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FILED IN THE
DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

APR 24 2001

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

8 ✓ NUVEEN QUALITY INCOME MUNICIPAL
9 FUND, INC; NUVEEN PREMIUM INCOME
10 MUNICIPAL FUND 4, INC.; STRONG
11 MUNICIPAL BOND FUND, INC.; SMITH
12 BARNEY MUNICIPAL FUND LIMITED
13 TERM; SMITH BARNEY MUNICIPAL HIGH-
14 INCOME FUND; and VANGUARD HIGH-
15 YIELD TAX-EXEMPT FUND,

16 Plaintiffs,

17 v.

18 PRUDENTIAL SECURITIES
19 INCORPORATED, a Delaware corporation;
20 WALKER PARKING CONSULTANTS/
21 ENGINEERS, INC., a Michigan corporation;
22 FOSTER PEPPER & SHEFELMAN PLLC, a
23 Washington professional limited liability
24 company; SPOKANE DOWNTOWN
25 FOUNDATION, a Washington corporation;
26 PRESTON GATES & ELLIS LLP, a
27 Washington limited liability partnership;
28 CITIZENS REALTY COMPANY, a
Washington corporation; LINCOLN
INVESTMENT COMPANY OF SPOKANE,
a Washington corporation; RPS MALL,
L.L.C., a Washington limited liability
company; RPS II, L.L.C., a Washington
limited liability company; RWR
MANAGEMENT, INC., a Washington
corporation, doing business as R. W.
ROBIDEAUX AND COMPANY; CITY OF
SPOKANE, WASHINGTON, a first-class

CS-01-0127-JLQ
No. _____

COMPLAINT

DEMAND FOR JURY
TRIAL

1 charter city of the State of Washington;
2 SPOKANE PUBLIC PARKING
3 DEVELOPMENT AUTHORITY, an
4 unregistered Washington corporation, doing
5 business as RIVER PARK SQUARE
6 PARKING,

7 Defendants.

8 Plaintiffs, by their attorneys, Davis & Ceriani, P.C. and Crumb &
9 Munding, P.S., for their Complaint against Defendants, and each of them,
10 state as follows:

11 JURISDICTION AND VENUE

12 1. This Court has jurisdiction pursuant to the Securities Exchange
13 Act of 1934, 15 U.S.C. § 78aa and 28 U.S.C. § 1331. This Court has
14 jurisdiction to hear and determine Plaintiffs' pendant claims for relief
15 arising under the Washington Securities Act, R.C.S. §§ 21.20.430(1),
16 21.20.430(3), and for common law fraud and negligent misrepresentation
17 pursuant to 28 U.S.C. §§ 1331 and 1367 in that such claims arise from a
18 common nucleus of operative facts and are so intertwined as to make the
19 Court's exercise of jurisdiction appropriate.

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22 2. Venue of this action lies in this Court pursuant to
23 28 U.S.C. § 1391(b) because a substantial part of the events or omissions
24 giving rise to Plaintiffs' claims occurred in this District, and the property
25 that is the subject of this action is located in this District.
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SUMMARY OF COMPLAINT

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2 3. On September 15, 1998, the Spokane Downtown Foundation
3 issued \$31,465,000 of Spokane Downtown Foundation Parking Revenue
4 Bonds, Series 1998 (the "Bonds"), to finance the purchase, in about August
5 1999, of the renovated and expanded River Park Square Parking Garage
6 (the "Garage") which is adjacent to the River Park Square shopping mall
7 (the "RPS Mall") in downtown Spokane (collectively, the "Project"). The
8 Plaintiffs collectively purchased \$19,810,000 of the Bonds from the
9 underwriter of the Bonds, Prudential Securities Incorporated, in reliance
10 upon a Preliminary Official Statement and an Official Statement (the
11 "Official Statements") which were drafted by Prudential Securities
12 Incorporated and underwriter's counsel, Foster Pepper & Shefelman PLLC.
13 A key attachment to the Official Statements (Appendix B) was a "Financial
14 Feasibility Analysis" (the "Walker Report") which was prepared by Walker
15 Parking Consultants/Engineers, Inc.

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17 4. The Bonds were not secured by any interest in the Garage or the
18 land underneath it. The sole source of repayment for the \$31.5 million in
19 bonds was revenues from the Garage, with an important and unconditional
20 credit enhancement described below to be provided by the City of Spokane
21 pursuant to Ordinance C31823 (the "Ordinance"), passed by the City on
22 January 27, 1997. Two critical factors to prospective bond purchasers were
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1 the reasonableness of the assumptions underlying the cash flow projections
2 in the Walker Report and the City's obligations under the Ordinance if
3 revenues were less than projected.

4 5. When the Bonds were issued in September 1998, the fair
5 market value of the Garage, in fully renovated and expanded condition, was,
6 and was known by the Defendants to be, less than \$10 million. In violation
7 of Section 10 of the Securities Exchange Act of 1934 (the "1934 Act") and
8 Securities and Exchange Commission Rule 10b-5 promulgated thereunder,
9 the Washington Securities Act and the common law of Washington, the
10 below-named Defendants, singly and together, directly and indirectly,
11 conspired with each other to, and did, enter into a scheme or artifice to
12 defraud the purchasers of the Bonds, including Plaintiffs, by devising and
13 implementing a scheme to overvalue the Garage so that it could be sold to
14 the Spokane Downtown Foundation for \$26 million, thereby generating
15 approximately \$11 million in fraudulent profits for the owners and
16 developers of the RPS Mall and the Garage. Further, in violation of the
17 above statutes and law, the City failed to disclose both its belief that there
18 were defenses which could be asserted in opposition to any attempts to
19 enforce the Ordinance and the City's intent to assert such defenses if anyone
20 sought to enforce the Ordinance.
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PARTIES

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2 6. Plaintiff Nuveen Quality Income Municipal Fund, Inc. is a
3 municipal bond investment fund which has its principal offices in Chicago,
4 Illinois. Nuveen Quality Income Municipal Fund, Inc. purchased \$1,675,000
5 of the Bonds on about September 18, 1998, and still holds said Bonds.
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7 7. Nuveen Premium Income Municipal Fund 4, Inc. is a municipal
8 bond investment fund which has its principal offices in Chicago, Illinois.
9 Nuveen Premium Income Municipal Fund 4, Inc. purchased \$1,570,000 of
10 the Bonds on about September 18, 1998, and still holds said Bonds. Nuveen
11 Quality Income Municipal Fund, Inc. and Nuveen Premium Income
12 Municipal Fund 4, Inc. are hereinafter collectively referred to as "Nuveen."
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14 8. Plaintiff Strong Municipal Bond Fund, Inc. ("Strong") is a
15 Wisconsin municipal bond investment fund which has its principal offices in
16 Menomonee Falls, Wisconsin. Strong purchased \$3,350,000 of the Bonds on
17 about September 18, 1998, and still holds said Bonds..
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19 9. Plaintiff Smith Barney Municipal Fund Limited Term is a
20 municipal bond investment fund which has its principal offices in New York
21 City, New York. Smith Barney Municipal Fund Limited Term purchased
22 \$3,900,000 of the Bonds on about September 15, 1998, and still holds said
23 Bonds.
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1 10. Plaintiff Smith Barney Municipal High-Income Fund is a
2 municipal bond investment fund which has its principal offices in New York
3 City, New York. Smith Barney Municipal High-Income Fund purchased
4 \$3,315,000 of the Bonds on about September 15, 1998, and still holds said
5 Bonds. Smith Barney Municipal Fund Limited Term and Smith Barney
6 Municipal High-Income Fund are hereinafter collectively referred to as
7 "SB Funds."
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10 11. Plaintiff Vanguard High-Yield Tax-Exempt Fund ("Vanguard") is
11 a municipal bond investment fund that is a series of Vanguard Municipal
12 Bond Funds, a Delaware Business Trust, which has its principal offices in
13 Malvern, Pennsylvania. Vanguard purchased \$6,000,000 of the Bonds on
14 about September 16, 1998, and still holds said Bonds.
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16 12. Plaintiffs Nuveen, Strong, SB Funds and Vanguard are
17 hereinafter referred to collectively as the "Bondholders."
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19 13. Defendant Prudential Securities Incorporated ("Prudential") is a
20 Delaware corporation and registered broker-dealer which does business in
21 the State of Washington. Prudential acted as underwriter for the Bonds and
22 offered and sold the Bonds to each of the Plaintiffs on about September 18,
23 1998. As the underwriter and the seller of the Bonds, Prudential had a duty
24 to make full, fair and accurate disclosure of all material facts needed to
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1 make an informed investment decision to all prospective purchasers of the
2 Bonds, including Plaintiffs.

3 14. John C. Moore was, at all times pertinent hereto, an employee of
4 and a Managing Director of Public Finance for Prudential. John C. Moore
5 was charged by Prudential with primary responsibility for conducting
6 Prudential's due diligence investigation into the facts and circumstances
7 surrounding the issuance of the Bonds. As part of Prudential's due diligence
8 inquiry, its representatives, including John C. Moore, obtained actual
9 knowledge that the \$26 million purchase price for the Garage was inflated,
10 unfair and unreasonable, that the fair market value of the Garage was less
11 than \$10 million, that the Walker Report (Appendix B to the Official
12 Statements) was totally unreliable, and that the Official Statements were
13 materially false and misleading. Prudential, through John Moore and other
14 Prudential representatives, obtained such knowledge as a result of their due
15 diligence activities, their participation in meetings and conferences, and
16 their review of reports on the value of the Garage conducted by MAI
17 appraisers Auble & Associates ("Auble" and the "Auble Report") and Daniel
18 M. Barrett ("Barrett" and the "Barrett Report"), a critique of the Walker
19 Report prepared by the accounting firm Coopers & Lybrand L.L.P.
20 ("Coopers & Lybrand" and the "Coopers & Lybrand Report"), and their
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1 review and analysis of other documents identified elsewhere in this
2 Complaint.

3 15. Defendant Walker Parking Consultants/Engineers, Inc.
4 ("Walker") is a Michigan corporation with its principal offices in
5 Indianapolis, Indiana, which specializes in providing consulting services,
6 including the preparation of financial feasibility studies, to public and
7 private sector clients who are evaluating the design, construction,
8 renovation and expansion of parking facilities, such as the Garage. Walker
9 holds itself out to be internationally recognized in, and having special
10 expertise and experience with respect to, the design, construction and
11 financial analysis of parking structures. In early 1995, the hereinbelow
12 identified "Developers" hired Walker to assist the accounting firm
13 Ernst & Young in analyzing the cost of renovating and expanding the
14 Garage and generating fact-based assumptions to project the future
15 financial performance of the Garage. Walker and Ernst & Young issued
16 reports on the Garage in or about May and June 1995 (collectively, the
17 "Walker/Ernst & Young Reports") which, using reasonable and realistic fact-
18 based assumptions, generated cash flow projections which indicated the
19 value of the Garage upon completion of the renovation and expansion would
20 be less than \$10 million.
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1 16. Walker was later hired by the City of Spokane in about April
2 1996 to prepare a financial feasibility study of the existing Garage and the
3 proposed expansion and renovation of the Garage. John Dorsett was, at all
4 times pertinent hereto, a senior project director and department head for
5 Walker. Dorsett was responsible for the 1995 Walker/Ernst & Young
6 Reports and, as a result, developed close ties to the Developers. Dorsett was
7 charged by Walker with primary responsibility for preparing and approving
8 the Walker Report and for examining the reasonableness of the fact-based
9 assumptions which underlie the Walker Report. Walker understood its
10 report would be provided to and would be relied upon by potential
11 purchasers of the Bonds and was aware of and consented to the inclusion of
12 its report in the Official Statements. However, Walker lacked the
13 independence required of a financial feasibility consultant and had an
14 undisclosed conflict of interest because it had previously been hired by the
15 Developers to prepare cash flow projections for the Garage during 1995.

