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FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington

APR 25 2001

JAMES R. LARSEN, CLERK
DEPUTY

IN THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON

U.S. BANK TRUST NATIONAL ASSOCIATION, in its capacity as Indenture Trustee on behalf of Holders of Spokane Downtown Foundation Parking Revenue Bonds, 1998 (River Park Square Project),

Plaintiffs,

v.

PRUDENTIAL SECURITIES INCORPORATED, a Delaware corporation; WALKER PARKING CONSULTANTS/ ENGINEERS, INC., a Michigan corporation; FOSTER PEPPER & SHEFELMAN PLLC, a Washington professional limited liability company; SPOKANE DOWNTOWN FOUNDATION, a Washington corporation; PRESTON GATES & ELLIS LLP, a Washington limited liability partnership; CITIZENS REALTY COMPANY, a Washington corporation; 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, d/b/a R. W. ROBIDEAUX AND COMPANY; CITY OF SPOKANE, WASHINGTON, a first-class charter city of the State of Washington; and SPOKANE PUBLIC PARKING DEVELOPMENT

NO. CS-01-0128-JLQ

PROPOSED PLAINTIFF-INTERVENOR ASSET GUARANTY INSURANCE COMPANY'S COMPLAINT IN INTERVENTION

AUTHORITY, an unregistered Washington corporation doing business as RIVER PARK SQUARE PARKING,

Defendants.

Plaintiff-intervenor Asset Guaranty Insurance Company ("AGIC"), by and through its attorneys, for its Complaint in Intervention against Defendants, and each of them, states as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over AGIC's claims in intervention pursuant to the Securities Exchange Act of 1934, 15 U.S.C. § 78aa, and pursuant to 28 U.S.C. §§ 1331 and 1367 and Fed. R. Civ. P. 24(a).

2. Venue lies in this Court pursuant to 28 U.S.C. §1391(b) in that a substantial part of the events or omissions giving rise to AGIC's claims occurred in this District.

II. PARTIES

3. Plaintiff-intervenor AGIC is an insurer of municipal bonds with its principal offices in New York, New York. On or about September 24, 1998, and at other subsequent dates, AGIC insured more than $14 million of the Spokane Downtown Foundation Parking Revenue Bonds, 1998 ("the Bonds") sold by the Defendants in this action. In addition, AGIC purchased one Bond, valued at $5,000 and still holds that Bond.

4. Defendant **Prudential Securities Incorporated** ("Prudential") is a Delaware corporation and registered broker-dealer that does business in the State of Washington.

5. Defendant **Walker Parking Consultants/Engineers, Inc.** ("Walker") is a Michigan corporation with its principal offices in Indianapolis, Indiana, and does business in the State of Washington.

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6. Defendant **Foster Pepper & Shefelman PLLC** ("Foster Pepper") is a Washington professional limited liability company engaged in the practice of law with its principal offices in Seattle, Washington.

7. Defendant **Spokane Downtown Foundation** (the "Foundation") is a Washington non-profit corporation created in 1996 to serve as the issuer of the Bonds.

8. Defendant **Preston Gates & Ellis LLP** ("Preston Gates") is a Washington limited liability partnership engaged in the practice of law with its principal offices in Seattle, Washington.

9. Defendant **Citizens Realty Company** ("Citizens") is a Washington corporation with its principal place of business in Spokane, Washington. Citizens is a wholly owned subsidiary of Cowles Publishing and is controlled by Elizabeth Cowles.

10. Defendant **Lincoln Investment Company of Spokane** ("Lincoln") is a Washington corporation with its principal place of business in Spokane, Washington. Lincoln is controlled by Elizabeth Cowles.

11. Defendant **RPS Mall L.L.C.** ("RPS") is a Washington limited liability company comprised of two members, Lincoln and Citizens.

12. Defendant **RPS II, L.L.C.** ("RPS II") is a Washington limited liability company with a principal place of business in Spokane, Washington. RPS II is a wholly-owned subsidiary of RPS and is therefore controlled by Elizabeth Cowles.

13. Citizens, Lincoln, RPS, and RPS II are hereinafter referred to collectively as the "**Developers**."

14. Defendant **RWR Management, Inc.** is a Washington corporation doing business as R. W. Robideaux and Company ("Robideaux & Company") with its principal offices in Spokane, Washington.

15. Defendant **City of Spokane** (the "City") is a first-class charter city of the State of Washington.

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16. Defendant **Spokane Public Parking Development Authority** (the "Authority") is an unregistered Washington corporation doing business as River Park Square Parking. It was created by the City through an Ordinance passed by the city council on November 7, 1988.

17. All of the agents and employees of the Defendants identified above were, at all times pertinent hereto, acting within the course and scope of their employment for said Defendants, and said Defendants have ratified, adopted and approved all of the actions taken by said agents and employees that are the subject of this Complaint.

III. GENERAL ALLEGATIONS APPLICABLE TO ALL CLAIMS FOR RELIEF

18. AGIC incorporates as if set forth fully herein the allegations and claims for relief set forth in the Complaint filed by Plaintiffs in this matter.

