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_{U.S. DISTRICT COURT}
(Local Counsel)_{EASTERN DISTRICT OF WASHINGTON}

APR 24 2001

UNITED STATES DISTRICT COURT ^{JAMES R. LARSEN, CLERK}
FOR THE EASTERN DISTRICT OF WASHINGTON _{DEPUTY}
_{SPOKANE, 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),

Plaintiff,

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

CS-01 No 0128-JLQ

COMPLAINT

DEMAND FOR JURY
TRIAL

charter city of the State of Washington;
SPOKANE PUBLIC PARKING
DEVELOPMENT AUTHORITY, an
unregistered Washington corporation
doing business as RIVER PARK SQUARE
PARKING,

Defendants.

Plaintiff U.S. Bank Trust National Association, solely in its capacity as Indenture Trustee ("Plaintiff" or "the Trustee"), as and for its Complaint against Defendants, states and alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this suit pursuant to the Securities Exchange Act of 1934 ("the 1934 Act"), 15 U.S.C. § 78aa and 28 U.S.C. § 1331. This Court has jurisdiction to hear and determine Plaintiff's pendent claims for relief arising under the Washington Securities Act, R.C.S. §§ 21.20.430(1); 21.20.430(3), and for common law fraud and negligent misrepresentation and alternative claim for breach of contract, pursuant to 28 U.S.C. §§ 1331 and 1367 in that such claims arise from a common nucleus of operative facts and are so intertwined as to make the Court's exercise of jurisdiction appropriate.

2. Venue of this action 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 Plaintiff's claims occurred in this District, and the property that is the subject of this action is located in this District.

SUMMARY OF COMPLAINT

3. Defendant Spokane Downtown Foundation (the "Foundation") issued \$31,465,000 of Spokane Downtown Foundation Parking Revenue Bonds, Series 1998 (the "Bonds") on behalf of the City of Spokane, Washington (the "City"), on September 15, 1998. Defendant Prudential Securities Incorporated ("Prudential") was the underwriter of the Bonds. The Bonds were issued in September 1998 to finance the purchase in about August 1999 of the renovated and expanded River Park Square Parking Garage (the "Garage") which is adjacent to the River Park Square shopping mall (the "Mall") in downtown Spokane (the Garage and the Mall are hereinafter collectively referred to as the "Project"). The Bonds are dated September 1, 1998 and bear interest payable to the Bondholders on each February 1 and August 1. Interest began effective February 1, 1999.

4. The Bondholders purchased the Bonds in reliance upon a Preliminary Official Statement and an Official Statement (the "Official Statements") which were written and distributed by Prudential and its counsel, the law firm of Foster Pepper & Shefelman PLLC (the "Foster law firm"). Defendant Walker Parking Consultants/Engineers, Inc. ("Walker") prepared a report it represented as a "Financial Feasibility Analysis" (the "Walker Report") which was attached to the Official Statements as Appendix B.

5. The Bonds were not secured by any interest in the Garage or the land underneath it. The sole source of repayment for the Bonds was revenues from the Garage, with an important and unconditional credit enhancement for the Bonds described below to be provided by the City of Spokane pursuant to Ordinance C31823 (the "Ordinance"), passed by the City on January 27, 1997. Accordingly, the two most critical factors to prospective purchasers were the feasibility of the projections (prepared by a purportedly independent and prominent expert on the subject of garages) contained in the Walker Report and the certainty of the City's obligation under the Ordinance to provide the credit enhancement if revenues were less than projected.

6. Defendants singly and together concealed and failed to disclose the fact that the feasibility analysis performed by Walker and included in the Official Statements was not a feasibility analysis at all, and contained wholly unrealistic and unreasonable assumptions. Defendants concealed and/or failed to disclose that Walker was not an independent consultant, but rather had a conflict of interest because before preparing projections which were to be included in the Official Statements, it had prepared far more conservative and reasonable projections for the Developers. Defendants concealed and failed to disclose that the unrealistic and unreasonable assumptions in the Walker Report were prepared for the sole purpose of

artificially inflating the purchase price of the Garage and misleading Bondholders into believing that there was a reasonable basis to expect that the Garage would generate sufficient revenues to repay the Bonds.

7. The City knew that there was no realistic opportunity that the Garage would generate sufficient revenues to repay the Bonds and that the purchase price for the Garage was grossly and inappropriately inflated well in excess of fair market value. It also knew that the marketplace required its unconditional credit enhancement of the Bond issue to obtain an investment grade rating for the bonds. The Defendants misrepresented both the scope and the unconditional nature of the City's obligation under the Ordinance to provide the credit enhancement for the Bonds in the event of a revenue shortfall. The City secretly never intended to honor its obligation to provide the credit enhancement, which it knew would be required given the almost certain inability of the Garage to generate projected revenues. As a consequence, the Bondholders were deceived into purchasing \$31.5 million in bonds that had no realistic opportunity of ever being repaid and in reliance on false and misleading representations about the City's credit enhancement obligations pursuant to the Ordinance. The below-named Defendants, singly and together, directly and indirectly, conspired with each other and entered into a scheme or artifice to defraud the purchasers of the Bonds, by concocting a scheme to overvalue the

Garage so that innocent Bondholders would pay \$31.5 million to finance a real estate project worth less than \$10 million. It was part and parcel of the scheme that the Garage would be sold to the Foundation for \$26 million, thereby generating approximately \$11 million in fraudulent profits for the owners and developers of the RPS Mall and the Garage in violation of Section 10(b) of the 1934 Act and Securities and Exchange Commission Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5), the Washington Securities Act and the common law.

THE PARTIES AND THEIR ROLES

8. Plaintiff is a national association chartered under the laws of the United States, with its principal office in St. Paul, Minnesota. Plaintiff serves as the Indenture Trustee for the holders of the Bonds issued in connection with the City's acquisition of the Garage under the terms of the Indenture of Trust, dated as of August 1, 1998 ("Indenture"). In Causes of Action 1 through 4 herein, Plaintiff brings this action in its capacity as Indenture Trustee for the owners of the Bonds who are not independently asserting claims against the Defendants for the misconduct described herein, and on behalf of all Bondholders who are unable for any reason to bring such claims on their own behalf. In Cause of Action 5 herein, Plaintiff brings this action on behalf of all Bondholders.

9. Defendant Prudential Securities Incorporated ("Prudential") is a Delaware corporation and registered broker-dealer which does business in the State of Washington. Prudential acted as underwriter for the Bonds and offered and sold the Bonds to each of the Bondholders on about September 15, 1998. As the underwriter for the Bonds, Prudential had primary responsibility for performing due diligence in connection with the preparation of the Official Statements to ensure that full and fair disclosure of all material facts was made to all bond purchasers. John C. Moore was, at all pertinent times, an employee of and a Managing Director of Public Finance for Prudential. Moore was charged by Prudential with primary responsibility for conducting Prudential's due diligence investigation into the facts and circumstances surrounding the issuance of the Bonds. As part of Prudential's due diligence inquiry, its representatives, including Moore, obtained actual knowledge that the \$26 million purchase price for the Garage was inflated, unfair and unreasonable, that the fair market value of the Garage was less than \$10 million, that the Walker Report, Appendix B to the Official Statements, was totally unreliable; and that the Official Statements were materially false and misleading. Prudential, through Moore and other Prudential representatives obtained such knowledge as a result of their due diligence activities, their participation in meetings and conferences, and their review of reports on the value of the Garage

conducted by MAI certified appraisers Auble & Associates ("Auble") and Daniel M. Barrett ("Barrett") (the "Auble and Barrett Reports"), a critique of the Walker Report prepared by the accounting firm Coopers & Lybrand L.L.P. ("Coopers & Lybrand"), and their review and analysis of other documents identified elsewhere in this Complaint.

10. Walker is a Michigan corporation with its principal offices in Indianapolis, Indiana. Walker specializes in providing consulting services, including the preparation of financial feasibility studies, to public and private sector clients who are evaluating the design, construction, renovation and expansion of parking facilities, such as the Garage. Walker holds itself out to be internationally recognized in the areas of design, construction and financial analysis of parking structures. Walker was hired by the City in about April 1996 to prepare a financial feasibility study of the existing Garage, together with the proposed expansion and renovation of the Garage. Walker knew and understood that its report would be provided to and would be relied upon by potential purchasers of the Bonds.

11. Walker issued a report in about June 1996 which it called a "Financial Feasibility Analysis," together with two revised and updated reports dated April 22, 1998, and June 29, 1998 (collectively, the "Walker Report"), which Walker knew would be attached as Appendix B to the Official Statements. John Dorsett was, at all pertinent times, a senior

project director and department head for Walker, and was charged by Walker with primary responsibility for preparing and approving the Walker Report and for ensuring the reasonableness of the fact-based assumptions, which underlie the Walker Report.

12. In May 1995, the developers retained Walker to develop projected net operating income for the Garage. Walker's projected operating income data for the Garage was completed on or about May 17, 1995 (hereinafter the "1995 Secret Walker Report"). The 1995 Secret Walker Report used reasonable and realistic fact-based assumptions. Its resultant cash flow projections were radically different than the projections contained in the 1996 Walker Report, and, if extrapolated, would result in a value for the garage of approximately \$10 million. Walker, as an expert in the area, knew the assumptions in the 1996 Walker Report were unreasonable and unrealistic, and were utilized for the sole purpose of increasing projected cash flows so that it would appear the Garage was really worth in excess of \$26 million. As a result, Walker was a willing participant in the scheme or artifice to defraud bond purchasers.