20 17. Walker's "Financial Feasibility Analysis" was issued in about
21 June 1996 and was subsequently revised and updated on April 22, 1998,
22 and June 29, 1998 (collectively, the "Walker Report"). Dorsett and Walker
23 knew the Walker Report used radically different assumptions than were
24 used to generate the Walker/Ernst & Young Reports. Walker, as an expert
25 in the area, knew the new assumptions to be unreasonable and unrealistic,
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1 but nonetheless used them for the sole purpose of increasing projected cash
2 flows so that it would appear the Garage was really worth in excess of
3 \$26 million. Walker was, therefore, a knowing and willing participant in
4 the scheme or artifice to defraud bond purchasers.
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6 18. Defendant Foster Pepper & Shefelman PLLC (the "Foster law
7 firm") is a Washington professional limited liability company engaged in the
8 practice of law with its principal offices in Seattle, Washington. The Foster
9 law firm acted as counsel for the underwriter, Prudential, in connection
10 with the underwriting, issuance, offer and sale of the Bonds and is identified
11 as such on the cover pages of the Official Statements. The Official
12 Statements do not, in any way, limit the scope of the Foster law firm's
13 activities as underwriter's counsel. Prudential retained the Foster law firm
14 to, among other things, advise Prudential regarding disclosure issues, to
15 assist Prudential in performing due diligence with respect to the facts and
16 circumstances of the Bonds and the Project, and to draft and edit the
17 Official Statements.
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22 19. As underwriter's counsel, the Foster law firm had a duty to
23 conduct a reasonable investigation into the facts and circumstances
24 surrounding the feasibility of the proposed bond issue and to take
25 reasonable steps to ensure the Official Statements did not misrepresent
26 material facts and did not fail to disclose material facts which needed to be
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1 disclosed to make the facts that were disclosed in the Official Statements
2 not misleading. The Foster law firm's duty to conduct reasonable due
3 diligence included the duty to investigate the accuracy of any statements in
4 the Official Statements which appeared to be inaccurate or doubtful, the
5 duty to make reasonable inquiry into the reasonableness of assumptions
6 underlying forward-looking statements, the duty to ensure that any
7 "expertised" portions of the Official Statements had, in fact, been prepared
8 by experts who had conducted such independent investigation as was
9 necessary or appropriate under the circumstances, and the duty to correct
10 all portions of the Official Statements which its investigation revealed, or
11 suggested, were false or misleading. The Foster law firm also had the duty
12 to not issue opinions of any kind with respect to the issuance of the Bonds
13 and the adequacy of disclosure in the Official Statements until it reasonably
14 believed that full and fair disclosure of all material facts had been made in
15 the Official Statements.
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20 20. In the process of drafting the Official Statements,
21 representatives of the Foster law firm reviewed the statements made in the
22 Official Statements regarding the \$26 million purchase price for the Garage,
23 the existence of two MAI appraisals using the "investment value" method,
24 the Walker Report, and certain "concerns" expressed about the risks
25 inherent in the assumptions used by Walker to generate the projected cash
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1 flows in the Walker Report. As a result, the Foster law firm knew the above
2 statements in the Official Statements were potentially false and misleading
3 unless the Official Statements made full, fair and accurate disclosures of all
4 material facts regarding the content of the MAI appraisals and the
5 Coopers & Lybrand Report. Given that, the Foster law firm had a duty to
6 carefully review the MAI appraisals and the Coopers & Lybrand Report.
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8 The Foster law firm reviewed the Coopers & Lybrand Report and the Auble
9 and Barrett Reports (which are the documents characterized as "MAI
10 appraisals" in the Official Statements) and learned, among other things,
11 that the Walker Report was not a financial feasibility study, that the
12 Walker Report was totally unreliable, that the so-called "MAI appraisals"
13 were not really MAI appraisals, that the Garage was really worth nowhere
14 near \$26 million and that, as a result, the Official Statements it was
15 drafting were materially false and misleading. The Foster law firm, having
16 obtained such information, could not lawfully go forward with the
17 preparation of the Official Statements and the issuance of any opinions in
18 connection with the closing on the bond issue without first ensuring that full
19 and fair disclosure was made of all material facts.

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24 21. The Foster law firm issued an opinion dated September 24,
25 1998, in connection with the issuance of the Bonds (the "Foster Opinion").
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27 The Bonds could not and would not have been issued without the Foster
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1 Opinion. The Foster law firm made the following statements, among others,
2 in the Foster Opinion:

3 We also examined information made available to us
4 in the course of our participation in the preparation
5 of the Official Statement as counsel for the
6 Underwriter, including legal matters and certain
7 records, documents and proceedings, and we have
8 attended conferences with, among others,
9 representatives of the Underwriter, the Issuer,
10 Preston Gates & Ellis LLP, bond counsel and
11 general counsel to the Issuer, the Trustee, the
12 Spokane Parking Public Development Authority, a
13 Washington public corporation (the "Authority"),
14 Perkins Coie LLP, counsel to the Authority and the
15 City of Spokane, Washington, at which conferences
16 the contents of the Official Statement were
17 discussed; however, our examination of information
18 and participation in such conferences does not
19 necessarily constitute such diligence as may be
20 specified, required or implied in Sections 12(b) and
21 17 of the Securities Act of 1933, as amended, Section
22 10(b) of the Securities Exchange Act of 1934, as
23 amended, and similar provisions under state
24 securities or 'blue sky' laws or regulations
25 promulgated pursuant thereto, to the extent such
26 provisions and regulations may be applicable (and
27 no opinion is expressed as to such applicability).
28 Without undertaking to determine independently or
assuming any responsibility for the accuracy,
completeness or fairness of the statements
contained in the Official Statement, we have no
reason to believe that the Official Statement as of
this date contains any untrue statement of a
material fact or omits to state a material fact
required to be stated therein or necessary to make
the statements therein, in light of the circumstances
in which they were made, not misleading (except
that we express no opinion or belief with respect to

1 any financial or statistical data contained in the
2 Official Statement).

3 Even ignoring that such statement is not, as a matter of law, sufficient to
4 disclaim the duties imposed upon the Foster law firm by virtue of its role as
5 underwriter's counsel and primary draftsman of the Official Statements,
6 the Foster law firm acquired actual knowledge that the Official Statements
7 were materially false and misleading as a result of taking the hereinabove-
8 alleged actions. As a result, the final sentence in the above paragraph of the
9 Foster Opinion is both false and misleading.
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11 22. Defendant Spokane Downtown Foundation (the "Foundation") is
12 a Washington non-profit corporation created in 1996 by the owners and
13 developers of the RPS Mall and the Garage (hereinafter identified as the
14 "Developers") as the entity to: (1) issue the Bonds; (2) purchase the
15 renovated and expanded Garage from the Developers with proceeds from
16 the sale of the Bonds; and (3) lease the ground underlying the Garage from
17 the Developers. The Foundation has, at all times pertinent hereto, been
18 managed by a board of directors appointed by representatives of the
19 Developers and is, therefore, subject to the direct and indirect control of the
20 Developers and their representatives.
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22 23. Defendant Preston Gates & Ellis LLP (the "Preston law firm") is
23 a Washington limited liability partnership engaged in the practice of law
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1 with its principal offices in Seattle, Washington. The Preston law firm acted
2 as both issuer's counsel on behalf of the Foundation and bond counsel in
3 connection with the underwriting and issuance of the Bonds. The Preston
4 law firm, acting in the capacity of bond counsel, issued a bond opinion on
5 September 24, 1998, to the Foundation and the underwriter, Prudential,
6 with the knowledge, expectation and belief that the bond opinion would
7 reasonably be relied upon by potential purchasers of the Bonds, including
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9 Plaintiffs.

11 24. As issuer's counsel, the Preston law firm had a duty to
12 thoroughly investigate the facts and circumstances surrounding the
13 proposed bond issue and to take reasonable steps to ensure that the Official
14 Statements did not misrepresent material facts and did not fail to disclose
15 material facts which needed to be disclosed in order to make the facts that
16 were disclosed in the Official Statements not misleading. The Preston law
17 firm's due diligence duties were heightened because the Preston law firm
18 knew its client, the issuer of the Bonds, owed a duty to potential bond
19 purchasers to make full, fair and accurate disclosure of all material facts in
20 the Official Statements and also knew the issuer and its directors did not
21 have the desire or the sophistication to conduct their own due diligence.
22 The Preston law firm also knew the Foundation was controlled by the
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1 Developers (who were selling the Garage to the Foundation) and, therefore,
2 lacked independence.

3 25. As bond counsel, the Preston law firm had a duty to thoroughly
4 investigate the facts and circumstances surrounding the proposed bond
5 issue to determine, among other things, that the Foundation would not be
6 paying more than the fair value of the Garage to the Developers. The
7 Preston law firm understood the Developers either owned or controlled the
8 owners of the Garage and planned to sell the renovated and expanded
9 Garage to the Foundation, which the Developers also controlled, for
10 approximately \$26 million. As bond counsel and as counsel for the issuer,
11 the Preston law firm had a duty to take reasonable steps to ensure that the
12 lack of independence of its client and conflicts of interest of the Developers
13 did not impair the accuracy or completeness of the disclosures made in the
14 Official Statements.

15 26. The Preston law firm did, in fact, review the Walker Report, the
16 Auble and Barrett Reports, the Coopers & Lybrand Report, and drafts of the
17 Official Statements, and, as a result, knew the Official Statements were
18 materially false and misleading. The Preston law firm, having obtained
19 such information, owed a duty to the Foundation and the Bondholders to not
20 go forward with the issuance of any opinions without first ensuring that full
21 and fair disclosure was made of all material facts and without first ensuring
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1 that that Foundation was not paying any more to the Developers than the
2 fair value of the Garage. The Preston law firm, having knowledge that the
3 Official Statements were materially false and misleading, nonetheless
4 issued three opinions in connection with closing on issuance of the Bonds.
5 The Bonds could not and would not have been issued had the Preston law
6 firm refused to issue any of the three opinions.
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8 27. In one September 24, 1998, opinion, the Preston law firm states,
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10 among other things:

11 In this connection we have reviewed and examined
12 certain proceedings and documents with respect to
13 the Bonds, and such records, certificates and other
14 documents we have considered necessary or
15 appropriate for the purposes of this opinion,
16 including the Amended and Restated Articles of
17 Incorporation and Bylaws of the Issuer, the Issuer
18 Resolution, the Financing Documents, the Project
19 Documents, the Preliminary Official Statement
20 dated September 2, 1998, and the Final Official
21 Statement dated September 15, 1998, with respect
22 to the issuance and offering of the Bonds
23 (collectively the "Official Statement") and a closing
24 certificate of the Issuer. Based on such review and
25 such other considerations of law and fact as we
26 believe to be relevant, we are of the opinion that:

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28 (10) Based upon our experience as counsel for the
Issuer and on our review of and participation in the
drafting of the Official Statement, and after diligent
inquiry, we have no reason to believe that the
information regarding the Issuer in the Official
Statement contains any untrue statement of a
material fact or omits to state any material fact

1 necessary in order to make the statements made
2 therein, in light of the circumstances under which
 they were made, not misleading.

3 At the time the Preston law firm issued this opinion, the Preston law firm
4 had actual knowledge that the Official Statements were materially false and
5 misleading as a result of taking the hereinabove-alleged actions. As a
6 result, the final sentence in the above paragraph of the Preston Opinion is
7 both false and misleading.
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9 28. Cowles Publishing is a Washington corporation with its
10 principal offices in Spokane, Washington. Elizabeth Cowles was, at all
11 times pertinent hereto, a resident of Spokane, Washington, and an owner of
12 Cowles Publishing.
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14 29. Defendant Citizens Realty Company ("Citizens") is a
15 Washington corporation with its principal place of business in Spokane,
16 Washington, and is a wholly-owned subsidiary of Cowles Publishing.
17 Citizens is controlled by Cowles Publishing and Elizabeth Cowles.
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19 30. Defendant Lincoln Investment Company of Spokane ("Lincoln")
20 is a Washington corporation with its principal place of business in Spokane,
21 Washington. Lincoln is controlled by Elizabeth Cowles.
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23 31. Defendant RPS Mall L.L.C. ("RPS") is a Washington limited
24 liability company comprised of two members, Lincoln and Citizens. As a
25 result, RPS is controlled by Cowles Publishing and Elizabeth Cowles.
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1 32. Defendant RPS II, L.L.C. ("RPS II") is a Washington limited
2 liability company with a principal place of business in Spokane,
3 Washington. RPS II is a wholly-owned subsidiary of RPS and is, therefore,
4 controlled by Cowles Publishing and Elizabeth Cowles.
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6 33. Citizens, Lincoln, RPS, RPS II, Cowles Publishing and
7 Elizabeth Cowles are hereinafter referred to collectively as the "Developers."
8 The Developers directly or indirectly owned the Garage and sold it to the
9 Foundation for the inflated \$26 million purchase price in about September
10 1999 after completion of the renovation and expansion of the Garage by the
11 Developers. The Foundation paid the Developers for the Garage with
12 proceeds from the Bonds.
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15 34. Defendant RWR Management, Inc. is a Washington corporation
16 doing business as R.W. Robideaux and Company ("Robideaux & Company")
17 which has its principal offices in Spokane, Washington.
18 Robideaux & Company holds itself out as a professional real property
19 management company providing specialized financial and administrative
20 expertise in the financing, development and management of commercial
21 properties. At all times pertinent hereto, Robideaux & Company was the
22 project director for the Developers' efforts to renovate and expand both the
23 RPS Mall and the Garage.
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1 35. At all times pertinent hereto, R.W. Robideaux, a resident of
2 Spokane, Washington, was the President of Robideaux & Company and was
3 the Robideaux & Company employee with overall responsibility for all
4 actions undertaken by Robideaux & Company in connection with the
5 commercial project and the activities of the Developers. As of 1998,
6 Robideaux & Company had managed the day-to-day business of the Garage
7 on behalf of the Developers for a number of years, and therefore knew,
8 based upon the actual historic financial performance of the Garage, that the
9 fact-based assumptions used by Walker to generate the cash flow projections
10 in the Walker Report were totally unrealistic and unreliable. Robideaux &
11 Company also had knowledge of the content of the Walker/Ernst & Young
12 Reports, the Auble and Barrett Reports, the Sabey Garage Report, the
13 Coopers & Lybrand Report, and the content of the Official Statements
14 because R.W. Robideaux reviewed and commented on those documents on
15 behalf of the Developers.
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17 36. Robideaux & Company was, at all times pertinent hereto, an
18 agent for the Developers acting within the course and scope of its agency
19 relationship with the Developers and, as a result, all actions and knowledge
20 of Robideaux & Company are imputed to the Developers. Robideaux &
21 Company acted in the above capacities in connection with the formation of
22 the Foundation on behalf of the Developers and was instrumental in
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1 carrying out the scheme or artifice to defraud by knowingly providing
2 erroneous or unrealistic fact-based assumptions to Walker, and by
3 convincing representatives of the City of Spokane to instruct the appraisers
4 of the Garage to use an appraisal method which would wrongfully inflate
5 the value of the Garage.
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7 37. Defendant City of Spokane (the "City") is a first-class charter
8 city of the State of Washington. The City knew the assumptions used by
9 Walker were unreasonable and that the Walker Report was totally
10 unreliable based upon the City's knowledge of the historic performance of
11 the Garage and the review, by representatives of the City, of the
12 Walker/Ernst & Young Reports, the Walker Report, the Auble and Barrett
13 Reports, the Coopers & Lybrand Report, and the Sabey Garage Report,
14 among other documents. The City, having such knowledge and acting at the
15 behest of the Developers, nonetheless instructed the appraisers, Auble and
16 Barrett, to use the cash flow projections and fact-based assumptions in the
17 Walker Report for the sole purpose of establishing an artificially inflated
18 value for the Garage. The City then used the Walker Report and the
19 wrongfully inflated value of the Garage in the Auble and Barrett Reports to
20 "negotiate" the \$26 million purchase price for the Garage with
21 representatives of the Developers.
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1 38. The City also approved the Ordinance to enhance the credit
2 strength of the Bonds and achieve an investment grade rating for the Bonds
3 from a bond rating agency. The Ordinance was characterized as being valid
4 and unconditional in opinions issued by the City attorney and the City's
5 special counsel, the Perkins Coie law firm. In the opinion letters, the City
6 Attorney and Perkins Coie represented that "[t]he . . . City Ordinance ha[s]
7 been duly enacted by the City Council and [is] in full force and effect . . . and
8 [is] the valid and legally binding obligation of the City, enforceable against
9 the City in accordance with [its] respective terms" The opinion letters
10 then cited specific provisions of the Official Statements as being accurate,
11 correct, and a complete disclosure of all material facts concerning the
12 Garage project and the subject City Ordinance:

13 The statements contained in the Official Statement
14 under the captions "Introduction – Purpose of the
15 Bonds – Public Purpose," "Project Participants –
16 the City," "Financing Structure – City Pledge of
17 Parking Meter Revenues," "Sources of Payment and
18 Security for the Bonds – City Pledge of Parking
19 Meter Revenues" and "Project Participants – The
20 City," insofar as such statement purport to
21 summarize certain provisions of the . . . the City
22 Ordinance or to describe the City are true, accurate
23 and correct summaries or descriptions thereof in all
24 material respects and do not omit to state a material
25 fact necessary in order to make the statements
26 contained therein, in light of the circumstances
27 under which they were made, not misleading.
28

1 Purchasers of the Bonds, including Plaintiffs, and the Standard & Poors
2 rating agency relied upon the validity and unconditional nature of the
3 Ordinance in purchasing the Bonds. The City, however, concealed its belief
4 that there were defenses which could be asserted in opposition to any
5 attempts to enforce the Ordinance and the City's intent to assert such
6 defenses if anyone sought to enforce the Ordinance. The City, despite such
7 knowledge and beliefs, nonetheless permitted the Bonds to be sold to the
8 purchasers thereof, including Plaintiffs, by means of the Official Statements
9 which the City knew were false and misleading.
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11

12 39. Defendant Spokane Public Parking Development Authority (the
13 "Authority") is an unregistered Washington corporation doing business as
14 River Park Square Parking, which was created by the City through an
15 Ordinance passed by the city council on November 7, 1988. The Authority is
16 governed by a five-member board of directors appointed by the mayor and
17 approved by the city council and is, therefore, subject to the direct and
18 indirect control of the City. During the period the Bonds were being
19 underwritten and issued, two city council members having knowledge of the
20 fraudulent scheme, Orville Barnes and Roberta Greene, sat on the board of
21 directors of the Authority.
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25 40. At the time the Bonds were issued in September 1998, the
26 Authority engaged in no activities other than those relating to the Garage.
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1 The Authority was used by the City as the entity that would lease the
2 Garage from the Foundation and assume responsibility for the day-to-day
3 operations and management of the Garage. The Authority was also used by
4 the City to sublease the land underlying the Garage from the Foundation at
5 an artificially inflated price established by the Developers and agreed to by
6 the City.
7

8
9 41. All of the hereinabove identified agents and employees of the
10 Defendants were, at all times pertinent hereto, acting within the course and
11 scope of their employment by said Defendants, and said Defendants have
12 ratified, adopted and approved all of the actions taken by said agents and
13 employees which are the subject of this Complaint.
14

15 42. For all of the hereinabove and hereinbelow alleged reasons, each
16 of the above Defendants had actual knowledge that the renovated and
17 expanded Garage would be worth less than \$10 million, knew that the
18 "investment value" method was used to artificially and wrongfully inflate
19 the value of the Garage, and knew that the Official Statements, including
20 the Walker Report, were materially false and misleading. By continuing to
21 participate in the underwriting and issuance of the Bonds, as herein alleged,
22 all of the above Defendants knowingly engaged in a scheme or artifice to
23 defraud and an unlawful conspiracy.
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1 Developers approached the City with the idea that the City would purchase
2 a renovated and expanded Garage from the Developers. The Developers
3 hired the Real Estate Advisory Services Group of the accounting firm
4 Ernst & Young and Walker to generate the Walker/Ernst & Young Reports
5 for the purpose of projecting the net operating income of the Garage based
6 upon assumptions which included the renovation of the existing 750-space
7 garage, the addition of over 230 parking spaces, and the addition of a
8 multiplex cinema as part of the renovation of the RPS Mall.
9

10
11 47. In May 1995, John Dorsett of Walker issued a "revised proforma
12 statement of net operating income" for the Garage as part of the
13 Walker/Ernst & Young Reports which projected the Garage would generate
14 approximately \$1,750,000 in total revenues during its first year of operation
15 following the renovation and expansion and would not generate more than
16 approximately \$2.28 million in annual revenues even after ten years of
17 operation. In contrast, the June 1996 Walker Report artificially inflated the
18 projected revenues approximately 300% by changing key fact-based
19 assumptions. In the Walker Report given to prospective purchasers of the
20 Bonds in the Official Statements, the comparable revenues were projected to
21 be over \$4.3 million in the first full year of operations and almost
22 \$10 million after ten years.
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1 48. In about June 1995, the City and the Developers discussed the
2 sale of the existing Garage to the City for a purchase price of approximately
3 \$4.8 million. The City was not interested in purchasing the Garage, and
4 representatives of the City and the Developers began to discuss the issuance
5 of tax-exempt bonds as a means to pay the Developers for the to-be
6 renovated and expanded Garage.
7

8 49. The Developers caused the Foundation to be formed so it could
9 be used as the vehicle for issuing the Bonds and using the Bond proceeds to
10 purchase a renovated and expanded Garage from the Developers.
11 Prudential was hired on behalf of the Foundation to serve as underwriter for
12 any bonds issued by the Foundation.
13
14

15 50. In June 1995, the City, the Developers and Prudential
16 calculated, based upon the Walker/Ernst & Young Reports, that a bond
17 issue of approximately \$14 million would provide for the purchase (not the
18 lease but the purchase) of the land underlying the Garage, the renovations
19 to the existing Garage, and the construction of approximately 240 additional
20 parking spaces. The Walker/Ernst & Young Reports also projected that
21 revenues that could reasonably be projected from the Garage would be
22 sufficient to service approximately \$14,000,000 in debt provided the
23 proposed bonds had a 25-year term. On June 12, 1995, the City passed a
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1 Resolution which authorized the development of a proposal to acquire and
2 develop the Garage through a bond issue not to exceed \$15 million.

3 51. In about June or July 1996, the City and the Developers
4 determined that if the City would supplement the anticipated revenue from
5 the Garage by pledging approximately \$1.6 million per year from its parking
6 meter revenue fund, a much larger bond issue could be supported. However,
7 the City and the Developers all knew the Garage, as renovated and
8 expanded, together with the ground underneath the Garage, would still be
9 worth less than \$10 million even if the City took steps to pledge parking
10 meter revenues.
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12

13
14 52. About this time, the City, apparently at the behest of the
15 Developers, agreed to utilize an extremely rare and, under the
16 circumstances, improper "investment value" to wrongfully and artificially
17 inflate the "value" of the Garage in order to support a \$26 million purchase
18 price and thereby generate a fraudulent and wrongful profit to the
19 Developers of approximately \$11 million. In furtherance of the scheme, the
20 Developers, acting through Robideaux & Company, supplied Walker with
21 new assumptions to be utilized by Walker in its financial feasibility study
22 (assumptions which Robideaux & Company, Walker, the Developers and the
23 City all knew were unrealistic and unreasonable) in order to mislead
24 prospective purchasers of the Bonds into believing that the "value" of the
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1 Garage was supported by its anticipated cash flows and that such cash flows
2 were sufficient to carry the debt being assumed to purchase the Garage at
3 the stated price.

4
5 **The Fraud Based Assumptions and the Walker Report**

6 53. The four principal assumptions supplied to Walker which drove
7 the projected operating revenue figures contained in the Walker Report
8 were: (1) the addition of a 24-screen multiplex AMC cinema to the RPS Mall
9 and the resulting parking revenues that could be projected based upon the
10 assumption that cinema patrons would pay full price for parking; (2) an
11 average projected parking stay of three hours; (3) a \$1.50-per-hour parking
12 rate paid by all mall patrons; and (4) the Garage would capture 85% of the
13 available parking customers. Each of the above assumptions was known by
14 Robideaux & Company, Walker, the City, and the Developers to be
15 unreasonable based upon the material existing facts alleged hereinbelow.
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19 54. Walker states in the Walker Report (June 1996) that it had not
20 considered the impact of a parking validation program, implying that it had
21 insufficient data available to it to determine the financial impact a parking
22 validation program would have upon future revenues. Since Walker was
23 issuing a "financial feasibility analysis" and had a duty to evaluate the
24 reasonableness of the assumptions underlying its analysis, the Walker
25 Report and the Official Statements, taken as a whole, created the false
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1 impression that Walker did not have enough information to evaluate the
2 impact of a future parking validation program. In fact, such information
3 was readily available and known to Robideaux & Company, the City, the
4 Developers and Walker. It was ignored because Robideaux & Company,
5 Walker, the Developers and the City all knew that if a parking validation
6 program similar to that currently in place was factored into the proformas,
7 there was insufficient revenue to repay the Bonds.
8
9

10 55. The RPS Mall and the Garage had previously participated in
11 parking validation programs which subsidized parking by providing free or
12 substantially reduced rate parking to mall patrons. Not only did this result
13 in a significant decrease in Garage revenues, existing users of the RPS Mall
14 were conditioned to expect reduced rate parking and area businesses were
15 conditioned to expect they would only reimburse the Garage for a small
16 portion of the standard parking fee.
17
18

19 56. Walker had also, at the request of the Developers, evaluated
20 various parking validation scenarios prior to the issuance of the Bonds.
21 Thus, Walker, the Developers, the City and Robideaux & Company knew
22 prior to the issuance of the Bonds that a "future" parking validation
23 program was already being planned and, when implemented, would have a
24 significant negative impact on Garage revenues. However, the Developers,
25 acting through Robideaux & Company, intentionally caused Walker to
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1 ignore the financial impact of a parking validation program in the Walker
2 Report for the specific purpose of falsely inflating the projected revenues
3 and with the knowledge and intent that a validation program would be
4 implemented after the Bonds were issued. As a result, at the time the
5 Bonds were issued, Robideaux & Company, the Developers, Walker and the
6 City all knew there was little or no likelihood that the revenues projected in
7 the Official Statements would be realized.
8

9
10 57. The City, the Developers, Walker and Robideaux & Company
11 also knew potential AMC movie patrons would very likely not be willing to
12 pay for parking when they had available to them free parking at other
13 theaters in Spokane, including multiplex cinemas, at more or equally
14 convenient locations.
15

16
17 58. In view of the above, Walker, the City, the Developers and
18 Robideaux & Company all knew a subsidized parking validation program
19 would be implemented after the Bonds were issued. This material fact was
20 never disclosed to potential bond purchasers.
21

22 59. The Developers, the City and Walker knew that the historic
23 average parking stay in the Garage prior to the issuance of the Bonds was
24 approximately 1.2 hours or less. There was no legitimate reason to believe
25 parkers would increase their length of stay after the RPS Mall was
26 renovated. Nonetheless, the Walker Report projects the average retail
27
28