19. This matter arises out of the issuance on September 15, 1998, of $31,465,000 in Bonds by the Foundation to fund the purchase of the River Park Square Parking Garage ("the Garage") from the Developers. The Bonds were securities within the meaning of the Securities Exchange Act of 1934 and the Washington State Securities Act ("WSSA"). The debt on the Bonds was to be retired through payments generated by revenue from the operation of the Garage, and, if necessary, operating and other expenses of the Garage were to be paid from loans made by the City. At present, the revenues from the Garage are insufficient to pay the Garage's operating expenses and service the debt on the Bonds.

20. Plaintiffs in this matter have brought claims against the Defendants, seeking both damages and rescissionary relief. In reliance on actions and statements made by the Defendants in this matter, AGIC insured more than $14 million of the Bonds. Because of the shortfall in revenues from the Garage, and because of the City's refusal to loan money for the payment of the Garage's operating expenses, AGIC reasonably anticipates that it will be called upon to make payments pursuant to its policies of insurance. Further, as a purchaser of a Bond, AGIC has incurred damages. Consequently, AGIC brings this Complaint in Intervention to assert its claims and protect its interests in this matter.

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IV. WRONGFUL CONDUCT ON THE PART OF THE DEFENDANTS

21. In connection with the issuance of the Bonds, each and all of the Defendants took actions and made statements, or aided and abetted others in taking actions and making statements, that they knew were false and misleading. Further, each and all of the Defendants failed to disclose material facts that they knew should have been disclosed to prevent other actions and statements from being misleading. AGIC did not know the truth with regard to these false and/or misleading statements and omissions and would not have purchased or insured the Bonds had it known the truth. AGIC has suffered injury as a direct and proximate result of those false and misleading actions, statements, and failures to disclose.

22. Specifically, the defendants engaged in the following conduct in regard to the issuance of the Bonds:

A. Prudential

23. Prudential, the underwriter for the Bonds, prepared the Preliminary Official Statement ("POS") and the Official Statement ("OS") for the Bonds. Prudential knew that potential purchasers and insurers of the Bonds, including AGIC, would rely on the POS and OS in determining whether or not to purchase and/or insure the Bonds. Further, Prudential knew that the POS and the OS contained false and misleading information and failed to disclose information that would have made the POS and OS not misleading.

24. Specifically, at least the following statements from the POS and OS were false and misleading, and Prudential knew that these statements were false and misleading:

25. The OS is false and misleading in stating that "[t]he City engaged Walker to conduct [a] Feasibility Analysis, which was issued on June 14, 1996." This statement is false and misleading because it fails to disclose the fact that in 1995 Walker had issued (along with the firm Ernst & Young) a prior report ("the Walker/Ernst & Young Report"), which had projected revenues from the Garage far lower than those in the Feasibility Analysis issued on June 14, 1996, and had determined the Garage's value to be less than $10 million—more than

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$16 million less than the purchase price of the Garage. Further, the Walker/Ernst & Young Report demonstrated that the Garage could not support a bond issue of more than $30 million. Prudential knew of the Walker/Ernst & Young Report and had a duty to disclose its existence and the opinions expressed in it. Prudential's failure to do so made the POS and OS false and misleading.

26. The OS is also false and misleading in stating that "[a]t the City's request, Robideaux engaged Walker to revise the Feasiblity Analysis on April 22, 1998 and again on June 29, 1998." This statement is false and misleading because it fails to disclose the Walker/Ernst & Young Report issued in 1995.

27. The OS also makes the following false and misleading statement:

> Second, the Feasibility Analysis does not account for the potential impact on revenues of a parking validation program or other negotiated arrangements with tenants of the Commercial Project. The Authority is authorized to participate in a validation program. The validation program currently in place is revenue neutral; however, if any future program were to cost more than the 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.

This statement is false and misleading for at least the following reasons: (1) Prudential knew that the Feasibility Analysis issued by defendant Walker on June 14, 1996, should have accounted for the potential impact on revenues of a validation program. That failure had been pointed out to the Developers and the City in written studies prepared by the Real Estate Advisory Services Group of the accounting firm of Coopers & Lybrand, which provided a report to the City in 1997, and by Sabey Corporation, a commercial real estate company with its principal place of business in Seattle, Washington, which provided two reports to the City in December 1996, including one report ("the Sabey Garage Report") concerning the purchase of the Garage by the City. Prudential knew of those criticisms and knew that Walker's failure to consider a potential validation program made Walker's projection of revenues for the Garage