13. Defendant Foster law firm is a Washington professional limited liability company engaged in the practice of law with its principal offices in Seattle, Washington. The Foster law firm acted as counsel for the underwriter, Prudential, in connection with the underwriting, issuance,

offer and sale of the Bonds and is identified as such on the cover pages of the Official Statements. The Official Statements do not, in any way, limit the scope of the Foster law firm's activities as underwriter's counsel. Prudential retained the Foster law firm to, among other things, advise Prudential regarding disclosure issues, to assist Prudential in performing due diligence with respect to the facts and circumstances of the Bonds and the Project, and to write and edit the Official Statements.

14. As underwriter's counsel, the Foster law firm had a duty to conduct a reasonable investigation into the facts and circumstances surrounding the feasibility of the proposed bond issue and to take reasonable steps to ensure the Official Statements did not misrepresent material facts and did not fail to disclose material facts which needed to be disclosed to make the facts that were disclosed in the Official Statements not misleading. The Foster law firm's duty to conduct reasonable due diligence included the duty to investigate the accuracy of any statements in the Official Statements which appeared to be inaccurate or doubtful, the duty to make reasonable inquiry into the reasonableness of assumptions underlying forward-looking statements, the duty to ensure that any "expertised" portions of the Official Statements had, in fact, been prepared by experts who had conducted such independent investigation as was necessary or appropriate under the circumstances, and the duty to correct

all portions of the Official Statements which its investigation revealed, or suggested, were false or misleading. The Foster law firm also had the duty not to issue opinions of any kind with respect to the issuance of the Bonds and the adequacy of disclosure in the Official Statements until it reasonably believed that full and fair disclosure of all material facts had been made in the Official Statements.

15. In the process of drafting the Official Statements, representatives of the Foster law firm reviewed the statements made in the Official Statements regarding the \$26 million purchase price for the Garage, the existence of two MAI appraisals using the "investment value" method, the Walker Report, and certain "concerns" expressed about the risks inherent in the assumptions used by Walker to generate the projected cash flows in the Walker Report. As a result, the Foster law firm knew the above statements in the Official Statements were potentially false and misleading unless the Official Statements made full, fair and accurate disclosures of all material facts regarding the content of the MAI appraisals and the Coopers & Lybrand Report. Given that, the Foster law firm had a duty to carefully review the MAI appraisals and the Coopers & Lybrand Report. The Foster law firm either reviewed the Coopers & Lybrand Report and the Auble and Barrett Reports (which are the documents characterized as "MAI appraisals" in the Official Statements) and learned, among other things,

that the Walker Report was not a financial feasibility study, that the Walker Report was totally unreliable, that the so-called "MAI appraisals" were not really MAI appraisals, that the Garage was really worth nowhere near \$26 million and that, as a result, the Official Statements it was drafting were materially false and misleading, or negligently and recklessly failed to review such documents. The Foster law firm, having obtained such information, could not go forward with the preparation of the Official Statements and the issuance of any opinions in connection with the closing on the bond issue without first ensuring that full and fair disclosure was made of all material facts.

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

We also examined information made available to us in the course of our participation in the preparation of the Official Statement as counsel for the Underwriter, including legal matters and certain records, documents and proceedings, and we have attended conferences with, among others, representatives of the Underwriter, the Issuer, Preston Gates & Ellis LLP, bond counsel and general counsel to the Issuer, the Trustee, the Spokane Parking Public Development Authority, a Washington public corporation (the "Authority"), Perkins Coie LLP, counsel to the Authority and the

City of Spokane, Washington, at which conferences the contents of the Official Statement were discussed; however, our examination of information and participation in such conferences does not necessarily constitute such diligence as may be specified, required or implied in Sections 12(b) and 17 of the Securities Act of 1933, as amended, Section 10(b) of the Securities Exchange Act of 1934, as amended, and similar provisions under state securities or 'blue sky' laws or regulations promulgated pursuant thereto, to the extent such provisions and regulations may be applicable (and no opinion is expressed as to such applicability). 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 any financial or statistical data contained in the Official Statement).

Even ignoring that such statement is not, as a matter of law, sufficient to disclaim the duties imposed upon the Foster law firm by virtue of its role as underwriter's counsel and primary draftsman of the Official Statements, the Foster law firm acquired actual knowledge that the Official Statements were materially false and misleading as a result of taking the hereinabove-alleged actions. As a result, the final sentence in the above paragraph of the Foster Opinion is both false and misleading.

17. The Foundation is a Washington non-profit corporation created in 1996 by the owners and developers of the RPS Mall and the Garage (hereinafter identified as the "Developers") as the entity to (1) issue the Bonds; (2) purchase the renovated and expanded Garage from the Developers with proceeds from the sale of the Bonds; and (3) lease the ground underlying the Garage from the Developers. The Foundation has, at all times pertinent hereto, been managed by a board of directors appointed by representatives of the Developers, and is therefore subject to the direct and indirect control of the Developers and its representatives.

18. Defendant Preston Gates & Ellis LLP (the "Preston law firm") is a Washington limited liability partnership engaged in the practice of law with its principal offices in Seattle, Washington. The Preston law firm acted as both issuer's counsel on behalf of the Foundation and bond counsel in connection with the underwriting and issuance of the Bonds. The Preston law firm, acting in the capacity of bond counsel, issued a bond opinion on September 24, 1998, to the Foundation and the underwriter, Prudential, with the knowledge, expectation and belief that the bond opinion would reasonably be relied upon by potential purchasers of the Bonds.

19. As issuer's counsel, the Preston law firm had a duty to thoroughly investigate the facts and circumstances surrounding the proposed bond issue and to take reasonable steps to ensure that the Official

Statements did not misrepresent material facts and did not fail to disclose material facts which needed to be disclosed in order to make the facts that were disclosed in the Official Statements not misleading. The Preston law firm's due diligence duties were heightened because the Preston law firm knew its client, the issuer of the Bonds, owed a duty to potential bond purchasers to make full, fair and accurate disclosure of all material facts in the Official Statements and also knew the issuer and its directors did not have the desire or the sophistication to conduct their own due diligence. The Preston law firm also knew the Foundation was controlled by the Developers (who were selling the Garage to the Foundation) and therefore lacked independence.

20. As bond counsel, the Preston law firm had a duty to thoroughly investigate the facts and circumstances surrounding the proposed bond issue to determine, among other things, that the Foundation would not be paying more than the fair value of the Garage to the Developers. The Preston law firm understood the Developers either owned or controlled the owners of the Garage and planned to sell the renovated and expanded Garage to the Foundation, which the Developers also controlled, for approximately \$26 million. As bond counsel and as counsel for the issuer, the Preston law firm had a duty to take reasonable steps to ensure that the lack of independence of its client and conflicts of interest of the Developers

did not impair full, fair and accurate disclosures made in the Official Statements.

21. The Preston law firm did, in fact, review the Walker Report, the Auble and Barrett Reports, the Coopers & Lybrand Report, drafts of the Official Statements and the Official Statements, and, as a result, knew the Official Statements were materially false and misleading. The Preston law firm, having obtained such information, owed a duty to the Foundation and the Bondholders not to go forward with the issuance of any opinions without first ensuring that full, fair and accurate disclosure was made of all material facts and without first ensuring that that Foundation was not paying any more to the Developers than the fair value of the Garage. The Preston law firm, having knowledge that the Official Statements were materially false and misleading, nonetheless issued three opinions in connection with closing on issuance of the Bonds. The Bonds could not and would not have been issued had the Preston law firm refused to issue any of the three opinions.

22. In one September 24, 1998, opinion, the Preston law firm states, among other things:

In this connection we have reviewed and examined certain proceedings and documents with respect to the Bonds, and such records, certificates and other documents we have considered necessary or appropriate for the purposes of this opinion, including the Amended and Restated Articles of Incorporation and Bylaws of the Issuer, the Issuer Resolution, the Financing Documents, the Project

Documents, the Preliminary Official Statement dated September 2, 1998, and the Final Official Statement dated September 15, 1998, with respect to the issuance and offering of the Bonds (collectively the "Official Statement") and a closing certificate of the Issuer. Based on such review and such other considerations of law and fact as we believe to be relevant, we are of the opinion that:

....

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

At the time the Preston law firm issued this opinion, the Preston law firm had actual knowledge that the Official Statements were materially false and misleading as a result of taking the hereinabove-alleged actions. As a result, the final sentence in the above paragraph of the Preston Opinion is both false and misleading.

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

24. 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.

25. Defendant RPS Mall L.L.C. ("RPS") is a Washington limited liability company comprised of two members, Lincoln and Citizens. As a result, RPS is controlled by Cowles Publishing and Elizabeth Cowles. RPS was the owner of the Garage at the time the Bonds were issued and sold the Garage to the Spokane Parking Public Development Authority for the inflated \$26 million purchase price.

26. 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.

27. Citizens, Lincoln, RPS, RPS II, and Elizabeth Cowles are hereinafter referred to collectively as the "Developers." The Developers directly or indirectly owned the Garage and sold it to the Foundation in about September 1999 after completion of the renovation and expansion of the Garage by the Developers. The Foundation paid the Developers for the Garage with proceeds from the Bonds.

28. Defendant RWR Management, Inc. is a Washington corporation doing business as R. W. Robideaux and Company ("Robideaux & Company")

which has its principal offices in Spokane, Washington. Robideaux & Company holds itself out as a professional real property management company providing specialized financial and administrative expertise in the financing, development and management of commercial properties. At all pertinent times, Robideaux & Company was the project director for the Developers' efforts to renovate and expand both the RPS Mall and the Garage.

29. At all pertinent times, R.W. Robideaux, a resident of Spokane, Washington, was the President of Robideaux & Company and was the Robideaux & Company employee with overall responsibility for all actions undertaken by Robideaux and Company in connection with the commercial project and the activities of the Developers. As of 1998, Robideaux & Company had managed the day-to-day business of the Garage on behalf of the Developers for a number of years, and therefore knew, based upon the actual historic financial performance of the Garage, that the fact-based assumptions used by Walker to generate the cash flow projections in the Walker Report were totally unrealistic and unreliable. Robideaux & Company also had knowledge of the content of the 1995 Secret Walker Report, the Auble and Barrett Reports, the Sabey Garage Report, the Coopers & Lybrand Report, and the content of the Official Statements

because R.W. Robideaux reviewed and commented on those documents on behalf of the Developers.