1 shopper at the RPS Mall would, on average, park for three hours, or over
2 two times the historic average length of stay, in the Garage. Accordingly,
3 the City, the Developers, Robideaux & Company and Walker all knew,
4 based upon all circumstances then known, including historic parking
5 statistics, that an average stay of three hours was totally unreasonable and
6 that, to the extent the projected revenues were based upon this assumption,
7 the Official Statements were knowingly false and misleading. This material
8 fact was never disclosed to potential bond purchasers.
9
10

11 60. Office workers do not tend to park in the Garage, but consume a
12 substantial portion of the other available parking in and about downtown
13 Spokane during working hours on weekdays. However, in the evenings and
14 on weekends, there is a substantial surplus of free or low-priced parking in
15 downtown Spokane which very strongly indicated to Walker, the City, the
16 Developers and Robideaux & Company that the Garage would never capture
17 anywhere close to 85% of the potential parkers. This material fact was
18 never disclosed to potential bond purchasers.
19
20

21 61. Downtown Spokane parking garages could not realistically
22 expect to charge customers an hourly rate for parking in the evenings and
23 on weekends because evening and weekend parkers, including movie goers,
24 could easily find parking which was both convenient and cheaper elsewhere.
25
26 As a result, the Developers, the City, Walker and Robideaux & Company
27
28

1 knew that even though the Walker Report stated the assumption that the
2 Garage would charge \$1.50 per hour to all Garage customers, the Garage
3 would actually have to charge much lower rates to induce people to park in
4 the Garage in the evening and on weekends. This material fact was never
5 disclosed to potential bond purchasers.
6

7 62. The significance of the false and misleading Walker Report (and
8 the false assumptions upon which it is based) is heightened by the manner
9 in which the participants to the fraudulent scheme then used the inflated
10 revenues in the Walker Report to "justify" an inflated "value" to be paid to
11 the Developers to purchase the Garage.
12

13 The Garage Valuation Sham

14
15 63. The City real estate manager, Dennis Beringer, advised the City
16 to seek market value appraisals of the Garage. However, at the urging of
17 Elizabeth Cowles and R.W. Robideaux, acting on behalf of the Developers,
18 the City instructed its appraisers to use the highly misleading "investment
19 value" method to value the Garage. Beringer objected to use of the
20 investment value and advised the City that its use would substantially and
21 unreasonably inflate the value of the Garage, thereby causing the
22 Foundation to pay much more for the Garage than it was really worth, pay
23 much more to the Developers under the ground lease than was reasonable
24 and fair, and would jeopardize the Foundation's ability to service and pay off
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1 the Bonds (all of which are material facts that were never disclosed to
2 prospective purchasers of the Bonds). The City, in furtherance of the
3 conspiracy and scheme or artifice to defraud, ignored Beringer and retained
4 John Evans and David Auble of Auble & Associates and Daniel E. Barrett to
5 perform "investment value" appraisals of the Garage and land underlying
6 the Garage. Barrett, Evans and Auble are all MAI certified appraisers.
7

8
9 64. Both appraisers advised the City and the Developers that it
10 would not be appropriate to use "investment value" for an appraisal of this
11 kind, but were nonetheless instructed by the City, at the behest of the
12 Developers, to use it. Auble and Barrett both qualified their Reports by
13 inserting disclaimers and other statements which made it clear the
14 "investment value" approach was not really an appraisal at all and provided
15 a number that had little, if anything, to do with the fair value of the Garage.
16
17

18 65. Auble stated in the cover letter to its July 11, 1996, Report:

19 The City has hired an independent parking garage
20 consultant who has conducted a 'financial feasibility'
21 analysis and provided a projection of the operating
22 revenue that will be generated by the parking
23 operation. The City has requested an 'investment
24 value' analysis utilizing the income projection from
the parking garage consultant, based on the
anticipated bond repayment specified by the City.

25 An appraisal based valuation model utilizing
26 discounted cash flow analysis is used to estimate
27 'investment value' that is consistent with the City
28 investment objectives. We have relied upon the
parking consultant's estimate of revenue, which has

1 been modified slightly to reflect local and current
2 conditions. The specified bond repayment rate was
3 utilized as the discount rate in the DCF analysis.

4 It should be noted that this assignment is not a
5 'market value' appraisal, but is a consulting
6 assignment. If market value were estimated, the
7 resulting value would be significantly lower than
8 the value estimated herein.

9 Using the criteria dictated by the City and the Developers and the June
10 1996 Walker Report, Auble concluded the "investment value" of the Garage
11 was over \$26 million.

12 66. The Barrett Report contains similar limitations and
13 qualifications:

14 As requested, I have completed an investigation and
15 analysis relative to providing an appraisal of the
16 'investment value' of the River Park Square Parking
17 Garage under the criteria which you supplied. It is
18 important to note that this is not an appraisal of
19 the 'market value' of this property which would
20 represent the value of the property in the open
21 market to a 'typical' purchaser. This 'investment
22 value' analysis represents the value of the property
23 to you—the City of Spokane—under specific
24 conditions and investment criteria. . . .

25 This assignment is unusual in several aspects. . . .
26 This appraisal report places significant weight upon
27 a 'financial feasibility analysis' and condition report
28 for the River Park Square Parking Garage' prepared
 by Walker Parking Consultants and Engineers,
 dated June 14, 1996. Several questions are raised
 regarding the validity of the Walker report. I
 question the weight which Walker places upon the
 potential income which the cinema patrons will
 generate.

1 As a result of this and other concerns, Barrett provided his "investment
2 value" of the Garage under three different scenarios. Based upon the above
3 limitations and conditions, together with other limitations and conditions,
4 Barrett concluded the "investment value" of the Garage was over
5 \$26 million in his moderate case scenario.
6

7 67. The Auble Report concludes the Walker Report is not a financial
8 feasibility study:
9

10 It is important to understand what the Walker
11 Report is not. This report professes to be a financial
12 feasibility study for the expanded River Park
13 Square parking garage. However, this report does
14 not address the issue of competition as it pertains to
15 regional malls in the Spokane area and does not
16 develop any estimates of success of River Park
17 Square capturing its share of the Spokane retail
18 market. Additionally, it does not consider the
19 additional parking facilities in the area or potential
20 for future competition. This report does not
21 recognize that the competition (regional malls and
22 cinemas) all have free parking and does not attempt
23 to reconcile the impact that may have on future
24 demands. Additionally, the assumptions regarding
25 the average length of stay per car does **not appear**
26 **to be reasonable.** (Auble & Associates p. 71, their
27 emphasis)
28

22 68. Auble evaluates the market for first-run movie screens in
23 Spokane and concludes:
24

25 Should all these facilities be built, there would be 93
26 screens, or approximately twice the amount
27 suggested by movie standards.
28

1 It must be recognized that all cinemas, existing and
2 proposed, offer free parking and have large
3 population bases in good time/distance
4 relationships. It may be difficult for River Park
Square to attract moviegoers in the downtown CBD
area. (p. 67 Auble)

5 69. Auble also challenged Walker's key assumption that the length
6 of stay in the Garage would increase to three hours:
7

8 This appears to be very aggressive assumptions, in
9 light of the fact that historic stay is approximately
10 1.2 hours over the last 5 years. (Walker reports
11 current length of stay is 1.9 hours; however,
historical data does not support that claim.) (p. 88,
Auble).

12 70. With respect to the land underneath the Garage, Barrett states
13 "the City's investment criteria creates more 'value' than the same
14 investment would generate in the open market." Barrett explains, "in other
15 words, the City would end up paying land rent based on an inflated land
16 value, when it is their investment criteria which creates the inflated
17 situation in the first place."
18

19 71. The Bonds could be issued at an artificially low interest rate
20 because the Bonds would be federal tax-exempt instruments which were to
21 receive an investment grade rating from a bond rating agency prior to
22 issuance. The "investment value" derived by Auble and Barrett was thus
23 driven by both the proposed and artificially low interest rate for the Bonds
24 and the wrongfully inflated cash flow projections in the Walker Report. The
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1 inflated "investment value" was then used to fraudulently inflate the value
2 of the Garage.

3 72. Despite their knowledge that use of the "investment value"
4 methodology wrongfully and fraudulently inflated the purchase price for the
5 Garage and the land under the Garage, the City and the Developers used
6 the Auble and Barrett Reports as the foundation to "negotiate" a \$26 million
7 purchase price for the Garage.
8
9

10 73. On November 25, 1996, after receiving the warnings in the
11 Auble and Barrett Reports, the mayor and city council unanimously adopted
12 Resolution No. 96-144 which provided, among other things:
13

14 NOW, THEREFORE, BE IT RESOLVED that the
15 City Manager and City staff are hereby *authorized*
16 *to prepare the ordinances, agreements and*
17 *documents jointly* with the Public Development
18 Authority and the Spokane Downtown Foundation
19 as are necessary to provide for the renovation,
20 expansion and construction of public parking garage
21 facilities adjacent to Spokane Falls Boulevard
22 between Lincoln Street and the Old City Hall
23 Building to serve the System in accordance with the
24 following project concept:

25 **Section 1: Public Development Authority**

26 The City Manager and Deputy City Manager, the
27 City Attorney and Perkins Coie as the City's bond
28 counsel (collectively, the "City Staff") are hereby
authorized and directed to prepare the necessary
resolutions or ordinances to appoint current
members to the Board of Directors (the "Board") of
the Authority and to provide all advice and support
necessary for the Authority to meet and to exercise

1 any or all or (sic) its powers granted to it by
2 Ordinance No. C-29241, adopted November 7, 1988.

3 **Section 2: Spokane Downtown Foundation**

4 The City Staff are hereby authorized and directed to
5 meet with the Foundation and its counsel and to do
6 all things necessary and appropriate in order for it
7 to recommend action to the Council in conjunction
8 with the acquisition of the Facility by the
9 Foundation, *the issuance of the Bonds on behalf
of the City* by the Foundation *and the transfer of
the Facility to the City* unencumbered at such
time as the tax-exempt bonds of the Foundation are
paid or otherwise defeased.

10 **Section 3: Tax-Exempt Bond Rating**

11 The City Staff *is hereby authorized and directed*
12 *to do all things necessary and appropriate to*
13 *procure a bond rating* of Baa from Moody's
14 Investors Service and/or BBB or better from
15 Standard & Poor's Ratings Group with respect to
the tax-exempt bonds anticipated to be issued by the
Foundation.

16 (Emphasis added).

17 **The Sabey Corporation Warning**

18 74. Sabey Corporation is a commercial real estate company which
19 maintains its principal place of business in Seattle, Washington. Sabey
20 Corporation was a major landowner, business operator and taxpayer in the
21 City and, among other things, owned and operated a retail mall which was
22 located in the City outside downtown Spokane. As a result, Sabey
23 Corporation was competent to express opinions regarding the manner in
24 which the proposed financing of the renovation and expansion of the RPS
25 Corporation was competent to express opinions regarding the manner in
26 which the proposed financing of the renovation and expansion of the RPS
27
28

1 Mall and the proposed financing of the renovation and expansion of the
2 Garage was being handled by the City and the Developers.

3 75. On December 10, 1996, Laurent D. Poole, the executive vice
4 president of Sabey Corporation, provided the mayor and city council with
5 two reports, entitled "Analysis of: Economic Impact Study Downtown River
6 Park Square Project" (the "Sabey RPS Mall Report") and "Analysis of:
7 Financial Feasibility Analysis Condition Assessment for the River Park
8 Square Parking Garage" (the "Sabey Garage Report"). The Sabey RPS Mall
9 Report and the Sabey Garage Report were provided to the Developers and
10 Robideaux & Company. The Sabey Garage Report was highly critical of the
11 manner in which the City and the Developers were proceeding with the
12 renovation and expansion of the Garage through the proposed issuance of
13 the Bonds. The Sabey Garage Report was prepared based upon, among
14 other things, a detailed review of the Auble and Barrett Reports.
15
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19 76. The Plaintiffs did not know of the existence or contents of the
20 Sabey Garage Report or the Sabey RPS Mall Report because those facts
21 were concealed from them and were not disclosed in the Official Statements.
22

23 77. The following are among the fact-based criticisms of the Walker
24 Report and the overall financing structure contained in the Sabey Garage
25 Report:
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1 (a) The Sabey Garage Report focused upon, quoted and
2 adopted the portions of the Auble Report which conclude the Walker Report
3 was not a legitimate financial feasibility analysis. The Sabey Garage Report
4 challenges Walker's failure to consider the negative impact on parking
5 usage at the Garage when parking rates are raised 50%, from \$1.00 to \$1.50
6 per hour as assumed in the Walker Report. The Sabey Garage Report notes
7 the Walker Report fails to address the claims of Spokane's downtown
8 association to have "6,000 parking stalls in the downtown area" and to fund
9 a "trolley shuttle to access inexpensive parking nearby."
10

11
12 (b) The Sabey Garage Report determined that the success or
13 failure of the proposed AMC cinema to attract customers was critical to the
14 success or failure of the Garage and found it "unusual that Walker bases his
15 theater parking projections not on the existing Spokane market, but on
16 markets in other unnamed cities with multi-plex cinemas. (p. I-24 Table 7,
17 Walker)." The Sabey Garage Report challenges Walker's assumption that
18 the multiplex cinema would be successful and states that assumption was
19 seriously questioned by both Auble and Barrett.
20
21

22
23 (c) The Sabey Garage Report supported the concerns
24 expressed in the Auble Report with information supplied to it by Act III
25 theaters, the operator of all of Spokane's first-run movie screens:
26
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1 [I]n 1995 Spokane had 28 first-run movie screens
2 which took in \$6.4 million in revenue. The proposed
3 downtown, AMC 24-plex will nearly double the
4 number of screens in the market. It is highly
5 unlikely that demand for movie theaters will also
6 double. The AMC 24-plex's success is questionable,
7 hence the parking demand it will generate is also
8 questionable.