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false and/or misleading. (2) Prudential knew that the validation program in place at the Garage at the time that the POS and OS were issued was not revenue neutral, but instead resulted in decreased revenues to the Garage. (3) Prudential knew that, in the event that a validation program was instituted between the Garage and the cinema operator (AMC theaters), that validation program would result in a loss of revenues to the Garage. (4) Prudential knew that the Feasibility Analysis was misleading because it failed to disclose that the proposed AMC theater would face substantial competition from existing theaters that provided free parking to patrons and that the proposed AMC theater would insist on the Garage offering a validation program to AMC theater patrons. (5) Prudential knew that the Feasibility Analysis had been subjected to many criticisms in the reports issued by Coopers & Lybrand and Sabey Corporation (identified above) and had also been questioned in reports prepared by Auble & Associates and Daniel Barrett, who had prepared analyses of the investment value of the Garage at the behest of the City. (6) Prudential knew that the Walker/Ernst & Young Report had projected revenues from the Garage far lower than those in the Feasibility Analysis. Those projected revenues were revised based on false and/or misleading assumptions provided to Walker by the City, the Developers, and Robideaux & Company. The reliance on those false assumptions made the Feasibility Analysis false and/or misleading. (7) Further, the OS's description of the Feasibility Analysis suggested that Walker was independent, whereas in fact Walker was acting at the behest of the City, the Developers, and Robideaux & Company. Prudential's failure to disclose Walker's lack of independence made the Feasibility Analysis appear reliable and thus rendered the POS and OS false and misleading.

28. Table 1, "Projected Operating Revenues and Expenses, Debt Service Requirements and Debt Service Coverage," set out on page 21 of the OS is misleading. The source of the Projected Operating Revenues column for the first ten years after the Bond issuance is stated to be the Feasibility Analysis. The Projected Operating Revenues column of Table 1 is misleading because it fails to disclose that the cash flow projections set out in the

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Feasibility Analysis were grossly inflated by Walker at the request of the City and the Developers without any reasonable justification.

29. The OS is also misleading because, under the heading "Other Risks," it fails to disclose material facts concerning those "other risks." Specifically, the OS fails to disclose the material facts underlying the criticisms of the Feasibility Analysis made by Coopers & Lybrand, Auble & Associates, Daniel Barrett, and Sabey Corporation.

30. The OS is also misleading because it states that "[t]he purchase price is based primarily on two MAI appraisals commissioned by the City. Those appraisals determine the 'Investment Value' rather than the 'Market Value' of the Parking Facility." That statement is misleading because the two so-called appraisals were in fact not MAI appraisals, which would have determined the Garage's market value, but were instead designed to support the position desired by the City and the Developers, which resulted in an inflated value for the Garage. Further, the persons who had prepared those "appraisals" (Auble & Associates and Barrett) had stated that their reports were not appraisals. Further, this statement in the OS is misleading because it fails to disclose that both Auble & Associates and Barrett noted that use of the "investment value method" results in an inflated and unrealistic value for the Garage. Further, this statement in the OS is misleading because it fails to disclose criticisms of the "investment value method" made by Coopers & Lybrand and by Sabey Corporation. Prudential knew these material facts.

31. The OS is also false and misleading because it states that the Developers' equity in the Garage, including the land underlying the Garage, was $21.7 million. That statement is false and misleading because the figure set forth is based on the "investment value method" of arriving at the value of the property to the City, not the property's value to the Developers. Further, that statement is false and misleading because it fails to disclose the criticisms of the "investment value method" identified above. That statement is also false and misleading because it fails to disclose earlier negotiations between the City and the Developers in which

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the Developers had offered to sell the Garage to the City for $4.8 million. In addition, the statement is false and misleading because it fails to disclose that, in earlier negotiations, the City and the Developer had contemplated sale of the Garage by the Developers to the City for less than $15 million. Prudential knew these material facts.

32. The OS is also false and misleading because, under the heading "Public Facilities Parking Demand" (at pages 19-20), it implies that the presence of five public facilities, including the River Park Square Mall, within two blocks of the Garage created a demand for parking that exceeded current parking supply by 1,000 spaces. That statement was false and misleading because there existed a surplus of parking spaces in downtown Spokane on evenings and weekends. The Walker Feasibility Analysis ignored that surplus of evening and weekend parking spaces. The failure to account for that surplus of evening and weekend parking spaces made the revenue projections in the Walker Feasibility Analysis false and misleading. Prudential knew these material facts.

33. The following statement in the OS is misleading:

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

That statement is misleading because it falsely implies that the $26 million purchase price was arrived at through arms-length negotiations and was based on a reasonable good faith estimate of the market value of the Garage rather than the "investment value methodology" actually used. Prudential knew that this statement was misleading.

34. The POS and OS are also misleading because they fail to disclose: (1) the true content of the Coopers & Lybrand report provided to the City in January 1997; (2) the existence and content of the Walker/Ernst & Young Report; (3) the existence and content of the Sabey Corporation report provided to the City in December 1996; and (4) the existence

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and content of the reports prepared by Auble & Associates and Daniel Barrett. Each of those reports contained information that criticized the assumptions on which the financial projections set forth in the POS and OS were based. Prudential knew of the existence of each of those reports, but failed to disclose them in the POS and OS.

