rate Bonds.

Section 1.02: Interpretation.

For all purposes of this Ordinance, except as otherwise expressly provided or unless the context otherwise requires:

A. All references in this Ordinance to designated "Articles," "Sections," and other subdivisions are to the designated articles, sections and other subdivisions of this Ordinance. The words "herein," "hereof," "hereto," "hereby," and "hereunder" and other words of similar import refer to this Ordinance as a whole and not to any particular article, section or other subdivision.

B. The terms defined in this Article I have the meanings assigned to them in this Article I, and include the plural as well as the singular, and words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons.

C. Any headings preceding the texts of the several Articles and Sections of this Ordinance, and any table of contents, shall be solely for convenience of reference and shall not constitute a part of this Ordinance, nor shall they affect its meaning, construction or effect.

D. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time.

E. Every "request," "order," "demand," "application," "appointment," "notice," "statement," "certificate," "consent" or similar action hereunder by the City shall, unless the form thereof is specifically provided, be in writing signed by an authorized officer of the City.

F. All approvals, consents, agreements and acceptances required to be given or made by any person or party hereunder shall not be unreasonably withheld or unduly delayed.

G. In the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and each of the words "to" and "until" means "to but excluding."

H. Words importing the redemption or redeeming of a Bond or the calling of a Bond for redemption do not include or connote the payment of such Bond at its stated maturity or the purchase of such Bond.

I. References to the payment of the Bonds shall be deemed to include references to the payment of interest thereon.

ARTICLE II: THE PARKING SYSTEM

Section 2.01: Parking System Created

The Parking System is hereby created and is comprised, initially, of the Facility. The Parking System shall also include other off-street parking facilities that (i) the City may hereafter acquire, construct or install, and (ii) the Council declares to be a part of the Parking System.

ARTICLE III: THE RIVER PARK BONDS

Section 3.01: Purpose

A. *Description of Purpose.* The River Park Bonds are being issued to finance the Acquisition of the Facility.

B. *Costs of the Facility.* The total costs of Acquiring the Facility are estimated to be \$29,790,000, a portion of which shall be paid from the River Park Bond proceeds. Such costs may include, but are not limited to:

(1) preliminary expenses advanced by the City from funds available for the use therefor, or advanced from any other source, with approval of the Council, or any combination thereof;

(2) the costs of making surveys, audits, preliminary plans, other plans, specifications, estimates of costs and other preliminaries relating to the Facility;

(3) the Acquisition costs of any properties, rights, easements or other interest in properties, or any licenses, privileges, agreements and franchises necessary for the Facility;

- (4) the costs of Acquiring the Facility;
- (5) the costs of Acquiring and installing equipment necessary to operate and maintain of the Facility;
- (6) the costs of appraising, printing, estimates, advice, services of engineers, architects, financial consultants, attorneys, clerical help or other agents or employees;
- (7) the costs of contingencies;
- (8) the costs of any discount on the River Park Bonds, the costs of issuance, registration and authentication of the River Park Bonds, the costs of funding the Reserve Account to the Reserve Account Requirement (including purchasing a Reserve Account Facility to satisfy the Reserve Account Requirement), the costs of funding the Rate Stabilization Account, and the costs, if any, of rating agencies and of bond insurance;
- (9) capitalized interest on the River Park Bonds;
- (10) the principal of and interest on any notes issued by the City in anticipation of the River Park Bonds; and
- (11) all other expenses necessary or desirable and appertaining to the Facility, as estimated or otherwise ascertained by the Council.

C. *Additional Funds.* In the event there are River Park Bonds proceeds remaining after the improvements set forth in subsection A of this Section 3.01 have been completed, the City may deposit said proceeds into the Bond Fund to defease a portion of the River Park Bonds prior to maturity, or may retain such proceeds in the Construction Fund pursuant to Section 5.01.B. of this Ordinance.

D. *Finding Regarding the Facility.* The Council hereby finds and determines that the primary purpose of the Facility is to provide public parking for persons who use park or civic center facilities.

Section 3.02: The River Park Bonds

The Council hereby authorizes the issuance of revenue bonds to be designated "City of Spokane Parking System Revenue Bonds (River Park Square Parking Facility)" (the "River Park Bonds"). The River Park Bonds shall be issued as Serial Bonds, shall be subject to prior redemption as set forth in Section 3.03 hereof, shall be dated as of the first day of the month they are issued, shall be issued in an aggregate principal amount not exceeding \$28,000,000, shall be in denominations of \$5,000 each or any integral multiple thereof within a single maturity, and shall be issued only in fully registered form. The River Park Bonds shall be substantially in the form set forth in Exhibit "A" attached hereto and hereby made a part hereof.

The River Park Bonds shall mature on such dates in the principal amounts, and bear interest at the rates, set forth in the Bond Purchase Contract. The River Park Bonds shall bear interest from their date, payable as specified in the Bond Purchase Contract, until their respective dates of maturity or prior redemption, whichever occur earliest. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

The City Manager shall execute the Bond Purchase Contract on behalf of the City if and when the following conditions are met: (i) the Closing Date under the Parking Garage Purchase and Sale Agreement is scheduled to occur within 60 days; (ii) a preliminary official statement or other offering document has been prepared describing the River Park Bonds and the security therefore; and (iii) the interest rate for each maturity of the River Park Bonds does not exceed nine percent per annum.

The Bond Purchase Contract shall set forth, at a minimum: (i) the date or dates of the River Park Bonds; (ii) the aggregate principal amount of the River Park Bonds; (iii) the maturities of the River Park Bonds, which may include Term Bonds; (iv) the amount of principal coming due on each maturity; (v) the interest rate each maturity shall bear; (vi) the dates, if any, upon which the River Park Bonds are subject to redemption prior to their stated maturities; (vii) the premiums, if any, to be paid for such redemptions; and (viii) whether all or a portion of the River Park Bonds are subject to mandatory sinking fund redemption.

Section 3.03: Redemption Prior to Maturity

A. *General Redemption.* All or a portion of the River Park Bonds shall be subject to optional and/or mandatory sinking fund redemption prior to their stated maturities in the manner and at the prices specified in the Bond Purchase Contract.

B. *Partial Redemptions.* In accordance with paragraph A of this Section 3.03, portions of the principal amount of any River Park Bond, in installments of \$5,000 or any integral multiple of \$5,000, may also be redeemed. If less than all of the principal amount of any River Park Bond is redeemed, upon surrender of such River Park Bond at either of the principal corporate trust offices of the Registrar there shall be issued to the Registered Owner, without charge therefor, for the then unredeemed balance of the principal amount thereof, a new River Park Bond or River Park Bonds, at the option of the Registered Owner, with like maturity and interest rate, in any of the denominations authorized by this Ordinance.

C. *Notice of Redemption.* Except as set forth in subsection D below, and unless waived by the Registered Owner of any River Park Bond to be redeemed, notice of any such redemption shall be sent by the Registrar by first-class mail, postage prepaid, not less than 30 or more than 60 days prior to the date fixed for redemption to the Registered Owner of each River Park Bond to be redeemed at the address shown on the Bond Register, or at such other address as may be furnished in writing by such Registered Owner to the Registrar. The requirements of this subsection C shall be deemed to be complied with when notice is mailed as herein provided, regardless of whether it is actually received by the Registered Owner of any River Park Bond. In addition, such redemption notice shall be mailed within the same period by first-class mail, postage prepaid, to the Underwriter at its office in Seattle, Washington, but

such mailing shall not be a condition precedent to the redemption of such River Park Bonds. Each notice of redemption given under this subsection C shall contain the following information:

- (1) the redemption date;
- (2) the redemption price;
- (3) if less than all River Park Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the River Park Bonds to be redeemed;
- (4) notification that on the redemption date the redemption price will become due and payable upon each such River Park Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date;
- (5) the place where such River Park Bonds are to be surrendered for payment of the redemption price, which place of payment shall be either of the principal corporate trust offices of the Registrar;
- (6) the CUSIP numbers, if any, of all River Park Bonds being redeemed;
- (7) the date of issue of the River Park Bonds as originally issued;
- (8) the rate of interest borne by each River Park Bond being redeemed;
- (9) the maturity date of each River Park Bond being redeemed; and
- (10) any other descriptive information needed to identify accurately the River Park Bonds being redeemed.

D. *Special Notice of Redemption to DTC.* For so long as DTC is the securities depository for the River Park Bonds under Section 3.07 of this Ordinance, the Registrar shall send a notice to DTC specifying: (1) the amount of the redemption or refunding; (2) in the case of a refunding, the maturity date(s) established under the refunding; and (3) the date such notice is to be mailed to beneficial owners or published (the "Publication Date"). Such notice shall be sent to DTC by a secure means (e.g., legible telecopy, registered or certified mail, overnight delivery) in a timely manner designed to assure that such notice is in DTC's possession no later than the close of business on the business day before the Publication Date. The Registrar shall forward such notice either in a separate secure transmission for each CUSIP number or in a secure transmission for multiple CUSIP numbers (if applicable) which includes a manifest or list of each CUSIP submitted in that transmission. The Registrar shall have a method to verify subsequently the use of such means and the timeliness of such notice. The Publication Date shall be not less than 30 days nor more than 60 days prior to the redemption date or, in the case of an advance refunding, the date that the proceeds are deposited in escrow.

E. *Notice of Defeasance.* If all or a portion of the River Park Bonds are to be defeased prior to their date of redemption or maturity and the date such River Park Bonds will be paid is more than three months from the date of defeasance, then notice of such defeasance shall be sent by the Registrar by first-class mail, postage prepaid, not more than seven days after the date of defeasance to each NRMSIR. The requirements of this subsection E shall be deemed to be complied with when notice is mailed as herein provided, regardless of whether it is actually received by the Registered Owner of any River Park Bond. Each notice of defeasance given under this subsection E shall contain the information required in subsection C above for notices of redemption. Notwithstanding the foregoing, neither a defect in said notice of defeasance nor any failure to give all or any portion of such notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as prescribed in subsection C of this Section 3.03.

F. *Effect of Redemption.* When so called for redemption, the River Park Bonds shall cease to accrue interest on the specified redemption date, provided funds for redemption are on deposit at the place of payment at that time, and shall not be deemed to be Outstanding as of such redemption date.

G. *Voluntary Redemption Notice.* In addition to the notice required by subsection C, further notice may be given by the Registrar as set out below, but neither a defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as prescribed in said subsection C. Each further notice of redemption may be: (1) sent at least 30 days before the redemption date by registered or certified mail or overnight delivery service to (a) all registered securities depositories then in the business of holding substantial amounts of obligations of the types comprising the River Park Bonds, such depositories now being DTC and the Philadelphia Depository Trust Company, Philadelphia, Pennsylvania; and (b) one or more national information services that disseminate notices of redemption of obligations such as the River Park Bonds (such as Moody's Municipal and Government, or Standard & Poor's Called Bond Record); and (2) published one time in *The Bond Buyer* of New York, New York, or, if such publication is impractical or unlikely to reach a substantial number of the Registered Owners, in some other financial newspaper or journal that regularly carries notices of redemption of other obligations similar to the River Park Bonds, such publication to be made at least 30 days prior to the date fixed for redemption.

H. *Open Market Purchase and Cancellation.* The City hereby reserves the right to purchase the River Park Bonds on the open market at any time at any price. All River Park Bonds so purchased shall be canceled.

Section 3.04: Execution and Authentication of the River Park Bonds

A. *Execution of River Park Bonds.* Without unreasonable delay, the City shall cause the definitive River Park Bonds to be prepared, executed and delivered, which River Park Bonds shall be lithographed or printed with steel-engraved or lithographed borders. The River Park Bonds shall be executed on behalf of the City by the manual or facsimile signature of the Mayor, shall be attested by the manual or facsimile signature of the Clerk, and shall have

the seal of the City, or a facsimile thereof, impressed or imprinted thereon. The River Park Bonds shall then be delivered to the Registrar for authentication. The River Park Bonds shall be numbered separately in the manner and with any additional designation as the Registrar deems necessary for purposes of identification.

B. *Authentication of River Park Bonds.* Only those River Park Bonds that bear a Certificate of Authentication substantially in the form set forth in Exhibit "A" hereto and manually executed by the Registrar shall be valid or obligatory for any purpose or entitled to the benefits of this Ordinance. Such Certificate of Authentication shall be conclusive evidence that the River Park Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this Ordinance.

C. *CUSIP Numbers.* At the sole option of the City, CUSIP identification numbers may be printed on the River Park Bonds, but no such number shall be deemed to be a part of any River Park Bond or a part of the contract evidenced thereby, and no liability shall hereafter attach to the City or any officer or agent thereof (including the Registrar) because of or on account of said CUSIP identification numbers or any use made thereof.

D. *Temporary River Park Bonds.* Until the definitive River Park Bonds are prepared, the City may utilize a temporary River Park Bond which shall be typewritten, and which shall be delivered to the Underwriter in lieu of definitive River Park Bonds, but subject to the same provisions, limitations and conditions as the definitive River Park Bonds. Such temporary River Park Bond shall be dated as of the date of the River Park Bonds, shall be in the aggregate principal amount set forth in the Bond Purchase Contract, shall be numbered T-1, shall be substantially of the tenor of such definitive River Park Bonds, but with such omissions, insertions and variations as may be appropriate to temporary bonds, shall be manually signed by the Mayor and the Clerk and shall have the seal of the City impressed thereon. The Treasurer shall be the Registrar in the event and for so long as a temporary River Park Bond is utilized.

E. *Valid Signatures.* In case any of the officers who shall have signed or attested any of the River Park Bonds shall cease to be such officer or officers of the City before the River Park Bonds so signed or attested shall have been authenticated or delivered by the Registrar, or issued by the City, such River Park Bonds may nevertheless be authenticated, delivered and issued, and, upon such authentication, delivery and issue, shall be as binding upon the City as though those who signed and attested the same had continued to be such officers of the City. Any River Park Bond may also be signed and attested on behalf of the City by such persons as at the actual date of execution of such River Park Bond shall be the proper officers of the City although at the original date of such River Park Bond any such person shall not have been such officer of the City.

Section 3.05: Distribution of River Park Bond Proceeds

Immediately upon receiving the proceeds of the sale of the River Park Bonds, the Treasurer is hereby directed to cause such proceeds to be distributed as follows:

A. *Deposit to the Capitalized Interest Account.* River Park Bond proceeds designated for purposes of paying capitalized interest, if any, shall be deposited into the Capitalized Interest Account.

B. *Deposit to the Debt Service Account.* An amount of River Park Bond proceeds equal to the interest on the River Park Bonds accrued from their dated date to the date of their initial delivery to the Underwriter shall be deposited into the Debt Service Account.

C. *Deposit to the Reserve Account.* A portion of the River Park Bond proceeds shall be used to fund the Reserve Account or Acquire a Reserve Account Facility for the River Park Bonds in a stated amount equal to the Reserve Account Requirement for the River Park Bonds.

D. *Deposit to the Rate Stabilization Account.* River Park Bond proceeds designated to fund a rate stabilization fund, if any, shall be deposited into Rate Stabilization Account.

E. *Deposit to the River Park Bonds Acquisition Account.* The River Park Bond proceeds remaining after the deposits to the Capitalized Interest Account, the Debt Service Account, the Reserve Account and the Rate Stabilization Account have been made shall be deposited into the River Park Bonds Acquisition Account.

Section 3.06: Registrar

The Washington State Fiscal Agents, in Seattle, Washington, and New York, New York, are hereby appointed as Registrar, authenticating agent, paying agent and transfer agent with respect to the River Park Bonds, subject to the following terms and conditions:

A. *Bond Register.* The Registrar shall keep, or cause to be kept at either of its principal corporate trust offices, sufficient books for the registration and transfer of the River Park Bonds, which shall at all times be open to inspection by the City.

B. *Fees and Costs.* Subject to the terms of the Washington State Fiscal Agency Agreement, dated February 8, 1993, between the State of Washington and the Registrar (as the same may be amended or readopted), the City shall pay to the Registrar from time to time reasonable compensation for all services rendered under this Ordinance, together with reasonable expenses, charges, fees of counsel, accountants and consultants and other disbursements, including those of its attorneys, agents and employees, incurred in good faith in and about the performance of their powers and duties under this Ordinance.

C. *Representations.* The Registrar shall be responsible for its representations contained in the Certificate of Authentication on the River Park Bonds.

D. *Ownership Rights.* The Registrar may become the Registered Owner of River Park Bonds with the same rights it would have if it were not the Registrar, and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as

a member of, or in any other capacity with respect to, any committee formed to protect the rights of Registered Owners of the River Park Bonds.

E. *Registration System.* The City hereby specifies and adopts the system of registration for the River Park Bonds approved by the Washington State Finance Committee.

Section 3.07: Book-Entry System

A. The River Park Bonds shall be initially issued in the form of a separate, single-certificated, fully registered River Park Bond for each maturity set forth in Section 3.02 of this Ordinance, in the aggregate principal amount of such maturity. Upon initial issuance, the ownership of each River Park Bond shall be registered in the Bond Register in the name of CEDE & Co., as nominee of DTC, the securities depository for the River Park Bonds. Except as provided in subsection D of this Section 3.07 all of the River Park Bonds shall be registered in the Bond Register in the name of CEDE & Co., as nominee of DTC.

B. With respect to River Park Bonds registered in the Bond Register in the name of CEDE & Co., as nominee of DTC, the City and the Registrar shall have no responsibility or obligation to any Participant or to any person on behalf of which a Participant holds an interest in the River Park Bonds. Without limiting the immediately preceding sentence, the City and the Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, CEDE & Co. or any Participant with respect to any ownership interest in the River Park Bonds, (ii) the delivery to any Participant or any other person, other than a Registered Owner, of any notice with respect to the River Park Bonds, including any notice of redemption or defeasance, or (iii) the payment to any Participant or any other person, other than a Registered Owner, of any amount with respect to principal of, premium, if any, or interest on the River Park Bonds. The City and the Registrar may treat and consider the Registered Owner of each River Park Bond as the absolute owner of such River Park Bond for the purpose of payment of principal, premium, if any, and interest with respect to such River Park Bond, for the purpose of giving notices of redemption and other matters with respect to such River Park Bond, for the purpose of registering transfers with respect to such River Park Bond, and for all other purposes whatsoever. The Registrar shall pay all principal of, premium, if any, and the interest on the River Park Bonds as provided in Section 3.08 of this Ordinance, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal of, premium, if any, and interest on the River Park Bonds to the extent of the sums so paid. No person other than a Registered Owner shall receive a certificated River Park Bond evidencing the obligation of the City to make payments of principal, premium, if any, and interest pursuant to this Ordinance. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of CEDE & Co., and subject to the provisions herein with respect to the transfer and payment of the River Park Bonds, the phrase "CEDE & Co." in this Ordinance shall refer to such new nominee of DTC.

C. The Mayor is hereby authorized to execute and deliver a Letter of Representations in substantially the form attached hereto as Exhibit "B," with such changes, omissions, insertions and revisions as the Mayor shall approve. The approval by the Mayor of

any such changes, omissions, insertions and revisions shall be conclusively established by the Mayor's execution and delivery of the Letter of Representations which shall not in any way limit the provisions of subsection B of this Section 3.07 or in any other way impose upon the City any obligation whatsoever with respect to persons having interests in the River Park Bonds other than the Registered Owner. The Registrar shall take all action necessary for all representations of the City in the Letter of Representations with respect to the Registrar, to at all times be complied with.

D. (1) DTC may determine to discontinue providing its services with respect to the River Park Bonds at any time by giving notice to the City and to the Registrar, and discharging its responsibilities with respect thereto under applicable law.

(2) The City, in its sole discretion and without the consent of any other person, may terminate the services of DTC with respect to the River Park Bonds if the City determines that:

(a) DTC is unable to discharge its responsibilities with respect to the River Park Bonds; or

(b) a continuation of the requirement that all of the River Park Bonds be registered in the Bond Register in the name of CEDE & Co., or any other nominee of DTC, is not in the best interest of the beneficial owners of the River Park Bonds.

(3) Upon termination of the services of DTC with respect to the River Park Bonds pursuant to subsection D(2)(b) of this Section 3.07, or upon the discontinuance or termination of the services of DTC with respect to the River Park Bonds pursuant to subsection D(1) or subsection D(2)(a) of this Section 3.07 after which no substitute securities depository willing to undertake the functions of DTC hereunder can be found that, in the opinion of the City, is willing and able to undertake such functions upon reasonable and customary terms, the City shall deliver certificated River Park Bonds at the expense of the City, as described in this Ordinance, and the River Park Bonds shall no longer be restricted to being registered in the Bond Register in the name of CEDE & Co. as nominee of DTC, but may be registered in the names that the Registered Owners transferring or exchanging River Park Bonds shall designate, in accordance with the provisions of this Ordinance.

E. Notwithstanding any other provision of this Ordinance to the contrary, so long as any River Park Bond is registered in the name of CEDE & Co., as nominee of DTC, all payments with respect to principal or premium, if any, and interest on such River Park Bond and all notices with respect to such River Park Bond shall be made and given, respectively, in the manner provided in the Letter of Representations.

Section 3.08: Place and Manner of Payment

Both principal of and interest on the River Park Bonds are payable in lawful money of the United States to the Registered Owners.