30. Robideaux & Company was, at all times pertinent hereto, an agent for the Developers acting within the course and scope of its agency relationship with the Developers and, as a result, all actions and knowledge of Robideaux & Company are imputed to the Developers. Robideaux & Company acted in the above capacities in connection with the formation of the Foundation on behalf of the Developers and was instrumental in carrying out the scheme or artifice to defraud by knowingly providing erroneous or unrealistic fact-based assumptions to Walker, and by convincing representatives of the City of Spokane to instruct the appraisers of the Garage to use an appraisal method which would wrongfully inflate the value of the Garage.

31. Defendant City is a first-class charter city of the State of Washington. In April 1996, the City retained Walker to prepare a financial feasibility study. Walker issued its feasibility analysis (the "Walker Report") on June 14, 1996. The City knew the assumptions used by Walker were unreasonable and that the Walker Report was totally unreliable based upon the City's knowledge of the historic performance of the Garage and the review, by representatives of the City, of the 1995 Secret Walker Report, the Walker Report, the Auble and Barrett Reports, the Coopers & Lybrand

Report, and the Sabey Garage Report, among other documents. The City, having such knowledge and acting at the behest of the Developers, nonetheless instructed the appraisers, Auble and Barrett, to use the cash flow projections and fact-based assumptions in the Walker Report for the sole purpose of establishing an artificially inflated value of the Garage. The City then used the Walker Report and the wrongfully inflated value of the Garage in the Auble and Barrett Reports to "negotiate" the \$26 million purchase price for the Garage with representatives of the Developers. The City, despite such knowledge, permitted the Bonds to be sold to the Bondholders, by means of Official Statements which the City knew were false and misleading.

32. Defendant Spokane Public Parking Development Authority (the "Authority") is an unregistered Washington corporation doing business as River Park Square Parking, which was created by the City through an Ordinance passed by the city council on November 7, 1988. The Authority is governed by a five-member board of directors appointed by the Mayor and approved by the city council and is, therefore, subject to the direct and indirect control of the City. During the period the Bonds were being underwritten and issued, two city council members having knowledge of the fraudulent scheme, Orville Barnes and Roberta Greene, sat on the board of directors of the Authority.

33. At the time the Bonds were issued in September 1998, the Authority engaged in no activities other than those relating to the Garage. The Authority was used by the City as the entity that would lease the Garage from the Foundation and assume responsibility for the day-to-day operations and management of the Garage. The Authority was also used by the City to sublease the land underlying the Garage from the Foundation at an artificially inflated price established by the Developers and agreed to by the City.

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

35. For all of the hereinabove and hereinbelow alleged reasons, each of the Defendants had actual knowledge that the renovated and expanded Garage would be worth less than \$10 million, knew that the "investment value" method was used to artificially and wrongfully inflate the value of the Garage, and knew that the Official Statements, including the Walker Report, were materially false and misleading. By continuing to participate in the underwriting and issuance of the Bonds, as herein alleged, all of the

Defendants knowingly engaged in a scheme or artifice to defraud and an unlawful conspiracy.

36. Each of the Defendants participated in making factual representations to the Bondholders in the Official Statements and omitted to disclose material facts. All of these were substantial factors in causing the Bonds to be issued by the Authority and sold to the Bondholders by Defendant Prudential.

GENERAL ALLEGATIONS
APPLICABLE TO ALL CLAIMS FOR RELIEF

A. Genesis of the Project and the 1995 Secret Walker Report

37. The RPS Mall is a shopping center located in downtown Spokane, Washington, which was built in 1974. The largest tenant of the RPS Mall is Nordstrom's Department Store, which, prior to the issuance of the Bonds, occupied 98,000 square feet of retail space. Prior to the issuance of the Bonds, the Garage had 750 spaces and was the dedicated parking facility for the RPS Mall. The RPS Mall was, at all pertinent times, owned by the Developers. The Garage was owned by the Developers who sold it to the Foundation following the issuance of the Bonds.

38. A 1993 parking survey prepared by the City's Planning Department concluded that downtown Spokane had a relatively high surplus of parking spaces. The operating revenues of the Garage never

exceeded approximately \$1 million per year prior to the issuance of the Bonds in September 1998.

39. The Developers were undertaking a redevelopment of the RPS Mall which was anticipated to cost in excess of \$100 million. One component of the redevelopment of the RPS Mall was the renovation and expansion of the Garage.

40. In about early 1995, the Developers approached the City to convince the City to purchase the Garage from the Developers. In May 1995, the Developers hired Walker to generate the 1995 Secret Walker Report, which was used to calculate the projected net operating income for the Garage based upon assumptions which included the renovation of the existing 750-space garage, plus the addition of over 230 parking spaces, and the addition of a multiplex cinema as part of the renovation of the RPS Mall.

41. The 1995 Secret Walker Report projected that the Garage would generate approximately \$1,750,000 in total revenues during its first year of operation following the renovation and expansion of the Garage, and would not generate any more than approximately \$2.28 million in revenues after ten years of operation. In contrast, the Walker Report in June 1996 artificially inflated the projected revenues by almost three hundred percent by changing key fact-based assumptions. This resulted in projected first full

year of operation revenues of over \$4.3 million, with revenues increasing to almost \$10 million after ten (10) years.

42. In about June 1995, the City and the Developers discussed the sale of the existing Garage from the Developers to the City for a purchase price of approximately \$4.8 million. The City was not interested in purchasing the Garage, and representatives of the City and the Developers began to discuss the issuance of tax-exempt bonds as a means to have third parties finance the renovation and expansion of the Garage.

43. The Developers caused the Foundation to be formed so it could be used as the vehicle for issuing the Bonds and using the Bond proceeds to purchase the renovated and expanded Garage from the Developers. Prudential was hired on behalf of the Foundation to serve as underwriter for any bonds issued by the Foundation.

44. In June 1995, the City, the Developers and Prudential calculated, based in part upon the 1995 Secret Walker Report, that a bond issue of approximately \$14 million would be required to provide for the purchase of the land underlying the Garage, the renovations to the existing Garage, and the construction of approximately 240 additional parking spaces.

45. On June 12, 1995, the City passed a Resolution which authorized the development of a proposal to acquire and develop the Garage through a bond issue not to exceed \$15 million.

46. On June 26, 1995, the City hired Walker to prepare a financial feasibility study.

B. The Bogus Walker Feasibility Study

47. In about June or July 1996, the City and the Developers determined that if the City was willing to pledge approximately \$1.6 million per year from its parking meter revenue fund in support of the proposed Bonds in order to support a much larger bond issue. However, the City and the Developers all knew the Garage, as renovated and expanded, together with the ground underneath the Garage, would still be worth less than \$10 million even if the City took steps to pledge parking meter revenues. About this time, the City, at the behest of the Developers, decided to use the a bogus and highly improper "investment value" valuation method to wrongfully and artificially inflate the purchase price of the Garage to \$26 million which would, in turn, generate a profit of approximately \$11 million, albeit fraudulent and wrongful, to the Developers. The Developers, acting through Robideaux, proceeded to supply Walker with new assumptions which Walker, the Developers and the City knew were both unrealistic and unreasonable.

48. The four principal assumptions supplied to Walker which drove the projected operating revenue figures contained in the Walker Report were: (1) the addition of a 24-screen multiplex AMC cinema to the RPS Mall and the resulting parking revenues that could be projected based upon the assumption that cinema patrons would pay full price for parking; (2) an average projected parking stay of three hours; (3) a \$1.50-per-hour parking rate paid by all mall patrons; and (4) the Garage would capture 85% of the available parking customers. Each of the above assumptions was known by Walker, the City, and the Developers to be unreasonable based upon the material existing facts alleged hereinbelow.

1. The Assumption That Cinema Parkers Would Pay Full Price Was Unrealistic on Its Face Given the Need for a Validation Program.

49. The Walker Report stated that it has not considered the impact of a parking validation program, implying that it had insufficient data available to it to determine the financial impact a parking validation program would have upon future revenues. Since Walker was issuing a "financial feasibility analysis" and had a duty to evaluate the reasonableness of the assumptions underlying its analysis, the Walker Report and the Official Statements, taken as a whole, created the false impression that Walker did not have enough information to evaluate the impact of a future parking validation program. In fact, such information

was readily available and known to Robideaux & Company, the City, the Developers and Walker. It was ignored because Robideaux & Company, Walker, the Developers and the City all knew that if a parking validation program similar to that currently in place was factored into the proformas, there was insufficient revenue to repay the debt.

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

51. In fact, Walker had evaluated various parking validation scenarios at the request of the Developers and Walker, the City and the Developers knew prior to the issuance of the Bonds that any validation program would significantly affect Garage revenues. The Developers, acting through Robideaux & Company, intentionally caused Walker to change certain critical assumptions with respect to reduced parking rates and a validation program for the specific purpose of falsely inflating the projected revenues and with the knowledge and intent that the reduced rates and validation program would be implemented after the Bonds were issued. As

a result, at the time the Bonds were issued, the Developers, Walker and the City knew there was little or no likelihood that the revenues projected in the Official Statements would be realized.

52. The City, the Developers and Walker also knew that potential AMC movie patrons would very likely not be willing to pay for parking when they had available to them free parking at other theaters in Spokane, including multiplex cinemas, at more convenient locations.

53. In view of the above, Walker, the City, the Developers and Robideaux & Company all knew that a subsidized parking validation program would be implemented soon after the Bonds were issued and that Cinema patrons would not pay \$1.50 per hour.