B. Foster Pepper

35. Foster Pepper, acting as counsel for the underwriter, assisted in the preparation of the POS and OS and also issued an opinion letter ("the Foster Pepper Opinion Letter") on September 24, 1998. Foster Pepper knew that potential purchasers and insurers of the Bonds would rely on the POS, the OS, and the Foster Pepper Opinion Letter in determining whether to purchase and/or insure the Bonds. In addition, Foster Pepper provided AGIC with opinion letters issued by Preston Gates, Perkins Coie LLP, and the City Attorney, Jim Sloane. (These opinion letters are described at greater length below.) AGIC relied on the existence of the POS, the OS, the Foster Pepper Opinion Letter, and the opinion letters issued by Preston Gates, Perkins Coie LLP, and the City Attorney, Jim Sloane in determining whether to insure the Bonds. For the reasons set forth above in regard to Prudential and below in regard to Preston Gates and the City, Foster Pepper knew that the POS, the OS, the Foster Pepper Opinion letter, and the opinion letters issued by Preston Gates, Perkins Coie LLP, and the City attorney contained false and misleading information and failed to set forth other information that would have made the POS, OS, and the Foster Pepper Opinion Letter not misleading.

C. The Foundation

36. The Foundation assisted in the preparation of the POS and OS and issued the Bonds. The Foundation knew that potential purchasers and/or insurers of the Bonds, including AGIC, would rely on the POS and the OS, including their attachments, in determining whether to purchase and/or insure the Bonds. AGIC received and relied on the POS and the OS, including their attachments, in determining whether to insure the Bonds. The Foundation knew that the POS and the OS contained the false and misleading statements identified above. The

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Foundation permitted the POS and OS to be issued containing that false and misleading information and lacking other information that would have made the POS and OS not misleading.

D. Preston Gates

37. Preston Gates, acting as issuer's counsel and bond counsel, issued an opinion letter on September 24, 1998 ("the Preston Gates Opinion Letter"). Preston Gates knew that potential purchasers and/or insurers of the Bonds would rely on its Opinion Letter in determining whether to purchase and/or insure the Bonds. AGIC received the Preston Gates Opinion Letter and reasonably relied on the existence of that Opinion Letter in determining to insure the Bonds. Preston Gates knew that its Opinion Letters contained false and misleading information and failed to disclose other information that would have made its Opinion Letters not misleading. Further, Preston Gates reviewed the POS and OS and knew that they contained false and misleading information and failed to disclose other information that would have made the POS and OS not misleading. Nevertheless, Preston Gates failed to take steps to ensure that the POS and OS would not be issued containing that false and misleading information and lacking other information that would have made the POS and OS not misleading.

E. Walker

38. As noted above, in or about June 1996, Walker issued a document that it called a "Financial Feasibility Analysis," together with two revised and updated reports dated April 22, 1998, and June 29, 1998 (collectively, the "Feasibility Analysis"). Walker knew that the Feasibility Analysis contained false and misleading information and failed to set forth information that would have made the information contained in the Feasibility Analysis not misleading. The reasons for the false and/or misleading nature of the Feasibility Analysis are set forth above in regard to Prudential.

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39. In addition, Walker knew that the following assumptions relied on in the Feasibility Analysis were false and misleading: **(1)** that parkers at the Garage would stay for an average of 3.0 hours apiece, whereas the historical average had been between 1.2 and 1.9 hours; **(2)** that all parkers at the Garage would pay $1.50 per hour, whereas persons parking on evenings and weekends would expect to pay reduced rates, and whereas patrons of the proposed AMC theater would expect to obtain the benefits of a validation program; and **(3)** that there was a shortage of parking in the downtown Spokane area, whereas in fact there was a surplus of parking available on evenings and weekends. Walker's reliance on these false and misleading assumptions in turn made the Feasibility Analysis, the POS, the OS, and the reports prepared by Auble & Associates and Daniel Barrett false and misleading. Walker knew that the Feasibility Analysis would be attached to the POS and the OS and that the POS and the OS would rely on the Feasibility Analysis and the reports prepared by Auble & Associates and Daniel Barrett. Walker also knew that potential purchasers and/or insurers of the Bonds would rely on the Feasibility Analysis, the POS, and the OS in determining whether to purchase and/or insure the Bonds. AGIC received the Feasibility Analysis and reasonably relied on it in determining to insure the Bonds.

F. <u>The City</u>

40. The City conspired with the Developers and Robideaux & Company (acting on behalf of the Developers) to induce Walker to rely on false and misleading assumptions in preparing the Feasibility Analysis and to fail to disclose other information that would have made the Feasibility Analysis not misleading. The reasons for the false and misleading nature of the Feasibility Analysis are alleged above in regard to Prudential and Walker. The City knew that the Feasibility Analysis relied on false and misleading assumptions and failed to disclose other information that would have made the Feasibility Analysis not misleading. Further, the City knew that potential purchasers and insurers of the Bonds would rely on the Feasibility Analysis to determine whether to purchase and/or insure the Bonds.

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41. In addition, the City retained John Evans and David Auble of Auble & Associates and Daniel E. Barrett to analyze the value of the Garage and the land underlying the Garage using the "investment value method." For the reasons alleged above in regard to Prudential, the City knew that the "investment value method" would result in an inflated and unreasonable value for the Garage. The City knew that the analyses performed by Auble & Associates and Barrett would be used to support the POS and OS. The City also knew that potential purchasers and insurers of the Bonds would rely on the POS and OS in determining whether to purchase and/or insure the Bonds. Further, the City knew that the use of the "investment value method" by Auble & Associates and Barrett, by providing an inflated and unreasonable value for the Garage, would render the POS and the OS false and misleading.