Payment of each installment of interest shall be made to the Registered Owner whose name appears on the Bond Register at the close of business on the fifteenth day of the calendar month preceding the interest payment date. Each installment of interest shall be paid by check or draft of the Registrar mailed to such Registered Owner on the due date at the address appearing on the Bond Register, or at such other address as may be furnished in writing by such Registered Owner to the Registrar. Interest installments may be paid by wire transfer to a Registered Owner if a written request of such Registered Owner is submitted to the Registrar by at least the fifteenth day of the calendar month preceding the interest payment date. The costs of any such wire transfer to the Registered Owner of more than \$1,000,000 in aggregate principal amount of the Bonds shall be borne by the City as an Operating Expense; and the cost of any such wire transfer to any other than the Registered Owner shall be borne by such Registered Owner.

Principal of each River Park Bond shall be payable to the Registered Owner, upon presentation and surrender of the River Park Bond on or after the date of maturity or prior redemption, at either of the principal corporate trust offices of the Registrar. Upon the payment of the River Park Bonds at maturity, and/or upon payment of the redemption price of any River Park Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number, if any, and identify by issue and maturity the River Park Bonds being paid or redeemed with the proceeds of such check or other transfer.

The City and the Registrar may deem and treat the Registered Owner of each River Park Bond as the absolute owner of such River Park Bond for the purpose of receiving payments of principal and interest due on such River Park Bond and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

Section 3.09: Transfer or Exchange of the River Park Bonds

The River Park Bonds shall be transferable by the Registered Owners thereof in person, or by their attorney duly authorized in writing, upon due completion of the assignment form appearing thereon and upon surrender of the River Park Bonds at either of the principal corporate trust offices of the Registrar for cancellation and issuance of new River Park Bonds registered in the name of the transferee, in exchange therefor.

The River Park Bonds shall be exchangeable by the Registered Owners thereof in person, or by their attorney duly authorized in writing, for other River Park Bonds of any authorized denomination or denominations, upon surrender and cancellation of said River Park Bonds at either of the principal corporate trust offices of the Registrar.

Whenever a River Park Bond shall be surrendered for transfer or exchange, the Registrar shall authenticate and deliver to the transferee or exchangee, in exchange therefor, a

new fully registered River Park Bond of any authorized denomination or denominations, of the same maturity and interest rate, and for the aggregate principal amount of such River Park Bond being surrendered. Notwithstanding the foregoing sentence, the Registrar shall not be obligated to exchange or transfer any River Park Bond during the 15 days preceding any principal or any interest payment date.

The Registrar shall require the payment by the Registered Owner requesting such transfer or exchange of any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. The costs imposed by the Registrar for such transfer or exchange shall be borne by the City.

Section 3.10: Defeasance of the River Park Bonds

A. *Method of Defeasance.* In the event that money and/or Defeasance Obligations (maturing or having guaranteed redemption prices at the option of the owner at such time or times and bearing interest to be earned thereon) in such amounts as are sufficient, together with any resulting cash balances, to redeem and retire part or all of the River Park Bonds in accordance with their terms, are hereafter irrevocably set aside in a special account and pledged to effect such redemption and retirement, then no further payments need be made into the Bond Fund for the payment of the principal of and interest on the River Park Bonds so provided for, and such River Park Bonds and interest accrued thereon shall no longer be deemed to be Outstanding hereunder.

B. *Limitation of Rights Upon Defeasance.* If the principal or redemption price of any River Park Bonds becoming due, either at maturity or by call for redemption or otherwise, together with all interest accruing thereon to the due date, has been paid or provision therefor made in accordance with this Section 3.10, all interest on such River Park Bonds shall cease to accrue on the due date and all liability of the City with respect to such River Park Bonds shall cease as of the date the principal, redemption price, if any, and interest is so provided for, except as hereinafter provided. Thereafter the Registered Owners of such River Park Bonds shall be restricted exclusively to the funds so deposited for any claim of whatsoever nature with respect to such River Park Bonds, and the Registrar shall hold such funds in trust for such Registered Owners uninvested and without interest.

C. *Notice of Defeasance.* If all or a portion of the River Park Bonds are to be defeased prior to their date of redemption or maturity and the date such River Park Bonds will be paid is more than three months from the date of defeasance, then notice of such defeasance shall be sent by the Registrar by first-class mail, postage prepaid, not more than seven days after the date of defeasance to each NRMSIR. The requirements of this subsection C shall be deemed to be complied with when notice is mailed as herein provided, regardless of whether it is actually received by the Registered Owner of any River Park Bond. Each notice of defeasance given under this subsection C shall contain the information required in Section 3.03.D for notices of redemption. Notwithstanding the foregoing, neither a defect in said notice of defeasance nor any failure to give all or any portion of such notice shall in any manner defeat the effectiveness of a call for redemption or a defeasance of the affected River Park Bonds.

Section 3.11: Cancellation of Surrendered River Park Bonds

River Park Bonds surrendered to the Registrar for payment, redemption, transfer or exchange, as well as River Park Bonds surrendered by the City for cancellation, shall be canceled immediately by the Registrar and returned to the City. Such River Park Bonds thereafter shall be destroyed pursuant to RCW 43.80.130 (as it now reads or is hereafter amended or recodified).

Section 3.12: Mutilated, Lost, Stolen or Destroyed River Park Bonds

A. *Issuance of Substitute River Park Bonds.* If any River Park Bond shall become mutilated, lost, stolen or destroyed, the affected Registered Owner shall be entitled to the issuance of a substitute River Park Bond only as follows:

(1) in the case of a lost, stolen or destroyed River Park Bond, the Registered Owner shall (a) provide notice of the loss, theft or destruction to the City and the Registrar within a reasonable time after the Registered Owner receives notice of the loss, theft or destruction, (b) request the issuance of a substitute River Park Bond, (c) provide evidence, satisfactory to the City and the Registrar, of the ownership and the loss, theft or destruction of the affected River Park Bond, and (d) file in the offices of the Treasurer and the Registrar a written affidavit specifically alleging on oath that said Registered Owner is the proper owner, payee or legal representative of such owner or payee of the River Park Bond that has been lost, stolen or destroyed, giving the date the River Park Bond was issued and the number, principal amount of such River Park Bond, and stating that the River Park Bond has been lost, stolen or destroyed, and has not been paid and has not been received by such Registered Owner,

(2) in the case of a mutilated River Park Bond, the Registered Owner shall surrender the River Park Bond to the Registrar for cancellation; and

(3) in all cases, the Registered Owner shall provide indemnity against any and all claims arising out of or otherwise related to the issuance of substitute River Park Bonds pursuant to this Section 3.12 satisfactory to the City and the Registrar.

Upon compliance with the foregoing, a new River Park Bond of like tenor and denomination, bearing the same number as the mutilated, destroyed, lost or stolen River Park Bond, and with the word "DUPLICATE" stamped or printed plainly on its face, shall be executed by the City, authenticated by the Registrar and delivered to the Registered Owner, all at the expense of the Registered Owner to whom the substitute River Park Bond is delivered. Notwithstanding the foregoing, the Registrar shall not be required to authenticate and deliver any substitute River Park Bond for a River Park Bond that has been called for redemption or that has matured or is about to mature and, in any such case, the principal or redemption price and interest then due or becoming due shall be paid by the Registrar in accordance with the terms of the mutilated, destroyed, lost or stolen River Park Bond without substitution therefor.

B. *Notation on Bond Register.* Upon the issuance and authentication of any substitute River Park Bond under the provisions of this Section 3.12, the Registrar shall enter upon the Bond Register a notation that the original River Park Bond was canceled and a substitute River Park Bond was issued therefor.

C. *Rights of Registered Owners of Substitute River Park Bonds.* Every substitute River Park Bond issued pursuant to this Section 3.12 shall constitute an additional contractual obligation of the City and shall be entitled to all the benefits of this Ordinance equally and proportionately with any and all other River Park Bonds duly issued hereunder unless the River Park Bond alleged to have been destroyed, lost or stolen shall be at any time enforceable by a bona fide purchaser for value without notice. In the event the River Park Bond alleged to have been destroyed, lost or stolen shall be enforceable by anyone, the City may recover the substitute River Park Bond from the Registered Owner to whom it was issued, or from anyone taking under the Registered Owner, except a bona fide purchaser for value, without notice.

D. *Exclusive Rights.* All River Park Bonds shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen River Park Bonds, and shall preclude any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or of investment or other securities without their surrender.

Section 3.13: Interest on Delinquent Amounts

If any River Park Bond is not redeemed when properly presented at its maturity or call date, the City shall be obligated to pay interest on that River Park Bond at the same rate provided in the River Park Bond from and after its maturity or call date until that River Park Bond, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the Bond Fund and the River Park Bond has been called for payment by giving notice of that call to the Registered Owner of that unpaid River Park Bond.

Section 3.14: Money Held by Registrar One Year After Due Date

Money or Investment Securities held by the Registrar in trust for the payment and discharge of any of the River Park Bonds which remain unclaimed for one year after the date when such River Park Bonds shall have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such money was held by such Registrar at such date or for one year after the date of deposit of such money if deposited with the Registrar after the date when such River Park Bonds become due and payable, shall at the written request of the City be repaid by the Registrar to the City as the City's property and free from the trust created by this Ordinance, and the Registrar shall thereupon be released and discharged with respect thereto, and the Registered Owners of the River Park Bonds payable from such money shall look only to the City for the payment of such River Park Bonds.

Section 3.15: Tax Covenants

A. *Compliance With Code.* The City covenants to comply with each requirement of the Code necessary to maintain the exclusion of interest on the River Park Bonds from gross income for federal income tax purposes. In furtherance of the covenant contained in the preceding sentence, the City covenants to comply with the provisions of the Arbitrage and Tax Regulatory Certificate executed by the City on the date of initial issuance and delivery of the River Park Bonds, as such Arbitrage and Tax Regulatory Certificate may be amended from time to time.

B. *Necessary Payments.* The City covenants to make any and all payments required to be made to the United States Department of the Treasury in connection with the River Park Bonds pursuant to Section 148(f) of the Code.

C. *Survival of Tax Covenants.* Notwithstanding any other provision of this Ordinance to the contrary, so long as necessary to maintain the exclusion from gross income of interest on the River Park Bonds for federal income tax purposes, the covenants contained in this Section 3.15 shall survive the payment of the River Park Bonds and the interest thereon, including any payment or defeasance thereof pursuant to Section 3.10 of this Ordinance.

D. *Remedies.* Notwithstanding any other provision of this Ordinance to the contrary, (1) upon the City's failure to observe or refusal to comply with the above covenants, the Registered Owners, or any trustee acting on their behalf, shall be entitled to the rights and remedies provided to the Registered Owners under this Ordinance, and (2) neither the holder or Registered Owner of Bonds of any series other than the River Park Bonds, nor any trustee acting on their behalf, shall be entitled to exercise any right or remedy provided to the Registered Owners under this Ordinance based upon the City's failure to observe, or refusal to comply with, the above covenants of this Section 3.15.

Section 3.16: Covenant To Provide Continuing Disclosure

A. *Limitation of Rights.* The City intends that this Section 3.16 constitutes the City's undertaking to provide the information and notices described by Rule 15c2-12(b)(5) with respect solely to the River Park Bonds. Notwithstanding any other provision of this Ordinance to the contrary, neither the holder or Registered Owner of bonds of any series other than the River Park Bonds, nor any trustee acting on their behalf, shall be entitled to any right or to exercise any remedy provided to the Holders under this Section 3.16 based upon the City's failure to observe, or refusal to comply with, the covenants contained in this Section 3.16.

B. *Definitions for Purposes of Section 3.16.* Solely for the purposes of this Section 3.16, the following terms shall have the following meanings unless the context otherwise requires:

"Annual Financial Information" shall mean an annual update of the financial information and operating data designated in the Bond Purchase Contract, which shall be appended hereto

when executed, together with audited (if available to the City) or unaudited financial statements in substantially the form designated in the Bond Purchase Contract.

"Arrangement" shall mean a commitment of the City to finance a project where the Persons for whom the project will primarily benefit will support payment of all or part of the Bonds. By way of example only, (i) a commitment by a Person to support debt service on bonds through payments under a lease, loan, installment sale agreement or other contract with the City relating to use of a project (such as a sale of the output of a facility pursuant to a take-or-pay (or take-and-pay) contract) *would* be included in the definition of "Arrangement"; (ii) an undertaking covering a developer that is the sole landowner in a development city assessment financing in which the future collection of assessments to service the borrowing is dependent upon the developer as part of the structure of the financing *may* be appropriate; (iii) major customers purchasing power from a municipal light department that, in turn, is under a take-or-pay contract with a joint action public power agency *would not* be included in the definition of "Arrangement", although the municipal light department *would* likely be included in the definition; and (iv) Persons that are major taxpayers of the City *would not* be included in the definition of "Arrangement" for purposes of a general obligation bond issue.

"Audited Financial Statements" shall mean, with respect to the City, financial statements prepared and audited pursuant to the laws of the State of Washington (presently RCW 43.09.200 through 43.09.285), as such laws may be amended from time to time, and with respect to Obligated Persons, financial statements prepared and audited in such manner as is described in the Annual Financial Information regarding the Obligated Person, if such Obligated Person exists in the future. Presently, there are no Obligated Persons (other the City) with respect to the Bonds.

"Holder" shall mean any Registered Owner of a River Park Bond and any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares: (i) voting power which includes the power to vote, or to direct the voting of, a River Park Bond; and/or (ii) investment power which includes the power to dispose, or direct the disposition of, a River Park Bond.

"MSRB" shall mean the Municipal Securities Rulemaking Board or any successor in functions thereto.

"Obligated Person" shall mean the City.

"Official Statement" shall mean the City's official statement relating to the River Park Bonds, together with any amendments thereto.

"Person" shall mean any firm, association, partnership (including limited partnerships), trust, corporation and other legal entity (including public bodies), and natural person.

"Required Filings" shall mean any filing made pursuant to paragraphs C, D, E and F of this Section 3.16 of this Ordinance.

"SID" shall mean any municipal securities information repository that is formally recognized in writing by the SEC as the State of Washington's "state information depository" for purposes of Rule 15c2-12.

C. *Annual Financial Information.* The City will provide to each NRMSIR and to each SID, if any, within six months after the end of each fiscal year, commencing on or before June 30, 97, Annual Financial Information for the City and for each Obligated Person, if any. Presently, the City's fiscal year commences on January 1. All or any portion of the Annual Financial Information may be incorporated in the Annual Financial Information by cross reference to any other documents which have been filed with: (i) each NRMSIR and SID, if any; or (ii) the SEC; or (iii) if the document is an official statement, with the MSRB. Annual Financial Information for any fiscal year containing any modified operating data or financial information for such fiscal year shall explain, in narrative form, the reasons for such modification and the effect of such modification on the Annual Financial Information being provided for such fiscal year. If a change in accounting principles is included in any such modification, the initial Annual Financial Information after such modification shall present a comparison between the financial statements or information prepared on the basis of the modified accounting principles and those prepared on the basis of the former accounting principles. The City will provide notice of the modification of operating data or financial information or change in accounting principles to each NRMSIR or to the MSRB, and to each SID, if any.

D. *Audited Financial Statements.* To the extent the City's Audited Financial Statements are not submitted as part of the Annual Financial Information under paragraph C of this Section 3.16, the City will provide to each NRMSIR and to each SID, if any, the Audited Financial Statements of the City and of each Obligated Person (commencing with the audited financial statements for the fiscal year ending December 31, 1996), when and if such Audited Financial Statements are available. Although the City may submit a comprehensive annual financial report (a "CAFR") together with its Audited Financial Statements, there is no requirement to do so hereunder, and the dissemination of a CAFR in any year shall not be construed as a requirement to disseminate a CAFR in any subsequent year.

E. *Material Event Notices.* The City will provide to each NRMSIR or to the MSRB, and to each SID, if any, in a timely manner, notice of any of the following events with respect to the River Park Bonds, if material: (1) principal and interest payment delinquencies; (2) non-payment related defaults; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions or events affecting the tax-exempt status of the security; (7) modifications to rights of security holders; (8) bond calls; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the Bonds; and (11) rating changes.

F. *Notice of Late Filing.* The City will provide to each NRMSIR or to the MSRB, and to each SID, if any, in a timely manner, notice of a failure of the City to provide the required Annual Financial Information on or before the date specified in paragraph C of this Section 3.16.

G. *Termination of Duties Regarding Obligated Persons.* The obligation hereunder to provide Annual Financial Information and notices of material events shall terminate automatically (without the filing of notice with Registered Owners of the Bonds, a NRMSIR or a SID) with respect to any Obligated Person if and when such person no longer constitutes an "Obligated Person" under paragraph B of this Section 3.16. The City will provide notice of such termination to each NRMSIR or to the MSRB, and to each SID, if any.

H. *Term of Section 3.16.* The term of this Section 3.16 shall commence on the date of closing and initial delivery of the River Park Bonds to the Registered Owners, and shall terminate when the River Park Bonds shall have been paid in full or defeased in accordance with Section 3.10 of this Ordinance. The City shall provide notice of such defeasance to each NRMSIR or to the MSRB, and to each SID, if any; provided, such notice shall not be a condition to such defeasance.

I. *Amendments.* Notwithstanding any provision of Section 7.01 of this Ordinance to the contrary, the City may amend this Section 3.16 in conformity with the Rule, as interpreted from time to time by the courts, the SEC, or the SEC staff. Upon the adoption of any amendment hereto, this Section 3.16 shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City and all Holders under this Section 3.16 shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendments, and all terms and conditions of any such amendment shall be deemed to be part of the terms and conditions of this Section 3.16 for any and all purposes. If the consent of Holders is necessary for such amendment, only the Holders of the River Park Bonds shall be considered for purposes of determining whether such consent has been rendered.

J. *Additional Information.* Nothing in this Section 3.16 shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Section 3.16 or any other means of communication, or including any other information in any Required Filing, in addition to that which is required by this Section 3.16. If the City chooses to include any information in any Required Filing in addition to that which is specifically required by this Section 3.16, the City shall have no obligation under this Section 3.16 to update such information or include it in any future Required Filing.

K. *Defaults Under This Section 3.16.* If the City shall fail to comply with any provision of this Section 3.16, then any Holder may enforce, for the equal benefit and protection of all Holders similarly situated, by mandamus or other suit or proceeding at law or in equity, such provision against the City and any of the officers, agents and employees of the City, and may compel the City or any such officers, agents or employees to perform and carry out their duties under this Section 3.16; provided, that the sole and exclusive remedy for breach of this Section 3.16 shall be an action to compel specific performance of the obligations of the City hereunder and no person or entity shall be entitled to recover monetary damages hereunder under any circumstances; and provided further, that a default under this Section 3.16 shall not be deemed an Event of Default under Section 7.02(A)(3) of this Ordinance.

L. **Rescission Rights.** The City hereby reserves the right to rescind this Section 3.16 without the consent of the Holders in the event Rule 15c2-12 is repealed by the SEC or is ruled to be invalid by a federal court and the time to appeal from such decision has expired. In the event of a partial repeal or invalidation of Rule 15c2-12, the City hereby reserves the right to rescind those provisions of this Section 3.16 that were required by those parts of Rule 15c2-12 that are so repealed or invalidated.

Section 3.17: Findings Regarding the River Park Bonds

A. **Sufficiency of Parking Revenues.** The Parking Revenues to be paid into the Revenue Fund at the rates charged and to be charged for parking at the various facilities comprising the Parking System will be sufficient, in the City's judgment, to enable the City to meet all of its obligations payable out of the Revenue Fund, including, without limitation, the Operating Expenses of the Parking System, the payment of the principal of and interest on the River Park Bonds as such become due and payable, and all other charges against or obligations of the Parking Revenues of whatsoever nature now or hereafter imposed by law or contract.

B. **Special Obligations.** The River Park Bonds shall be special obligations of the City, payable by the City solely out of the Parking Revenues. The full faith, credit and resources of the City are not pledged for the payment of the River Park Bonds.

C. **Due Regard.** In fixing the amounts to be paid into the Bond Fund for the River Park Bonds, the Council has had due regard for the Operating Expenses and for the debt service requirements for the River Park Bonds, and that it is not setting aside into the Bond Fund a greater amount than in its judgment will be available over and above the Operating Expenses and the debt service requirements for the River Park Bonds.

Section 3.18: Execution of a Bond Insurance Policy and a Reserve Account Facility

A. **Bond Insurance Policy.** The City Manager is hereby authorized to sign a commitment for, and/or otherwise obtain, a municipal bond insurance policy insuring the payment of the principal of and interest on for the River Park Bonds (the "Bond Insurance Policy"), provided the following conditions are satisfied: (i) the amount of the premium the City will be required to pay for such Bond Insurance Policy is less than the present value of the difference between the interest that the River Park Bonds would bear if they are not insured and the interest that they will bear if they are insured; (ii) the City receives an opinion from its financial advisor that acquiring the Bond Insurance Policy is in the best interests of the City; and (iii) the City receives an opinion from its counsel that the commitment for the Bond Insurance Policy and any agreement to be executed by the City in regard to the Bond Insurance Policy are legally binding on the City.