2. Assumption About Length of Stay Was Known to Be Unreasonable.

54. The Developers, the City and Walker knew that the historic average parking stay in the Garage prior to the issuance of the Bonds was approximately 1.2 hours or less. There was no legitimate reason to believe parkers would increase their length of stay after the RPS Mall was renovated. Nonetheless, the Walker Report projects that the average retail shopper at the RPS Mall would, on average, park for three hours, more than double the historic average length of stay, in the Garage. Accordingly, the City, the Developers, Robideaux & Company and Walker all knew, based upon historic parking statistics, that an average stay of three hours was

4. Assumption That Garage Would Capture 85% of Potential Parkers Was Known to Be Unreasonable.

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

C. Warnings to Defendants by Appraisers

57. The City real estate manager, Dennis Beringer, advised the City to seek market value appraisals of the Garage. However, at the urging of Elizabeth Cowles and R.W. Robideaux, acting on behalf of the Developers, the City instructed its appraisers to use the unusual and, in this case, highly misleading "investment value" method to value the Garage. Beringer objected to use of the "investment value" and advised the City that its use would substantially and unreasonably inflate the value of the Garage, thereby causing the Foundation to pay much more for the Garage than it was really worth, pay much more to the Developers under the ground lease than was reasonable and fair, and would jeopardize the Foundation's ability to service and pay off the Bonds (all of which are material facts that were

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never disclosed to prospective purchasers of the Bonds). The City, in furtherance of the conspiracy and artifice to defraud, ignored Beringer and retained John Evans and David Auble of Auble & Associates and Daniel E. Barrett to perform "investment value" appraisals of the Garage and land underlying the Garage. Barrett, Evans and Auble are all MAI certified appraisers.

58. Both appraisers advised the City and the Developers that it would be wrong to use "investment value" for an appraisal of this kind for the above-alleged reasons, but were nonetheless ordered by the City, at the behest of the Developers, to use it. Auble and Barrett both qualified their Reports by inserting disclaimers and other statements which made it clear the "investment value" approach was not really an appraisal at all and provided a number that had little, if anything, to do with the fair market value of the Garage. For example, Auble stated in the cover letter to its July 11, 1996, Report:

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

An appraisal based valuation model utilizing discounted cash flow analysis is used to estimate 'investment value' that is consistent with the City

investment objectives. We have relied upon the parking consultant's estimate of revenue, which has been modified slightly to reflect local and current conditions. The specified bond repayment rate was utilized as the discount rate in the DCF analysis.

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

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

59. The investment value Report prepared by Barrett contains similar limitations and qualifications:

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

This assignment is unusual in several aspects. . . . This appraisal report places significant weight upon a 'financial feasibility analysis' and condition report 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.

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

60. Both appraisers raised significant concerns about the reasonableness of the Walker Report. For example, the Auble Report concludes the Walker Report is not a financial feasibility study:

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

61. Auble evaluated the market for first-run movie screens in Spokane and concluded:

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

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

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

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

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

64. The Bonds could be issued at an artificially low interest rate because the Bonds would be federal tax-exempt instruments which were to receive an investment grade rating from a bond rating agency prior to issuance. The "investment value" used by Auble and Barrett was driven by the proposed and artificially low interest rate for the Bonds, together with

the wrongfully inflated cash flow projections in the Walker Report, to arrive at the "investment value" of the Garage. Thus, the low interest rate paid to purchasers of the Bonds was used by the City and the Developers as a mechanism for fraudulently inflating the value of the Garage.

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

D. The Sabey Warnings

66. Sabey Corporation ("Sabey") is a commercial real estate company which maintains its principal place of business in Seattle, Washington. Sabey was a major landowner, business operator and taxpayer in the City and, among other things, owned and operated a retail mall which was located in the City outside downtown Spokane. As a result, Sabey was competent to express opinions regarding the manner in which the proposed financing of the renovation and expansion of the RPS Mall and the proposed financing of the renovation and expansion of the Garage was being handled by the City and the Developers.

67. On December 10, 1996, Laurent D. Poole, the executive vice president of Sabey, provided the mayor and city council with two reports,

entitled "Analysis of: Economic Impact Study Downtown River Park Square Project" (the "Sabey RPS Mall Report") and "Analysis of: Financial Feasibility Analysis Condition Assessment for the River Park Square Parking Garage" (the "Sabey Garage Report"). The Sabey RPS Mall Report and the Sabey Garage Report were provided to the Developers and Robideaux & Company. The Sabey Garage Report was highly critical of the manner in which the City and the Developers were proceeding with the renovation and expansion of the Garage through the proposed issuance of the Bonds. The Sabey Garage Report was prepared based upon, among other things, a detailed review of the Auble and Barrett Reports.

68. The Bondholders did not know of the existence or contents of the Sabey Garage Report because those facts were concealed from them and were not disclosed in the Official Statements.

69. The following are among the fact-based criticisms of the Walker Report and the overall financing structure contained in the Sabey Garage Report:

- (a) The Sabey Garage Report focused upon, quoted and adopted the portions of the Auble Report which conclude the Walker Report was not a legitimate financial feasibility analysis. The Sabey Garage Report challenged Walker's failure to consider the negative impact on parking usage at the Garage when

parking rates are raised 50%, from \$1.00 to \$1.50 per hour as assumed in the Walker Report. The Sabey Garage Report noted that the Walker Report fails to address the claims of Spokane's downtown association to have "6,000 parking stalls in the downtown area" and to fund a "trolley shuttle to access inexpensive parking nearby."

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

(c) The Sabey Garage Report supported the concerns expressed in the Auble Report with information supplied to it by Act III theaters, the operator of all of Spokane's first-run movie screens:

[I]n 1995 Spokane had 28 first-run movie screens which took in \$6.4 million in revenue. The proposed

downtown, AMC 24-plex will nearly double the number of screens in the market. It is highly unlikely that demand for movie theaters will also double. The AMC 24-plex's success is questionable, hence the parking demand it will generate is also questionable.

(d) The Sabey Garage Report further challenged Walker's assumption that the average length of stay for retail RPS

Mall customers in the Garage would be three hours:

The average length of stay is estimated to increase to 3 hours for retail and 2.5 hours for cinema, two and a half times longer than the current 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).

(e) The Sabey Garage Report also quoted the portion of the Auble Report which questioned the reasonableness of Walker's length-of-stay assumption.

(f) The Sabey Garage Report compares the first-year projected garage revenues in the Walker Report of \$4,372,400 and the projected profits in the Walker Report of \$3,183,000 to the actual current revenues and profits of the Garage which were reported to be \$724,901 in revenues and \$298,526 in profits, attributed to the Auble Report at pages 72 and 74. The Sabey Garage Report puts the Walker projections into perspective: "Walker is suggesting first year parking

revenues will be 500% higher than current parking revenues and profits to soar 1,000% over current profits.”

(g) The Sabey Garage Report concludes:

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

No prudent investor, underwriter, financial institution, or person in a fiduciary position would advance funds on the ‘investment value’ of a real estate asset. The estimated ‘investment value,’ in excess of \$30 million, is an unsupportable number and vastly overstates the parking garage’s value. The price for the parking garage is not for fee simple ownership; the purchaser never owns the land. The lender is essentially being asked to: 1) underwrite an overstated best case scenario of future profits, and 2) accept all of the project’s risk. Should adequate revenue not materialize and the project fail, the lender’s only recourse would be to the 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.

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

70. All of the hereinabove alleged statements contained in the Sabey Garage Report were true and accurate statements of material existing fact which were actually known to the City, the Developers and Walker as of December 1996. They were not disclosed in the Official Statements or otherwise.

E. The Coopers & Lybrand Warnings to Defendants

71. The City retained the real estate advisory services group of the international accounting and consulting firm of Coopers & Lybrand to perform certain market and financial analyses regarding the proposed renovation and expansion of the Garage. Coopers & Lybrand issued a report on January 27, 1997. The Coopers & Lybrand Report criticized the reasonableness of the hereinabove-alleged assumptions utilized by Walker and determined that the Garage was not worth \$26 million. Coopers & Lybrand understood, in connection with preparing the Coopers & Lybrand Report, that the analyses and conclusions in the Barrett and Auble Reports were among the things used as a basis for determining

the acquisition price of the Garage by the Foundation, the anticipated bond financing structure, and the economic terms of the ground lease.

72. Coopers & Lybrand set forth the following in the Summary of Conclusions section of its report:

The Walker projections do not consider the financial implications of a parking validation program. It is clearly difficult at this time to assess what form of parking validation program, if any, will be in place upon completion of the proposed RPS project. However, if a parking validation program similar to the Easy Pass program in place today is available to customers in the year 2000, the validation program would need to collect significantly greater revenues from (i) retailers, (ii) property owners, or (iii) other available sources to be able to provide the RPS garage with the assumed parking rates and 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 likely expect that its patrons will not be required to pay for parking, so as to avoid creating a competitive advantage for competing screens. At the same time, it is unclear whether the cinema operator will contribute significantly to cover lost parking revenues from movie patrons.

73. Coopers & Lybrand made the following findings and observations in the Coopers & Lybrand Report:

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

- (b) Walker identified a historical length of stay for transient parkers of 1.9 hours which they state they received from the current management of the garage.
- (c) Other reports and discussions indicated an average length of stay of 1.2 and 1.5 hours and concluded that "if Walker's historical assumptions are overstated, this may lower the projected length of stay and materially affect the forecasted parking revenues from retail customers."
- (d) The hourly parking rate for weekdays and Saturdays is assumed to be \$1.50. The currently hourly rate for RPS parking is approximately \$1.00. Assuming the increase in the average stay for transient retail customers from 1.5 hours to 1.3 hours, the average cost to park will increase from \$1.50 ($\1.00×1.5 hours) to \$4.50 ($\1.50×3 hours).
- (e) The average parking cost to cinema patrons, according to the Walker Report, is \$3.75 per car on weekdays and Saturdays ($\$1.50 \times 2.5$ hours) and \$2.50 on Sundays ($\1.00×2.5 hours). Considering the anticipated competition of theater screens in the market, the cinema operator may likely expect that his patrons will not be required to pay for parking, so as to avoid creating a competitive advantage from competing screens. At

the same time, it is unclear whether the cinema operator will contribute significantly to cover lost parking revenues from movie patrons.