9 (d) The Sabey Garage Report further challenged Walker's
10 assumption that the average length of stay for retail RPS Mall customers in
11 the Garage would be three hours:

12 The average length of stay is estimated to increase
13 to 3 hours for retail and 2.5 hours for cinema, **two**
14 **and a half times longer than the current**
15 **length of stay.** The national average for shopper
length of stay is 72 minutes, or 1.2 hours, and
trending downward as shoppers have less and less
time to spend shopping. (Source: Simon DeBartolo
1995).

16 The Sabey Garage Report also quotes the portion of the Auble Report which
17 questions Walker's length of stay assumptions.

18 (e) The Sabey Garage Report compares the first-year
19 projected garage revenues in the Walker Report of \$4,372,400 and the
20 projected profits in the Walker Report of \$3,183,000 to the actual current
21 revenues and profits of the Garage which were reported to be \$724,901 in
22 revenues and \$298,526 in profits. The figures are attributed to the Auble
23 Report at pages 72 and 74. The Sabey Garage Report puts the Walker
24 projections into perspective: "Walker is suggesting first year parking
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1 revenues will be 500% higher than current parking revenues and profits to
2 soar 1,000% over current profits.”

3 (f) The Sabey Garage Report concludes:
4

5 With these unrealistically high best case scenario
6 numbers, one would only expect the anticipated
7 valuation analysis of the parking structure to be
8 just as unrealistically inflated. In fact, this is the
9 case as both Mr. Auble and Mr. Barrett heavily
10 qualify their reports as ‘not appraisals’ but
11 consulting exercises based on the Walker Report
12 and the City’s discount rate and investment criteria.
13 Both appraisers state that the **market value** of this
14 garage would be significantly lower.

15 No prudent investor, underwriter, financial
16 institution, or person in a fiduciary position would
17 advance funds on the ‘investment value’ of a real
18 estate asset. The estimated ‘investment value,’ in
19 excess of \$30 million, is an unsupportable number
20 and vastly overstates the parking garage’s value.
21 The price for the parking garage is not for fee simple
22 ownership; the purchaser never owns the land. The
23 lender is essentially being asked to: 1) underwrite
24 an overstated best case scenario of future profits,
25 and 2) accept all of the project’s risk. Should
26 adequate revenue not materialize and the project
27 fail, the lender’s only recourse would be to the
28 parking structure improvements and the leasehold
interest in this land, the value of which will not be
the ‘investment value’ but a significantly lower
market value.

Before the City of Spokane pledges funds, gets ‘at
risk,’ or even participates tangentially with the
River Park Square parking garage’s financing, it
should apply the same rigorous underwriting
criteria the market would require and insist on a
realistic market-driven, cash flow projection and
asset valuation.

1 The Sabey RPS Mall Report is also highly critical of the manner in which
2 the City and the Developers were planning to finance the RPS Mall
3 renovation. Among other things, the Sabey RPS Mall Report challenges the
4 ethics of the City utilizing its HUD bloc grants to provide financial aid to the
5 Developers at the probable detriment of the entire City.
6

7 78. All of the hereinabove alleged statements contained in the
8 Sabey Garage Report were true and accurate statements of material
9 existing fact which were actually known to the City, the Developers and
10 Walker as of December 1996.
11

12 79. On January 13, 1998, one month after the City received the
13 Sabey Garage Report, the mayor and city council unanimously adopted
14 Resolution No. 97-2 which provided, in pertinent part:
15

16 **NOW, THEREFORE, IT IS HEREBY FOUND,**
17 **DETERMINED AND ORDERED, as follows:**

18 **Section 1. Findings.**

19 It is hereby found and declared that the public
20 interest, welfare and benefit require the acquisition
21 of the Facility for public use. The Council finds that
22 the proposal of the Foundation to acquire the
23 Facility, to lease the Facility to the Authority and
24 assign the Ground Lease to the Authority is in the
25 best interest of the City and its inhabitants.

26 **Section 2. Approval of the Facility.**

27 The plan for acquiring the Facility is hereby
28 accepted and approved. In particular, the Council
acknowledges and approves the plan for the
Foundation to finance the acquisition of the Facility
by means of revenue bonds issued by the

1 Foundation in accordance with Revenue Ruling 63-
2 20 of the U.S. Department of Treasury (as compiled
3 and supplemented by Revenue Procedure 82-26 of
4 the U.S. Department of Treasury).

5 **Section 3. Approval of the Foundation's**
6 **Financing Plan.**

7 For the purpose of complying with the requirements
8 of Revenue Ruling 63-20 and Revenue Procedure 82-
9 26 of the U.S. Department of Treasury and in
10 accordance with the plan, *the Council hereby*
11 *acknowledges and approves the Foundation's*
12 *issuance of tax-exempt lease revenue bonds* (the
13 "Bonds") maturing over a period of not to exceed 21
14 years to finance acquisition of the Facility. In no
15 event shall the Bonds be issued in an amount
16 greater than is necessary to pay a garage purchase
17 price of \$26,000,000 plus costs of issuance and a
18 debt service reserve. The City agrees that when the
19 Bonds are retired, *the City shall accept delivery*
20 *of full legal and unencumbered title to the*
21 *Facility* for no additional consideration.

22 **Section 4. General Authorization.**

23 The City Manager, the Deputy City Manager and
24 the City Attorney, the agents and representatives of
25 the City are hereby authorized and directed to do
26 everything necessary to accomplish the acquisition
27 and this resolution.

28 **Section 5. Ratification of Past Acts.**

All actions heretofore taken by City officers, staff,
attorneys and agents consistent with the terms and
purposes of this resolution *are hereby ratified,*
confirmed and approved.

(Emphasis added).

The Coopers & Lybrand Warning

80. The City retained the real estate advisory services group of
Coopers & Lybrand to perform certain market and financial analyses

1 regarding the proposed renovation and expansion of the Garage.
2 Coopers & Lybrand issued a report on January 27, 1997. The
3 Coopers & Lybrand Report criticized the reasonableness of the hereinabove-
4 alleged assumptions utilized by Walker and determined that the Garage
5 was not worth \$26 million. Coopers & Lybrand understood, in connection
6 with preparing the Coopers & Lybrand Report, that the analyses and
7 conclusions in the Barrett and Auble Reports were among the things used as
8 a basis for determining the acquisition price of the Garage by the
9 Foundation, the anticipated bond financing structure, and the economic
10 terms of the ground lease.
11
12

13
14 81. Coopers & Lybrand set forth the following in the Summary of
15 Conclusions section of its report:

16 The Walker projections do not consider the financial
17 implications of a parking validation program. It is
18 clearly difficult at this time to assess what form of
19 parking validation program, if any, will be in place
20 upon completion of the proposed RPS project.
21 However, if a parking validation program similar to
22 the Easy Pass program in place today is available to
23 customers in the year 2000, the validation program
24 would need to collect significantly greater revenues
25 from (i) retailers, (ii) property owners, or (iii) other
26 available sources to be able to provide the RPS
27 garage with the assumed parking rates and
28 revenues used in the Walker analysis. To the extent
that this does not occur, the financial operations of
the RPS garage could be materially overstated.

Considering the anticipated competition of theater
screens in the market, the cinema operator may

1 likely expect that its patrons will not be required to
2 pay for parking, so as to avoid creating a
3 competitive advantage for competing screens. At
4 the same time, it is unclear whether the cinema
operator will contribute significantly to cover lost
parking revenues from movie patrons.

5 82. Coopers & Lybrand made the following findings and
6 observations in the Coopers & Lybrand Report:
7

8 (a) The Walker Report was not intended to be a feasibility
9 study for the entire redevelopment project or even for the parking garage.

10 (b) Walker identified a historical length of stay for transient
11 parkers of 1.9 hours which they state they received from the current
12 management of the garage.
13

14 (c) Other reports and discussions indicated an average length
15 of stay of 1.2 and 1.5 hours and concluded that "if Walker's historical
16 assumptions are overstated, this may lower the projected length of stay and
17 materially affect the forecasted parking revenues from retail customers."
18

19 (d) The hourly parking rate for weekdays and Saturdays is
20 assumed to be \$1.50. The currently hourly rate for RPS parking is
21 approximately \$1.00. Assuming the increase in the average stay for
22 transient retail customers from 1.5 hours to 1.3 hours, the average cost to
23 park will increase from \$1.50 ($\1.00×1.5 hours) to \$4.50 ($\1.50×3 hours).
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1 (e) The average parking cost to cinema patrons, according to
2 the Walker Report, is \$3.75 per car on weekdays and Saturdays (\$1.50 x 2.5
3 hours) and \$2.50 on Sundays (\$1.00 x 2.5 hours). Considering the
4 anticipated competition of theater screens in the market, the cinema
5 operator may likely expect that his patrons will not be required to pay for
6 parking, so as to avoid creating a competitive advantage from competing
7 screens. At the same time, it is unclear whether the cinema operator will
8 contribute significantly to cover lost parking revenues from movie patrons.
9

10 (f) The Walker projections of net revenues and net operating
11 income are substantially higher than historic figures. Walker projects year
12 2000 (the first full year of operations) revenues and net operating income to
13 be \$4,886,800 and \$3,653,300 respectively. These higher income levels are
14 primarily due to the following:
15

16 hourly rate is increased from the \$1.00 to \$1.50;

17 transient retail customers' average length of stay
18 increases to three hours;

19 theater transient customer of over 623,000 in year
20 2000.

21 83. Coopers & Lybrand also reviewed the Auble and Barrett
22 Reports, and a representative of Coopers & Lybrand spoke with John Evans
23 of Auble and Daniel Barrett to better understand the Reports and their
24 views on the Project. Coopers & Lybrand made the following findings and
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1 observations regarding the Auble and Barrett Reports in the
2 Coopers & Lybrand Report:

3 (a) The appraisers were requested to determine the
4 "investment value" of the Garage rather than the market value. The
5 market value of the Garage would result in a substantially lower valuation.
6

7 (b) The appraisers were provided the cash flow projections
8 from the Walker Report and directed to use those cash flow estimates in
9 their valuation analyses.
10

11 (c) The appraisers were also instructed to use the City's
12 projected bond rate as the applicable discount rate to determine the
13 "investment value" of the Garage.
14

15 (d) The appraisers questioned certain assumptions regarding
16 revenue and/or expenses and performed sensitivity tests regarding certain
17 assumptions, but still relied upon the operating projections included in the
18 Walker Report in determining their values as requested by the City.
19

20 (e) The allocation of land value in the Auble Report was
21 based on 25% of the investment value for the entire property, including both
22 the land and the Garage building, which resulted in a land allocation value
23 of \$8,575,000. Coopers & Lybrand concluded that "this analysis overstates
24 the contributory value of the land due to the fact that the excess of
25 investment value over market value is created by the City's discount rate
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1 applied to the cash flows." Coopers & Lybrand stated that this excess value
2 "is not reflective of, nor should it be attributable to, the underlying land."

3 84. The Coopers & Lybrand Report states that, despite being
4 provided with cash flows and discount rate parameters to be used in the
5 determination of investment value of the Garage, both appraisers addressed
6 concerns with respect to the aggressiveness of certain operating
7 assumptions used in the Walker Report.
8
9

10 85. All of the Defendants knew of the Coopers & Lybrand Report
11 prior to the issuance of the Bonds and either reviewed it, or recklessly failed
12 to review it, and are therefore chargeable with the knowledge that the key
13 assumptions used by Walker to generate the proforma cash flows were
14 unreliable and unreasonable, the "investment value" method dictated to the
15 appraisers resulted in substantially inflated and unreasonable valuations
16 for both the Garage and the land, and it was highly unlikely the Garage
17 would achieve anywhere close to the projected cash flows, resulting in
18 almost certain default on the Bonds.
19
20
21

22 The Ordinance

23 86. On January 27, 1997, after receiving the hereinabove-alleged
24 warnings from Auble, Barrett, Sabey Corporation and Coopers & Lybrand,
25 the City enacted the Ordinance. The Plaintiffs purchased the Bonds
26 believing the Ordinance was a legally binding and enforceable obligation of
27
28

1 the City. The Ordinance specifies multiple benefits to the City from
2 participation in the acquisition and financing of the Garage, and specifically
3 acknowledges the Foundation "issuing tax-exempt bonds on behalf of the
4 City." The key undertaking in the Ordinance is the City's pledge of and
5 obligation to loan parking meter revenue funds to ensure the Authority had
6 the ability to fulfill its payment obligations under the leases discussed
7 hereinafter. This was a critical credit enhancement to the Bonds, and the
8 City knew its credit enhancement was required in order to obtain an
9 investment grade rating for the bond issue from a bond rating agency.