B. **Reserve Account Instrument.** The Mayor is hereby further authorized to sign a commitment for, and/or otherwise obtain, a Reserve Account Facility for that portion of the Reserve Account allocable to the River Park Bonds, provided the following conditions are satisfied: (i) the principal amount of River Park Bonds required to be issued is less than had the

Reserve Account Requirement allocable to the River Park Bonds been funded with River Park Bond Proceeds (other than premium); (ii) the City receives an opinion from its financial advisor that acquiring such Reserve Account Facility and executing any reimbursement agreements pertaining thereto are in the best interests of the City; and (iii) the City receives an opinion from its counsel that the commitment for such Reserve Account Facility and any reimbursement agreements pertaining to the Reserve Account Facility are legally binding on the City.

C. The Council hereby authorizes the Mayor to execute all necessary documents pertaining to the Bond Insurance and the Reserve Account Instrument securing the River Park Bonds.

Section 3.19: Delivery of the River Park Bonds Authorized

Upon the execution of the Bond Purchase Contract, the Mayor, the Clerk, the City Manager, the Deputy City Manager and the Treasurer are hereby authorized and directed to do everything necessary for (i) the prompt execution and delivery of the River Park Bonds and other certificates and receipts necessary to document the issuance of the Bonds, and (ii) the proper application and use of the proceeds of the sale thereof.

Section 3.20: Approval of Preliminary Official Statement

The City Manager is hereby authorized to deem "final" the preliminary official statement with respect to the River Park Bonds as of its date except for the omission of information dependent upon the pricing of the issue and the completion of the underwriting agreement, such as offering prices, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates and other terms of the River Park Bonds dependent on the foregoing matters. The City agrees to cooperate with the Underwriter to deliver or cause to be delivered, within seven business days from the date of the Bond Purchase Contract and in sufficient time to accompany any confirmation that requests payment from any customer of the Underwriter, copies of a final official statement in sufficient quantity to comply with paragraph (b)(4) of Rule 15c2-12 and the rules of the Municipal Securities Rulemaking Board.

ARTICLE IV: PLEDGE SECURING THE BONDS

Section 4.01: Pledge of Net Parking Revenues

There are hereby pledged, for the equal and ratable benefit of the Registered Owners from time to time of the Bonds, as security for the payment of the principal of, premium, if any, and interest on the Bonds: (1) all Net Parking Revenues, (2) all rights of the City to receive Net Parking Revenues, (3) all Assessment Income and (4) all money and securities held in the Construction Fund and the Bond Fund, including the investments thereof, if any, and subject to the provisions of this Ordinance permitting the application of amounts hereunder to the

purposes set forth herein. Such pledge is hereby declared to be a prior lien and charge on the foregoing superior to all other liens and charges of any kind whatsoever.

Section 4.02: Application of Parking Revenues

All Parking Revenues (except for net insurance proceeds in amounts greater than \$100,000, which directly shall be deposited into the Renewal and Replacement Account) shall be deposited into the Revenue Account as collected and, together with amounts transferred to the Revenue Account from the Rate Stabilization Account, shall be used only for the following purposes and in the following order of priority:

First, to pay the Operating Expenses;

Second, to pay the interest on the Bonds;

Third, to pay the principal of the Bonds, to make mandatory sinking fund deposits required to be made for the payment of the principal of any Term Bonds, to make payments required to be made on any reimbursement obligation qualifying under Section 6.09.D of this Ordinance as an obligation with a lien on the Net Parking Revenues equal to the lien thereon of the Bonds, and to make payments required to be made on any Derivative Products qualifying under Section 7.04 of this Ordinance as an obligation with a lien on the Net Parking Revenues equal to the lien thereon of the Bonds;

Fourth, to make all payments required to be made into the Reserve Account to secure the payment of Bonds, and to make any payments required in connection with a Reserve Account Facility and reimbursement obligations not qualifying under Section 6.09.D of this Ordinance as an obligation with a lien on the Net Parking Revenues equal to the lien thereon of the Bonds;

Fifth, to make all City Payments relating to a series of Bonds under a Derivative Product not qualifying under Section 7.04 of this Ordinance as an obligation with a lien on the Net Parking Revenues equal to the lien thereon of the Bonds;

Sixth, to make all payments required under the Ground Lease;

Seventh, to pay the principal of and interest on the Promissory Note;

Eighth, to make all payments required to be made into the Renewal and Replacement Account pursuant to Section 5.02 of this Ordinance;

Ninth, to make all payments required to be made into the Rate Stabilization Account pursuant to Section 5.02 of this Ordinance; and

Tenth, to be used for any other lawful City purposes.

ARTICLE V:
FUNDS AND ACCOUNTS

Section 5.01: The Construction Fund

A. *Creation of the Construction Fund.* There is hereby created and shall be maintained in the office of the Treasurer a fund separate and distinct from all other funds and accounts of the City, designated the "Parking System Construction Fund" (the "Construction Fund"), or such other designation conforming to banking requirements or accounting practices. Money in the Construction Fund may be invested in Investment Securities.

B. *Subaccounts Authorized.* For accounting purposes, a separate account for each series of Bonds may be maintained in the Construction Fund. The City's share of any liquidated damages or other money paid by defaulting contractors or their sureties on a specified project shall be deposited into the account within the Construction Fund established for such project to assure the completion of the project. When a project has been completed and all costs related thereto have been paid in full, any balance remaining in the Construction Fund subaccount pertaining to such project may, at the Council's discretion, be transferred into another subaccount in the Construction Fund or may be deposited into the Bond Fund. Each ordinance creating such a subaccount shall specify into which fund or account of the Parking System interest earnings on money invested from the subaccount shall be deposited.

C. *Capitalized Interest Account.* A Capitalized Interest Account is hereby created in the Construction Fund for the purpose of paying the interest on the Bonds. The City shall deposit any Bond proceeds that are designated in the ordinance authorizing such Bonds as capitalized interest into the Capitalized Interest Account. The City shall pay interest on the Bonds from the Capitalized Interest Account until such time as all money in the Capitalized Interest Account is spent; except the City, in its discretion, may supplement such transfers with other legally available money. Investments of money in the Capitalized Interest Account shall mature on or prior to the date on which such money shall be needed for required interest payments. Any interest earnings on money invested from the Capitalized Interest Account shall be retained in such account.

D. *Creation of the River Park Bonds Acquisition Account.* The Treasurer is hereby authorized and directed to create a subaccount in the Construction Fund for purposes of accounting for the use of the River Park Bonds proceeds deposited into the Construction Fund under Section 3.05.E of this Ordinance. Such account shall be designated the "River Park Bonds Acquisition Account," or such other designation conforming to banking requirements or accounting practices. Money in the River Park Bonds Acquisition Account shall be used to pay the costs of Acquiring the Facility, as described in Section 3.01 of this Ordinance. Any interest earnings on money invested from the River Park Bonds Acquisition Account shall be deposited into the Revenue Account.

Section 5.02: The Revenue Fund

A. *Creation of the Revenue Fund.* There is hereby created and shall be maintained in the office of the Treasurer a fund separate and distinct from all other funds and accounts of the City, designated the "Parking System Revenue Fund" (the "Revenue Fund"), and consisting of the Revenue Account, the Renewal and Replacement Account and the Rate Stabilization Account.

B. *Revenue Account.* There is hereby created and shall be maintained in the Revenue Fund an account separate and distinct from all other funds and accounts of the City, designated the "Parking System Revenue Account" (the "Revenue Account"). All Parking Revenues (except for net insurance proceeds in amounts greater than \$100,000, which directly shall be deposited into the Renewal and Replacement Account) shall be deposited into the Revenue Account upon receipt. Money shall be withdrawn from the Revenue Account solely for the purposes, and in the priority of order, set forth in Section 4.02 of this Ordinance.

C. *Renewal and Replacement Account.* There is hereby created and shall be maintained in the Revenue Fund an account separate and distinct from all other funds and accounts of the City, designated the "Parking System Renewal and Replacement Account" (the "Renewal and Replacement Account"), or such other designation conforming to banking requirements or accounting practices. There shall be deposited into the Renewal and Replacement Account (i) all amounts required to be deposited therein by the City's annual budget and (ii) all net proceeds of condemnation awards or insurance relating to condemnation, damage or destruction of property of the Parking System if in excess of \$100,000. Amounts on hand in the Renewal and Replacement Account shall be disbursed to pay the cost of replacement, repair, reconstruction or restoration of the Parking System as provided by Sections 6.01, 6.03 or 6.05 hereof; *provided*, any amounts in the Renewal and Replacement Account that, in the City's judgment, are not reasonably required (as evidenced by a certificate of an Engineer) for the purposes of the Renewal and Replacement Account, shall be deposited first in the Reserve Account to make up any deficiencies therein, and then shall be deposited in the Revenue Account. All income realized from the investment of the Renewal and Replacement Account shall be credited to the Renewal and Replacement Account.

D. *Rate Stabilization Account.* There is hereby created and shall be maintained in the Revenue Fund an account separate and distinct from all other funds and accounts of the City, designated the "Parking System Rate Stabilization Account" (the "Rate Stabilization Account"), or such other designation conforming to banking requirements or accounting practices. There shall be deposited into the Rate Stabilization Account all amounts required to be deposited therein by the City's annual budget. Amounts on hand in the Rate Stabilization Account shall be transferred, at the City's discretion, to the Revenue Account from time to time and used thereby to stabilize rates charged for parking at the various facilities of the Parking System. All income realized from the investment of the Rate Stabilization Account shall be credited to the Rate Stabilization Account.

Section 5.03: The Bond Fund

A. *Creation of the Bond Fund.* There is hereby created and shall be maintained in the office of the Treasurer a fund separate and distinct from all other funds of the City, designated the "Parking System Revenue Bond Fund" (the "Bond Fund"), or such other designation conforming to banking requirements or accounting practices. The Bond Fund shall be used solely for the purpose of paying the principal of, premium, if any, and interest on the Bonds. The Bond Fund shall consist of a Debt Service Account and a Reserve Account.

B. *Debt Service Account.* A Debt Service Account is hereby created in the Bond Fund for the purpose of paying the principal of, premium, if any, and interest on the Bonds. Any accrued interest paid to the City as proceeds of any series of Bonds shall be deposited into the Debt Service Account. All Assessment Income shall be deposited into the Debt Service Account upon receipt.

As long as any Bond remains Outstanding, the City hereby irrevocably obligates, pledges and binds itself to set aside and pay on a monthly basis from the Net Parking Revenues into the Debt Service Account those amounts necessary, together with Assessment Income and such other money as is on hand and available in the Debt Service Account and the Capitalized Interest Account (with respect to interest only), to pay installments of interest, or principal and interest, next coming due on the Bonds that are then Outstanding.

With respect to the River Park Bonds, such payments shall be made on or before the twentieth business day of each month as follows:

(1) continuing for as long as any of the River Park Bonds are Outstanding and unpaid, an approximately equal monthly amount that, together with other money available therefor in the Debt Service Account and the Capitalized Interest Account, is required to pay the interest to become due and payable on the next interest payment date on all of the River Park Bonds then Outstanding; and

(2) continuing for as long as any of the River Park Bonds are Outstanding and unpaid, an approximately equal monthly amount that, together with other money available therefor in the Debt Service Account, is required to pay the principal to mature on the next principal payment date of such River Park Bonds.

C. *Reserve Account.* A Reserve Account is hereby created in the Bond Fund for the purpose of securing the payment of the principal of and interest on the Bonds. The City will deposit an amount into the Reserve Account, simultaneously with the issuance and delivery of each series of Bonds, that will be sufficient, together with deposits in the Reserve Account and any Reserve Account Facility on deposit therein or to be deposited therein concurrently with the proceeds of such Bonds, to equal the Reserve Account Requirement. The City hereby reserves the right to calculate the Reserve Account Requirement from time to time, and at any time.

The City hereby further covenants and agrees that when the required deposits have been made into the Reserve Account, it will at all times maintain therein an amount at least equal to the Reserve Account Requirement. Whenever there is a sufficient amount in the Bond Fund to pay the principal of, premium if any, and interest on, all Bonds then Outstanding, the money in the Reserve Account may be used to pay such principal, premium and interest. Money in the Reserve Account may also be withdrawn to redeem and retire, and to pay the premium, if any, and interest due to such date of redemption, on any Bonds, as long as the money left remaining on deposit in the Reserve Account is equal to the Reserve Account Requirement. If at any time the amount in the Reserve Account exceeds the Reserve Account Requirement, such surplus may be deposited into the Debt Service Account.

In the event there shall be a deficiency in the Debt Service Account such that maturing installments of principal of and interest on the Bonds cannot be met, such deficiency shall be made up from the Reserve Account by the withdrawal of money therefrom. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up within 12 months out of Parking Revenues after making the necessary provision for the payments required to be made by subparagraphs First, Second and Third of Section 4.02 of this Ordinance.

D. *Reserve Account Facility Provisions.* In lieu of or in substitution for money or investments, the City may fund the Reserve Account with a Reserve Account Facility for the benefit of the Registered Owners of the Bonds and any Future Parity Bonds for all or any part of the Reserve Account Requirement, *provided* that:

(1) any such Reserve Account Facility that is a surety bond or insurance policy shall be issued by an insurance company or association duly authorized to do business in the State of Washington, and either (a) the claims paying ability of such insurance company or association is rated the highest rating accorded by a nationally recognized insurance rating agency or (b) obligations insured by a surety bond or an insurance policy issued by such company or association are rated at the time such surety bond or insurance policy is delivered, without regard to qualification of such rating by symbols such as "+" or "-" or numerical notation, in at least the third highest rating category by Moody's Investors Service, Inc. and Standard & Poor's Rating Group;

(2) any such Reserve Account Facility that is a letter of credit shall be issued by a bank, a trust company, a national banking association, a corporation subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 or any successor provision of law, a federal branch pursuant to the International Banking Act of 1978 or any successor provision of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States, the unsecured or uncollateralized long-term debt obligations of which, or long-term obligations secured or supported by a letter of credit issued by such person, are rated at the time such letter of credit is delivered, without regard to qualification of such rating by symbols such as "+" or "-" or numerical notation, in at least the third

highest rating category by Moody's Investors Service, Inc. and Standard & Poor's Rating Group; and

(3) prior to funding the Reserve Account with a Reserve Account Facility, the Treasurer shall have received (a) an opinion of counsel to the effect that such Reserve Account Facility has been duly authorized, executed and delivered by the provider thereof and is enforceable in accordance with its terms and (b) in the event such provider is not a domestic entity, an opinion of foreign counsel in form and substance satisfactory to the City.

Notwithstanding the foregoing, if at any time after a Reserve Account Facility has been deposited in the Reserve Account the unsecured or uncollateralized long-term debt of the provider thereof, or the long-term debt obligations secured or unsecured by a surety bond, insurance policy or letter of credit of the provider of the Reserve Account Facility, is reduced below the ratings required by paragraphs (1) and (2) of this subsection D, the City shall either (i) replace or cause to be replaced said Reserve Account Facility with another Reserve Account Facility that satisfies the requirements set forth in paragraphs (1) and (2) of this subsection D or (ii) deposit or cause to be deposited in the Reserve Account an amount of money or Investment Securities that is equal to the value of the Reserve Account Facility of such provider, such deposits to be made from Net Parking Revenues as money is made available, but in any case within 36 months of the first principal or interest payment date after the reduction in said ratings.

Each Reserve Account Facility shall be payable (upon the giving of such notice as may be required thereby) on any date on which money is required to be withdrawn from the Reserve Account and such withdrawal cannot be made without obtaining payment under such Reserve Account Facility.

In computing the amount on deposit in the Reserve Account, a Reserve Account Facility shall be valued at the amount available to be paid thereunder on the date of computation; provided that, if the unsecured or uncollateralized long-term debt of the provider of such Reserve Account Facility, or if the long-term debt obligations secured or supported by a surety bond, insurance policy or letter of credit of said provider, has been reduced below the ratings required by paragraphs (1) and (2) of this subsection D, said Reserve Account Facility shall be valued at the lesser of (i) the amount available to be paid thereunder on the date of calculation and (ii) the difference between the amount available to be paid thereunder on the date of issue thereof and an amount equal to a fraction of such available amount, the numerator of which is the aggregate number of principal and interest payment dates that has elapsed since such ratings were reduced and the denominator of which is six; provided, however, that in no event shall the Reserve Account Facility be valued at less than \$0.00.

E. *Investment of Money in the Bond Fund.* Money in the Bond Fund may be invested in Investment Securities. Investments of money in the Debt Service Account shall mature on or prior to the date on which such money shall be needed for required interest or principal payments. All interest earned and income derived by virtue of investing money in the Debt Service Account shall be deposited into the Revenue Account and be used for the

purposes and in the order of priority established by Section 4.02 of this Ordinance; *provided*, any earnings which are subject to a federal tax or rebate requirement may, so long as the amounts remaining on deposit in the Bond Fund are sufficient to pay the principal of and interest on the Bonds as they next become due and payable, be withdrawn from the Debt Service Account for deposit into a separate fund or account for that purpose. Investments of money in the Reserve Account shall be available to pay any deficiencies that may occur in the Debt Service Account. All interest earned and income derived by virtue of investing money in the Reserve Account shall be deposited into the Revenue Account and be used for the purposes and in the order of priority established by Section 4.02 of this Ordinance; *provided*, any earnings which are subject to a federal tax or rebate requirement may, so long as the amounts remaining on deposit in the Bond Fund are sufficient to pay the principal of and interest on the Bonds as they next become due and payable, be withdrawn from the Reserve Account for deposit into a separate fund or account for that purpose. Subject to the other provisions of this paragraph, money in the Debt Service Account and the Reserve Account may be combined for the purpose of purchasing investments, *provided*, the records of the City shall show to which account the respective portions of any such combined investments are credited.

F. *Valuation of Investment Securities in the Bond Fund.* In calculating the value of Investment Securities held in the Bond Fund, Investment Securities shall be valued at the market value of such obligations, exclusive of accrued interest. Valuation of the Reserve Account shall occur at least annually and immediately upon a withdrawal from the Reserve Account. The value of Investment Securities shall be determined as follows:

(1) for Investment Securities the bid and asked prices of which are published on a regular basis in *The Wall Street Journal*, the value of such Investment Securities shall be the average of the bid and asked prices for such Investment Securities so published on or most recently prior to such time of determination;

(2) for Investment Securities the bid and asked prices of which are not published on a regular basis in *The Wall Street Journal*, the value of such Investment Securities shall be the average bid price at such time of determination for such Investment Securities by any two nationally recognized government securities dealers (selected by the City in its absolute discretion) at the time making a market in such Investment Securities or the bid price published by a nationally recognized pricing service; and

(3) for certificates of deposit and bankers' acceptances, the value of such Investment Securities shall be the face amount thereof, plus accrued interest.

ARTICLE VI: COVENANTS TO REGISTERED OWNERS

Section 6.01: Maintenance of the Parking System

The City shall at all times maintain, preserve and keep the properties of the Parking System in good repair, working order and condition and shall from time to time make all

necessary and proper repairs, renewals, replacements, extensions and betterments thereto, so that at all times the business carried on in connection therewith will be properly and advantageously conducted, and the City shall at all times operate or cause to be operated said properties of the Parking System and the business in connection therewith in an efficient manner and at a reasonable cost.

Section 6.02: Rates and Charges

The City shall maintain and collect from the users of the Parking System, rates and charges for furnishing the services and the facilities of the Parking System to such users thereof. The City shall also collect all Assessments, if any, payable into the Debt Service Account when due. The City shall fix, maintain and collect rates and charges for the use of the services and facilities and all commodities sold, furnished or supplied by the Parking System, which shall be fair and nondiscriminatory and shall adjust such rates and charges from time to time so that:

(1) the Parking Revenues, together with any Assessment Income collected, will at all times be sufficient (a) to pay the Costs of Maintenance and Operation, (b) to make any payments required to be made on account of the Bonds, as and when the same shall become due and payable, (c) to make when due all payments which the City is obligated to make into the Reserve Account and all other payments which the City is obligated to make pursuant to this Ordinance, and (d) to pay all taxes, assessments or other governmental charges lawfully imposed on the Parking System or the Parking Revenues, or payments in lieu thereof, and any and all other amounts which the City may now or hereafter become obligated to pay from the Parking Revenues by law or contract; and

(2) the Net Parking Revenues for each calendar year, together with Assessment Income, will equal at least the sum of (a) 1.00 times the Average Annual Debt Service of that portion of all Bonds then Outstanding that are Assessment Bonds, plus (b) 1.35 times the Maximum Annual Debt Service of that portion of all Bonds then Outstanding that are not Assessment Bonds; *provided*, that in determining compliance with this clause (2), Parking Revenues deposited into the Rate Stabilization Account shall be considered to be received on the date such Parking Revenues are transferred from the Rate Stabilization Account to the Revenue Account as opposed to the date on which such Parking Revenues are initially deposited into the Revenue Account pending transfer to the Rate Stabilization Account.

Section 6.03: Sale of the Parking System

A. *Sale of the Parking System.* The City shall not sell or otherwise dispose of the Parking System in its entirety unless simultaneously with such sale or other disposition provision is made for payment into the Bond Fund of cash or Defeasance Obligations sufficient (taking into account interest to be earned on any such Defeasance Obligations) to pay the principal of and interest on all Bonds then Outstanding, nor shall it sell or otherwise dispose of

any part of the useful operating properties of the Parking System unless such facilities are replaced or provision is made for payment into the Bond Fund of the greatest of the following:

(1) an amount which shall be in the same proportion to the net amount of Bonds then Outstanding (defined as the total principal amount of the Bonds then Outstanding less the amount of cash and investments in the Bond Fund and accounts therein) that the revenue from the portion of the Parking System sold or disposed of for the preceding year bears to the total Parking Revenues for such period; or

(2) an amount which shall be in the same proportion to the net amount of Bonds then Outstanding (as defined above) that the Net Parking Revenues from the portion of the Parking System sold or disposed of for the preceding year bears to the total Net Parking Revenues for such period; or

(3) an amount which shall be in the same proportion to the net amount of Bonds then Outstanding (as defined above) that the depreciated-cost value of the facilities sold or disposed of bears to the depreciated-cost value of the entire Parking System immediately prior to such sale or disposition.