42. Further, the City continued to negotiate with the Developers for the purchase of the Garage despite the fact that Auble & Associates, Daniel Barrett, Coopers & Lybrand, and Sabey Corporation had all provided reports to the City outlining the flaws in the Feasibility Analysis and the inappropriateness of the "investment value method" used to value the Garage. The City knew that potential purchasers and/or insurers would rely on the City's continued negotiations with the Developers and support for the purchase of the Garage by the Foundation in determining whether or not to purchase and/or insure the Bonds. In light of the City's knowledge of the criticisms set forth by Auble & Associates, Daniel Barrett, Coopers & Lybrand, and Sabey Corporation, the City's continued negotiations with the Developers and support for the purchase of the Garage by the Foundation constituted false and misleading conduct in connection with the issuance of the Bonds.

43. In addition, the City caused to be enacted on January 27, 1997, Ordinance C31823 ("the Ordinance") that obligated the City to provide loans to the Authority in the event that revenue from the Garage was insufficient to meet certain financial obligations of the Garage. The City enacted the Ordinance acknowledging that there might be a shortfall in the revenues generated by the Garage. Further, the City knew that bond rating agencies,

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purchasers, and/or insurers of the Bonds would rely on the Ordinance in determining the bond rating for the Bonds and whether or not to purchase and/or insure the Bonds. The City has subsequently asserted that the Ordinance does not obligate it to make up any shortfall in revenues generated by the Garage. Instead, the City now asserts that there are numerous defenses to its obligation to make loans pursuant to the Ordinance, including that there must be a new vote of the City Council to authorize a loan to the Authority in the event of a shortfall in revenues generated by the Garage. Further, the City now asserts that it can refuse to make any such loan. The City had an obligation to disclose its actual interpretation of the Ordinance, its belief that there were such defenses, and its unwillingness to make loans under the Ordinance. Its failure to disclose these facts rendered the Ordinance, the OS, and the POS false and misleading at the time that the Bonds were issued.

44. In addition, the City caused its employee, City Attorney Jim Sloane ("Sloane"), to issue an opinion letter ("the City's Opinion Letter"), which was separately issued to AGIC. The City's Opinion Letter stated that the Ordinance obligates the City to provide loans to the Authority in the event that revenue from the Garage is insufficient to meet certain obligations of the Garage. The City's Opinion Letter also stated that statements made in the Official Statement under the captions "Introduction—Purpose of the Bonds—Public Purpose," "Project Participants—The City," "—Financing Structure—City Pledge of Parking Meter Revenues," "Source of Payment and Security for the Bonds—City Pledge of Parking Meter Revenues," and "Project Participants—The City," insofar as such statements purported to summarize certain positions of the City Resolutions and the Ordinance or to describe the City's participation in and support for the RPS Mall and Garage, were true, accurate, and correct summaries or descriptions in all material respects and did not omit to state any material facts necessary in order to make those statements not misleading. Sloane and the City knew that purchasers and insurers of the Bonds would rely on the City's Opinion Letter in determining whether or not to purchase and/or insure the Bonds. The City knew that the City's Opinion Letter was false

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and misleading and/or failed to disclose other information that would have made the City's Opinion Letter not misleading. Further, the City knew that the POS and OS were false and misleading because of their reliance on the Ordinance.

45. In addition, the City caused its special counsel, Perkins Coie LLP, to issue an opinion letter ("the Perkins Coie Opinion Letter"). The Perkins Coie Opinion Letter stated that the Ordinance obligates the City to provide loans to the Authority in the event that revenue from the Garage is insufficient to meet certain obligations of the Garage. The City's Opinion Letter also stated that statements made in the Official Statement under the captions "Introduction—Purpose of the Bonds—Public Purpose," "Project Participants—The City," "—Financing Structure—City Pledge of Parking Meter Revenues," "Source of Payment and Security for the Bonds—City Pledge of Parking Meter Revenues," and "Project Participants—The City," insofar as such statements purported to summarize certain positions of the City Resolutions and the Ordinance or to describe the City's participation in and support for the RPS Mall and Garage, were true, accurate, and correct summaries or descriptions in all material respects and did not omit to state any material facts necessary in order to make those statements not misleading. The City knew that purchasers and insurers of the Bonds would rely on the Perkins Coie Opinion Letter in determining whether or not to purchase and/or insure the Bonds. The Perkins Coie Opinion Letter was provided to AGIC, and AGIC relied on the existence of the Perkins Coie Opinion Letter in determining to insure the Bonds. The City knew that the Perkins Coie Opinion Letter was false and misleading and/or failed to disclose other information that would have made the Perkins Coie Opinion Letter not misleading.