10 87. Under the Ordinance, the duty to effectuate the loans was
11 delegated to the Spokane city manager and city attorney. In particular, the
12 Ordinance provides:

13
14
15
16 The City hereby pledges, as a first charge and lien,
17 that, in the event Parking Revenues are insufficient
18 to make Ground Lease Payments and pay Operating
19 Expenses, the City shall loan money from the
20 Parking Meter Revenue Fund (but only to the extent
21 money or investments are then on deposit or
22 allocable to the Parking Meter Revenue Fund) to the
23 [Authority's] Ground Lease Account and Operating
24 and Maintenance Account in an amount that is no
25 more than is necessary, together with such other
26 money as is on hand and available in the Ground
27 Lease Account and the Operating and Maintenance
28 Account, to permit the [Authority] to make Ground
Lease Payments and to pay Operating Expenses.

.....

1 The City Manager, the City Attorney and their
2 designees, plus bond counsel, Perkins Coie, are
3 authorized in their reasonable judgment to take all
4 acts as appropriate or necessary in order to carry
out and complete the transactions contemplated by
this Ordinance.

5 88. The Ordinance went on to require, in Section 7A, that the
6 Spokane city council adopt a resolution approving the issuance of the Bonds
7 by the Foundation. The city council had earlier adopted that resolution on
8 January 13, 1997 (Resolution No. 97-2).
9

10 89. As hereinabove alleged, the City knew it was highly unlikely the
11 Garage would generate sufficient cash flow to pay the Bonds and that the
12 City would need to loan monies under the Ordinance. The City failed to
13 disclose both its belief that there were defenses which could be asserted in
14 opposition to any attempts to enforce the Ordinance and the City's intent to
15 assert such defenses if anyone sought to enforce the Ordinance.
16
17

18 Another Fraudulent Boost to Projected Revenues

19 90. After the Coopers & Lybrand Report was issued and provided to
20 Prudential, the City, the Developers, the Preston law firm, Robideaux &
21 Company and the Foster law firm, Walker was instructed by the
22 Developers, with the consent of the City, to change its parking revenue
23 assumptions because the seating capacity of the AMC theater would be
24 changed from 3,400 seats to 3,682 seats. The resulting increase in projected
25 Garage revenues over the June 1996 portion of the Walker Report was
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1 included in a June 1998 supplement to the Walker Report. However, based
2 upon the hereinabove-alleged material facts, there was no reason to believe
3 increasing the seating capacity for an already oversized theater would result
4 in any meaningful increase in revenues. This material fact was not
5 disclosed to potential bond purchasers in the Walker Report or the Official
6 Statements.
7

8
9 91. The Defendants all had a duty to review the entire Auble and
10 Barrett Reports and the entire Coopers & Lybrand Report and obtain
11 market value appraisals of the Garage before proceeding further with the
12 issuance of the Bonds. The Defendants, however, proceeded with the
13 issuance of the Bonds using the false and misleading Official Statements.
14

15 **The False and Misleading Official Statements**

16 92. The Official Statements for the Bonds misrepresent the
17 following material facts and fail to disclose the following material facts
18 which needed to be disclosed in order to make the facts which were disclosed
19 in the Official Statements not misleading:
20

21 (a) The Official Statements fail to disclose: (i) the true and
22 complete content of the Coopers & Lybrand Report; (ii) the existence and
23 content of the Walker/Ernst & Young Reports; (iii) the existence and content
24 of the Sabey Garage Report; (iv) the complete content and limitations of the
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1 Auble and Barrett Reports; and (v) the City's belief that it had defenses to
2 any attempt to enforce the Ordinance.

3 (b) The following statement appearing next to the "Sale of the
4 Parking Facility" heading on page 7 of the Official Statements is misleading:
5

6 Pursuant to the Parking Facility Purchase and Sale
7 Agreement (the "Purchase Agreement") dated as of
8 August 1, 1998, between the Foundation and the
9 Developer, upon completion of the expansion and
10 renovation of the Parking Facility, the Developer
11 will sell the Parking Facility (but not the land on
12 which it is located) to the Foundation for a purchase
13 price of \$26 million.

14 The above statement is misleading because it implies the purchase price
15 was based upon a reasonable good faith estimate of the market value of the
16 Garage and the \$26 million purchase price was arrived at based upon arms-
17 length negotiations while concealing and failing to disclose the hereinabove-
18 alleged facts.

19 (c) The following statement under the "Sources and Use of
20 Funds" section on page 17 of the Official Statements is also misleading for
21 the reasons set forth above:

22 Acquisition of Parking Facility \$24,927,756.85

23 (d) The following statement under the "Commercial Project"
24 heading on page 18 of the Official Statements is both false and misleading:
25

26 21.7 million Developer equity (including land)
27
28

1 The statement is false because the "Developer" did not have equity in the
2 Garage of anywhere near \$21.7 million. The statement is misleading for the
3 reasons set forth above.

4
5 (e) The following statement under the "Commercial Project"
6 heading on page 18 of the Official Statements is misleading:

7 Proceeds from the Bonds used to acquire the
8 Parking Facility in the amount of \$26.0 million are
9 expected to take out the construction financing, with
10 the balance being reinvested by the Developer as
equity in the Commercial Project.

11 The statement is misleading for the reasons set forth above with respect to
12 the purchase price of the Garage.

13
14 (f) The entire section under the heading "Public Facilities
15 Parking Demand" on pages 19-20 of the Official Statements is misleading
16 because it creates the false impression that the demand created by having
17 at least five public facilities, including the RPS Mall, located within two
18 blocks of the Garage created a demand for parking which exceeded current
19 parking supply by 1,000 spaces without disclosing the hereinabove-alleged
20 material facts.

21
22
23 (g) The entire section appearing under the heading
24 "Feasibility Analysis" on page 20 of the Official Statements is both false and
25 misleading:
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1 (i) The statement that Walker prepared a "financial
2 feasibility analysis (the 'Feasibility Analysis') included herein as Appendix
3 B" is false because, as determined by Coopers & Lybrand, Auble, Barrett
4 and Sabey Corporation, the Walker Report was not a legitimate financial
5 feasibility analysis.
6

7 (ii) The above section of the Official Statements is
8 misleading because it states "[t]he City engaged Walker to conduct the
9 Feasibility Analysis, which was issued on June 14, 1996," when, in fact, the
10 Developers had engaged Ernst & Young and Walker to conduct the initial
11 feasibility analysis based upon the historical performance of the Garage as
12 reflected in the 1995 Walker/Ernst & Young Reports which indicated the
13 value of the Garage as renovated and expanded was less than \$10 million,
14 and the Garage as renovated and expanded could not be reasonably
15 expected to generate anywhere close to the amount of revenue needed to
16 service and repay over \$31 million in bond debt.
17
18

19 (iii) The statement "[a]t the City's request, Robideaux
20 engaged Walker to revise the Feasibility Analysis on April 22, 1998 and
21 again on June 29, 1998" is misleading due to the failure to disclose
22 Robideaux & Company's prior engagement of Walker and Ernst & Young on
23 behalf of the Developers to prepare the 1995 Walker/Ernst & Young
24 Reports.
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1 (iv) This entire section of the Official Statements is also
2 misleading due to the failure to disclose Walker was not independent
3 because it received all of the key assumptions it would make in connection
4 with the Walker Report from Robideaux on behalf of the Developers.
5

6 (h) Table 1: "Projected Operating Revenues and Expenses,
7 Debt Service Requirements and Debt Service Coverage" on page 21 of the
8 Official Statements is misleading. The source of the Projected Operating
9 Revenues column for the first ten years after the Bonds were issued is
10 stated to be the Walker Report. The Projected Operating Revenues column
11 of Table 1 is misleading because it fails to disclose that the cash flow
12 projections contained in the Walker Report as reflected in the Projected
13 Operating Revenues column of Table 1 were grossly inflated by Walker at
14 the request of the City and the Developers without any reasonable
15 justification or basis in fact.
16
17
18

19 (i) The entire section appearing under the heading "Other
20 Risks" on page 25 of the Official Statements is false and misleading:
21

22 (i) This section states the City hired the accounting
23 firm Coopers & Lybrand to perform an analysis of the Garage and that
24 Coopers & Lybrand described four primary areas of concern in the Walker
25 Report. The stated areas of concern are misleading because they are
26
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1 expressed in the form of "risks" rather than by disclosing the existing
2 factual basis for the concerns.

3 (ii) This section portrays Walker as a recognized expert
4 in the area of parking garage operations and construction and states that
5 Walker's cash flow analysis was developed using methodology established
6 by the Urban Land Institute, thereby creating the false impression the
7 Walker Report was reliable and there was no existing factual basis upon
8 which Coopers & Lybrand or anyone else could challenge Walker's
9 assumptions with respect to the stated areas of concern.

12 (iii) This section states:

13
14 First, the Feasibility Analysis projects a rate of
15 \$1.50 per hour combined with an anticipated stay
16 per transient retail parking customer of 3.0 hours.
17 This represents an increase from the current rate of
18 approximately \$1.00 and a current average length of
19 stay of 1.5 hours. If these increased rates and
longer anticipated stays are not achieved, revenues
generated by the Parking Facility could fall short of
projections.

20 The above statement is false and misleading because:

21 (A) It does nothing more than state an apparent
22 risk that if patrons of the Garage do not, on average, stay for three hours, or
23 potential patrons of the Garage decide to park elsewhere rather than pay
24 \$1.50 per hour, revenues could fall short of projections without disclosing
25 any of the hereinabove-alleged material facts which indicated the \$1.50 per
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1 hour across-the-board rate was too high and the length of stay per transient
2 retail parking customer had historically been substantially less than three
3 hours.

4
5 (B) It does not disclose the intent to implement a
6 parking validation program after the Bonds were issued and the negative
7 impact any such parking validation program would necessarily have upon
8 the ability of the Garage to actually collect \$1.50 per hour from all its
9 customers.
10

11 (C) It does not disclose downtown Spokane had
12 excess parking available in the evenings and on weekends which was either
13 free or available for substantially less than \$1.50 per hour.
14

15 (D) It does not disclose cinema goers would likely
16 refuse to pay any significant amount for parking due to their ability to park
17 for free at other Spokane theaters or park for a very low rate or for free in
18 downtown Spokane on evenings and weekends and not utilize the Garage.
19

20 (E) It does not disclose the specific criticisms of
21 the stated hourly rate and anticipated stay set forth in the Auble and
22 Barrett Reports, the Sabey Garage Report and the Coopers & Lybrand
23 Report.
24

25 (iv) The "Other Risks" section on page 25 of the Official
26 Statements further states:
27
28

1 Second, the Feasibility Analysis does not account for
2 the potential impact on revenues of a parking
3 validation program or other negotiated
4 arrangements with tenants of the Commercial
5 Project. The Authority is authorized to participate
6 in a validation program. The validation program
7 currently in place is revenue neutral; however, if
8 any future program were to cost more than the
9 revenue generated by additional parking, revenues
generated by the Parking Facility could fall short of
projections. Third, the impact of any parking
validation program between the Authority and the
cinema operator is unknown.

10 The above statement is both false and misleading:

11 (A) The statement that the validation program
12 currently in place is revenue neutral is false because the current validation
13 program and all prior validation programs were subsidized at the expense of
14 the Garage.
15

16 (B) The statement is misleading due to the failure
17 to disclose the intent of the City and the Developers to implement a
18 subsidized parking validation program after the Bonds were issued.
19

20 (C) The statement that the impact of any
21 validation program between the Authority and the cinema operator is
22 uncertain is both false and misleading because there was good reason to
23 believe many potential cinema patrons would refuse to pay for parking, and
24 the cinema operator, AMC, would refuse to sign a lease that clearly required
25 its patrons to pay any significant amount for parking.
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1 (D) Due to the failure to accurately report the
2 content of the hereinabove-quoted portions of the Coopers & Lybrand
3 Report, the Sabey Garage Report and the Auble and Barrett Reports which
4 pertain to parking validation programs.
5

6 (v) The "Other Risks" section on page 25 of the Official
7 Statements further states:
8

9 Fourth, no independent appraisal of the market
10 value of the land on which the Parking Facility is
11 located has been conducted. To the extent that the
12 market value of the land differs from its negotiated
13 value of \$59.84 per square foot, the relative
14 leasehold value of the Parking Facility may be
15 negatively impacted.

16 The above statement is misleading due to the failure to disclose the ground
17 payments due from the Authority to the Foundation under the sublease, and
18 from the Foundation to the Developers under the ground lease, were
19 inflated, unreasonable, unfair, and were calculated to further wrongfully
20 subsidize the Developers.

21 (j) The following false and misleading statements regarding
22 use of the investment value method to establish the purchase price of the
23 Garage were made at page 25 in the "Limited Remedies Upon Default"
24 section of the Official Statements:

25 The purchase price of the Parking Facility of
26 \$26 million is the result of negotiations involving
27 the Foundation, the City and the Developer. The
28

1 purchase price is based primarily on two MAI
2 appraisals commissioned by the City. Those
3 appraisals determine the 'Investment Value' rather
4 than the 'Market Value' of the Parking Facility. It
5 is not certain that the amount realized upon any
6 sale of the leasehold interest in the Parking Facility
7 would be sufficient to redeem all of the then-
8 outstanding principal amount of the Bonds.