B. *Sale of Obsolete Property.* Notwithstanding subsection A of this Section 6.03, the City may sell or otherwise dispose of any of the works, plant, properties and facilities of the Parking System or any real or personal property comprising a part of the same, without making any deposit into the Bond Fund, provided the property which is disposed of is: (i) unserviceable, inadequate, obsolete or unfit to be used in the operation of the Parking System; (ii) no longer necessary, material to or useful in such operation; or (iii) no longer profitable to the City.

C. *Condemnation of the Parking System.* In the event of any loss or damage to the properties of the Parking System by reason of condemnation, the City shall (i) with respect to each such loss, promptly replace, repair and reconstruct to the extent necessary to the proper conduct of the operations of the Parking System the condemned portion thereof and shall apply the proceeds of any condemnation award for that purpose to the extent required therefor, or (ii) if the City shall not use the entire proceeds of such condemnation award to repair, replace or reconstruct such lost or damaged property, such award not so used shall be paid into the Renewal and Replacement Account, and if in excess of \$300,000 for any one loss or damage, shall be used to purchase or redeem Bonds or to Acquire, construct or install extensions, betterments and improvements to the Parking System.

Section 6.04: Payment of Lawful Charges and Compliance With Law

The City shall pay, or shall cause to be paid, all taxes and assessments or other municipal or governmental charges, if any, that are lawfully levied or assessed upon it for or with respect to the Parking System, or upon any part thereof or upon any Parking Revenues derived therefrom, when the same shall become due. The City shall duly observe and comply with, and shall cause all of its contractors, subcontractors, employees and agents to observe and comply with, all valid federal, state and local laws, regulations, rules and orders relating or

applicable to the City and the Parking System, and the City shall not, except as provided in Sections 6.09 and 7.04 hereof, create or suffer to be created any lien or charge upon the Parking System or upon any part thereof and the City shall not create or suffer to be created any lien or charge upon the Parking Revenues which are derived therefrom, except for Permitted Encumbrances. The City shall pay and discharge (or cause to be paid and discharged) or shall make adequate provision to satisfy and discharge within 60 days after the same shall accrue, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the Parking System or upon any part thereof or upon the Parking Revenues which are derived therefrom, or upon any money or securities pledged hereunder, other than Permitted Encumbrances.

Section 6.05: Insurance

The City shall either self-insure in such manner and to such extent as the City shall determine to be necessary and appropriate or, to the extent insurance coverage is available at reasonable cost with responsible insurers, keep the Parking System and the operation thereof insured, with policies payable to the City, against the risks of direct physical loss, damage to or destruction of the Parking System or any part thereof, and against accidents, casualties or negligence, including liability insurance and employers liability, at least to the extent that similar insurance is usually carried by utilities operating like properties. The cost of such self-insurance and the premiums on such insurance policies are declared to be normal Operating Expenses. In the event of any loss or damage, (i) the City shall promptly repair or replace the damaged portion of the insured property and apply the proceeds of any insurance policy for that purpose, or (ii) in the event that the City should determine not to repair or reconstruct such damaged portion of the properties of the Parking System, the proceeds of such insurance shall be paid into the Reserve Account to the extent that such transfer shall be necessary to make up any deficiency in the Reserve Account and the balance, if any, shall at the option of the City, be used either for repairs, renewals, replacements or capital additions to the Parking System or for the purchase, payment or redemption of Bonds.

Section 6.06: Books and Records

The City shall keep proper books of account in accordance with the rules and regulations prescribed by the Division of Municipal Corporations of the State Auditor's office of the State of Washington, or such other State department or agency succeeding to such duties of the State Auditor's office, and if no such rules or regulations are prescribed as aforesaid, then in substantial accordance with generally accepted accounting principal, as the same apply to governmental entities. The City shall cause its books of account to be audited annually by an independent certified public accountant or public accounting firm. Any Registered Owner of Bonds may obtain at the office of the City copies of the annual report of the City.

Section 6.07: No Free Service

Except to aid the poor or infirm, the City shall not permit free parking at any facility comprising the Parking System so long as any Bonds are Outstanding and unpaid. The City

shall promptly enforce, to the extent allowed by law, the payment of any and all accounts owing to the City and delinquent, by discontinuing service, or by legal suits, actions and proceedings, or both.

Section 6.08: Improvements to the Parking System

The City shall not expend any of the Parking Revenues or the proceeds of any obligation payable therefrom for any extensions, betterments and improvements to the Parking System that are not legally required or economically sound, and that will not properly and advantageously contribute to the conduct of the business of the Parking System in an efficient manner.

Section 6.09: Issuance of Future Parity Bonds

A. *Restriction Against Prior Lien Bonds.* The City hereby covenants and agrees with the Registered Owners of the Bonds, for as long as any of the same remain Outstanding, that the City shall not issue any bonds having a greater priority of lien upon the Parking Revenues to pay and secure the payment of the principal of and interest on such bonds than the priority of lien created on such Parking Revenues to pay and secure the payment of the principal of and interest on the Bonds. The City shall not issue any bonds having an equal priority of lien upon the Parking Revenues to pay and secure the payment of the principal of and interest on such bonds than the priority of lien created on such Parking Revenues to pay and secure the principal of and interest on the Bonds, except as provided in this Section 6.09.

B. *Purposes for Which Future Parity Bonds May Be Issued.* The City reserves the right to issue Future Parity Bonds for the purposes of:

(1) providing funds to Acquire, construct, reconstruct, install or replace any equipment, facilities, additions, betterments or other capital improvements to the Parking System for which it is authorized by law to issue revenue bonds; or

(2) refunding at or prior to their maturity, any Bonds, revenue bond anticipation notes or outstanding revenue bonds or other obligations payable out of the Parking Revenues.

C. *Conditions of Issuing Future Parity Bonds.* Future Parity Bonds may be issued only if the following conditions are satisfied:

(1) At the time of the issuance of any Future Parity Bonds there is no deficiency in the Debt Service Account or the Reserve Account.

(2) The principal of and interest on the Future Parity Bonds shall be payable out of the Debt Service Account and the Capitalized Interest Account (with respect to interest only).

(3) The ordinance authorizing such Bonds shall specify: (a) if such Future Parity Bonds will be interest-bearing Bonds, their interest rates and the interest

payment dates; (b) if such Future Parity Bonds will be Capital Appreciation Bonds, their Valuation Dates and the Accredited Value on such Valuation Dates; (c) if such Future Parity Bonds will be Deferred Income Bonds, their Interest Commencement Date, their Valuation Dates prior to the Interest Commencement Date and their Appreciated Value on such Valuation Dates; (d) if such Future Parity Bonds will be Variable Interest Rate Bonds, the provisions, if any, as to the calculation or change of Variable Interest Rates.

(4) If there are Assessments levied in any local improvement district to pay for additions and improvements to and extensions of the Parking System that will be constructed from the proceeds of such Future Parity Bonds, or if there are Assessments pledged to be paid into a warrant or bond redemption fund for revenue bonds or warrants being refunded by the Future Parity Bonds, the ordinance authorizing such Future Parity Bonds shall require that such Assessments be paid into the Debt Service Account.

(5) The City shall provide in the ordinance authorizing the issuance of such Future Parity Bonds that it will deposit a Reserve Account Facility into the Reserve Account or pay money into the Reserve Account so that by three years from the date such Future Parity Bonds are issued there will have been paid into the Reserve Account an amount which, with the money or Reserve Account Facility already on deposit therein, will be equal to the Reserve Account Requirement (as calculated to include the Future Parity Bonds to be issued).

(6) Prior to the delivery of any Future Parity Bonds, the City shall have on file in the office of the City's Deputy City Manager a certificate of an independent certified public accountant, dated not earlier than 90 days prior to the date of delivery of such Future Parity Bonds, showing that the Adjusted Net Parking Revenue, together with Assessment Income, will equal at least the sum of (a) 1.00 times the Average Annual Debt Service (as such is calculated to include the Future Parity Bonds to be issued) of that portion of all Bonds that are Assessment Bonds, plus (b) 1.50 times the Average Annual Debt Service (as such is calculated to include the Future Parity Bonds to be issued) of that portion of all Bonds that are not Assessment Bonds; *provided*, that in determining compliance with clause (b) of this sentence, Parking Revenues deposited into the Rate Stabilization Account shall be considered to be received on the date such Parking Revenues are transferred from the Rate Stabilization Account to the Revenue Account as opposed to the date on which such Parking Revenues are initially deposited into the Revenue Account pending transfer to the Rate Stabilization Account. Such accountant shall base his certification upon, and his certificate shall have attached thereto, financial statements of the Parking System audited by the State Examiner or by such other person or firm currently authorized by the statutes of the State of Washington to perform such audits (unless such an audit is not available for a 12-month period within the preceding 36 months), and certified by the Treasurer or the Deputy City Manager, showing income and expenses for the period upon which the same is based.

D. *Reimbursement Obligations.* In the event that the City elects to meet the Reserve Account Requirement with respect to any series of Bonds through the use of a Reserve Account Facility, the City may contract with the provider of such Reserve Account Facility that the City's reimbursement obligation, if any, to such provider is subordinate and junior only to the Bonds and on a parity with the City's reimbursement obligations to other providers of Reserve Account Facilities. In the event that the City elects additionally to secure any Bonds through the use of a letter of credit, municipal bond insurance or other equivalent credit enhancement device, the City may contract with the entity providing such credit enhancement device that the City's reimbursement obligation, if any, to such entity is either: (i) on a parity of lien with the Bonds and any Future Parity Bonds, on the condition that the payments due under such reimbursement agreement are such that if such reimbursement obligation were Future Parity Bonds, such Bonds could be issued in compliance with the provisions of this Section 6.09, or (ii) subordinate and junior only to the Bonds and on a parity with the City's reimbursement obligations, if any, to providers of Reserve Account Facilities.

E. *Subordinate Lien Bonds.* Nothing herein contained shall prevent the City from issuing revenue bonds or other obligations that are a charge upon the Parking Revenues junior or inferior to the payments required by this Ordinance to be made out of such revenue into the Bond Fund to pay and secure the payment of the Bonds.

F. *Refunding Bonds.* The restrictions set forth in subsection C(6) of this Section 6.09 shall not apply in the event the City issues Future Parity Bonds to refund all or a portion of the Bonds then Outstanding, provided (i) the annual maturities of the refunding bonds do not extend over a longer period of time than the Bonds being refunded, and (ii) the sum of the principal and interest due on each annual maturities of the refunding bonds does not exceed by more than \$5,000 the sum of the principal of and interest on the refunded Bonds that would have otherwise been due on the respective annual maturities. Notwithstanding the foregoing, this Section 6.09 shall not prevent the City from issuing revenue bonds to refund maturing Bonds for the payment of which money is not otherwise available.

ARTICLE VII: MISCELLANEOUS

Section 7.01: Amendments to this Ordinance

A. *Adoption of a Supplemental Ordinance.* The Council may adopt an ordinance supplemental hereto, which ordinance thereafter shall become a part of this Ordinance, for any one or more of all of the following purposes:

(1) to add to or delete from the covenants and agreements of the City in this Ordinance, provided such additions or deletions shall not adversely affect, in any material respect, the interests of the Registered Owners of any Bonds; or

(2) to cure, correct or supplement any ambiguous or defective provision contained in this Ordinance, provided such supplemental ordinance shall not adversely affect, in any material respect, the interests of the Registered Owners of the Bonds.

Any such supplemental ordinance may be adopted without the consent of the Registered Owners of any Bonds at any time Outstanding, notwithstanding any of the provisions of subsection B of this Section 7.01.

B. *Amendments With Consent of the Registered Owners.* With the consent of the Registered Owners of not less than 65 percent in aggregate principal amount of the Bonds at the time Outstanding, the Council may adopt an ordinance supplemental hereto for the purpose of adding any provisions to, or changing in any manner, or eliminating any of the provisions of this Ordinance or of any supplemental ordinance; provided, however, that no such supplemental ordinance shall:

(1) extend the fixed maturity of any Bonds, or reduce the rate of interest thereon, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or change the redemption provisions thereof, or reduce any premium payable on the redemption thereof, or reduce the priority of liens established by Section 4.01 of this Ordinance in favor of the Bonds, without the consent of the Registered Owner of each Bond so affected; or

(2) reduce the aforesaid percentage of Registered Owners required to approve any such supplemental ordinance, without the consent of the Registered Owners of all of the Bonds then Outstanding.

It shall not be necessary for the consent of Registered Owners under this subsection B to approve the particular form of any proposed supplemental ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

C. *Effect of Amendments.* Upon the adoption of any supplemental ordinance pursuant to the provisions of this Section 7.01, this Ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City under this Ordinance and all Registered Owners of Bonds Outstanding hereunder shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendments, and all terms and conditions of any such supplemental ordinance shall be deemed to be part of the terms and conditions of this Ordinance for any and all purposes.

D. *Notations; Replacement Bonds.* Bonds executed and delivered after the execution of any supplemental ordinance adopted pursuant to the provisions of this Section 7.01 may have a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, new Bonds so modified as to conform in the opinion of the Council to any modification of this Ordinance contained in any such supplemental ordinance, may be prepared and delivered without cost to the Registered Owners of any affected Bonds then Outstanding, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

Section 7.02: Events of Default

A. *Events of Default Defined.* Each of the following shall be an "Event of Default" hereunder:

(1) payment of the principal or redemption price of any Bond is not made when it becomes due and payable at maturity or upon call for redemption; or

(2) payment of any interest on any Bond is not made when it becomes due and payable; or

(3) the City fails or refuses to comply with any of its covenants hereunder, other than the timely payment of the principal of, redemption price, or interest on the Bonds (to which no cure period shall apply), and such failure or refusal shall continue for a period of 90 days after written notice thereof has been given to the City by the Registrar.

B. *No Acceleration.* If an Event of Default shall happen and shall not have been remedied, the Bonds shall not be subject to acceleration of payment, and each installment of principal of and interest on the Bonds shall be payable when due.

C. *Proceedings Brought by Registered Owners.* If an Event of Default happens and is not remedied, then the Registered Owners of not less than 25 percent in principal amount of Bonds then Outstanding may proceed, by their agents and attorneys, to protect and enforce their rights under this Ordinance forthwith by a suit in equity or at law, whether for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or for an accounting against the City as if the City were the trustee of an express trust, or in the enforcement of any other legal or equitable right as the legal representative of the Registered Owners shall deem most effectual to enforce any of their rights.

The Registered Owners of not less than 25 percent in principal amount of Outstanding Bonds may appoint a default trustee (the "Default Trustee") to represent their interests. The Default Trustee must be appointed by an instrument or concurrent instruments in writing signed and acknowledged by such Registered Owners, or by their attorneys-in-fact duly authorized, and delivered to such Default Trustee, notification thereof being given to the City. Any Default Trustee appointed under the provisions of this subsection C shall be a bank or trust company organized under the laws of the State of Washington or the State of New York or a national banking association. The fees and expenses of the Default Trustee shall be borne by the Registered Owners and not by the City. The Default Trustee may be removed at any time, and a successor Default Trustee may be appointed, by the Registered Owners of a majority in principal amount of the Bonds, by an instrument or concurrent instruments in writing signed and acknowledged by such Registered Owners or by their attorneys-in-fact duly authorized. The Default Trustee appointed in the manner provided in this subsection C, and each successor thereto, is declared to be a trustee for the Registered Owners of all of the

Bonds and is empowered to exercise all of the rights and powers herein conferred on the Default Trustee.

The Registered Owners of not less than a majority in principal amount of the Bonds then Outstanding may direct the time, method and place of conducting any proceeding for any remedy available to them provided that the Default Trustee shall have the right to decline to follow any such direction if the Default Trustee shall be advised by counsel that the action or proceeding so directed may not lawfully be taken, or if the Default Trustee in good faith shall determine that the action or proceeding so directed would involve the Default Trustee in personal liability or be unjustly prejudicial to the Registered Owners who are not parties to such direction.

The Default Trustee shall have the power to institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under this Ordinance by any acts that may be unlawful or in violation of this Ordinance, and such suits and proceedings as the Default Trustee may be advised shall be necessary or expedient to preserve or protect the interests of the Registered Owners. Any action, suit or other proceeding instituted by the Default Trustee shall be brought in its name as trustee for the Registered Owners and all such rights of action upon or under any of the Bonds or the provisions of this Ordinance may be enforced by the Default Trustee without the possession of any of the Bonds, and without the production of the same at any trial or proceeding relative thereto except when otherwise required by law, and the respective owners of the Bonds, by taking and holding the same, shall be conclusively deemed irrevocably to appoint the Default Trustee the true and lawful trustee of the respective owners of the Bonds, with authority to (i) institute any such action, suit or proceeding; (ii) receive as trustee and deposit in trust any sums becoming distributable on account of the Bonds; (iii) execute any paper or documents for the receipt of such money; and (iv) do all acts with respect thereto that the Registered Owner himself might have done in person.

Nothing contained herein shall be deemed to authorize or empower the Default Trustee to consent to accept or adopt, on behalf of any owner of the Bonds, any plan of reorganization or adjustment affecting the Bonds of the City or any right of any owner thereof, or to authorize or empower the Default Trustee to vote the claims of the Registered Owners thereof in any receivership, insolvency, liquidation, bankruptcy, reorganization or other proceeding to which the City shall be a party.

D. *Restriction on Action of Registered Owners.* No Registered Owner of any one or more of the Bonds shall have any right to institute any action, suit or proceeding at law or in equity for the enforcement of same, unless an Event of Default shall have happened and be continuing and unless no Default Trustee has been appointed as herein provided, but any remedy herein authorized to be exercised by the Default Trustee may be exercised individually by a Registered Owner, in his own name and on his own behalf or for the benefit of all Registered Owners, in the event no Default Trustee has been appointed, or with the consent of the Default Trustee if such Default Trustee has been appointed, except that nothing in this Ordinance or in the Bonds shall affect or impair the obligation of the City, which is absolute and unconditional, to pay from Net Parking Revenues the principal of and interest on the

Bonds to the respective Registered Owners thereof at the respective due dates therein specified, or affect or impair the right of action, which is absolute and unconditional, of such Registered Owners to enforce such payment.

E. *Remedies Not Exclusive.* No remedy herein conferred is intended to be exclusive of any other remedy or remedies, and each remedy is in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

F. *Delays and Omissions Not to Impair Rights.* No delays or omissions in respect of exercising any right or power accruing upon any default shall impair such right or power or be a waiver of such default, and every remedy given by this Section 7.02 may be exercised from time to time and as often as may be deemed expedient.

Section 7.03: No Personal Recourse

No recourse shall be had for any claim based on this Ordinance or the Bonds against any Council member, officer or employee, past, present or future, of the City or of any successor body as such, either directly or through the City or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise.

Section 7.04: Derivative Products Authorized

The City hereby reserves the right to enter into Derivative Products with respect to all or a portion of the Bonds. The City's obligations to make City Payments may be secured by a pledge of and lien on the Parking Revenues on an equal and ratable basis with the Bonds if the following conditions are satisfied:

(1) the Derivative Product must satisfy the requirements for issuing Future Parity Bonds set forth in Section 6.09 of this Ordinance, taking into consideration regularly scheduled City Payments and regularly scheduled Reciprocal Payments under the Derivative Product;

(2) the City shall obtain an opinion of a nationally recognized bond counsel firm on the due authorization and execution of such Derivative Product, the validity and enforceability thereof and opining that the action proposed to be taken is authorized or permitted by the Ordinance and will not adversely affect the excludability of the interest on any series of Outstanding Bonds for federal income tax purposes;

(3) each Derivative Product shall set forth the manner in which the City Payment and Reciprocal Payments are to be calculated and a schedule of Derivative Payment Dates; and

(4) prior to entering into a Derivative Product, the City shall adopt an ordinance that (a) establishes general provisions for the rights of the providers of Derivative Products or Derivative Facilities, and (b) sets forth such other matters as the

City deems necessary or desirable in connection with the management of Derivative Products as are not clearly inconsistent with the provisions of this Ordinance.

Section 7.05: Bonds Owned by the City

Bonds owned or held by or for the account of the City shall not be deemed Outstanding for the purpose of any vote or consent or other action or any calculation of Outstanding Bonds provided for in this Ordinance, and shall not be entitled to vote or consent or take any other action provided for in this Ordinance.

Section 7.06: Contract; Severability

The covenants contained in this Ordinance and in the Bonds shall constitute a contract between the City and the Registered Owner of each and every Bond. Any action by the Registered Owner of any Bond shall bind all future Registered Owners of the same Bond in respect of anything done or suffered by the City or the Registrar in pursuance thereof. All the covenants, promises and agreements in this Ordinance contained by or on behalf of the City, or by or on behalf of the Registrar, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

If any one or more of the covenants or agreements provided in this Ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction on final appeal (if any appeal be taken) to be contrary to law, then such covenant or agreement shall be null and void and shall be deemed separable from the remaining covenants and agreements in this Ordinance and shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds.

Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon or give to any person other than the City, the Registrar and the Registered Owners from time to time of the Bonds any rights, remedies or claims under or by reason of this Ordinance or any covenant, condition or stipulation thereof; and all of the covenants, stipulations, promises and agreements in this Ordinance contained by or on behalf of the City shall be for the sole and exclusive benefit of the City, the Registrar and the Registered Owners from time to time of the Bonds.

Section 7.07: Ratification

All actions not inconsistent with the provisions of this Ordinance heretofore taken by the Council and the City's employees with respect to the adoption of this Ordinance, the Acquisition of the Facility, the creation of the Parking System and the issuance, sale and delivery of the River Park Bonds, are hereby in all respects ratified, approved and confirmed.

Section 7.08: Repealer

All ordinances or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and shall have no further force or effect.

Section 7.09: Conformity to Accounting Principles

The Treasurer is hereby authorized to rename any fund or account created herein and to implement such accounting procedures as is necessary to comply with generally accepted accounting principles for municipal governments and with the rules and regulations imposed from time to time by the State Auditor of the State of Washington.

Section 7.10: Artwork not Included

For purposes of complying with Section 7.06.420 of the Spokane Municipal Code, as amended, the acquisition of the Facility shall not include the acquisition of artwork. Accordingly, the City shall not be required to expend one percent of the principal amount of the Bonds for works of art.

Section 7.11: Emergency and Urgency; Effective Date

The City has determined that there is a significant need for additional public parking in the vicinity of City Hall, the main branch of the Spokane Public Library and Riverfront Park. Further, the City has had extensive negotiations with the current owners of the Facility regarding the sale of said garage to the City. Lincoln Investment Company of Spokane and Citizens Realty Company have advised the City that, in order for them to consummate plans for the Project, the City must commit no later than October 21, 1996 to purchase the Facility. The City has determined to immediately issue bond anticipation notes in preparation of the payment of said purchase price. Pursuant to RCW 39.50.020, the City must authorize the issuance of the River Park Bonds before said notes can be issued. In order for said notes to be issued in time to provide money to pay the purchase price for the Facility, it is necessary for to this Ordinance to become effective immediately upon its adoption. Based upon said facts, an urgency and emergency is hereby declared to exist. Based upon said urgency and emergency, this Ordinance shall be effective immediately upon its adoption and approval.

ADOPTED by the City Council of the City of Spokane, Washington, at a regular meeting thereof held on October 21, 1996.

CITY OF SPOKANE
Spokane County, Washington

Jack Geraghty, Mayor

ATTEST:

Terri L. Pfister, City Clerk

(S E A L)

APPROVED AS TO FORM:

James C. Sloane, City Attorney

Roy J. Koegen, Bond Counsel

* * * * *

CERTIFICATE

I, Terri L. Pfister, the City Clerk of the City of Spokane, Spokane County, Washington, hereby certify that the foregoing Ordinance is a full, true and correct copy of an ordinance duly adopted at a regular meeting of the City Council duly held at the regular meeting place thereof on October 21, 1996, of which meeting all members of said Council had due notice, and at which a majority thereof were present, and that at said meeting said Ordinance was adopted by the following vote:

AYES, and in favor thereof, Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

I further certify that I have carefully compared the same with the original Ordinance on file and of record in my office; that said Ordinance is a full, true and correct copy of the original Ordinance adopted at said meeting; and that said Ordinance has not been amended, modified or rescinded since the date of its adoption, and is now in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the official seal of said City on October 21, 1996.

CITY OF SPOKANE
Spokane County, Washington

Terri L. Pfister, City Clerk

(SEAL)

[Face of River Park Bond]

UNITED STATES OF AMERICA
STATE OF WASHINGTON
COUNTY OF SPOKANE

CITY OF SPOKANE

PARKING SYSTEM REVENUE BOND
(RIVER PARK SQUARE PARKING FACILITY)

Number

Dollars

See Reverse Side for
Additional Provisions

INTEREST RATE:

MATURITY DATE:

CUSIP NO.

THE CITY OF SPOKANE, Washington (the "City"), a municipal corporation duly organized and existing under and by virtue of the Constitution and the laws of the State of Washington, acknowledges itself to owe and, for value received, promises to pay from its "Parking System Revenue Bond Fund" (the "Bond Fund"), referred to in Ordinance No. _____, adopted by the City Council on October 21, 1996 (the "Ordinance"), to

or registered assigns, on the Maturity Date specified above, the principal sum of

DOLLARS

and to pay interest thereon from the aforesaid Bond Fund from _____, ____ or from the most recent date to which interest has been paid or duly provided for, at the Interest Rate per annum specified above, payable commencing _____, ____ and semiannually thereafter on each _____ and _____ to the stated Maturity Date or date of prior redemption, whichever occurs earliest. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

Both the principal of and interest on this River Park Bond are payable in lawful money of the United States of America to the Registered Owner hereof, whose name and address shall appear on the registration books of the City (the "Bond Register") maintained by either of the Washington State Fiscal Agents in Seattle, Washington, or New York, New York (the "Registrar").

Interest shall be paid to the Registered Owner hereof whose name appears on the Bond Register at the close of business on the fifteenth day of the calendar month preceding the interest payment date and shall be paid by check or draft of the Registrar mailed to such Registered Owner on the due date at the address appearing on the Bond Register, or such other address as may be furnished in writing by such Registered Owner to the Registrar. Interest installments may be paid by wire transfer to a Registered Owner if a written request of

such Registered Owner is submitted to the Registrar by at least the fifteenth day of the calendar month preceding the interest payment date. The costs of any such wire transfer to the Registered Owner of more than \$1,000,000 in aggregate principal-amount of the Bonds shall be borne by the City as an Operating Expense; and the cost of any such wire transfer to any other the Registered Owner shall be borne by such Registered Owner.

Principal shall be paid to the Registered Owner upon presentation and surrender of this River Park Bond on or after the stated Maturity Date or date of prior redemption, whichever occurs earliest, at either of the principal corporate trust offices of the Registrar. If this River Park Bond is not redeemed when properly presented at its maturity or call date, then interest shall continue to accrue at the Interest Rate identified above until this River Park Bond, both principal and interest, is paid in full or until sufficient money for its payment in full has been deposited in the Bond Fund and this River Park Bond has been called for payment.

Reference is hereby made to the Additional Provisions set forth on the reverse side hereof, and such Additional Provisions shall for all purposes have the same effect as if set forth in this space.

This River Park Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance until the Certificate of Authentication hereon shall have been manually signed by the Registrar.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that this River Park Bond and the series of which it is one are issued pursuant to and in strict compliance with the Constitution and the laws of the State of Washington now in force, and the ordinances of the City, specifically the Ordinance, and that all acts, conditions and things required to be done precedent to and in the issuance of this River Park Bond have happened, been done and been performed.

IN WITNESS WHEREOF, the City of Spokane, Washington, has caused this River Park Bond to be executed by the facsimile signature of its Mayor, attested by the facsimile signature of its City Clerk, and imprinted with a facsimile of its seal on _____, ____.

CITY OF SPOKANE
Washington

[facsimile signature]

Mayor

ATTEST:

[facsimile signature]

Clerk

[facsimile seal]

CERTIFICATE OF AUTHENTICATION

Date of Authentication:

This River Park Bond is one of the City of Spokane Parking System Revenue Bonds (River Park Square Parking Facility), dated _____, _____, and described in the within-mentioned Ordinance.

WASHINGTON STATE FISCAL AGENCY, as Registrar

By: _____
Authorized Officer

[Reverse Side of River Park Bond]

ADDITIONAL PROVISIONS

This River Park Bond is one of a duly authorized series of Bonds of like date, tenor and effect, except for variations required to state denominations, numbers, interest rates and dates of maturity, aggregating the principal sum of \$_____. The River Park Bonds are issued in fully registered form in denominations of \$5,000 each, or any integral multiple thereof within a single maturity, mature over the years _____ through _____, inclusive, and are special obligations of the City payable solely from the Bond Fund. For a more particular description of said Bond Fund, the Parking Revenues to be deposited therein, and the nature and extent of the security afforded thereby, reference is made to the provisions of the Ordinance. This River Park Bond is not a general obligation of the City, and the full faith, credit and resources of the City are not pledged for payment of the principal thereof and interest thereon.

The River Park Bonds constitute a prior lien and charge upon the Net Parking Revenues superior to all other charges of any kind or nature, and are equal to the charges necessary to pay the principal of and interest on any Future Parity Bonds that hereafter may be issued. The City has irrevocably obligated itself to set aside and pay out of the Net Parking Revenues certain fixed amounts without regard to any fixed proportion, namely, amounts sufficient, together with other money legally available and to be used therefor, to pay into the Bond Fund the principal of and premium, if any, and interest on the River Park Bonds and any Future Parity Bonds at any time Outstanding as they respectively become due, all at the times and in the manner set forth in the Ordinance.

The River Park Bonds are issued by the City pursuant to and in full compliance with the Constitution and laws of the State of Washington now in force, particularly chapters 35.86 and 39.46 RCW, and proceedings duly adopted and authorized by the Council, more particularly the Ordinance, for the purpose of providing the money to finance the Acquisition of the Facility, to fund the Reserve Account and the Rate Stabilization Account, to pay capitalized

interest and to pay the costs of issuing the River Park Bonds, all as more particularly described in the Ordinance.

The River Park Bonds maturing in the years ____ through ____, inclusive, are not subject to redemption prior to their fixed date of maturity. The City has reserved the right to redeem and call the River Park Bonds maturing on or after _____, ____, prior to their stated maturity, on or after _____, ____, in whole or in part (maturities to be selected by the City and by lot within a maturity in such manner as the Registrar shall determine) at any time, at the redemption price of par, plus accrued interest, if any, to the date of redemption.

Notice of any such redemption, unless waived by a Registered Owner, shall be sent by the Registrar by first-class mail, postage prepaid, not less than 30 nor more than 60 days prior to the date fixed for redemption, to the Registered Owner of each River Park Bond to be redeemed, at the address appearing on the Bond Register. Said requirements shall be deemed to be complied with when notice is mailed as herein provided, regardless of whether it is actually received by the Registered Owner of any River Park Bond to be redeemed. Interest on any River Park Bonds so called for redemption shall cease to accrue on the date fixed for redemption, and the River Park Bonds shall not be deemed to be Outstanding as of such redemption date, provided funds for redemption are on deposit at the place of payment at that time.

This River Park Bond is transferable or exchangeable by the Registered Owner hereof in person, or by his attorney duly authorized in writing, upon presentation and surrender of this River Park Bond at either of the principal corporate trust offices of the Registrar. Upon such transfer or exchange, a new River Park Bond or River Park Bonds of authorized denominations, of the same maturity and interest rate, and for the same aggregate principal amount shall be issued to the transferee or exchangee, in exchange therefor. The Registrar shall not be obligated to exchange or transfer any River Park Bond during the 15 days preceding any principal or any interest payment date.

The City and the Registrar may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payments of principal hereof and interest due hereon and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

The City has covenanted and agreed with the Registered Owners of the River Park Bonds that it will keep and perform all of the covenants of this River Park Bond and of the Ordinance to be by it kept and performed. The City has further covenanted to maintain the Facility in good repair, working order and condition, to operate the same in an efficient manner and at a reasonable cost, and to fix, maintain and collect rates and charges for service furnished by or through the Parking System, sufficient in amount, for as long as any of the River Park Bonds are Outstanding, to make available from the Parking Revenues, after Operating Expenses are provided for, all amounts required to be paid into the Bond Fund in any year hereafter to pay the principal of and interest on the River Park Bonds and any Future Parity Bonds.

Reference is hereby made to the Ordinance for other covenants, declarations, terms and conditions under which this River Park Bond and the River Park Bonds of this series have been issued, including the rights and remedies of the Registered Owners in the event of a default hereunder or under the Ordinance. The covenants contained herein and in the Ordinance, as they may apply to this River Park Bond, may be discharged by making provision, at any time, for the payment of the principal of and interest on this River Park Bond in the manner provided in the Ordinance.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things essential to the validity of this River Park Bond and the River Park Bonds of this series do exist, have happened, and have been done and that every requirement of the Constitution and laws of the State of Washington now in force and the ordinances affecting the issue hereof has been duly complied with, and that the Net Parking Revenues to be derived from the operation of the Parking System, including any future improvements, additions or extensions thereto, has been pledged and will be set aside into the Bond Fund to be used for the payment of principal of and interest on this River Park Bond in the order of priority provided in the Ordinance.

LEGAL OPINION

It is hereby certified that the following is a true and complete copy of the legal opinion of Perkins Coie, of Spokane, Washington, on file in my office, which opinion is dated the date of delivery of and payment for the River Park Bonds described therein, an original of which was delivered to me on said date, and is a part of the permanent records of the City.

CITY OF SPOKANE
Washington

[facsimile signature]

Clerk

[Insert Legal Opinion of Perkins Coie]

[Insert Statement of Insurance, if applicable]

The following abbreviations, when used in the inscription on the face of this River Park Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM --	as tenants in common	UNIF GIFT MIN ACT _____ (Cust) (Minor)
TEN ENT --	as tenants by the entireties	under Uniform Transfer to Minors Act _____
JT TEN --	as joint tenants with right of survivorship and not as tenants in common	(State)

Additional abbreviations may also be used although not in the above list.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto:

Name of Transferee: _____

Address: _____

Tax Identification No.: _____

the within River Park Bond and hereby irrevocably constitutes and appoints _____

to transfer said River Park Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

Signature: _____

Registered Owner

NOTE: The signature on this Assignment must correspond with the name of the Registered Owner as it appears upon the face of the within River Park Bond in every particular, without alteration or enlargement or any change whatever.

SIGNATURE GUARANTEED:

Bank, Trust Company or Member
Firm of the New York Stock Exchange

Authorized Officer



OFFICE OF THE CITY CLERK
808 W. SPOKANE FALLS BLVD.
SPOKANE, WASHINGTON 99201-3312
(509) 625-6350

October 22, 1996

Clerk's File No.:
ORD C31763
/ ORD C31764
ORD C31765
CPR 96-2
PRO 95-25

COUNCIL ACTION MEMORANDUM

RE: EMERGENCY ORDINANCES C31763, C31764, AND C31765 -- RELATING TO THE PROPOSAL FOR THE CITY TO ACQUIRE AND OPERATE THE RIVER PARK SQUARE PARKING GARAGE

At its 6:00 p.m. Special Meeting on Thursday, October 17, 1996, the Spokane City Council held hearing on Emergency Ordinances C31763, C31764, and C31765. After hearing a presentation by City Staff on the proposal for the City to acquire and operate the River Park Square Parking Garage as a municipal facility, Council took the following action:

Motion by Mrs. Greene, seconded by Mrs. Holmes, that the City commission a financial feasibility study in order to evaluate the project as presented tonight and the City's acquisition of the Parking Garage; (and) further, staff is directed to scope the study including satisfying the HUD 108 Loan requirements and submit the report with staff recommendations to the Council no later than 30 days from tonight; carried unanimously (Mr. Anderson absent).

The Council then heard further presentations on the proposal. Presentations supporting the proposal were given by the developers of the River Park Square Project and representatives of the Chamber of Commerce, Downtown Spokane Partnership, Momentum, Convention and Visitors Bureau, and the Economic Development Council. Presentations opposing the proposal were given by Attorney Stephen Eugster (representing Richard Adams, George Prekeges, Spokane Research & Defense Fund and CLEAN (Citizens for Leaders with Ethics and Accountability Now!)); and Lauren Poole, Executive Vice President for Sabey Corporation.

Following the presentations, Council heard public testimony on the proposal from proponents, opponents, and those individuals with a neutral position.

At the conclusion of the public testimony, Mayor Geraghty advised that the Council will take the matters (Ordinances C31763, C31764, and C31765) under advisement, and they will be brought forward to the Council for action on Monday, October 28, 1996. No further public testimony will be taken on October 28, however, the Mayor advised that written testimony will be accepted until that date.

Terri L. Pfister
City Clerk

c: City Manager
Community Development
City Attorney
Perkins Coie



Legal Sloane 6225
Submitting Department Contact Person Phone Ext.

RECEIVED

<u>CONSENT AGENDA</u>	<u>LEGISLATIVE SESSION</u>	<u>COUNCIL PRIORITY</u>
<input type="checkbox"/> Contract	<input type="checkbox"/> Resolution	<input type="checkbox"/> Economic Development
<input checked="" type="checkbox"/> Report	<input checked="" type="checkbox"/> Emergency Ordinance	<input type="checkbox"/> Growth Management
	<input type="checkbox"/> Final Reading Ordinance	<input type="checkbox"/> Neighborhoods
	<input type="checkbox"/> First Reading Ordinance	<input type="checkbox"/> Public Safety
	<input type="checkbox"/> Special Consideration	<input type="checkbox"/> Public Works
	<input type="checkbox"/> Hearing	<input type="checkbox"/> Service Delivery

OCT 11 1996

CITY CLERK'S OFFICE
SPOKANE, WA

Clerk's Files: # _____
 Renewals: # _____
 Cross Reference: # _____
 ENG/LID: # _____
 BID: # _____

NEIGHBORHOOD/COMMISSION/COMMITTEE NOTIFIED BY SUBMITTING DEPARTMENT: _____
 Area Manager: _____

Action Taken: _____

AGENDA WORDING: An ordinance of the City of Spokane creating a system of parking facilities providing for the sale, issuance and delivery of City parking system revenue bonds in a principle amount not to exceed \$29.8 Million to finance the acquisition of a parking facility adjacent to City Hall.

BACKGROUND (Attach separate sheet if necessary): See Agenda Sheet relating to Off Street Parking Facility Ordinance.

RECOMMENDATION: Approve.

FISCAL IMPACT:	Expenditure - \$	Budget Account: #
	Revenue - \$	#

LIST ATTACHMENTS AS FOLLOWS:
 On file for Review in Office of City Clerk:

Include in Packets:

SIGNATURES OF SUBMITTING OFFICERS (sign legibly):

Department Head
 Legal
[Signature]

Division Director

Finance
 City Manager
[Signature]

DISTRIBUTION AFTER COUNCIL ACTION:
 City Manager
 Community Development
 City Attorney
 Perkins Coie

COUNCIL ACTION:
 SEE COUNCIL ACTION MEMORANDUM DATED 10-22-96 FOR COUNCIL ACTION ON 10-17-96

 (NOTE: THIS MATTER WAS NOT PLACED ON OCTOBER 28, 1996, COUNCIL AGENDA.)