G. <u>The Developers and Robideaux & Company</u>

46. The Developers and Robideaux & Company induced Walker to rely on false and/or misleading assumptions in preparing the Feasibility Analysis (as alleged above in regard to Prudential). The Developers and Robideaux & Company knew that the Feasibility Analysis would be used in preparation of the POS and the OS. Further, the Developers and

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Robideaux & Company knew that potential purchasers and/or insurers of the Bonds would rely on the POS and OS—and, consequently, on the Feasibility Analysis—in determining whether to purchase and/or insure the bonds. For the reasons alleged above in regard to Prudential, the Developers knew that the Feasibility Analysis was based on false and/or misleading assumptions and thus generated false and/or misleading revenue projections. Further, the Developers knew that the Feasibility Analysis failed to disclose other information that would have made the Feasibility Analysis not misleading.

47. In addition, the Developers and Robideaux & Company induced the City to instruct Auble & Associates and Daniel Barrett to use the "investment value method" to value the Garage and the land underlying the Garage. The Developers and Robideaux & Company knew that the reports prepared by Auble & Associates and Daniel Barrett would be used in preparation of the POS and the OS. Further, the Developers and Robideaux & Company knew that potential purchasers and/or insurers of the Bonds would rely on the POS and OS—and, consequently, on the reports prepared by Auble & Associates and Daniel Barrett—in determining whether to purchase and/or insure the bonds. For the reasons alleged above in regard to Prudential and the City, the Developers and Robideaux & Company knew that the reports prepared by Auble & Associates and Daniel Barrett were based on false and/or misleading assumptions and thus generated an inflated and unreasonable value for the Garage.

H. <u>The Authority</u>

48. The Authority, which included members of the City Council, participated in the negotiations and operation of the Garage and participated in making factual representations included in the POS and the OS, which the Authority knew to be inaccurate and misleading, as alleged above. The Authority knew that potential purchasers and/or insurers of the Bonds would rely on the POS and the OS in determining whether to purchase and/or insure the Bonds.

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V. FIRST CLAIM FOR RELIEF: VIOLATION OF SECTION 10(B) OF THE 1934 ACT (15 U.S.C. § 78J) AND OF SEC 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)

49. AGIC repeats the allegations of all preceding paragraphs of this Complaint and incorporates the same by reference.

50. Each and all of the Defendants, in connection with the insurance and purchase of the Bonds by AGIC, directly and indirectly, singly and in concert, recklessly, knowingly or with an intention to defraud, engaged in, offered for sale, and sold securities by means of one or more misrepresentations or 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. In addition, each and all of the Defendants employed a device, scheme, or artifice to defraud AGIC and engaged in acts, practices and a course of business that operated as a fraud or deceit upon AGIC, 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.

51. Defendants Lincoln, Citizens, RPS and RPS II are each, individually, persons who directly or indirectly controlled the Foundation within the meaning of Section 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. § 78t(a)) because of their ability to appoint the board of directors of the Foundation.

52. The City is a person who directly or indirectly controlled the Authority within the meaning of Section 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. § 78t(a)) because of its ability to appoint the board of directors of the Authority. The City appointed two city council persons with knowledge of the fraudulently inflated purchase price of the Garage to control the Foundation in furtherance of the City's fraudulent scheme. Further, the City caused the Ordinance to be enacted and caused its employee, City Attorney Jim Sloane, to issue the City's Opinion Letter stating that the Ordinance obligated the City to loan funds to the Authority

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to make up certain shortfalls in revenues generated by the Garage. In addition, the City caused its special counsel, Perkins Coie LLP, to issue the Perkins Coie Opinion Letter stating that the Ordinance obligated the City to loan funds to the Authority to make up certain shortfalls in revenues generated by the Garage. Those opinion letters were provided to AGIC. The Ordinance, the City's Opinion Letter, and the Perkins Coie Opinion Letter were false and misleading.

53. AGIC, acting through its employees, read and reasonably relied upon the existence of the POS, the OS, the appendices to the OS (including the Feasibility Analysis), the Ordinance, the City's Opinion Letter, the Perkins Coie Opinion Letter, the Preston Gates Opinion Letter, the Foster Pepper Opinion Letter, and all other documents identified above that were prepared by the Defendants in connection with the offering of the Bonds.

54. The purpose, effect, and result of the Defendants' violations of Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 promulgated thereunder were to induce AGIC to insure and purchase the Bonds, something that AGIC would not have done otherwise.

55. All of the Defendants conspired to conceal their fraud from AGIC by virtue of all of the conduct alleged above attributable to the Defendants and events that occurred in connection with and subsequent to AGIC's insurance and purchase of the Bonds. As a result of such fraudulent concealment, AGIC, in the exercise of reasonable diligence, did not discover its claims against the Defendants, and each of them, until May 2000, at the earliest. This claim was brought on behalf of AGIC within one year after the discovery of the facts giving rise to this cause of action and within three years of the date that AGIC insured and purchased the Bonds.

56. As a direct and proximate result of the Defendants' violations of Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 promulgated thereunder, AGIC has incurred or will incur damages in an amount that is presently unknown, but that is estimated to

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consist of a substantial portion of the stated principal amount of the Bonds insured and owned by AGIC, plus interest.