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

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

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

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

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

75. The appraisers were requested to determine the "investment value" of the Garage rather than the market value. The market value of the Garage would result in a substantially lower valuation.

76. The appraisers were provided the cash flow projections from the Walker Report and directed to use those cash flow estimates in their valuation analyses.

77. The appraisers were also instructed to use the City's projected bond rate as the applicable discount rate to determine the "investment value" of the Garage.

78. The appraisers questioned certain assumptions regarding revenue and/or expenses and performed sensitivity tests regarding certain assumptions, but still relied upon the operating projections included in the Walker Report in determining their values as requested by the City.

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

80. The Coopers & Lybrand Report states that, despite being provided with cash flows and discount rate parameters to be used in the determination of investment value of the Garage, both appraisers addressed

concerns with respect to the aggressiveness of certain operating assumptions used in the Walker Report.

81. All of the Defendants either reviewed the Coopers & Lybrand Report as herein alleged or knew of its existence and should have reviewed it and therefore knew or should have known the key assumptions used by Walker to generate the proforma cash flows were unreliable and unreasonable, knew or should have known use of the investment value method by the appraisers resulted in substantially inflated and unreasonable valuations for both the Garage and the land, and knew or should have known it was highly unlikely the Garage would achieve anywhere close to the projected cash flows, resulting in almost certain default on the Bonds.

82. After the Coopers & Lybrand Report was issued and provided to Prudential, the City, the Developers, the Preston law firm and Robideaux & Company, Walker was instructed by the Developers, with the consent of the City, to change its parking revenue assumptions because the seating capacity of the theater would be changed from 3,400 seats to 4,500 seats. This resulted in an increase in projected Garage revenues of almost 12% over the June 1996 portion of the Walker Report. Based upon the hereinabove-alleged material facts, there was no reason to believe

increasing the seating capacity for an already oversized theater would result in any meaningful increase in revenues.

83. The Defendants all had a duty to review the entire Auble and Barrett Reports based upon their reviews of the Coopers & Lybrand Report and to seek and obtain market value appraisals of the Garage before proceeding further with the issuance of the Bonds.

84. The Official Statements for the Bonds misrepresent the following material facts and fail to disclose the following material facts which needed to be disclosed in order to make the facts which were disclosed in the Official Statements not misleading:

85. The Official Statements fail to disclose: (i) the true content of the Coopers & Lybrand Report; (ii) the existence and content of the 1195 secret Walker Report; (iii) the existence and content of the Sabey Garage Report; and (iv) the content of the Auble and Barrett Reports.

86. The following statement appearing next to the "Sale of the Parking Facility" heading on page 7 of the Official Statements 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.

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

87. The following statement under the "Sources and Use of Funds" section on page 17 of the Official Statements is also misleading for the reasons set forth above:

Acquisition of Parking Facility	\$24,927,756.85
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88. The following statement under the "Commercial Project" heading on page 18 of the Official Statements is both false and misleading:

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

89. The following statement under the "Commercial Project" heading on page 18 of the Official Statements is misleading:

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

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

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

91. The entire section appearing under the heading "Feasibility Analysis" on page 20 of the Official Statements is both false and misleading. The statement that Walker prepared a "financial feasibility analysis (the 'Feasibility Analysis') included herein as Appendix B" is false because, as determined by Coopers & Lybrand, Auble, Barrett and Sabey Corporation, the Walker Report was not a legitimate financial feasibility analysis.

The above section of the Official Statements is misleading because it states "[t]he City engaged Walker to conduct the Feasibility Analysis, which was issued on June 14, 1996," but fails to disclose that the Developers had engaged Walker to prepare initial projections based upon the historical performance of the Garage as reflected in the 1995 Secret Walker Report which indicated the value of the Garage as renovated and expanded was less

than \$10 million, and the Garage as renovated and expanded could not be reasonably expected to generate anywhere close to the amount of revenue needed to service and repay over \$31 million in bond debt.

The statement “[a]t the City’s request, Robideaux engaged Walker to revise the Feasibility Analysis on April 22, 1998 and again on June 29, 1998” is misleading due to the failure to disclose Robideaux’s prior engagement of Walker and Ernst & Young on behalf of the Developers to prepare the 1995 Secret Walker Report.

This entire section of the Official Statements is also misleading due to the failure to disclose Walker was not independent because it received all of the key assumptions it would make in connection with the Walker Report from Robideaux on behalf of the Developers.

92. Table 1: “Projected Operating Revenues and Expenses, Debt Service Requirements and Debt Service Coverage” on page 21 of the Official Statements is misleading. The source of the Projected Operating Revenues column for the first ten years after the Bonds were issued is stated to be the Walker Report. The Projected Operating Revenues column of Table 1 is misleading because it fails to disclose that the cash flow projections contained in the Walker Report as reflected in the Projected Operating Revenues column of Table 1 were grossly inflated by Walker at the request

of the City and the Developers without any reasonable justification or basis in fact.

93. The entire section appearing under the heading "Other Risks" on page 25 of the Official Statements is false and misleading. This section states the City hired the accounting firm Coopers & Lybrand to perform an analysis of the Garage and that Coopers & Lybrand described four primary areas of concern in the Walker Report. The stated areas of concern are misleading because they are expressed in the form of "risks" rather than by disclosing the existing factual basis for the concerns. This section portrays Walker as a recognized expert in the area of parking garage operations and construction and states that Walker's cash flow analysis was developed using methodology established by the Urban Land Institute, thereby creating the false impression the Walker Report was reliable and there was no existing factual basis upon which Coopers & Lybrand or anyone else could challenge Walker's assumptions with respect to the stated areas of concern.

94. This same section of the Official Statements also states:

First, the Feasibility Analysis projects a rate of \$1.50 per hour combined with an anticipated stay per transient retail parking customer of 3.0 hours. This represents an increase from the current rate of approximately \$1.00 and a current average length of 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.

The above statement is false and misleading because:

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

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

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

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

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

95. This same section of the Official Statements also states:

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.

The above statement is both false and misleading because the statement that "the validation program currently in place is revenue neutral" is false and misleading because the current validation program and all prior validation programs were subsidized at the expense of the Garage. The statement that "the impact of any validation program between the Authority and the cinema operator is unknown" is likewise both false and misleading because there was good reason to believe many potential cinema patrons would refuse to pay for parking, and the cinema operator, AMC, would refuse to sign a lease that clearly required its patrons to pay any significant amount for parking. Due to the failure to report completely and

accurately the content of the hereinabove-quoted portions of the Coopers & Lybrand Report, the Sabey Garage Report and the Auble and Barrett Reports which pertain to parking validation programs.

96. The same section of the Official Statements further states:

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

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

F. The Role of the City and Its Agents and Instrumentalities in Conceiving and in Promoting the Bond Offering

97. Through actions taken by the Spokane Mayor and City Council between 1995 and 1997, the City aided in establishing the Foundation to acquire the Parking Garage, and actively approved and supported the Foundation's Bond offering to finance such acquisition.

98. In particular, on November 25, 1996, the Mayor and City Council unanimously adopted Resolution No. 96-144 which provided, among other things:

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

Section 1: Public Development Authority

The City Manager and Deputy City Manager, the City Attorney and Perkins Coie as the City's bond 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 any or all or (sic) its powers granted to it by Ordinance No. C-29241, adopted November 7, 1988.

Section 2: Spokane Downtown Foundation

The City Staff are hereby authorized and directed to meet with the Foundation and its counsel and to do all things necessary and appropriate in order for it to recommend action to the Council in conjunction with the acquisition of the Facility by the 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.

Section 3: Tax-Exempt Bond Rating

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

(Emphasis added).

99. Similarly, on January 13, 1997, the Mayor and City Council unanimously adopted Resolution No. 97-2 which provided, in pertinent part:

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

Section 1. Findings.

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

Section 2. Approval of the Facility.

The plan for acquiring the Facility is hereby 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 Foundation in accordance with Revenue Ruling 63-20 of the U.S. Department of Treasury (as compiled and supplemented by Revenue Procedure 82-26 of the U.S. Department of Treasury).

Section 3. Approval of the Foundation's Financing Plan.

For the purpose of complying with the requirements of Revenue Ruling 63-20 and Revenue Procedure 82-26 of the U.S. Department of Treasury and in accordance with the plan, *the Council hereby acknowledges and approves the Foundation's issuance of tax-exempt lease revenue bonds* (the "Bonds") maturing over a period of not to exceed 21 years to finance acquisition of the Facility. In no event shall the Bonds be issued in an amount greater than is necessary to pay a garage purchase price of \$26,000,000 plus costs of issuance and a

debt service reserve. The City agrees that when the Bonds are retired, *the City shall accept delivery of full legal and unencumbered title to the Facility* for no additional consideration.

Section 4. General Authorization.

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

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).