C31764





ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SPOKANE, -WASHINGTON, PROVIDING FOR THE ISSUANCE OF \$26,000,000 PRINCIPAL AMOUNT OF THE CITY'S PARKING SYSTEM REVENUE BOND ANTICIPATION NOTES (RIVER PARK SQUARE PARKING FACILITY), TO FINANCE THE ACQUISITION OF A PARKING FACILITY ADJACENT TO CITY HALL; FIXING THE DATE, FORM, MATURITY, INTEREST RATE, TERMS AND COVENANTS OF SUCH NOTES; PROVIDING FOR THE REGISTRATION AND AUTHENTICATION OF SAID NOTES; PROVIDING FOR THE PAYMENT OF BOTH THE PRINCIPAL OF AND INTEREST ON THE NOTES BY THE ISSUANCE OF THE CITY'S PARKING SYSTEM REVENUE BONDS; CREATING AND ADOPTING CERTAIN FUNDS AND ACCOUNTS; AUTHORIZING THE SALE AND DELIVERY OF THE NOTES TO BANK OF AMERICA NW, N.A.; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

C-31765

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C31765

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SPOKANE, WASHINGTON, PROVIDING FOR THE ISSUANCE OF \$26,000,000 PRINCIPAL AMOUNT OF THE CITY'S PARKING SYSTEM REVENUE BOND ANTICIPATION NOTES (RIVER PARK SQUARE PARKING FACILITY), TO FINANCE THE ACQUISITION OF A PARKING FACILITY ADJACENT TO CITY HALL; FIXING THE DATE, FORM, MATURITY, INTEREST RATE, TERMS AND COVENANTS OF SUCH NOTES; PROVIDING FOR THE REGISTRATION AND AUTHENTICATION OF SAID NOTES; PROVIDING FOR THE PAYMENT OF BOTH THE PRINCIPAL OF AND INTEREST ON THE NOTES BY THE ISSUANCE OF THE CITY'S PARKING SYSTEM REVENUE BONDS; CREATING AND ADOPTING CERTAIN FUNDS AND ACCOUNTS; AUTHORIZING THE SALE AND DELIVERY OF THE NOTES TO BANK OF AMERICA NW, N.A.; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

CITY OF SPOKANE
Spokane County, Washington

PARKING SYSTEM REVENUE BOND ANTICIPATION NOTES
(RIVER PARK SQUARE PARKING FACILITY)
\$26,000,000 PRINCIPAL AMOUNT

THE CITY OF SPOKANE DOES ORDAIN:

WHEREAS, the City of Spokane, Washington (the "City"), is a first-class charter city duly organized and existing under and by virtue of the Constitution and the laws of the State of Washington and the Charter of the City;

WHEREAS, the City is authorized by RCW 35.86.010 to provide off-street parking facilities that are operated in accordance with RCW 35.86A.120;

WHEREAS, the City is authorized by RCW 35.86.020 and chapter 35.41 RCW to issue revenue bonds to finance the acquisition and construction of off-street parking facilities;

WHEREAS, the City Council (the "Council") has heretofore found that the area bounded by Post Street, Main Avenue, Lincoln Street and Spokane Falls Boulevard (the "Project Area") is characterized by vacant buildings and land that has not been developed to its highest and best use;

WHEREAS, Lincoln Investment Company of Spokane and Citizens Realty Company (the "Seller"), as owners of the property within the Project Area, have proposed a two-block mixed use redevelopment project (the "Project") which, according to the Seller, will

contain approximately 300,000 square feet of gross leasable area for new retail stores, restaurants and entertainment uses;

WHEREAS, the City received a report from Walker Parking Consultants/Engineers, Inc., dated June 14, 1996, projecting that the Project, if constructed and leased as proposed by the Seller, will cause a need for additional public parking within the vicinity of the Project Area;

WHEREAS, during times of poor weather, the only off-street public parking facilities available within reasonable walking distance from City Hall and the City's main library are the parking lot adjacent to City Hall and the parking lot beneath the library;

WHEREAS, the Council has heretofore found that it is necessary to acquire an off-street public parking facility in the vicinity of Spokane Falls Boulevard and Post Street to (i) improve vehicular access to City Hall, the City's main library and Riverfront Park, (ii) prevent traffic congestion in the City's downtown area, especially in light of the proposed Project, (iii) improve vehicular access to the City's downtown area, and (iv) decrease the demand on the City's limited number of on-street parking spaces;

WHEREAS, the Seller has proposed to sell the City a 1304-stall off-street parking garage consisting of the following facilities, all of which are to be interconnected, (i) the existing River Park Square parking garage, which will be remodeled by the Seller, (ii) an underground parking garage along Main Avenue between Post and Lincoln Streets, and (iii) a seven-level above-ground and one-level below ground parking structure along Spokane Falls Boulevard between Post and Lincoln Streets (the "Facility");

WHEREAS, the Seller has proposed further to lease to the City the ground on which the Facility is to be situated;

WHEREAS, the Council, on October 17, 1996, held a public hearing on the economic survey for and plans of the Facility pursuant to the requirements of RCW 35.86.050;

WHEREAS, the Council authorized the issuance of the City's "Parking System Revenue Bonds (River Park Square Parking Facility)", adopted on this date, the proceeds of which will be used to finance the costs of acquiring said facility;

WHEREAS, pursuant to the provisions of RCW 43.80.120, the State Finance Committee of the State of Washington from time to time designates certain financial institutions to act as the Fiscal Agent for the State of Washington and any political subdivisions who so designate, and the Fiscal Agent and the City wish to establish the procedures pursuant to which the Fiscal Agent will carry out its duties;

WHEREAS, chapters 39.46 and 39.50 RCW authorize the City to sell the herein-authorized notes at negotiated sale without the giving of prior notice thereof; and

WHEREAS, Bank of America NW, N.A. doing business as Seafirst Bank, of Seattle, Washington, has offered to purchase such notes at the price and according to the terms set forth in the offer to purchase hereinafter described;

NOW, THEREFORE, IT IS FURTHER ORDAINED as follows:

Section 1: Definitions

All terms defined in the Bond Ordinance and not defined herein shall have the meaning ascribed thereto in the Bond Ordinance. In addition to terms defined elsewhere in this Ordinance, the following words and terms as used in this Ordinance and the preambles hereto shall have the following meanings unless the context or use clearly indicates another or different meaning or intent. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words imparting the singular number shall include the plural number and vice versa unless the context shall otherwise indicate.

"Bond Ordinance" shall mean the ordinance adopted by the Council on this date pursuant to which the Bonds are authorized to be issued.

"Note Fund" shall mean the City's "Parking System Revenue Bond Anticipation Note Fund" created by Section 14 of this Ordinance.

"Note Register" shall mean the registration records of the City, maintained by the Registrar, on which shall appear the names and addresses of the Registered Owners.

"Notes" shall mean the herein authorized "City of Spokane Parking System Revenue Bond Anticipation Notes (River Park Square Parking Facility)".

"Ordinance" shall mean this Ordinance No. _____.

"Outstanding" shall mean, when used with reference to the Notes, as of any particular date, all Notes that have been issued, executed, authenticated and delivered except (1) Notes canceled because of payment or redemption prior to their stated dates of maturity and (2) any Note (or portion thereof) deemed to have been paid pursuant to Section 10 hereof.

"Registered Owners" shall mean the persons in whose names the Notes shall be registered in the Note Register in accordance with the terms of this Ordinance.

"Registrar" shall mean either of the Washington State Fiscal Agents in Seattle, Washington, or New York, New York, or their successors in functions, as now or hereafter designated.

"Seafirst Bank" shall mean Bank of America NW, N.A. doing business as Seafirst Bank, of Seattle, Washington, as the initial purchaser of the Notes.

Section 2: Interpretation

For all purposes of this Ordinance, except as otherwise expressly provided or unless the context otherwise requires:

A. *Internal References.* All references in this Ordinance to designated "Sections" and other subdivisions are to the designated sections and other subdivisions of this Ordinance. The words "herein," "hereof," "hereto," "hereby," "hereunder" and other words of similar import refer to this Ordinance as a whole and not to any particular section or other subdivision.

B. *Persons.* Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public boards, as well as natural persons.

C. *Headings.* Any headings preceding the texts of the several sections of this Ordinance and the table of contents, shall be solely for convenience of reference and shall not constitute a part of this Ordinance, nor shall they affect its meaning, construction or effect.

D. *Accounting Terms.* All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles for governments, as in effect from time to time.

E. *Writing Requirement.* Every "notice," "certificate," "consent" or similar action hereunder by the City shall, unless the form thereof is specifically provided, be in writing signed by an authorized representative of the City.

F. *Time.* In the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and each of the words "to" and "until" means "to but excluding."

G. *Redemption.* Words importing the redemption or redeeming of a Note or the calling of a Note for redemption do not include or connote the payment of such Note at its stated maturity or the purchase of such Note.

H. *Payment Terms.* References to the payment of the Notes shall be deemed to include references to the payment of interest thereon.

Section 3: Purpose of the Notes

A. *Description of Purpose.* The Notes are being issued to finance, on an interim basis, the Acquisition of the Facility. The proceeds from the sale of the Notes shall be deposited upon receipt into the Acquisition Account in the Construction Fund; provided, any proceeds representing accrued interest on the Notes shall be deposited into the Note Fund.

B. *Costs of the Facility.* The total costs of Acquiring the Facility are estimated to be \$29,970,000, a portion of which shall be paid from the Note proceeds. Such costs may include, but are not limited to:

(1) preliminary expenses advanced by the City from funds available for the use therefor, or advanced from any other source, with approval of the Council, or any combination thereof;

(2) the costs of making surveys, audits, preliminary plans, other plans, specifications, estimates of costs and other preliminaries relating to the Facility;

(3) the Acquisition costs of any properties, rights, easements or other interest in properties, or any licenses, privileges, agreements and franchises necessary for the Facility;

(4) the costs of Acquiring the Facility;

(5) the costs of Acquiring and installing equipment necessary to operate and maintain of the Facility;

(6) the costs of appraising, printing, estimates, advice, services of engineers, architects, financial consultants, attorneys, clerical help or other agents or employees;

(7) the costs of contingencies;

(8) the costs of any discount on the Notes and the Bonds, the costs of issuance, registration and authentication of the Notes and the Bonds, the costs of funding the Reserve Account to the Reserve Account Requirement (including purchasing a Reserve Account Facility to satisfy the Reserve Account Requirement), the costs of funding the Rate Stabilization Account, and the costs, if any, of rating agencies and of bond insurance;

(9) capitalized interest on the Notes and the Bonds; and

(10) all other expenses necessary or desirable and appertaining to the Facility, as estimated or otherwise ascertained by the Council.

C. *Additional Funds.* In the event there are Note proceeds remaining after the improvements set forth in subsection A of this Section 3 have been completed, the City may deposit said proceeds into the Bond Fund to defease a portion of the Notes prior to maturity, or may retain such proceeds in the Construction Fund.

D. *Finding Regarding the Facility.* The Council hereby finds and determines that the primary purpose of the Facility is to provide public parking for persons who use park or civic center facilities.

Section 4: The Notes

The Notes are hereby authorized to be sold, issued and delivered. The Notes shall be designated the "City of Spokane Parking System Revenue Bond Anticipation Notes (River Park Square Parking Facility)". The Notes shall be dated their date of delivery, shall mature on December 1, 1999, shall be issued in the aggregate principal amount of \$26,000,000, shall be in the denomination of \$5,000 each or any integral multiple thereof, and shall be issued only in fully registered form. The Notes shall be substantially in the form set forth in Exhibit "A" attached hereto and hereby made a part hereof. The Notes shall bear interest from their date at the rate of ___ percent per annum, payable semiannually on each June 1 and December 1, commencing on June 1, 1997. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

Section 5: Redemption of the Notes

A. *Optional Redemption.* The City hereby reserves the right to redeem and call the Notes prior to their stated maturity, on or after December 1, 1996, in whole or in part at any time (by lot in such manner as the Registrar shall determine) at the price of par plus accrued interest, if any, to the date of redemption.

In accordance with the preceding paragraph, portions of the principal amount of any Note, in installments of \$5,000 or any integral multiple of \$5,000, may also be redeemed. If less than all of the principal amount of any Note is redeemed, upon surrender of such Note at either of the principal corporate trust offices of the Registrar there shall be issued to the Registered Owner, without charge therefor, for the then-unredeemed balance of the principal amount thereof, a new Note or Notes, at the option of the Registered Owner, in any denomination authorized by this Ordinance.

B. *Notice of Redemption.* Unless waived by the Registered Owner of any Note to be redeemed, notice of any such redemption shall be sent by the Registrar by first-class mail, postage prepaid, not less than 30 or more than 60 days prior to the date fixed for redemption to the Registered Owner of each Note to be redeemed at the address shown on the Note Register, or at such other address as may be furnished in writing by such Registered Owner to the Registrar. The requirements of this subsection B shall be deemed to be complied with when notice is mailed as herein provided, regardless of whether or not it is actually received by the Registered Owner of any Note.

C. *Effect of Redemption.* When so called for redemption, the Notes shall cease to accrue interest on the specified redemption date, provided funds for redemption are on deposit at the place of payment at that time, and shall not be deemed to be Outstanding as of such redemption date.

D. *Voluntary Redemption Notice.* In addition to the notice required by subsection B above, further notice may be given by the Registrar as set out below, but neither a defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as

prescribed in subsection B hereof. Each further notice of redemption given hereunder may contain the following information: (a) the redemption date; (b) the redemption price; (c) if less than all Notes are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Notes to be redeemed; (d) notification that on the redemption date the redemption price will become due and payable upon each such Note or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date; (e) the place where such Notes are to be surrendered for payment of the redemption price, which place of payment shall be either of the principal corporate trust offices of the Registrar; (f) the CUSIP numbers, if any, of all Notes being redeemed; (g) the date of issue of the Notes as originally issued; (h) the rate of interest borne by each Note being redeemed; (i) the maturity date of each Note being redeemed; and (j) any other descriptive information needed to identify accurately the Notes being redeemed.

Each further notice of redemption may (1) be sent at least 30 days before the redemption date by registered or certified mail or overnight delivery service to: (a) all registered securities depositories then in the business of holding substantial amounts of obligations of the types comprising the Notes, such depositories now being The Depository Trust Company and the Philadelphia Depository Trust Company, Philadelphia, Pennsylvania, and (b) one or more national information services that disseminate notices of redemption of obligations such as the Bonds (such as Moody's Municipal and Government, or Standard & Poor's Called Bond Record); (2) be published one time in *The Bond Buyer* of New York, New York, or, if such publication is impractical or unlikely to reach a substantial number of the Registered Owners, in some other financial newspaper or journal that regularly carries notices of redemption of other obligations similar to the Notes, such publication to be made at least 30 days prior to the date fixed for redemption.

E. Open Market Purchase and Cancellation. The City hereby reserves the right to purchase the Notes on the open market at any time, at any price. All Notes so purchased shall be canceled.

Section 6: Place and Manner of Payment

Principal of and interest on the Notes are payable in lawful money of the United States of America to the Registered Owners.

Payment of each installment of interest shall be made to the Registered Owner whose name appears on the Note Register at the close of business on the fifteenth day of the calendar month preceding the interest payment date. Each installment of interest shall be paid by check or draft of the Registrar mailed to such Registered Owner on the due date at the address appearing on the Note Register, or at such other address as may be furnished in writing by such Registered Owner to the Registrar. Interest installments may be paid by wire transfer to a Registered Owner of at least \$1,000,000 in principal amount of the Notes, upon written request of such Registered Owner submitted to the Registrar by at least the fifteenth day of the calendar month preceding the interest payment date.

Principal of each Note shall be payable to the Registered Owner, upon presentation and surrender of the Note on or after the date of maturity or prior redemption, whichever occurs first, at either of the principal corporate trust offices of the Registrar. Upon the payment of the Notes at maturity, each check or other transfer of money issued for such purpose shall bear the CUSIP number, if any, identifying, by issue and maturity, and the Notes being paid with the proceeds of such check or other transfer.

The City and the Registrar may deem and treat the Registered Owner of each Note as the absolute owner of such Note for the purpose of receiving payments of principal and interest due on such Note and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

Section 7: Execution and Authentication of the Notes

Without unreasonable delay, the City shall cause definitive Notes to be prepared, executed and delivered, which Notes shall be lithographed or printed with steel-engraved or lithographed borders. The Notes shall be executed on behalf of the City by the manual or facsimile signature of the Mayor, shall be attested by the manual or facsimile signature of the Clerk, and shall have the seal of the City, or a facsimile thereof, impressed or imprinted thereon.

The Notes shall then be delivered to the Registrar for authentication. The Notes shall be numbered separately in the manner and with any additional designation as the Registrar deems necessary for purposes of identification.

Until the definitive Notes are prepared, the City may, if deemed necessary by the Clerk, utilize a temporary Note which shall be typewritten, and which shall be delivered to the Seafirst Bank in lieu of definitive Notes, but subject to the same provisions, limitations and conditions as the definitive Notes. Such temporary Note shall be dated the date of the Notes, shall be in the denomination of \$26,000,000, shall be numbered T-1, shall be substantially of the tenor of such definitive Notes, but with such omissions, insertions and variations as may be appropriate to temporary Notes, shall be manually signed by the Mayor and the Clerk and shall have the seal of the City impressed thereon. The Treasurer shall be the Registrar in the event and for so long as a temporary Note is utilized.

In case any of the officers who shall have signed or attested any of the Notes shall cease to be such officer or officers of the City before the Notes so signed or attested shall have been authenticated or delivered by the Registrar, or issued by the City, such Notes may nevertheless be authenticated, delivered and issued, and, upon such authentication, delivery and issue, shall be as binding upon the City as though those who signed and attested the same had continued to be such officers of the City. Any Note may also be signed and attested on behalf of the City by such persons as at the actual date of execution of such Note shall be the proper officers of the City although at the original date of such Note any such person shall not have been such officer of the City.

Only those Notes that bear a Certificate of Authentication substantially in the form set forth in Exhibit "A" hereto and manually executed by the Registrar shall be valid or obligatory for any purpose or entitled to the benefits of this Ordinance. Such Certificate of Authentication shall be conclusive evidence that the Notes so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this Ordinance.

Section 8: Registrar

The Washington State Fiscal Agents, in Seattle, Washington, and New York, New York, are hereby appointed as Registrar, authenticating agent, paying agent and transfer agent with respect to the Notes, subject to the following terms and conditions:

A. *Note Register.* The Registrar shall keep, or cause to be kept at either of its principal corporate trust offices, sufficient books for the registration and transfer of the Notes, which shall at all times be open to inspection by the City.

B. *Fees and Costs.* Subject to the terms of the Washington State Fiscal Agency Agreement, dated February 8, 1993, between the State of Washington and the Registrar (as the same may be amended or readopted), the City shall pay to the Registrar from time to time reasonable compensation for all services rendered under this Ordinance, together with reasonable expenses, charges, fees of counsel, accountants and consultants and other disbursements, including those of its attorneys, agents and employees, incurred in good faith in and about the performance of their powers and duties under this Ordinance.

C. *Representations.* The Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Notes.

D. *Ownership Rights.* The Registrar may become the Registered Owner of Notes with the same rights it would have if it were not the Registrar, and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Registered Owners of the Notes.

E. *Registration System.* The City hereby specifies and adopts the system of registration for the Notes approved by the Washington State Finance Committee.

Section 9: Transfer or Exchange of the Notes

The Notes shall be transferable by the Registered Owners thereof in person, or by their attorney duly authorized in writing, upon due completion of the assignment form appearing thereon and upon surrender of the Notes at either of the principal corporate trust offices of the Registrar for cancellation and issuance of new Notes registered in the name of the transferee, in exchange therefor.

The Notes shall be exchangeable by the Registered Owners thereof in person, or by their attorney duly authorized in writing, for other Notes of any authorized denomination or

denominations, upon surrender and cancellation of said Notes at either of the principal corporate trust offices of the Registrar.

Whenever a Note shall be surrendered for transfer or exchange, the Registrar shall authenticate and deliver to the transferee or exchangee, in exchange therefor, a new fully registered Note or Notes of any authorized denomination or denominations, for the aggregate principal amount of such Note being surrendered. Notwithstanding the foregoing sentence, the Registrar shall not be obligated to exchange or transfer any Note during the 15 days preceding any principal or interest payment date, including any redemption date.

The Registrar shall require the payment by the Registered Owner requesting such transfer or exchange of any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. The costs imposed by the Registrar for such transfer or exchange shall be paid by the City.

Section 10: Defeasance of the Notes

In the event that money and/or Defeasance Obligations (maturing or having guaranteed redemption prices at the option of the owner at such time or times and bearing interest to be earned thereon) in such amounts as are sufficient, together with any resulting cash balances, to redeem and retire part or all of the Notes in accordance with their terms, are hereafter irrevocably set aside in a special account and pledged to effect such redemption and retirement, then no further payments need be made into the Note Fund for the payment of the principal of and interest on the Notes so provided for, and such Notes and interest accrued thereon shall no longer be deemed to be Outstanding hereunder.

If the principal or redemption price of any Notes becoming due, either at maturity or by call for redemption or otherwise, together with all interest accruing thereon to the due date, has been paid or provision therefor made in accordance with this Section 10, all interest on such Notes shall cease to accrue on the due date and all liability of the City with respect to such Notes shall cease as of the date the principal, redemption price, if any, and interest is so provided for, except as hereinafter provided. Thereafter the Registered Owners of such Notes shall be restricted exclusively to the funds so deposited for any claim of whatsoever nature with respect to such Notes, and the Registrar shall hold such funds in trust for such Registered Owners uninvested and without interest.

Section 11: Cancellation of Surrendered Notes

Notes surrendered to the Registrar for payment, transfer or exchange, as well as Notes surrendered by the City for cancellation, shall be canceled immediately by the Registrar and returned to the City. Such Notes thereafter shall be destroyed pursuant to RCW 43.80.130.

Section 12: Mutilated, Lost, Stolen or Destroyed Notes

A. Issuance of Substitute Notes. If any Note shall become mutilated, lost, stolen or destroyed, the affected Registered Owner shall be entitled to the issuance of a substitute Note only as follows:

(1) in the case of a lost, stolen or destroyed Note, the Registered Owner shall (a) provide notice of the loss, theft or destruction to the City and the Registrar within a reasonable time after the Registered Owner receives notice of the loss, theft or destruction, (b) request the issuance of a substitute Note, (c) provide evidence, satisfactory to the City and the Registrar, of the ownership and the loss, theft or destruction of the affected Note, and (d) file in the offices of the Treasurer and the Registrar a written affidavit specifically alleging on oath that said Registered Owner is the proper owner, payee or legal representative of such owner or payee of the Note that has been lost, stolen or destroyed, giving the date the Note was issued and the number, principal amount and series of such Note, and stating that the Note has been lost, stolen or destroyed, and has not been paid and has not been received by such Registered Owner;

(2) in the case of a mutilated Note, the Registered Owner shall surrender the Note to the Registrar for cancellation; and

(3) in all cases, the Registered Owner shall provide indemnity against any and all claims arising out of or otherwise related to the issuance of substitute Notes pursuant to this Section 12 satisfactory to the City and the Registrar.

Upon compliance with the foregoing, a new Note of like tenor and denomination, bearing the same number as the mutilated, destroyed, lost or stolen Note, and with the word "DUPLICATE" stamped or printed plainly on its face, shall be executed by the City, authenticated by the Registrar and delivered to the Registered Owner, all at the expense of the Registered Owner to whom the substitute Note is delivered. Notwithstanding the foregoing, the Registrar shall not be required to authenticate and deliver any substitute Note for a Note that has been called for redemption or that has matured or is about to mature and, in any such case, the principal or redemption price and interest then due or becoming due shall be paid by the Registrar in accordance with the terms of the mutilated, destroyed, lost or stolen Note without substitution therefor.