57. Further, each of the Defendants acted in concert with the other Defendants to achieve the unlawful purposes alleged herein so that each is liable for the acts and conduct of the other Defendants.

58. As a direct and proximate result of the Defendants' violations of Section 20(a) of the Securities Exchange Act of 1934, AGIC has incurred or will incur damages consisting of a substantial portion of the stated principal amount on the Bonds insured and owned by AGIC, plus interest.

VI. SECOND CLAIM FOR RELIEF: VIOLATION OF THE SECURITIES ACT OF WASHINGTON, RCW 21.20.430(1); 21.20.430(3); 21.20.430(7) (ASSERTED AGAINST ALL DEFENDANTS)

59. AGIC repeats the allegations of all preceding paragraphs of this Complaint in Intervention and incorporate the same by reference.

60. Prudential offered the Bonds to AGIC and induced AGIC to insure the Bonds in violation of RCW 21.20.010. The Foundation, through the Official Statements issued on its behalf, offered the Bonds to AGIC and induced AGIC to insure the bonds in violation of RCW 21.20.010. Foster Pepper, Preston Gates, Walker, Lincoln, Citizens, RPS, RPSII, and the Authority offered and sold the Bonds to AGIC, and induced AGIC to insure the bonds, because of their substantial participation in the bond underwriting process.

61. Each and all of the Defendants, in connection with the insurance and purchase of the Bonds by AGIC, directly and indirectly, singly and in concert, negligently, 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 or 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

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defraud AGIC and engaged in acts, practices and a course of business which operated as a fraud or deceit upon AGIC, all in violation of RCW 21.20.010(1), (2) and (3).

62. Defendants Lincoln, Citizens, RPS and RPSII are persons who directly or indirectly controlled the Foundation within the meaning of RCW 21.20.430(3). The Foundation is liable as a principal for violation of RCW 21.20.430(1).

63. Defendant Prudential is a broker-dealer within the meaning of RCW 21.20.430(3). Defendants Walker, Foster Pepper, Preston Gates, Citizens, Lincoln, RPS, RPSII, RWR Management, and the Authority are persons who materially aided in the transactions alleged above and whose conduct was a substantial factor in the fraud perpetrated on AGIC.

64. Any Defendant that falls within the scope of RCW 21.20.430(7) acted with scienter within the meaning of that statute. Specifically, the City and the Authority both acted with scienter. Defendant Prudential is an underwriter within the meaning of RCW 21.20.430(7). Defendant Preston Gates is a bond counsel within the meaning of RCW 21.20.430(7).

65. Each of the Defendants, by engaging in the conduct alleged above, materially aided the Foundation in connection with the underwriting, issuance, offer, and sale of the Bond to AGIC, and the inducement of AGIC to insure the Bonds, when, having knowledge that the POS, the OS, the Feasibility Analysis, the Foster Pepper Opinion Letter, the Preston Gates Opinion Letter, the City's Opinion Letter, Perkins Coie Opinion Letter, and the Ordinance were false and misleading, as alleged above, nonetheless failed to take action to ensure that full and fair disclosure of all material facts was made to prospective bond purchasers and insurers, including AGIC.

66. The following Defendants materially aided the Foundation in connection with the underwriting, issuance, offer and sale of the Bond to AGIC, and the inducement of AGIC to insure the Bonds:

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67. Prudential served in the role of underwriter with respect to the bond issue and had primary responsibility for conducting due diligence, for drafting the POS and OS, and for ensuring that the POS and OS made full and fair disclosure of all material facts.

68. In its capacity as underwriter's counsel, Foster Pepper assisted in the preparation of the POS and OS and issued the Foster Pepper Opinion in connection with the issuance of the Bonds and served in the capacity of underwriter's counsel.

69. Walker issued the Feasibility Analysis with all of the false and misleading statements alleged above.

70. The Developers, both individually and collectively, caused the Foundation to be formed, controlled the Foundation, instructed Walker to utilize unreasonable and unrealistic assumptions, knowing that the use of such assumptions would result in substantially increased but unachievable projected cash flows, coerced the City to cause Auble & Associates and Daniel Barrett to utilize the improper "investment value method" in connection with their reports, and took an active role in minimizing and defeating all challenges that were made to the Project, including, specifically, the challenges set forth in the report provided to the City by Sabey Corporation.

71. The Authority, with full knowledge of the fraudulent scheme alleged above, agreed to and entered into the lease of the Garage with the Foundation, entered into the sublease of the ground from the Foundation, and undertook the day-to-day management of the Garage.

72. Preston Gates served as bond counsel and issued the bond opinion with knowledge of the false and misleading statements alleged above.

73. The City caused the Ordinance to be enacted and caused its employee, City Attorney Jim Sloane, to issue the City's Opinion Letter **and caused its special counsel, Perkins Coie LLP, to issue the Perkins Coie Opinion Letter**. The City knew that the POS,

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the OS, the Ordinance, the City's Opinion Letter, and the Perkins Coie Opinion Letter were false and/or misleading.

74. The Bonds could not have been issued without each of the Defendants providing material aid to the Foundation as herein alleged.