100. Two weeks later, on January 27, 1997, the City enacted the Ordinance. The Ordinance is a legally binding and enforceable obligation of the City. The Ordinance specifies multiple benefits to the City from participation in the acquisition and financing of the Parking Garage, and specifically acknowledges the Foundation "issuing tax-exempt bonds on behalf of the City." The key undertaking in the Ordinance is the City's pledge of and obligation to loan Parking Meter Revenue funds to insure that the Authority had the ability to fulfill its payment obligations under the leases discussed hereinafter. The primary, if not exclusive, purpose of this mandatory undertaking was to provide vital financial support for the financing and operation of the Garage. The unconditional obligations of the

City to issue loans pursuant to the Ordinance were falsely and misleadingly described in the Official Statements. The misrepresentations were highly material because the credit enhancement provided by the City was critical to obtaining the investment grade rating required to sell the Bonds. The Ordinance enhanced the credit of the Bonds by assuring prospective investors that substantial resources existed to fund the financial needs of the Garage, thereby assuring that principal and interest would be timely paid in accordance with the terms of the Bonds and the Indenture.

101. Under the Ordinance, the duty to effectuate the loans was delegated to the Spokane City Manager and City Attorney. In particular, the Ordinance provides:

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

* * *

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

102. The Ordinance went on to require, in § 7A, that the Spokane City Council adopt a resolution approving the issuance of the Bonds by the Foundation. The City Council had earlier adopted that resolution on January 13, 1997 (Resolution No. 97-2).

G. The Leases

103. The Bonds are payable from and secured by rental payments received by the Foundation from its lease of the Parking Garage to the Authority under a lease dated as of August 1, 1998 ("Garage Lease"). In particular, the Foundation leases the Parking Garage to the Authority. The Foundation also leases from Citizens Realty Company and River Park Square, L.L.C. (the project developer) the land on which the Garage is located pursuant to a Ground Lease ("Ground Lease"), and assigned this lease to the Authority.

104. Similarly, under the Ground Lease the Authority must pay to the project developer from revenues of the Garage monthly and annual ground rent payments ("Fixed Ground Rents"). The Authority must also pay from revenues of the Garage all costs of operating and maintaining the Garage ("Operating Expenses").

105. According to the Garage Lease (§ 5.C.), the Authority is required to charge and collect parking revenues together with net transfers from a rate stabilization account and City Loan Program in an amount not

less than the amount of fixed Ground Rent and Operating Expenses, plus 1.25 times the amount of the Fixed Facility Rent for that calendar year, after payment of Fixed Ground Rent and Operating Expenses. In turn, the Authority is required to pay to the Foundation monthly rental payments for the Garage in amounts sufficient to pay the principal and interest on the Bonds. It must do so on or before the 15th day of each month. The Foundation must deposit all revenue generated by the Garage into a Revenue Fund, immediately upon receipt.

106. Pursuant to both the Garage Lease (§ 5.C.) and the Ground Lease (§ 4.1), the Authority must apply revenues generated by the Garage in the following priority:

- First, Fixed Facility Rent, from which the Foundation must pay principal of and interest on the Bonds;
- Second, Fixed Ground Rent;
- Third, Operating Expenses;

* * *

- Sixth, "to repay any loans made by the City, if any, required by the (Authority) to pay Fixed Ground Rent or Operating Expenses."

107. The Foundation assigned its rights to receive payments from the Authority and all remaining rights and interest in the Garage Lease to Plaintiff as security for the payment of principal and premium, if any, and interest on the Bonds.

108. The Garage Lease and the Ground Lease contain numerous renewal options designed and intended to cover amortization of the Bonds. Upon payment in full of the Bonds, the Foundation is to transfer title to the Garage to the City, and under a separate ground lease, the City had the option to continue leasing the land under the Garage thereafter into the future.

109. Thus, at all material times from at least 1995 to the present, key elected and appointed City officials and their agents not only knew of all interrelated aspects of the River Park Square redevelopment project, including the Parking Garage, but also actively promoted and otherwise participated in the critical decisions that enabled the project to proceed, including the enactment of the Ordinance and the issuance and sale of the Bonds. Indeed, the Bonds could not have obtained an "investment grade" rating, and therefore could not have been sold and the project could not have proceeded, without the enactment of and the ability of investors to rely on the Ordinance and the professional opinions issued in connection therewith. The City always knew and publicly acknowledged this to be true, and knowingly and voluntarily made material representations of these facts. These were substantial contributing factors in the sale of the Bonds.

110. Numerous persons and entities purchased the Bonds. They did so in reliance on the Ordinance, representations made in two opinion letters

dated as of September 24, 1998, and written by Spokane City Attorney James C. Sloane and "special counsel" for the City of Spokane, Perkins Coie (collectively, the "Opinion Letters"), and on the statements contained in the Official Statements. The investors relied on both the preliminary and final form of the Opinion Letters and Official Statements. Such reliance was at all times reasonable and intended and expected by Defendants.

111. The Opinion Letters were prepared and issued at the request of the City. City Attorney Sloane and Perkins Coie each was the City's authorized agent and had the authority to make binding statements on behalf of the City concerning the issues addressed in the Opinion Letters. The City is legally responsible for all affirmative misrepresentations and omissions in the Opinion Letters.

112. The preliminary and final Opinion Letters and Official Statement were disseminated to prospective Bondholders, their agents, and the class of persons whom the City (and Perkins Coie) reasonably expected to receive these documents in connection with the sale of the Bonds. Moreover, the City and its authorized agents were aware and expected that these prospective investors would rely on the Opinion Letters and Official Statement (both preliminary and final forms) in their decisions to invest.

113. In the Opinion Letters the City Attorney and Perkins Coie represented: "The ... City Ordinance ha[s] been duly enacted by the City

Council and [is] in full force and effect ... and [is] the valid and legally binding obligation[] of the City, enforceable against the City in accordance with [its] respective terms” The City and its authorized agent, Perkins Coie, also represented in these Opinion Letters: “The enactment of ... the City Ordinance and the performance by the City of its obligations thereunder ... do not and will not result in a violation of any provision of, or in default under, the City’s Charter or any agreement or other instrument to which the City is a party or by which it or its properties are bound.” The Opinion Letters then cited specific provisions of the Official Statement as being accurate, correct and a complete disclosure of all material facts concerning the Garage project and the subject City Ordinance:

The statements contained 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,” “Sources of Payment and Security for the Bonds – City Pledge of Parking Meter Revenues” and “Project Participants – The City,” insofar as such statement purport to summarize certain provisions of the ... the City Ordinance or to describe the City are true, accurate and correct summaries or descriptions thereof in all material respects and do not omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

114. In the last paragraph of each Opinion Letter the City’s authorized agents stated: “We hereby consent to the references made to us in the Official Statement.”

115. Prudential prepared and disseminated the Official Statement in connection with its offer and sale of the Bonds. The relevant paragraphs of the Official Statement identified by the City and its City Attorney and special counsel in their Opinion Letters stated:

INTRODUCTION

* * *

Financing Structure

The following transactions are reflected in the flow chart on the previous page:

* * *

City Pledge of Parking Meter Revenues. The City, by the City Ordinance, has pledged to make loans to the Authority from the City's parking meter revenues if and to the extent necessary to enable the Authority to pay Fixed Ground Rent and Operating Expenses. The City's pledge is contingent on a deficiency of Authority revenues to make such payments, and any loans must be repaid from Authority revenues as described herein under "SOURCES OF PAYMENT AND SECURITY FOR THE BONDS – Flow of Funds." The City has pledged to maintain its parking meter rates at a level sufficient to produce each year an amount, together with other legally available money equal to the Fixed Ground Rent and Operating Expenses budgeted by the Authority for that year. The City generated approximately \$1.3 million of parking meter revenues in each of 1996 and 1997. City parking meter revenues are not pledged to and may not be applied to pay Fixed Facility Rent or otherwise to pay debt service on the Bonds. (p. 8)

* * *

SOURCES OF PAYMENT AND SECURITY FOR THE BONDS

* * *

City Pledge of Parking Meter Revenues

The City by the City Ordinance has created and established its Parking Meter Revenue Fund, into which fund that City has pledged to deposit all income, receipts and revenues, except revenue derived from the enforcement of City parking laws, received by the City through its ownership and operation of its system of parking meters ("Parking Meter Revenues"). Pursuant to the City Ordinance, the City has pledged to loan money available in the Parking Meter Revenue Fund to the Authority to the extent necessary to enable the Authority to pay Fixed Ground Rent and Operating Expenses. The City has further pledged in the City Ordinance to (i) maintain the number of parking meters operated by the City at approximately the number that existed as of the date of the City Ordinance, (ii) charge market parking meter rates, and (iii) maintain parking meter rates at a level required to produce in each year Parking Meter Revenues in an amount sufficient, together with other money legally available in or to be loaned to the Parking Meter Revenue Fund, to pay Fixed Ground Rent and Operating Expenses budgeted for that year. Money in the Parking Meter Revenue Fund also may be used to pay the costs of maintaining public streets and roadways within the City; however, the City's pledge to make loans to the Authority is a first lien and charge on the fund. The City generated approximately \$1.3 million of parking revenues in each of 1996 and 1997. The City has not pledged its full faith, credit and resources, or money in the City's General Fund to the payment of Fixed Ground Rent or Operating Expenses, nor are any of the City's assets or funds pledged to the payment of principal or interest on the Bonds. (p. 16)

* * *

Operating Expenses. The Operating Expenses set forth in the Feasibility Analysis are an estimate. Actual Operating Expenses may vary materially from those projected in the Feasibility Analysis. The Authority is required to apply revenues generated by the Parking Facility first to Fixed Facility Rent, from which the Foundation will pay principal of and interest on the Bonds, before paying Fixed Ground Rent or Operating Expenses. If revenues generated by the Parking Facility are not sufficient to pay Fixed Ground Rent or Operating Expenses, the City has pledged to loan its Parking

Meter Revenues in an amount sufficient to make those payments. If the City is unable to make such a loan, the Authority may not be able to maintain the Parking Facility as required under the Lease Agreement. (pp. 24-25)

[Emphasis in original.]