B. Notation on Note Register. Upon the issuance and authentication of any substitute Note under the provisions of this Section 12, the Registrar shall enter upon the Note Register a notation that the original Note was canceled and a substitute Note was issued therefor.

C. Rights of Registered Owners of Substitute Notes. Every substitute Note issued pursuant to this Section 12 shall constitute an additional contractual obligation of the City and shall be entitled to all the benefits of this Ordinance equally and proportionately with any and all other Notes duly issued hereunder unless the Note alleged to have been destroyed, lost or stolen shall be at any time enforceable by a bona fide purchaser for value without notice. In the event the Note alleged to have been destroyed, lost or stolen shall be enforceable by anyone, the City may recover the substitute Note from the Registered Owner to whom it was issued, or from anyone taking under the Registered Owner, except a bona fide purchaser for value, without notice.

D. *Exclusive Rights.* All Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes, and shall preclude any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or of investment or other securities without their surrender.

Section 13: Pledge of Security to Repay the Notes

A. The City hereby pledges to issue the Bonds, bond anticipation notes or a combination thereof, that will provide proceeds sufficient, together with any other money of the City legally available and specifically set aside for the purpose, to pay the principal of and interest on the Notes when due. The City's full faith, credit and resources are not pledged to the payment of the Notes.

B. In addition to the foregoing pledge, the City hereby further pledges, for the equal and ratable benefit of the Registered Owners from time to time of the Notes, as security for the payment of the principal of and interest on the Notes: (1) all Net Parking Revenues, (2) all rights of the City to receive Net Parking Revenues, (3) all Assessment Income and (4) all money and securities held in the Construction Fund and the Note Fund, including the investments thereof, if any, and subject to the provisions of this Ordinance and the Bond Ordinance permitting the application of amounts hereunder to the purposes set forth herein. Such pledge is hereby declared to be a prior lien and charge on the foregoing superior to all other liens and charges of any kind whatsoever.

Section 14: The Note Fund

There is hereby created, and shall be maintained in the office of the Treasurer, a fund separate and distinct from all other funds and accounts of the City, designated the "Parking System Revenue Bond Anticipation Note Fund" (the "Note Fund"), or such other designation conforming to banking requirements or accounting practices. The Note Fund shall be used solely for the purpose of paying the principal of and interest on the Notes when due. The City covenants that simultaneously with the receipt of the proceeds of sale of the Bonds or an additional series of the Bond anticipation notes, if any, it will pay into the Note Fund money sufficient to pay the principal of and interest on the Notes to their date of maturity or early redemption. Upon receipt of the proceeds of the Notes from the Seafirst Bank, the Treasurer shall deposit into the Note Fund that portion of such proceeds representing accrued interest on the Notes from their dated date to the date of their issuance and delivery to the Seafirst Bank.

The Note Fund shall be maintained by the Treasurer until the principal of and interest on the Notes have been fully paid. Money in the Note Fund may be invested as permitted by law, which investments shall mature prior to the date on which such money shall be needed for required interest or principal payments. All interest earned and income derived by virtue of such investments shall remain in the Note Fund and be used to meet the required deposits therein.

Section 15: Tax Covenants

A. *Compliance With Code.* The City covenants to comply with each requirement of the Code necessary to maintain the exclusion of interest on the Notes from gross income for federal income tax purposes. In furtherance of the covenant contained in the preceding sentence, the City covenants to comply with the provisions of the Arbitrage and Tax Regulatory Certificate executed by the City on the date of initial issuance and delivery of the Notes, as such Arbitrage and Tax Regulatory Certificate may be amended from time to time.

B. *Necessary Payments.* The City covenants to make any and all payments required to be made to the United States Department of the Treasury in connection with the Notes pursuant to Section 148(f) of the Code.

C. *Survival of Tax Covenants.* Notwithstanding any other provision of this Ordinance to the contrary, so long as necessary in order to maintain the exclusion from gross income of interest on the Notes for federal income tax purposes, the covenants contained in this Section 15 shall survive the payment of the Notes and the interest thereon, including any payment or defeasance thereof pursuant to Section 10 of this Ordinance.

D. *Remedies.* Notwithstanding any other provision of this Ordinance to the contrary, (1) upon the City's failure to observe or refusal to comply with the above covenants, the Registered Owners, or any trustee acting on their behalf, shall be entitled to the rights and remedies provided to the Registered Owners under this Ordinance, and (2) neither the holder or registered owner of Notes of any series other than the Notes, nor any trustee acting on their behalf, shall be entitled to exercise any right or remedy provided to the Registered Owners under this Ordinance based upon the City's failure to observe, or refusal to comply with, the above covenants.

Section 16: Amendments to Ordinance

A. *Adoption of Supplemental Ordinance.* The Council may adopt an ordinance supplemental hereto, which ordinance thereafter shall become a part of this Ordinance, for any one or more of all of the following purposes: (1) to add to or delete from the covenants and agreements of the City in this Ordinance, provided such additions or deletions shall not adversely affect, in any material respect, the interests of the Registered Owners of any Notes; or (2) to cure, correct or supplement any ambiguous or defective provision contained in this ordinance, provided such supplemental ordinance shall not adversely affect, in any material respect, the interests of the Registered Owners of the Notes. Any such supplemental ordinance may be adopted without the consent of the Registered Owners of any Notes at any time Outstanding, notwithstanding any of the provisions of subsection B of this Section 16.

B. *Amendments With Consent of the Registered Owners.* With the consent of the Registered Owners of not less than 65 percent in aggregate principal amount of the Notes at the time Outstanding, the Council may adopt an ordinance supplemental hereto for the purpose of adding any provisions to, or changing in any manner, or eliminating any of the provisions of this Ordinance or of any supplemental ordinance; provided, however, that no such

supplemental ordinance shall: (1) extend the fixed maturity of any Notes, or reduce the rate of interest thereon, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the Registered Owner of each Note so affected; or (2) reduce the aforesaid percentage of Registered Owners required to approve any such supplemental ordinance, without the consent of the Registered Owners of all of the Notes then Outstanding. It shall not be necessary for the consent of Registered Owners under this subsection B to approve the particular form of any proposed supplemental Ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

C. *Effect of Amendments.* Upon the adoption of any supplemental ordinance pursuant to the provisions of this Section 16, this Ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City under this Ordinance and all Registered Owners of Notes Outstanding hereunder shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendments, and all terms and conditions of any such supplemental ordinance shall be deemed to be part of the terms and conditions of this Ordinance for any and all purposes.

D. *Notations; Replacement Notes.* Notes executed and delivered after the execution of any supplemental ordinance adopted pursuant to the provisions of this Section 16 may have a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, new Notes so modified as to conform in the opinion of the Council to any modification of this Ordinance contained in any such supplemental ordinance, may be prepared and delivered without cost to the Registered Owners of any affected Notes then Outstanding, upon surrender for cancellation of such Notes in equal aggregate principal amounts.

Section 17: Sale of the Notes Authorized

The sale of the Notes to the Seafirst Bank is hereby authorized and approved. The terms of said sale are contained in the Seafirst Bank's offer to purchase the Notes on file with the Clerk, dated October 21, 1996, which is hereby adopted and approved. The Council is of the opinion that no better price could be obtained for the Notes, and that it is in the best interests of the City and the public to accept said offer and sell the Notes by private sale, without giving any prior notice thereof by publication or otherwise, as permitted by chapter 39.46 RCW.

The Mayor and/or Clerk are hereby authorized and directed to execute a Note purchase contract on behalf of the City, and to do everything necessary for the prompt execution and delivery of the Notes to said Seafirst Bank and for the proper application and use of the proceeds of the sale thereof.

Section 18: No Personal Recourse

No recourse shall be had for any claim based on this Ordinance or the Notes against any Council member, officer or employee, past, present or future, of the City or of any successor body as such, either directly or through the City or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise.

Section 19: Contract; Severability

The covenants contained in this Ordinance and in the Notes shall constitute a contract between the City and the Registered Owner of each and every Note. Any action by the Registered Owner of any Note shall bind all future Registered Owners of the same Note in respect of anything done or suffered by the City or the Registrar in pursuance thereof. All the covenants, promises and agreements in this Ordinance contained by or on behalf of the City, or by or on behalf of the Registrar, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

If any one or more of the covenants or agreements provided in this Ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction on final appeal (if any appeal be taken) to be contrary to law, then such covenant or agreement shall be null and void and shall be deemed separable from the remaining covenants and agreements in this Ordinance and shall in no way affect the validity of the other provisions of this Ordinance or of the Notes.

Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon or give to any person other than the City, the Registrar and the Registered Owners from time to time of the Notes any rights, remedies or claims under or by reason of this Ordinance or any covenant, condition or stipulation thereof; and all of the covenants, stipulations, promises and agreements in this Ordinance contained by or on behalf of the City shall be for the sole and exclusive benefit of the City, the Registrar and the Registered Owners from time to time of the Notes.

Section 20: Ratification

All actions not inconsistent with the provisions of this Ordinance heretofore taken by the Council and the City's employees with respect to the adoption of this Ordinance, the Acquisition of the Facility, the creation of the Parking System and the issuance, sale and delivery of the Notes, are hereby in all respects ratified, approved and confirmed.

Section 21: Repealer

All ordinances or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and shall have no further force or effect.

Section 22: Conformity to Accounting Principles

The Treasurer is hereby authorized to rename any fund or account created herein and to implement such accounting procedures as is necessary to comply with generally accepted accounting principles for municipal governments and with the rules and regulations imposed from time to time by the State Auditor of the State of Washington.

Section 23: Artwork Not Included

For purposes of complying with Section 7.06.420 of the Spokane Municipal Code, as amended, the acquisition of the Facility shall not include the acquisition of artwork. Accordingly, the City shall not be required to expend one percent of the principal amount of the Notes for works of art.

Section 24: Emergency and Urgency; Effective Date

The City has determined that there is a significant need for additional public parking in the vicinity of City Hall, the main branch of the Spokane Public Library and Riverfront Park. Further, the City has had extensive negotiations with the current owners of the Facility regarding the sale of said garage to the City. Lincoln Investment Company of Spokane and Citizens Realty Company have advised the City that, in order for them to consummate plans for the Project, the City must commit no later than October 21, 1996 to purchase the Facility. The City has determined to immediately issue the Notes in preparation of the payment of said purchase price. In order for the Notes to be issued in time to provide money to pay the purchase price for the Facility, it is necessary for this Ordinance to become effective immediately upon its adoption. Based upon said facts, an urgency and emergency is hereby declared to exist. Based upon said urgency and emergency, this Ordinance shall be effective immediately upon its adoption and approval.

ADOPTED by the City Council of the City of Spokane, Washington, at a regular meeting thereof held on October 21, 1996.

CITY OF SPOKANE
Spokane County, Washington

Jack Geraghty, Mayor

ATTEST:

Terri L. Pfister, City Clerk

(S E A L)

APPROVED AS TO FORM:

James C. Sloane, City Attorney

Roy J. Koegen, Bond Counsel

* * * * *

CERTIFICATE

I, Terri L. Pfister, the City Clerk of the City of Spokane, Spokane County, Washington, hereby certify that the foregoing Ordinance is a full, true and correct copy of an ordinance duly adopted at a regular meeting of the City Council duly held at the regular meeting place thereof on October 21, 1996, of which meeting all members of said Council had due notice, and at which a majority thereof were present, and that at said meeting said Ordinance was adopted by the following vote:

AYES, and in favor thereof, Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

I further certify that I have carefully compared the same with the original Ordinance on file and of record in my office; that said Ordinance is a full, true and correct copy of the original Ordinance adopted at said meeting; and that said Ordinance has not been amended, modified or rescinded since the date of its adoption, and is now in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the official seal of said City on October 21, 1996.

CITY OF SPOKANE
Spokane County, Washington

Terri L. Pfister, City Clerk

(SEAL)

3-
C.3176

[Face of Note]

Number

Dollars

UNITED STATES OF AMERICA
STATE OF WASHINGTON
COUNTY OF SPOKANE

CITY OF SPOKANE

PARKING SYSTEM REVENUE BOND ANTICIPATION NOTES, RIVER PARK
SQUARE PARKING FACILITY

INTEREST RATE:

MATURITY DATE:

CUSIP NO.:

____%

December 1, 1999

CITY OF SPOKANE, Washington (the "City"), a first-class charter city duly organized and existing under and by virtue of the Constitution and the laws of the State of Washington, and the Charter of the City, acknowledges itself to owe and, for value received, promises to pay from the City's "Parking System Revenue Bond Anticipation Note Fund" (the "Note Fund"), created by Ordinance No. _____, adopted by the City Council on October 21, 1996 (the "Ordinance"), to

or registered assigns, on the Maturity Date specified above, the principal sum of

DOLLARS

and to pay interest thereon from the aforesaid Note Fund from the date hereof, at the Interest Rate per annum specified above, payable to the Maturity Date specified above or the date this Note is redeemed, whichever occurs first. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

Principal of and interest on this Note are payable in lawful money of the United States of America to the Registered Owner hereof, whose name and address shall appear on the registration books of the City (the "Note Register") maintained by either of the Washington State Fiscal Agents in Seattle, Washington, or New York, New York (the "Registrar"). Interest shall be paid to the Registered Owner whose name appears on the Note Register at the close of business on the fifteenth day of the calendar month preceding the interest payment date, and shall be paid by check or draft of the Registrar mailed to such Registered Owner on the due date at the address appearing on the Note Register, or such other address as may be furnished in writing by such Registered Owner to the Registrar. Principal shall be paid to the Registered Owner upon presentation and surrender of this Note on or after the Maturity Date specified above or date of prior redemption, whichever shall occur first, at either of the principal corporate trust offices of the Registrar.

This Note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance until the Certificate of Authentication hereon shall have been manually signed by the Registrar.

3
A 3176

This Note is one of a duly authorized series of Notes of like date, tenor, redemption provisions, Interest Rate, Maturity Date and effect, aggregating the principal sum of \$26,000,000. The Notes are issued in fully registered form in the denomination of \$5,000 each, or any integral multiple thereof. Capitalized terms used in this Note shall have the meanings given to them by the Ordinance.

The Notes are issued by the City pursuant to and in full compliance with the Constitution and laws of the State of Washington now in force, particularly chapters 39.46 and 39.50 RCW, and proceedings duly adopted and authorized by the Council, more particularly the Ordinance, for the purpose of providing money necessary to Acquire the Facility and to pay the costs of issuance, all as set forth and more particularly described in the Ordinance.

The City has pledged to issue the Bonds, bond anticipation notes or a combination thereof, that will provide proceeds sufficient, together with any other money of the City legally available and specifically set aside for the purpose, to pay the principal of and interest on the Notes when due. The City's full faith, credit and resources have not been pledged to the payment of the Notes. In addition to the foregoing pledge, the City has further pledged, for the equal and ratable benefit of the Registered Owners from time to time of the Notes, as security for the payment of the principal of and interest on the Notes: (1) all Net Parking Revenues, (2) all rights of the City to receive Net Parking Revenues, (3) all Assessment Income and (4) all money and securities held in the Construction Fund and the Note Fund, including the investments thereof, if any, and subject to the provisions of the Ordinance and the Bond Ordinance permitting the application of amounts hereunder to the purposes set forth herein. Such pledge is hereby declared to be a prior lien and charge on the foregoing superior to all other liens and charges of any kind whatsoever.

The City has reserved the right to redeem and call the Notes prior to their stated date of maturity, on or after December 1, 1996, in whole or in part at any time (by lot within a maturity in such manner as the Registrar shall determine) at the price of par plus accrued interest, if any, to the date of redemption.

Notice of any such redemption, unless waived by the Registered Owner of any Note to be redeemed, shall be sent by the Registrar by first-class mail, postage prepaid, not less than 30 nor more than 60 days prior to the date fixed for redemption, to the Registered Owner of each Note to be redeemed, at the address appearing on the Note Register. Said requirements shall be deemed to be complied with when notice is mailed as herein provided, regardless of whether or not it is actually received by the Registered Owner of any Note to be redeemed. Interest on any Notes so called for redemption shall cease to accrue on the date fixed for redemption, and the Notes shall not be deemed to be Outstanding as of such redemption date, provided funds for redemption are on deposit at the place of payment at that time.

This Note is transferable or exchangeable by the Registered Owner hereof in person, or by his attorney duly authorized in writing, upon presentation and surrender of this Note at either of the principal corporate trust offices of the Registrar. Upon such transfer or exchange, a new Note or Notes of any authorized denomination, for the aggregate principal amount of the Note being surrendered will be issued to the transferee or exchangee, in exchange therefor.

The Registrar shall not be obligated to exchange or transfer any Note during the 15 days preceding any principal or interest payment date, including any redemption date.

The City and the Registrar may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payments of principal hereof and interest due hereon and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

Reference is hereby made to the Ordinance for the covenants and declarations of the City and other terms and conditions under which this Note and the Notes of this series have been issued. The covenants contained herein and in the Ordinance, as they may apply to this Note, may be discharged by making provision, at any time, for the payment of the principal of and interest on this Note in the manner provided in the Ordinance.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things essential to the validity of this Note and the Notes of this series do exist, have happened, have been done and have been performed and that the City has complied with every requirement of the Constitution and laws of the State of Washington now in force and the Ordinances and ordinances of the City affecting the issue hereof, and that the issuance of this Note and the Notes of this series does not exceed any Constitutional, statutory or other limitation upon the amount of bonded indebtedness that the City may incur.

IN WITNESS WHEREOF, the City of Spokane, Washington, has caused this Note to be executed by the signature of its Mayor, attested by the signature of its Clerk, and imprinted with its seal on October __, 1996.

CITY OF SPOKANE
Spokane County, Washington

[signature]

Mayor

ATTEST:

[signature]

Clerk

[Seal]

CERTIFICATE OF AUTHENTICATION

Date of Authentication:

This Note is one of the City of Spokane Parking System Revenue Bond Anticipation Notes (River Park Square Parking Facility)", dated October __, 1996, and described in the within-mentioned Ordinance.

WASHINGTON STATE FISCAL
AGENT, as Registrar

By _____
Authorized Signatory

LEGAL OPINION

It is hereby certified that the following is a true and complete copy of the legal opinion of Perkins Coie, of Spokane, Washington, on file in my office, which opinion is dated the date of delivery of and payment for the Notes described therein, an original of which was delivered to me on said date, and is a part of the permanent records of the City.

CITY OF SPOKANE
Spokane County, Washington

[signature]

Clerk

[Insert Legal Opinion of Perkins Coie]

The following abbreviations, when used in the inscription on the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM --	as tenants in common	UNIF GIFT MIN ACT --... _____	(Cust)	(Minor)
TEN ENT --	as tenants by the entireties		under Uniform Transfer to Minors Act _____	
JT TEN --	as joint tenants with right of survivorship and not as tenants in common			(State)

Additional abbreviations may also be used although not in the above list.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto:

Name of Transferee: _____

Address: _____

Tax Identification No.: _____

the within Note and hereby irrevocably constitutes and appoints _____

to transfer said Note on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

Signature: _____

Registered Owner

NOTE: The signature on this Assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Note in every particular, without alteration or enlargement or any change whatever.

SIGNATURE GUARANTEED:

Bank, Trust Company or Member
Firm of the New York Stock Exchange

Authorized Officer



OFFICE OF THE CITY CLERK
808 W. SPOKANE FALLS BLVD.
SPOKANE, WASHINGTON 99201-3342
(509) 625-6350

October 22, 1996

Clerk's File No.:
ORD C31763
ORD C31764
/ ORD C31765
CPR 96-2
PRO 95-25

COUNCIL ACTION MEMORANDUM

RE: EMERGENCY ORDINANCES C31763, C31764, AND C31765 -- RELATING TO THE PROPOSAL FOR THE CITY TO ACQUIRE AND OPERATE THE RIVER PARK SQUARE PARKING GARAGE

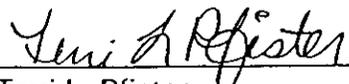
At its 6:00 p.m. Special Meeting on Thursday, October 17, 1996, the Spokane City Council held hearing on Emergency Ordinances C31763, C31764, and C31765. After hearing a presentation by City Staff on the proposal for the City to acquire and operate the River Park Square Parking Garage as a municipal facility, Council took the following action:

Motion by Mrs. Greene, seconded by Mrs. Holmes, that the City commission a financial feasibility study in order to evaluate the project as presented tonight and the City's acquisition of the Parking Garage; (and) further, staff is directed to scope the study including satisfying the HUD 108 Loan requirements and submit the report with staff recommendations to the Council no later than 30 days from tonight; carried unanimously (Mr. Anderson absent).

The Council then heard further presentations on the proposal. Presentations supporting the proposal were given by the developers of the River Park Square Project and representatives of the Chamber of Commerce, Downtown Spokane Partnership, Momentum, Convention and Visitors Bureau, and the Economic Development Council. Presentations opposing the proposal were given by Attorney Stephen Eugster [representing Richard Adams, George Prekeges, Spokane Research & Defense Fund and CLEAN (Citizens for Leaders with Ethics and Accountability Now!)]; and Lauren Poole, Executive Vice President for Sabey Corporation.

Following the presentations, Council heard public testimony on the proposal from proponents, opponents, and those individuals with a neutral position.

At the conclusion of the public testimony, Mayor Geraghty advised that the Council will take the matters (Ordinances C31763, C31764, and C31765) under advisement, and they will be brought forward to the Council for action on Monday, October 28, 1996. No further public testimony will be taken on October 28, however, the Mayor advised that written testimony will be accepted until that date.