9 The above statements are false and misleading for the following reasons:

10 (i) The statements are misleading due to the failure to
11 disclose how investment value wrongfully inflated the purchase price of the
12 Garage as stated in the Auble Report, the Barrett Report, the
13 Coopers & Lybrand Report and the Sabey Garage Report.

14 (ii) The statement that the \$26 million purchase price
15 was the result of negotiations between the Foundation, the City and the
16 Developers is misleading because it implies the "negotiations" were arms
17 length and the Foundation was an independent negotiator when, in fact, the
18 "negotiations" were a sham and the Foundation's independence was
19 compromised due to the total control of the Foundation by the Developers.
20 The Official Statements are, in general, misleading due to the failure to
21 disclose the Foundation was not independent and was controlled by the
22 Developers.
23

24 (iii) The statement that the purchase price is based
25 primarily on two MAI appraisals commissioned by the City is both false and
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28

1 misleading. The statement is false because the Auble and Barrett Reports
2 are not true MAI appraisals. The Auble and Barrett Reports were intended
3 to be and are, in fact, nothing more than intellectual exercises calculated to
4 derive an artificially inflated value for the Garage. The above statement is
5 misleading due to the failure to disclose the statements made in the Auble
6 and Barrett Reports which show the reports were consulting exercises, not
7 true MAI appraisals.
8

9
10 (iv) The statement is misleading because it falsely
11 indicates the \$26 million purchase price is fair and reasonable because it is
12 backed up by not one, but two, MAI appraisals.
13

14 (v) The above statements are misleading because they
15 fail to disclose the "investment value" set forth in the Auble and Barrett
16 Reports was derived based upon investment criteria dictated by the City
17 and the Developers which would result in a highly-inflated and unrealistic
18 value for the Garage rather than investment value criteria which were fair,
19 reasonable and calculated to arrive at a fair value for the Garage.
20

21
22 (vi) The statement "it is not certain the amount realized
23 upon the sale of the leasehold interest in the Parking Facility would be
24 sufficient to redeem all of the then-outstanding principal amount of the
25 Bonds" is misleading due to the failure to disclose all of the herein alleged
26 material facts set forth in the Auble and Barrett Reports, the
27
28

1 Coopers & Lybrand Report and the Sabey Garage Report which express
2 serious and legitimate fact-based concerns that the Garage was worth
3 nowhere near \$26 million.
4

5 (k) The Walker Report, Appendix B to the Official
6 Statements, is both false and misleading for the following reasons:

7 (i) The statement that the Walker Report is a
8 "feasibility analysis" is false because the Walker Report was not a financial
9 feasibility analysis.
10

11 (ii) Identifying the Walker Report as a financial
12 feasibility analysis indicates it was prepared independently and that Walker
13 made full, fair and accurate disclosure of all material facts pertaining to the
14 reasonableness of the assumptions and its projections.
15

16 (iii) The Walker Report is misleading due to the failure
17 to disclose Walker had no reasonable factual basis for assuming the Garage
18 could increase the hourly parking rate from \$1.00 to \$1.50 and generate the
19 revenues projected based upon that assumption.
20

21 (iv) The Walker Report is misleading due to the failure
22 to disclose Walker had no reasonable factual basis for assuming the garage
23 could charge the stated rates on evenings and weekends to cinema patrons.
24

25 (v) The Walker Report is misleading due to the failure
26 to disclose the terms and conditions of the existing validation program
27
28

1 which was not revenue neutral and, if applied to the renovated and
2 expanded Garage after the Bonds were issued, would serve to substantially
3 reduce Garage revenues.

4 (vi) The Walker Report is misleading because it fails to
5 disclose that all major competition to the Garage in downtown Spokane
6 participated in the current validation program and the Garage would not be
7 able to compete, particularly with respect to cinema customers, if it did not
8 participate in a subsidized validation program.
9

10 (vii) The Walker Report is misleading because it fails to
11 disclose Walker had no reasonable basis for believing retail shopping
12 patrons would spend three hours parked in the Garage.
13

14 (viii) The Walker Report is misleading because it fails to
15 disclose the 3,400-seat mega-plex AMC cinema would face substantial
16 competition from existing theaters, including relatively new or to-be-
17 constructed multi-screen theaters located in shopping malls much closer and
18 convenient to the residential areas of the City, all of which provided free
19 parking.
20

21 (ix) The Walker Report is misleading due to the failure
22 to disclose the existence and the content of the 1995 Walker/Ernst & Young
23 Reports. The Walker Report only utilized the assumptions and methodology
24 reflected throughout the Walker Report after it utilized the more reasonable
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1 assumptions and methodology in the Walker/Ernst & Young Reports which
2 indicated the Garage was worth less than \$10 million and that the revenues
3 generated by the Garage could support nowhere near \$30 million in debt.
4

5 93. Each of the Defendants substantially participated in making
6 factual representations to the Plaintiffs in the Official Statements and, as a
7 result, owed Plaintiffs a duty to make full and fair disclosure of all material
8 facts of which they were aware or reasonably should have been aware of
9 under the circumstances alleged herein.
10

11 94. Each of the Defendants acted in concert with the other
12 Defendants to achieve the unlawful purposes alleged herein so that each is
13 liable for the acts and conduct of the other Defendants.
14

15 95. Prudential provided each of the Plaintiffs with a copy of the
16 Official Statements, and the Plaintiffs, through their respective employees,
17 read and reasonably relied upon the Official Statements, specifically
18 including, but not limited to, those portions of the Official Statements and
19 appendices attached thereto which address the hereinabove-alleged matters.
20

21 96. Each of the Plaintiffs did not know of the truth with regard to
22 the hereinabove-alleged false and misleading statements and would not
23 have purchased the Bonds had they known the truth.
24

25 97. Prior to issuance of the Bonds, the rating agency
26 Standard & Poors stated it would give the Bonds a BBB- investment grade
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28

1 rating. The rating was based in large part upon approval of the Ordinance
2 by the City and caused potential bond purchasers, including each of the
3 Plaintiffs, to believe the Bonds were investment grade.
4

5 98. The Bonds were issued with the understanding that the
6 completely renovated RPS Mall was expected to generate the vast majority
7 of Garage revenues. The RPS Mall renovation was to be conducted in two
8 phases, and tenant space was not expected to be fully occupied until late in
9 the year 2000 at the earliest. The Garage was to be renovated and
10 expanded in the first phase along with a portion of the RPS Mall. The
11 remainder of the RPS Mall was to be renovated in the second phase. As a
12 result, parking revenues were expected to be reduced until construction was
13 completed and all or substantially all tenant space was occupied.
14
15

16 99. After the Bonds were issued in September 1998, the bond
17 proceeds were placed in escrow for the benefit of the Bondholders, and the
18 Bonds were subject to special mandatory redemption which would result in
19 repayment of the Bonds if the Garage could not for any reason be
20 transferred to the Foundation. The City, Prudential, the Developers and the
21 Preston law firm proceeded with the transfer of ownership of the Garage
22 upon completion of renovation and expansion work on the Garage in about
23 September 1999. However, before the transfer could be completed,
24 representatives of AMC theaters objected to their cinema patrons being
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1 required to pay for parking and stated in writings which were circulated to
2 the above Defendants that AMC either would not occupy the theater or
3 would enter into more appropriate parking arrangements with the operators
4 of a competing parking garage located approximately one block from the
5 RPS Mall.
6

7 100. To mollify AMC theaters, an agreement was quietly reached
8 whereby parking rates for the Garage would be reduced in the evenings and
9 on weekends to, in effect, subsidize AMC theaters at the expense of the
10 Garage. The above Defendants knew this agreement would seriously
11 compromise the ability of the Garage to generate the revenues needed to
12 service and pay off the Bonds. Although all of this was known to the above
13 Defendants, none of it was disclosed to the Bondholders.
14
15

16 101. The Developers, the Foundation (which was still controlled by
17 the Developers), the City, and the Authority (which was still controlled by
18 the City) all wished to keep secret the fact that significant changes were
19 being made to the parking rates which would have a serious negative
20 impact on the future revenues of the Garage. One or more of the Developers
21 agreed to contribute funds to partially compensate for the loss in revenues
22 to the Garage out of fear that, if an agreement could not quickly be reached
23 with AMC, the dispute would receive wide public dissemination, resulting in
24 the inability of the Developers to complete the sale of the Garage. If the sale
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1 was not completed, the Bonds would be subject to mandatory redemption
2 and the Developers would be deprived of their huge, albeit fraudulent,
3 profit.

4
5 102. The actual process of completing renovations to the RPS Mall
6 took substantially longer than anticipated and, to some extent, the
7 renovations are still being made. During late 1999 and early 2000, the
8 construction delays made it reasonably appear that reduced Garage
9 revenues were caused by the construction delays. The January 21, 2000,
10 edition of *The Spokesmen Review*, a Spokane newspaper owned by Cowles
11 Publishing, attributed the lower-than-expected revenues to the RPS Mall
12 being "only 65% complete" and stated that "parking numbers are expected to
13 increase after the mall is finished this year."

14
15
16 103. Standard & Poors downgraded the Bonds on about February 1,
17 2000, from BBB- to BB-. The Standard & Poors ratings report
18 characterized the projections in the Walker Report as "exceedingly
19 optimistic," but did not attribute the downgrade to fraud. The reduced
20 Garage revenues were attributed to changes in the validation program, a
21 two-month delay in completing renovations to the Garage, and operational
22 problems at the Garage. The Standard & Poors report stated that
23 approximately 100,000 square feet of the RPS Mall was still being renovated
24 and was not expected to be complete until at least late 2000 and that
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1 approximately 40,000 square feet of renovated tenant space was unoccupied.
2 Thus, as of February, the RPS Mall was about 25% vacant and the
3 continued renovation activity was expected to cut into Garage revenue for
4 the remainder of 2000. The reduced revenues were not attributed to fraud
5 or even negligence by Walker. The true reasons for the reduced revenues
6 were still being concealed from the public.
7

8
9 104. The Plaintiffs reasonably attributed the downgrading to
10 construction delays and operational problems. Prudential promptly
11 contacted the Plaintiffs upon publication of the Standard & Poors
12 downgrading and advised the Bondholders that the problem was not
13 serious, that Prudential had the situation under control and would proceed
14 with a refunding or restructuring of the Bonds which would solve any
15 problems caused by lower-than-expected Garage revenues. Prudential knew
16 that it had no basis for believing the Bonds could be restructured or
17 refunded, but did not disclose that to the Plaintiffs. As a result, the
18 Plaintiffs continued to rely upon Prudential for accurate information and
19 continued to be deceived.
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23 105. By early 2000, the City had a new mayor and two new city
24 council members who were opposed to the Ordinance and to the issuance of
25 the Bonds.
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1 106. Standard & Poors downgraded the Bonds a second time on
2 about April 20, 2000, from BB- to CCC. The downgrading was announced
3 in late April 2000.
4

5 107. The city council passed a Resolution at an April 26, 2000,
6 meeting which indicated the City would not honor the Ordinance. The
7 City's position was attributed by Prudential to control of the City passing to
8 a mayor and city council which were opposed to the Ordinance and to the
9 issuance of the Bonds. The scheme to defraud the bond purchasers was still
10 being concealed.
11
12

13 108. Prudential brought the content of the city council Resolution to
14 the attention of the Bondholders on about May 2, 2000. Shortly after that,
15 the Trustee for the Bonds retained counsel to represent the interests of the
16 Bondholders in connection with their dealings with the City over the
17 Ordinance.
18

19 109. The Bondholders reasonably believed the City's refusal to loan
20 parking meter revenue funds pursuant to the Ordinance was the result of
21 the City having a new mayor and two new city council members who were
22 opposed to the Project from the outset and had no reasonable grounds to
23 believe, at that time, that the City's refusal was part of a fraudulent
24 scheme.
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1 110. In about late May or early June 2000, *Camus* magazine and the
2 local KXLY TV station began printing and airing a series of investigative
3 news reports which, for the first time, uncovered a substantial amount of
4 the fraud addressed in this Complaint. A number of web sites were also
5 established providing information regarding various aspects of the
6 fraudulent scheme.
7

8
9 111. The Bondholders learned of the fraud through references to the
10 web sites, the *Camus* magazine reports and the KXLY news reports.
11

12 112. Prudential lulled the Bondholders into a false sense of security
13 by understating the magnitude of the problem, by continuing to fail to
14 disclose the fraudulent scheme that resulted in the issuance of the Bonds,
15 and by making positive statements regarding the likelihood that it would be
16 successful in refunding or restructuring the Bonds. The fact that Prudential
17 was pursuing a restructuring or refunding indicated the problems with the
18 Bonds could be overcome and were not the result of a fraudulent scheme.
19

20 113. The Bondholders had no reasonable basis for believing they had
21 been defrauded until their representatives reviewed the content of one or
22 more of the *Camus* magazine and KXLY news reports. The true reasons
23 behind the lower-than-projected revenues generated by the Garage had been
24 concealed from them through the hereinabove-alleged actions of certain
25 Defendants, and the Bondholders reasonably believed decreased revenues
26
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1 were attributable to construction delays or other reasonably unanticipated
2 problems.