116. The Official Statement was reviewed and accepted by the City and the Foundation. In fact, on September 9, 1998, the City certified in writing that the information contained in the Preliminary Official Statement, as it related to its role in the bond offering (including specifically the sections entitled "City Pledge of Parking Meter Revenues"), was "final." This meant that prospective purchasers had a right to rely on such information. Moreover, on September 24, 1998, the Spokane Deputy City

117. The City Manager certified in writing that "the information contained in the Official Statement ... relating to the City ... and parking meter revenues is true and correct in all material respects and does not contain any untrue or incorrect statement of material fact or omit to state a material fact necessary in order to make the statements made ... in light of the circumstances under which they were made, not misleading." On the same date, the Authority wrote to the Foundation that the Authority "hereby agrees to enforce the obligations of the City pursuant to (the) Ordinance ... to make loans to the (Authority) from the City's parking meter revenues ..."

118. The City arranged for and directed the preparation, issuance and dissemination of the Opinion Letters and Feasibility Study when the City was keenly interested in ensuring that investors would be willing to purchase the Bonds necessary to finance the Garage project. Moreover, the Bondholders in particular and the general investment community relied upon the validity, enforceability, and mandatory obligation of the Ordinance in deciding to invest in the Bonds. Neither the Ordinance nor any other document disclosed that any additional actions or documents were necessary to make the various duties and obligations of the City and its officials under the Ordinance valid, enforceable, and mandatory.

H. The Misrepresentations About the Ordinance

119. The Official Statements misrepresented the unconditional nature of the City's obligations to provide loans as a credit enhancement to the Garage pursuant to the Ordinance, which it knew would be triggered given the completely unrealistic nature of the 1996 Walker Feasibility Study.

120. The validity, enforceability and mandatory obligation of the City under the Ordinance were intentionally misrepresented in the Official Statement and in the City Attorney's and Special Counsel's Opinion Letters. As discussed below, after the sale of the Bonds, the City refused to loan parking meter funds to the Authority, claiming that it had no obligation to

do so. Accordingly, the credit enhancement that the Ordinance was represented to provide has been rendered illusory. The Bondholders therefore did not purchase Bonds of the quality that were represented to them in the Official Statement and Opinion Letters.

121. Moreover, despite the Ordinance, the Official Statement, and the City Attorney's and special counsel's Opinion Letters, the City secretly never intended to perform its obligations under the Ordinance. The City's intent never to perform those obligations is evidenced by its conduct following the sale of the bonds. For example, the City denied and repudiated its obligations under the Ordinance in opposing a Writ of Mandamus entered against City Manager Henry Miggins and City Attorney James Sloane on May 24, 2000, by the Spokane County Superior Court in *River Park Square, L.L.C., et al v. Miggins, et al*, Cause No. 00202777-4, and in the City's subsequent appeal of the Mandamus Writ to Washington State Supreme Court, Cause No. 69769-8 ("appeal"). The City represented to both the Spokane Superior Court and the Washington Supreme Court that it was the real party in interest.

122. In opposing issuance of the Writ by the Superior Court, the City (as the claimed real party in interest) judicially admitted the following in its Answer to Alternative Writ of Mandamus:

- The City Manager and City Attorney may not effectuate the City's loan to the Authority because "[t]hey have not been

authorized to do so by an appropriation ordinance or order of the City Council[.]”

- The City Manager and City Attorney may not effectuate the City’s loan to the Authority because “[t]here is no loan agreement approved by the City Council pursuant to which the requested ‘advances’ could be made[.]”
- The City Council may reject loan requests by the Authority.
- The City Manager and City Attorney have discretion not to approve loans to the Authority.
- Any loan under the Ordinance to the Authority would be a “gift” in violation of Washington law.
- No “legally enforceable loan agreements between the City and the Authority” can be proven to require a loan under the Ordinance.
- “Even if the existence of an enforceable loan agreement between the City and the Authority were established, the City would be entitled to raise any number of defenses to an action to enforce that agreement.”

123. Likewise, in its appeal of the Mandamus Writ, the City (as the claimed real party in interest) made the following assertions in its opening brief to the Washington Supreme Court:

- The City officials charged with loaning the City’s money to the Authority are prohibited from doing so unless and until the City Council expressly votes to authorize them to loan the money by separate City Ordinance.
- “[U]nder the Spokane City Charter, Spokane City Ordinance C 31823 is [not] an appropriations ordinance[.]”
- “[I]n the absence of an appropriations ordinance or council order appropriating specific money from a special fund, the Spokane City Manager and Spokane City Attorney have [no] authority to disburse public funds [under the Ordinance.]”

- “[A] transfer of funds [under the Ordinance] that all parties know cannot be repaid is [not] a loan” and therefore the subject Ordinance cannot be enforced against the City.
- The agreements that were identified in and contemplated to be entered into after passage of the Ordinance do not satisfy Section 38 of the Spokane City Charter[.]”
- Loaning the money contemplated in the Ordinance to the Authority has the effect of illegally converting the Authority into a financing conduit for the transfer of public funds to a private developer.
- The Ordinance does not contain a loan obligation, but rather merely authorizes City officials to pursue a future loan agreement that would then be submitted to the City Council for approval.
- There is no valid and enforceable loan obligation under the Ordinance until such time as there is a fully negotiated document that sets forth the essential terms of the anticipate loan, such as the repayment schedule, the interest to be charged, terms of default, security for the loan, etc.
- The City Council may at its discretion direct the City officials not to loan money under the Ordinance to the Authority, and the City officials must follow the Council’s direction.
- If an enforceable loan obligation between the City and the Authority were established under the Ordinance, the City still would be entitled to raise a number of defenses to any action to enforce that obligation.

124. Most notably, nowhere within City Attorney Sloane’s and special counsel’s Opinion Letters (or within the numerous Official Statement paragraphs specifically referenced in those letters) is there any mention of the City’s true intent or the myriad of legal and factual hurdles that the City now claims to exist to make unenforceable the Ordinance’s

loan provision. Indeed, the Opinion Letters and the Official Statement omit any mention of the facts that the City could take the position that it had discretion whether to loan money under the Ordinance, thus creating an option rather than an obligation; that the Ordinance was subject to later challenge or repudiation by the very entity which enacted it; and that no investor could rely on the Ordinance as an integral component of the overall financial structure of the Parking Garage (and hence the River Park Square project itself) and the economic viability of the Bond issue. Had such risks been disclosed to the Bondholders, they never would have purchased the Bonds. As a result, the project would have failed before it even got started.

125. The investment rating on the Bonds has been downgraded at least twice in the relatively short time since their issuance, and the Bonds have accordingly greatly depreciated in value, all of which has been directly and proximately caused by the actions of Defendants described above.

I. Other Material Misrepresentations in the Official Statements

126. The Official Statements for the Bonds misrepresent the following material facts and fail to disclose the following material facts which needed to be disclosed in order to make the facts which were disclosed in the Official Statements not misleading:

(a) The Official Statements fail to disclose: (i) the true content of the Coopers & Lybrand Report; (ii) the existence and content of the 1995

Secret Walker Report; (iii) the existence and content of the Sabey Garage Report; (iv) the existence and content of the Auble and Barrett Reports; and (v) the true nature of the City's obligation to provide a credit enhancement pursuant to the Ordinance.

(b) The following statement appearing next to the "Sale of the Parking Facility" heading on page 7 of the Official Statements 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.

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

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

Acquisition of Parking Facility	\$24,927,756.85
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(d) The following statement under the "Commercial Project" heading on page 18 of the Official Statements is both false and misleading:

\$21.7 million Developer equity (including land)

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

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

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

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

(f) The entire section under the heading "Public Facilities Parking Demand" on pages 19-20 of the Official Statements is misleading because it creates the false impression that the demand created by having at least five public facilities, including the RPS Mall, located within two blocks of the Garage created a demand for parking which exceeded current parking supply by 1,000

spaces without disclosing the hereinabove-alleged material facts.

(g) The entire section appearing under the heading "Feasibility Analysis" on page 20 of the Official Statements is both false and misleading:

(i) The statement that Walker prepared a "financial feasibility analysis (the 'Feasibility Analysis') included herein as Appendix B" is false because, as determined by Coopers & Lybrand, the report prepared by Walker was not a financial feasibility analysis.

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

(iii) The statement that "[a]t the City's request, Robideaux engaged Walker to revise the Feasibility Analysis on April 22,

1998 and again on June 29, 1998” is misleading due to the failure to disclose Robideaux’s prior engagement of Walker on behalf of the Developers to prepare the 1995 Secret Walker Report.

(iv) This entire section of the Official Statements is also misleading due to the failure to disclose that Walker was not independent because it received all of the key assumptions it would make in connection with the Walker Report from Robideaux on behalf of the Developers.

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

(i) The entire section appearing under the heading “Other Risks” on page 25 of the Official Statements is misleading:

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

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

(iii) This section is misleading because it fails to disclose the actual fact-based substance of Coopers & Lybrand's concerns as stated in its report. The hereinabove-quoted portions of the Coopers & Lybrand report were all material existing facts which should have been disclosed in the Official Statements.

(iv) The above section is further misleading due to the failure to disclose all of the hereinabove alleged concerns raised by the appraisers in the Auble and Barrett Reports.

- (j) The above section is further misleading due to the failure to disclose all of the hereinabove alleged facts stated in the Sabey Garage Report.

127. The following false and misleading statements regarding use of the investment value method to establish the purchase price of the Garage were made at page 25 of the Official Statements:

Fourth, no independent appraisal of the market value of the land on which the Parking Facility is located has been conducted.

....

The purchase price of the Parking Facility of \$26 million is the result of negotiations involving the Foundation, the City and the Developer. The 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. It is not certain that the amount realized upon any sale of the leasehold interest in the Parking Facility would be sufficient to redeem all of the then-outstanding principal amount of the Bonds.