Terri L. Pfister
City Clerk

c: City Manager
Community Development
City Attorney
Perkins Coie

EXHIBIT D

ORDINANCE NO. C31823

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SPOKANE RELATING TO OFF STREET PARKING FACILITIES; PROVIDING FOR THE DEVELOPMENT AND ACCEPTANCE OF FULL LEGAL AND UNENCUMBERED TITLE TO THE RIVER PARK SQUARE PARKING GARAGE LOCATED ADJACENT TO CIVIC CENTER FACILITIES; CREATING THE PARKING METER REVENUE FUND; CONTINGENTLY PLEDGING MONEY IN SAID FUND TO MAKE CERTAIN PAYMENTS TO THE CITY'S PUBLIC DEVELOPMENT AUTHORITY; DECLARING AN URGENCY AND EMERGENCY AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

OFF-STREET PARKING FACILITIES

THE CITY OF SPOKANE DOES ORDAIN:

WHEREAS, the City of Spokane, Washington (the "City"), is a first-class charter city duly organized and existing under and by virtue of the Constitution and the laws of the State of Washington and the Charter of the City;

WHEREAS, the Council of the City (the "Council") recognizes the public interest in sustaining the Spokane Downtown Central Business District (the "CBD") as described in the Downtown Spokane Development Plan prepared November 20, 1990, as the region's economic, cultural and civic activity center;

WHEREAS, the City has committed public finances and resources to the CBD by constructing, maintaining and operating numerous civic center facilities such as: (i) the Spokane City Hall, (ii) the main branch of the Spokane Public Library, (iii) Riverfront Park, (iv) the Spokane Agricultural Trade Center, (v) the Spokane Convention Center and Opera House and (vi) other infrastructure and service improvements in or adjacent to the CBD, which improves the character, role and function of the CBD for Spokane citizens, employers, employees and visitors;

WHEREAS, the provision of convenient, accessible, and attractive off-street public parking in the CBD will provide a benefit to the civic center facilities, prevent and alleviate traffic congestion, improve vehicular access and circulation, directly and indirectly improve public safety and promote the use of municipal streets by facilitating the movement of vehicles in the CBD, all of which serves a public purpose;

WHEREAS, the most efficient use of the CBD street system requires the availability of conveniently located off-street parking for vehicles where large numbers of persons congregate;

WHEREAS, the inability to temporarily park vehicles discourages the public from: (i) travel to and within the City, (ii) congregating at public events and (iii) using civic center facilities;

WHEREAS, off-street public parking is a necessary extension and ancillary to an efficient street system in the CBD;

WHEREAS, the City is authorized by chapter 35.86 RCW to provide off-street parking facilities as a public purpose;

WHEREAS, on June 12, 1995, the Council adopted its Resolution 95-74, which authorized and directed the City Manager to proceed with the development of a proposal for the acquisition and development of a public parking facility, recognizing the public benefit that would accrue as a result of the City acquiring off-street parking facilities;

WHEREAS, on June 10, 1996, the Council adopted its Resolution 96-77, which further directed City staff to represent the City in meetings with Lincoln Investment Company of Spokane and Citizens Realty Company (collectively, the "Developer"), as owners of the River Park Square Parking Garage and to prepare a report for the Council on the economic feasibility and legal authority of the City acquiring said parking garage;

WHEREAS, the Council authorized the City Manager to commission into a financial feasibility study and a condition assessment with Walker Parking Consultants/Engineers (the "Walker Report"), with the City receiving a report from Walker plus an addendum on October 16, 1996, concluding that additional off-street public parking is required to serve the Project and civic center facilities;

WHEREAS, the Developer owns certain real property situated in the City which is proposed to be redeveloped into a two block mixed-use project containing, in addition to public parking facilities, approximately 300,000 square feet of gross area available for lease for new retail stores, restaurants and entertainment uses (the "Project"), which will improve the CBD by promoting economic activity, increasing public safety and revenue to the City;

WHEREAS, the acquisition of off-street parking facilities will provide convenient public parking for users and visitors to City Hall, Riverfront Park, and the main branch of the Spokane Public Library as well as other municipal and governmental offices and civic center facilities, some of which are connected to the existing off-street parking facilities by a pedestrian skywalk system;

WHEREAS, the Developer intends to design and construct off-street parking facilities to consist of an existing parking garage, plus an additional underground and above ground parking structure connected to the existing parking garage, with 1,304 public parking spaces to serve the civic facilities and the parking needs of the CBD (the "Facility");

WHEREAS, the provision of safe and reliable public parking will increase downtown activity and improve public safety;

WHEREAS, the Spokane Downtown Foundation (the "Foundation") has been formed as a nonprofit corporation of the State of Washington which anticipates issuing tax-exempt bonds on behalf of the City payable over 21 years from the revenues from the Facility;

WHEREAS, the Foundation will enter into a ground lease (the "Ground Lease") with the Developer for the lease of the land upon which the Facility will be situated;

WHEREAS, the Public Development Authority (the "Authority"), a duly created public corporation pursuant to RCW 35.21.730 through 35.21.757, inclusive, is authorized as a public purpose to own and acquire property and property rights by purchase, gift, devise, or lease for the construction, maintenance, or operation of off street parking facilities, including the acquisition of the Facility in order to improve governmental efficiency and services, the general living conditions in the City, which necessarily includes the City transportation system;

WHEREAS, development of the Facility will promote the growth and development of retail businesses and office uses in the CBD which will increase payrolls, business productivity, and property values thereby benefiting the public health, safety and welfare;

WHEREAS, the City has been advised by the Developer that the Foundation will acquire the Facility from the Developer to provide off-street public parking;

WHEREAS, the City has been advised by the Foundation that the Foundation anticipates leasing the Facility and assigning the Ground Lease to the Authority;

WHEREAS, on October 17, 1996, the Council held a public hearing on the Facility pursuant to the requirements of RCW 35.86.050;

WHEREAS, the City has been advised that the Authority will publicly bid the operation of the Facility;

WHEREAS, after the payment of the principal of and interest on bonds issued by the Foundation (the "Bonds"), full legal and unencumbered title to the Facility will pass to the City without cost;

WHEREAS, the City has determined it is in the best interests of the City and its inhabitants, ratepayers and taxpayers that the Facility be maintained and operated in a first-class condition;

WHEREAS, RCW 35.21.730(1) authorizes the City to transfers its funds to the Authority with or without consideration;

WHEREAS, the Council is desirous of creating a parking meter revenue fund, into which parking meter revenue will be deposited and contingently pledged to pay Operating

Expenses of the Facility and Ground Lease Payments in the event that Facility revenues are insufficient, thereby ensuring the Facility is maintained in a first-class condition;

WHEREAS, chapter 35.59 RCW authorizes the City to combine two or more facilities in a single multi-purpose community center in order to more effectively and economically provide municipal services. City Hall, Riverfront Park, and the main branch of the Spokane Public Library, constitute the multi-purpose community center system for the downtown area;

WHEREAS, the acquisition, development and operation of the Facility will reduce costs, avoid duplication of off-street parking facilities that serve the existing downtown system and make off-street parking more convenient and useful to the residents of Spokane;

WHEREAS, chapter 35.71 RCW, authorizes the Council to establish pedestrian malls and related facilities in rights-of-way, including off-street parking facilities in the vicinity of a pedestrian mall when the right-of-way is proposed to be vacated;

WHEREAS, the Council, upon receipt of a petition to vacate a portion of Post Street from Spokane Falls Boulevard to Main Avenue, adopted Resolution 95-75 declaring the intent of the Council to proceed with the street vacation as set forth in Ordinance C31403 which will facilitate the development of a pedestrian mall area for the Riverpark Square project as set forth above;

WHEREAS, the Developer, on May 7, 1996, submitted to the City an Environmental Checklist (pursuant to SEPA), including a Traffic Impact Analysis-Riverpark Square Expansion (including Level of Service Worksheets) and an Air Quality Analysis plus Study Update ("Environmental Reports") with the City through its responsible official issued a Mitigated Declaration of Nonsignificance;

WHEREAS, the CBD has experienced a serious economic decline which affects the built environment and climate for civic facilities with remaining business operators facing reduced employment, all adversely affecting the citizens of the City and causing deterioration of the public and private investment in improvements and services in the CBD, including the downtown multi-purpose community center system comprising of City Hall, Riverfront Park and the main branch of the Spokane Public Library;

WHEREAS, the Project is expected to contain 300,000 square feet of new retail, entertainment and other business uses, preserving and creating approximately 2,800 jobs in Spokane;

WHEREAS, the Project will improve public safety in the CBD, including the financial stability of the City, by adding an estimated \$3 million in tax revenues per year;

WHEREAS, the Walker Report, the Environmental Reports, other reports, analyses and testimony indicated that the Facility will aid downtown vehicle and pedestrian circulation by efficiently removing vehicles from the street system, promoting improved vehicle movements and providing for the parking demand created by the downtown multi-purpose

community center system, including City Hall, Riverfront Park and the main branch of the Spokane Public Library;

WHEREAS, the Council has received reports and testimony from individuals and experts that support the acquisition of the Facility for public purposes, reviewed plans for development of the Project, as well as listened to and considered public testimony and received reports concerning the parking needs in the CBD, projected Facility revenue, benefits to the City and its citizens and the transfer to the City of the Facility and related property interests;

WHEREAS, the City will acquire full legal and unencumbered title to the Facility without cost or other consideration upon payment of the Bonds;

WHEREAS, the City has received a letter from the Developer containing Project information and a deadline indicating that time is of the essence concerning the Project and the Facility, such that immediate assurances must be given by the City in order for the Developer to proceed with the Project, including the Facility, thereby serving a public purpose;

WHEREAS, the Developer has stated that for the Project to proceed commitments must immediately be received from tenants and lenders so that preparations for demolition and construction can commence in order to timely complete the Project as represented to Developer's lenders and other project participants, including the City, the Foundation, the Authority and the major Project tenants;

WHEREAS, without a commitment from the City to immediately contingently pledge its parking meter revenue to Operating Expenses and Ground Lease Payments, tenants and lenders are not assured that there will be adequate public parking to serve the Project and civic facilities, thus placing the Project in jeopardy; and

WHEREAS, the City finds, based on studies, documents and public testimony presented to the Council, that the Project will: (i) provide new jobs to the Spokane area, (ii) stimulate the economy, (iii) provide cultural opportunities and (iv) improve the quality of life through a reinvestment in the CBD which will generate additional tax revenue and that the failure of the Project to proceed will cause the City to suffer economic decline;

NOW, THEREFORE, IT IS FURTHER ORDAINED, as follows:

Section 1. Definitions.

All words and terms as used in this Ordinance and the preambles hereto shall have the following meanings unless the context or use clearly indicates another or different meaning or intent. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words imparting the singular number shall include the plural number and vice versa unless the context shall otherwise indicate.

"Authority" shall mean the Spokane Public Development Authority duly created by Ordinance No. C-29241 of the City of Spokane, adopted by the Council on November 7, 1988.

"Bonds" shall mean the bonds issued by the Foundation to finance the cost of acquiring the Facility.

"City" shall mean City of Spokane, Washington.

"Council" shall mean the City Council, as the same may be duly constituted from time to time.

"Developer" shall mean, collectively, Lincoln Investment Company of Spokane and Citizens Realty Company.

"Facility" shall mean the seven-level above ground and one-level below ground off-street parking facility in the vicinity of Spokane Falls Boulevard and Post Street.

"Foundation" shall mean the Spokane Downtown Foundation.

"Ground Lease" shall mean the Ground Lease between the Developer and the Foundation regarding the real property underlying the Facility.

"Ground Lease Account" shall mean the account by that name created by the Authority within its Revenue Fund from which the Authority shall make Ground Lease Payments.

"Ground Lease Payments" shall mean all payments the Foundation is required to make under the Ground Lease.

"Operating and Maintenance Account" shall mean the account by that name created by the Authority within its Revenue Fund from which the Authority shall pay Operating Expenses.

"Operating Expenses" shall mean all of the Authority's expenses incurred with respect to operating and maintaining the Facility. The term "Operating Expenses" shall not include any extraordinary, nonrecurring expenses, any costs or expenses for new construction, interest, amortization, any allowance for depreciation or any taxes or payments in lieu of taxes upon the properties or earnings of the Facility payable to the City.

"Ordinance" shall mean this Ordinance No. C31823.

"Parking Meter Revenue Fund" shall mean a special fund of the City created by Section 4 of this Ordinance.

"Parking Meter Revenues" shall mean all income, receipts and revenues, except revenue derived from the enforcement of City parking laws, received by the City through its ownership and operation of its system of parking meters.

"Parking Revenues" shall mean all income, receipts and revenues received by the Authority through the ownership and operation of the Facility, including investments earnings on money in the Revenue Fund.

"Project" shall mean, in addition to the Facility, an approximately 300,000 square feet of gross feasible area for new retail stores, restaurants and entertainment uses in the project area.

"Revenue Fund" shall mean the Authority's Parking Facility Revenue Fund, which includes the Ground Lease Account and the Operating and Maintenance Account.

Section 2. Public Hearing.

In accordance with RCW 35.86.050, a public hearing has been conducted on the receipt by the City of full legal and unencumbered title to the Facility, including the presentation of reports related to the parking needs of civic center facilities in the CBD, traffic impacts of the Project, economic projections of Facility revenue, and a description of the plans which relate to the development of the Facility and the Project. Further, the Council has considered testimony from members of the public, representatives of the Developer and experts employed by the City in connection with the Facility. Reports and plans relating to off-street parking needs and the Facility have been presented and received by the Council and are filed in the office of the City Clerk.

Section 3. Authority of the City.

The City, pursuant to chapters 35.86 and 35.71 RCW and other laws of the state of Washington, shall acquire, without any consideration, for public parking purposes, full legal and unencumbered title to the Facility described in the plans and specifications on file in the office of the City Clerk and a leasehold interest for property underneath the Facility after the Foundation has paid, in full, the principal of and interest on its Bonds.

Section 4. Public Purpose.

The public purpose and interest will be served by providing short-term public parking in the CBD through operation and maintenance of the Facility by the Authority in accordance with Parking Covenants and a Parking Agreement and transfer full legal and unencumbered title of the Facility from the Foundation to the City.

Section 5. Valuable Asset.

The leasehold interest in the real property under the Facility and the Facility itself are valuable municipal assets which will benefit adjacent municipal properties including, but not

limited to, Spokane City Hall, the main branch of the Spokane Public Library, and Riverfront Park by providing safe, convenient and adjacent public parking.

Section 6. Improved Access.

The Facility will improve public access to, and circulation within, the CBD, preventing congestion and facilitating private and public transportation within a part of the City that contains arterial streets by providing approximately 1,304 public parking spaces for use, all as set forth in the Environmental Reports and the Walker Report as supplemented, which are on file in the office of the City Clerk. Further, the Facility will also increase pedestrian activity by efficiently removing automobiles from the street, thereby contributing the viability and safety of pedestrian movement within the CBD.

Section 7. Documents.

The receipt by the City, without cost or any consideration, of full legal and unencumbered title to the Facility will be accomplished by:

- A. a resolution of the Council, approving a plan to finance the acquisition of a public parking facility by the Foundation through the issuance of tax-exempt revenue bonds for a term of not to exceed 21 years, and providing for other matters properly relating thereto;
- B. a Parking Garage Purchase and Sale Agreement between Developer and the Foundation;
- C. a Ground Lease between the Developer and the Foundation;
- D. a Parking Agreement and Parking Covenants between the Developer and Nordstrom, Inc., a Washington corporation;
- E. a Parking Garage Lease Agreement by and between the Foundation and the Authority;
- F. an assignment of the Ground Lease by the Foundation to the Authority; and
- G. a Ground Lease between City and the Developer.

In addition, the City shall enter into a contract with the Housing and Urban Development ("HUD") to loan \$23,800,000 for the Project, as described and according to the terms of the HUD loan application which was submitted to HUD on June 23, 1995.

Section 8. The Parking Meter Revenue Fund.

There is hereby created and shall be maintained in the office of the Treasurer a fund separate and distinct from all other funds and accounts of the City, designated the "Parking Meter Revenue Fund" (the "Parking Meter Revenue Fund"). All Parking Meter Revenue shall

be deposited into the Parking Meter Revenue Fund upon receipt. Money shall be withdrawn from the Parking Meter Revenue Fund to maintain public streets and roadways within the City and for the purposes set forth in Section 9 of this Ordinance. The City shall maintain the number of parking meters at approximately the number that exists on the date of this Ordinance and shall charge parking meter rates that are market rates.

Section 9. Contingent Pledge of Parking Meter Revenue Fund.

The City hereby pledges, as a first charge and lien, that, in the event Parking Revenues are insufficient to make Ground Lease Payments and pay Operating Expenses, the City shall loan money from the Parking Meter Revenue Fund (but only to the extent money or investments are then on deposit or allocable to the Parking Meter Revenue Fund) to the Authority's Ground Lease Account and Operating and Maintenance Account in an amount that is no more than is necessary, together with such other money as is on hand and available in the Ground Lease Account and the Operating and Maintenance Account, to permit the Authority to make Ground Lease Payments and to pay Operating Expenses. The City covenants to maintain parking meter rates at a level to produce an amount each year that, together with other legally available money loaned to the Parking Meter Fund, will equal Ground Lease Payments and Operating Expenses budgeted for that year. Notwithstanding the foregoing, the City specifically does not: (i) pledge to maintain money in the Parking Meter Revenue Fund; (ii) pledge revenue derived from the enforcement of City parking laws to the Parking Meter Revenue Fund or any transfer therefrom; (iii) pledge the City's full faith, credit and resources, or money in the City's General Fund to the payment of Ground Lease Payments or Operating Expenses; or (iv) pledge any assets of the City to the payment of principal of or interest on the Foundation's Bonds.

Section 10. Operation of the Facility.

The City hereby covenants that once it receives full legal and unencumbered title to the Facility that it will: (i) operate and maintain the Facility in a first-class condition, (ii) establish reasonable hours of operation, (iii) operate the Facility for the use of the general public and (iv) establish parking rates at levels sufficient to pay the City's Operating Expenses and Ground Lease payments relating to the Facility and to encourage short-term hourly parking.

Section 11. Delegated Authority.

The City Manager, the City Attorney and their designees, plus bond counsel, Perkins Coie, are authorized in their reasonable judgment to take all acts as appropriate or necessary in order to carry out and complete the transactions contemplated by this Ordinance.

Section 12. Repeal of Section 43 of Ordinance No. C31398.

Section 43 of Ordinance No. C31398 (codified as 16.61.5920), adopted June 5, 1995 is hereby repealed in its entirety.

Section 13. Severability.

If any one or more of the covenants or agreements provided in this Ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements of this Ordinance and shall in no way affect the validity of the other provisions of this Ordinance.

Section 14. Urgency and Emergency; Effective Date.

Pursuant to Section 19 of the City Charter, this Ordinance will: (i) have the direct benefit of promoting the creation of employment in the CBD, (ii) have the effect of stimulating the economy, (iii) provide recreational and cultural opportunities and (iv) improve the quality of life for the Spokane community through a reinvestment in the CBD, which will generate increased tax revenues as estimated in the studies, documents and public testimony presented to the Council. The immediate passage and effectiveness of this Ordinance will promote downtown revitalization and reverse the economic decline of the CBD by promoting the construction of the Project, including the Facility, which will become a valuable municipal asset inuring to the public benefit. The public purposes of this Ordinance will be lost if assurances of City participation, including a contingent pledge of its Parking Meter Revenue to pay Operating Expenses and Ground Lease Payments, are not immediately made and effective upon passage of this Ordinance..

The City further recognizes that the Developer must immediately execute leases to commit Nordstrom, plus other major tenants to the Project otherwise the Project will not be ready for occupancy and operation by the dates contractually required. If this contractual promise cannot be performed the Project will not be built and severe economic and other consequences will ensue. Further, the Developer has indicated that adequate public parking must be available to serve the Project and civic facilities before tenants will commit to the Project. Therefore, the Developer must receive assurances of City participation prior to pledging land and capital in order to obtain public and private financing to develop and construct the Project which will enable the Foundation to issue tax-exempt bonds and acquire the Facility.

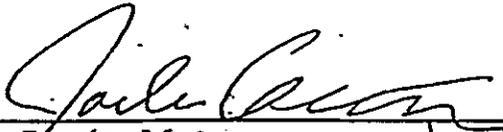
Based on such facts and studies, reports and testimony, the Council finds that the loss of the Project will result in a loss of jobs, tax revenue, recreational opportunities which at the same time diminishing the quality of life for a substantial number of the City's citizens.

Based on such facts, the Council finds and declares that an urgency and emergency exists such that this Ordinance shall be immediately effective upon adoption in order to preserve the public peace, health or safety and provide support of the City government and its existing public institutions, facilities and infrastructure.

Section 15. Publication.

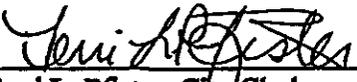
The City Clerk shall publish in the City's official newspaper, the title and text of this ordinance, which will be available for inspection in the Office of the City Clerk.

PASSED the City Council this 27th day of January, 1997.



Jack Geraghty, Mayor

Attest:



Terri L. Pfister, City Clerk

Approved as to form:



Assistant City Attorney