3
4 114. At present, the revenues generated by the Garage fall far short
5 of projections as a direct and proximate result of the grossly inflated value of
6 the Garage. The Foundation is totally incapable of paying any significant
7 amount of debt service on the Bonds.

8
9 115. The City filed a Complaint in an action styled *City of Spokane v.*
10 *Walker Parking Consultants/Engineers, Inc., et al.*, Superior Court of the
11 State of Washington for the County of Spokane, Case No. 00-204173-4, in
12 July 2000. The Complaint attributes the inability of the Garage to generate
13 the projected revenues to the hereinabove-alleged fraudulent scheme.

14
15 116. Each of the Defendants acted in concert with the other
16 Defendants to achieve the unlawful purposes alleged herein so that each is
17 liable for the acts and conduct of the other Defendants.

18
19 117. As a direct and proximate result of the wrongful conduct alleged
20 herein, Plaintiffs have suffered damages in an amount which is presently
21 unknown, but which is estimated to consist of a substantial portion of the
22 stated principal amount of the Bonds purchased by each Plaintiff, plus
23 interest.
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FIRST CLAIM FOR RELIEF

**(Section 10(b) of the 1934 Act [15 U.S.C. § 78j],
Violation of S.E.C. Rule 10b-5 Promulgated Thereunder)
(Asserted Against All Defendants)**

**(Violation of Section 20(a) of the 1934 Act [15 U.S.C. § 78t(a)]
(Asserted Against the Developers and the City)**

118. Plaintiffs repeat the allegations of all preceding paragraphs of this Complaint and incorporate the same by reference.

119. All of the Defendants, in connection with the purchases by each of the Plaintiffs of the Bonds, directly and indirectly, singly and in concert, recklessly, knowingly or with an intention to defraud, engaged in, offered for sale and sold to each of the Plaintiffs securities by means of one or more misrepresentations of failures to disclose material facts, which material facts were necessary in order to make the statements made in connection with those offerings and sales not misleading in light of the circumstances under which those statements were made and, in addition, employed a device, scheme or artifice to defraud each of the Plaintiffs and engaged in acts, practices and a course of business which operated as a fraud or deceit upon each of the Plaintiffs, all in violation of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j] and subsections 2(a), (b), and (c) of SEC Rule 10b-5 promulgated thereunder.

120. Defendants Lincoln, Citizens, RPS and RPS II are each, individually, persons who directly or indirectly controlled the Foundation

1 within the meaning of Section 20(a) of the Securities Exchange Act of 1934
2 [15 U.S.C. § 78t(a)] due to their ability to appoint the board of directors of
3 the Foundation.
4

5 121. The City is a person persons who directly or indirectly controlled
6 the Authority within the meaning of Section 20(a) of the Securities
7 Exchange Act of 1934 [15 U.S.C. § 78t(a)] due to its ability to appoint the
8 board of directors of the Authority. The City appointed two city council
9 persons with knowledge of the fraudulently inflated purchase price of the
10 Garage to control the Foundation in furtherance of the City's fraudulent
11 scheme.
12

13
14 122. Each of the Plaintiffs, acting individually through their
15 employees, read and reasonably relied upon the Official Statements and
16 appendices thereto which were prepared by the Defendants in connection
17 with the offering of the Bonds.
18

19 123. The purpose, effect and result of the Defendants' violations of
20 Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5
21 promulgated thereunder were to induce the Plaintiffs, and each of them
22 individually, to purchase the Bonds, something none of the Plaintiffs would
23 otherwise have done.
24

25
26 124. All of the Defendants conspired to fraudulently conceal their
27 fraud from the Plaintiffs by virtue of all of the hereinabove-alleged conduct
28

1 attributable to the Defendants and events which occurred in connection
2 with and subsequent to each Plaintiff's purchase of the Bonds. As a result
3 of such fraudulent concealment, Plaintiffs, in the exercise of reasonable
4 diligence, did not discover their claims against the Defendants until some
5 time within one year prior to filing this Complaint. This claim was brought
6 on behalf of each of the Plaintiffs within one year after the discovery of the
7 facts giving rise to this cause of action and within three years of the date
8 each of the Plaintiffs purchased the Bonds.
9

10
11 125. As a direct and proximate result of the hereinabove-alleged
12 violations of Section 10(b) of the Securities Exchange Act of 1934 and SEC
13 Rule 10b-5 promulgated thereunder, Plaintiffs have suffered damages.
14

15 126. As a direct and proximate result of the hereinabove-alleged
16 violations of Section 20(a) of the Securities Exchange Act of 1934, each of
17 the Plaintiffs has suffered damages.
18

19 **SECOND CLAIM FOR RELIEF**

20 **(The Securities Act of Washington,**

21 **WASH. REV. CODE 21.20.430(1); 21.20.430(3); 21.20.430(7))**

22 **(All Defendants Except the City)**

23 127. Plaintiffs repeat the allegations of all preceding paragraphs of
24 this Complaint and incorporate the same by reference.

25 128. Defendant Prudential sold the Bonds to each of the Plaintiffs in
26 violation of WASH. REV. CODE 21.20.010. Defendant the Foundation,
27
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1 through the Official Statements issued on its behalf, offered the Bonds to
2 each of the Plaintiffs in violation of WASH. REV. CODE 21.20.010.
3 Defendants the Foster law firm, the Preston law firm, Walker, Lincoln,
4 Citizens, RPS, RPS II, and the Authority were substantial contributing
5 factors in the offer and sale of the Bonds to Plaintiffs and are, therefore,
6 deemed to have offered and sold the Bonds to Plaintiffs.
7

8
9 129. All of the Defendants, in connection with the purchases by each
10 of the Plaintiffs of the Bonds, directly and indirectly, singly and in concert,
11 negligently, recklessly, knowingly or with an intention to defraud, engaged
12 in, offered for sale and sold to each of the Plaintiffs securities by means of
13 one or more misrepresentations of or failures to disclose material facts,
14 which material facts were necessary in order to make the statements made
15 in connection with those offerings and sales not misleading in light of the
16 circumstances under which those statements were made and, in addition,
17 employed a device, scheme or artifice to defraud each of the Plaintiffs and
18 engaged in acts, practices and a course of business which operated as a
19 fraud or deceit upon each of the Plaintiffs, all in violation of WASH. REV.
20 CODE § 21.20.010(1), (2) and (3).
21
22

23
24 130. Defendants Lincoln, Citizens, RPS and RPS II are persons who
25 directly or indirectly controlled the Foundation within the meaning of the
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1 Washington Securities Act. The Foundation is liable as a principal for
2 violation of WASH. REV. CODE § 21.20.430(1).

3
4 131. Defendant Prudential is a broker-dealer within the meaning of
5 WASH. REV. CODE § 21.20.430(3). Defendants Walker, the Foster law firm,
6 the Preston law firm, Citizens, Lincoln, RPS, RPS II, Robideaux &
7 Company, and the Authority are persons who are exempt under the
8 provisions of WASH. REV. CODE § 21.20.040 who materially aided in the
9 hereinabove-alleged transaction.

10
11 132. Any Defendant that falls within the scope of WASH. REV. CODE §
12 21.20.430(7) acted with *scienter* within the meaning of WASH. REV. CODE §
13 21.20.430(7). Defendant Prudential is an underwriter within the meaning
14 of WASH. REV. CODE § 21.20.430(7). Defendants the Preston law firm and
15 the Foster law firm are bond counsel within the meaning of WASH. REV.
16 CODE § 21.20.430(7).

17
18 133. Each of the Defendants, by engaging in the hereinabove-alleged
19 conduct, materially aided the Foundation in connection with the
20 underwriting, issuance, offer and sale of the Bonds to Plaintiffs when,
21 having knowledge that the Official Statements, including the Walker
22 Report, were false and misleading as hereinabove alleged, nonetheless failed
23 to take action to ensure that full and fair disclosure of all material facts was
24 made to prospective bond purchasers, including Plaintiffs, in the Official
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1 Statements including the Walker Report. The Bonds could not have been
2 issued without each of the Defendants providing material aid to the
3 Foundation as herein alleged.
4

5 134. This claim shall be asserted against the City through
6 amendment to this Complaint upon the expiration of sixty days from service
7 upon the City of the "Notice of Claim Against City of Spokane, Washington,
8 for Tortious Conduct" which was served on the City on February 28, 2001,
9 pursuant to R.C.W. Chapter 4.96 and 35.31 and S.M.C. § 4.02.030.
10

11 **THIRD CLAIM FOR RELIEF**
12 **(Common Law Fraud / Aiding and Abetting Common Law Fraud)**
13 **(All Defendants Except the City)**

14 135. Plaintiffs repeat the allegations of all preceding paragraphs of
15 this Complaint and incorporate the same by reference.
16

17 136. All of the Defendants made material misrepresentations and
18 omissions of past and present fact as more fully set forth hereinabove. Said
19 Defendants knew the misrepresentations were false and misleading.
20

21 137. Any of the Defendants not liable as a principal for common law
22 fraud is liable to each of the Plaintiffs for aiding and abetting common law
23 fraud.
24

25 138. The misrepresentations and omissions, as hereinabove alleged,
26 were made with the intent to induce each of the Plaintiffs to purchase the
27 Bonds.
28

1 139. Each of the Plaintiffs justifiably relied upon the representations
2 contained in the Official Statements and, as a direct and proximate result,
3 has suffered substantial damages.
4

5 140. As a direct and proximate result of Defendants' fraud or aiding
6 and abetting fraud, each of the Plaintiffs has suffered damages.
7

8 141. This claim shall be asserted against the City through
9 amendment to this Complaint upon the expiration of sixty days from service
10 upon the City of the "Notice of Claim Against City of Spokane, Washington,
11 for Tortious Conduct" which was served on the City on February 28, 2001,
12 pursuant to R.C.W. Chapter 4.96 and 35.31 and S.M.C. § 4.02.030.
13

14 **FOURTH CLAIM FOR RELIEF**
15 **(Common Law Negligent Misrepresentation)**
16 **(All Defendants Except the City)**

17 142. Plaintiffs repeat the allegations of all preceding paragraphs of
18 this Complaint and incorporate the same by reference.

19 143. All Defendants had a duty to disclose or cause to be disclosed to
20 potential purchasers of the Bonds, including the Plaintiffs, the material
21 facts set forth hereinabove. All Defendants had a duty to ensure that the
22 representations made in the Official Statements for the Bonds were
23 accurate.
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1 144. Defendants breached their duty to each of the Plaintiffs by
2 negligently making the misrepresentations of and failures to disclose
3 material facts as set forth hereinabove.
4

5 145. As a direct and proximate result of the Defendants' negligent
6 misrepresentations and omissions, each of the Plaintiffs has suffered
7 damages.
8

9 146. This claim shall be asserted against the City through
10 amendment to this Complaint upon the expiration of sixty days from service
11 upon the City of the "Notice of Claim Against City of Spokane, Washington,
12 for Tortious Conduct" which was served on the City on February 28, 2001,
13 pursuant to R.C.W. Chapter 4.96 and 35.31 and S.M.C. § 4.02.030.
14

15 WHEREFORE, Plaintiffs request that the Court enter judgment in
16 favor of the Plaintiffs, and each of them, and against the Defendants, and
17 each of them, jointly and severally, on each of Plaintiffs' Claims for Relief
18 and award Plaintiffs rescission or monetary damages as provided for
19 violations of Section 10(b) of the 1934 Act, the Washington Securities Act
20 and the common law, together with pre-judgment interest, costs, expenses
21 under applicable law, attorney fees pursuant to the pertinent provisions of
22 the Washington Securities Act, and any other relief which the Court deems
23 proper.
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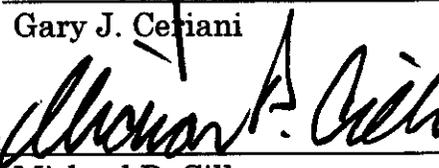
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PLAINTIFFS HEREBY DEMAND THAT THIS ACTION BE TRIED TO A JURY OF NOT LESS THAN SIX PERSONS.

DATED this 24th day of April, 2001.

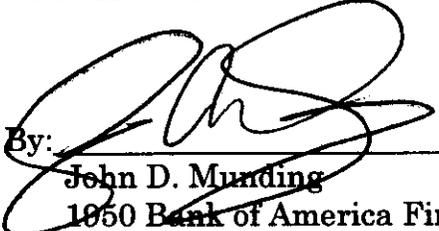
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2 Milwaukee, Wisconsin 53201

3 Smith Barney Municipal Fund
4 Limited Term
5 Smith Barney Municipal High-
Income Fund
6 7 World Trade Center, 43rd Floor
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7 Vanguard High-Yield Tax-
8 Exempt Fund
9 P.O. Box 2600
Valley Forge, Pennsylvania 19482

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