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

76. As a direct and proximate result of the Defendants' violations of the WSSA, AGIC has incurred or will incur damages consisting of a substantial portion of the stated principal amount of the Bonds insured and owned by AGIC, plus interest.

VII THIRD CLAIM FOR RELIEF: FRAUD AND/OR AIDING AND ABETTING FRAUD (ASSERTED AGAINST ALL DEFENDANTS)

77. AGIC repeats the allegations of all preceding paragraphs of this Complaint and incorporates the same by reference.

78. As alleged above, all of the Defendants made material misrepresentations and omissions of material existing facts. The Defendants knew that the misrepresentations and omissions were false and/or misleading.

79. The misrepresentations and omissions, as alleged above, were made with the intent to induce AGIC to purchase and/or insure the Bonds.

80. AGIC justifiably relied upon the representations contained in the POS, the OS, the Feasibility Analysis, the City's Opinion Letter, the Foster Pepper Opinion Letter, and the Preston Gates Opinion Letter. AGIC did not know that the representations contained in the POS, the OS, the Feasibility Analysis, the City's Opinion Letter, the Foster Pepper Opinion Letter, and the Preston Gates Opinion Letter were false and/or misleading.

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

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Defendants. Any of the Defendants not liable as a principal for common law fraud is liable to AGIC for aiding and abetting common law fraud.

82. As a direct and proximate result of Defendants' fraud or aiding and abetting fraud, AGIC has incurred or will incur damages consisting of a substantial portion of the stated principal amount of the Bonds insured and owned by AGIC, plus interest.

VIII. FOURTH CLAIM FOR RELIEF: NEGLIGENT MISREPRESENTATION (ALL DEFENDANTS)

83. AGIC repeats the allegations of all preceding paragraphs of this Complaint and incorporates the same by reference.

84. Each Defendant had a duty to disclose or cause to be disclosed to potential purchasers and insurers of the Bonds, including AGIC, the material facts set forth above. Each Defendant had a duty to ensure that the representations made in the POS and the OS were accurate. In addition, Foster Pepper had a duty to ensure that the representations made in the Foster Pepper Opinion Letter were accurate. Preston Gates had a duty to ensure that the representations made in the Preston Gates Opinion Letter were accurate. The City had a duty to ensure that the representations made in the City's Opinion Letter were accurate. Walker had a duty to ensure that the representations made in the Feasibility Analysis were accurate.

85. Defendants breached their duty to AGIC by negligently making the misrepresentations of and failures to disclose material facts alleged above.

86. As a direct and proximate result of the Defendants' negligent misrepresentations, AGIC has incurred or will incur damages consisting of a substantial portion of the stated principal amount of the Bonds insured and owned by AGIC, plus interest.

WHEREFORE, AGIC requests that the Court enter judgment in favor of AGIC and against the Defendants, and each of them, jointly and severally, on each of AGIC's Claims for Relief and award AGIC rescission or monetary damages as provided for violations of Section

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10(b) of the 1934 Act, Section 20(a) of the 1934 Act, the WSSA and the common law, together with pre-judgment interest, costs, expenses under applicable law, attorney fees pursuant to the pertinent provisions of the WSSA, and any other relief, legal or equitable, that the Court deems proper.

DATED this 25 day of April, 2001.

STAMPER, RUBENS, STOCKER & SMITH, P.S.

By Randall L. Stamper
Randall L. Stamper, WSBA #4663
Tom Luciani, WSBA #9124
Of Attorneys for Asset Guaranty Insurance Co.

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By John D. Lowery by R. L. Stamper
John D. Lowery, WSBA #6633
James Rhett Brigman, WSBA #29569
Of Attorneys for Asset Guaranty Insurance Co.

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of April, 2001, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Proposed Plaintiff-Intervenor Asset Guaranty Insurance Company's Complaint in Intervention

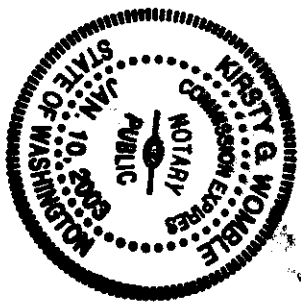
Crumb & Munding, P.S. John D. Munding 1950 Bank of America Financial Center 601 W. Riverside Spokane, WA 99201	____ X ____ ____	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Telecopy (Facsimile)
Davis & Ceriani, P.C. Gary J. Ceriani Michael P. Cillo 1350 17th Street, Suite 400 Denver, CO 80202	X ____ ____ ____	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Telecopy (Facsimile)
Maslon Edelman Borman & Brand, LLP Geoffrey Jarpe Alain Baudry 3300 Wells Fargo Center 90 South Seventh Street Minneapolis, MN 55402	X ____ ____ ____	U.S. Mail, Postage Prepaid Hand Delivered Overnight Mail Telecopy (Facsimile)

Molly DeBolt

MOLLY DEBOLT

Subscribed and Sworn to before me this 25th day of April, 2001.

Kirsty Womble

Notary Public in and for the State
of Washington residing at Spokane
Commission expires: 1/10/03

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