The above statement regarding the lack of an independent appraisal of the market value of the land is misleading because both Auble and Barrett state in their Reports that use of the investment value method would result in an inflated and unrealistic value for the land underneath the Garage. This statement is also misleading due to the failures to disclose the criticisms of using the investment value method in the Auble and Barrett Reports, the Coopers & Lybrand Report and the Sabey Garage Report. The statement

that the purchase price is based primarily on two MAI appraisals commissioned by the City is both false and misleading. The statement is false because the Auble and Barrett Reports are not MAI appraisals. The Auble and Barrett Reports are, in fact, intellectual exercises calculated to derive an artificially inflated value for the Garage. This statement is misleading because it falsely indicates that the \$26 million purchase price is fair and reasonable because it is backed up by not one, but two, MAI appraisals. The above statements are misleading because they fail to disclose that the "investment value" set forth in the appraisals was derived based upon the investment criteria of the City and the Developers which would result in an highly-inflated and unrealistic value for the Garage rather than investment value criteria which were fair, reasonable and calculated to arrive at a fair value for the Garage. The statement that "it is not certain the amount realized upon the sale of the leasehold interest in the Parking Facility would be sufficient to redeem all of the then-outstanding principal amount of the Bonds" is misleading due to the failure to disclose all of the herein alleged material facts set forth in the Auble Report, the Barrett Report, the Coopers & Lybrand Report and the Sabey Garage Report which express very serious and legitimate fact-based concerns that the Garage was worth nowhere near \$26 million.

128. The Walker Report, Appendix B to the Official Statements, is both false and misleading for the following reasons:

(a) The statement that the Walker Report, Appendix B to the Official Statements, is a "feasibility analysis" is false because the Walker Report is not, in fact, a financial feasibility analysis.

(b) Identifying the Walker Report as a financial feasibility analysis indicates that it was prepared independently, that Walker evaluated and tested the reasonableness of the assumptions which underlie the report and that Walker made full and fair disclosure in its report of all material facts pertaining to the reasonableness of the assumptions and its projections. In fact, Walker, at the behest of the City, and the Developers, with the knowledge and consent of the other Defendants, knew its report was far from independent and was, in fact, tailored by Walker to meet the express desires and needs of the City and the Developers.

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

(d) The Walker Report is misleading due to the failure to disclose that Walker had no reasonable factual basis for assuming the

garage could charge the stated rates on evenings and weekends to cinema patrons.

(e) The Walker Report is misleading due to the failure to disclose the terms and conditions of the existing Easy Pay Validation Program which was not revenue neutral and, if applied to the renovated and expanded Garage after the Bonds were issued, would serve to substantially reduce revenues because the various retailers in downtown Spokane who participated in the Easy Pay program did not fully reimburse the Garage for the total cost of parking, but rather reimbursed the garage for a fraction of the total parking charges that would otherwise be collected by the garage directly from the customer.

(f) The Walker Report is misleading because it fails to disclose that all of the major competition to the Garage in downtown Spokane participated in the Easy Pay program and that the Garage would not be able to compete, particularly with respect to cinema customers, if it did not participate in the Easy Pay program or another parking validation program which would substantially reduce the revenues generated by the Garage.

(g) The Walker Report is misleading because it fails to disclose that Walker had no reasonable fact-based reason for believing that retail shopping patrons would spend, on average, three hours parked in the

Garage and that cinema patrons would spend an average of 2.8 hours parked in the garage, and that the retail parking figures substantially exceeded the historic length of stay of parking garage customers.

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

129. The Walker Report is misleading due to the failure to disclose the existence and the content of the 1995 Secret Walker Report. The Walker Report only utilized the assumptions and methodology reflected throughout the Walker Report after it pointedly did not utilize the more reasonable assumptions and methodology in the 1995 Secret Walker Report, which indicated the Garage was worth less than \$10 million and that the revenues generated by the Garage could support nowhere near \$30 million in debt.

130. Each of the Defendants substantially participated in making factual representations to the Bondholders in the Official Statements and, as a result, owed Bondholders a duty to make full and fair disclosure of all

material facts of which they were aware or reasonably should have been aware of under the circumstances alleged herein.

131. The Bondholders read and reasonably relied upon the Official Statements, specifically including, but not limited to, those portions of the Official Statements and appendices attached thereto which address the hereinabove-alleged matters.

132. The Bondholders did not know of the truth with regard to the hereinabove-alleged matters and would not have purchased the Bonds had they known the truth.

133. Prior to issuance of the Bonds, the rating agency Standard & Poors stated it would give the Bonds a BBB- investment grade rating. The rating was based in large part upon approval of the parking meter revenue Ordinance by the City and caused potential bond purchasers to believe the Bonds were, in fact, investment grade.

J. Events Following Sale of the Bonds

134. The Bonds were issued with the understanding that renovation of the RPS Mall, which was expected to attract the vast majority of customers parking in the Garage, was to be conducted in two phases and the subject tenant space was not expected to be fully occupied until late in the year 2000 at the earliest. The Garage was to be renovated and expanded in the first phase along with a portion of the RPS Mall. The remainder of the

RPS Mall was to be renovated in the second phase. As a result, parking revenues were expected to be reduced until construction was completed and all or substantially all the tenant space was occupied. The Walker Report accounts for the phasing of the project and projects reduced revenues for the project during 1999.

135. The actual process of completing renovations to the RPS Mall took substantially longer than anticipated and, to some extent, the renovations are still being made. These construction delays made it reasonably appear that reduced Garage revenues were caused by the construction delays. The construction delays served to cover up the long-term problems the Garage would encounter generating revenues as a result of the hereinabove-alleged fraudulent scheme.

136. After the Bonds were issued in September 1998, the bond proceeds were placed in escrow for the benefit of the Bondholders and were subject to special mandatory redemption which would result in repayment of the bond proceeds to the Bondholders if the Garage was, for some reason, not completely renovated or could not be transferred to the Foundation. The City, Prudential, the Developers, and the Preston law firm proceeded with the transfer of ownership of the Garage from the Developers to the Foundation in about September 1999. However, before that transfer could be completed, the owners of AMC theaters objected to their cinema patrons

being required to pay for parking and stated in writings which were circulated to the Defendants that AMC either would not occupy the theater or would enter into more appropriate parking arrangements with the operators of a competing parking garage. To mollify AMC theaters, an agreement was reached whereby parking rates for the Garage would be reduced in the evenings and on weekends to, in effect, subsidize AMC theaters at the expense of the Garage. The Defendants knew that this agreement would seriously compromise the ability of the Garage to generate the revenues needed to service and pay off the Bonds. Although all of this was known to the Defendants, none of it was disclosed to the Bondholders.

137. The Developers, the Foundation (which was still controlled by the Developers), the City, and the Authority (which was still controlled by the City) all wished to keep secret the fact that significant changes were being made to the parking rates which would have a serious negative impact on the future revenues of the Garage. One or more of the Developers agreed to contribute funds to partially compensate for the loss in revenues to the Garage out of fear that, if an agreement could not quickly be reached with AMC, the dispute would receive wide public dissemination, resulting in the inability of the Developers to complete the sale of the Garage. If the sale was not completed, the Bonds would be subject to mandatory redemption

and the Developers would be deprived of their huge, albeit fraudulent, profit.

138. The actual process of completing renovations to the RPS Mall took substantially longer than anticipated and, to some extent, the renovations are still being made. During late 1999 and early 2000, the construction delays made it reasonably appear that reduced Garage revenues were caused by the construction delays. The January 21, 2000, edition of *The Spokesmen Review*, a Spokane newspaper owned by Cowles Publishing, attributed the lower-than-expected revenues to the RPS Mall being "only 65% complete" and stated that "parking numbers are expected to increase after the mall is finished this year." Standard & Poors downgraded the Bonds on about February 1, 2000, from BBB- to BB-. The Standard & Poors ratings report characterized the projections in the Walker Report as "exceedingly optimistic," but did not attribute the downgrade to fraud. The reduced Garage revenues were attributed to changes in the validation program, a two-month delay in completing renovations to the Garage, and operational problems at the Garage. The Standard & Poors report stated that approximately 100,000 square feet of the RPS Mall was still being renovated and was not expected to be complete until at least late 2000 and that approximately 40,000 square feet of renovated tenant space was unoccupied. Thus, as of February, the RPS Mall was about 25% vacant

and the continued renovation activity was expected to cut into Garage revenue for the remainder of 2000. The reduced revenues were not attributed to fraud or even negligence by Walker. The true reasons for the reduced revenues were still being concealed from the public.

139. The Plaintiffs reasonably attributed the downgrading to construction delays and operational problems. Prudential promptly contacted the Bondholders upon publication of the Standard & Poors downgrading and advised the Bondholders that the problem was not serious, that Prudential had the situation under control and would proceed with a refunding or restructuring of the Bonds which would solve any problems caused by lower-than-expected Garage revenues. Prudential knew that it had no basis for believing the Bonds could be restructured or refunded, but did not disclose that to the Bondholders. As a result, the Bondholders continued to rely upon Prudential for accurate information and continued to be deceived.

140. By early 2000, the City had a new mayor and two new city council members who were opposed to the Ordinance and to the issuance of the Bonds.

141. Standard & Poors downgraded the Bonds a second time on April 20, 2000, from BB- to CCC. The downgrading was announced in late April 2000.

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

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

144. The Bondholders reasonably believed the City's refusal to loan parking meter revenue funds pursuant to the Ordinance was the result of the City having a new mayor and two new city council members who were opposed to the Project from the outset and had no reasonable grounds to believe, at that time, that the City's refusal was part of a fraudulent scheme pursuant to which the City approved the Ordinance without having any intention of ever loaning parking meter revenue funds in the event Garage revenues fell short.

145. In about late May or early June 2000, *Camus* magazine and the local KXLY TV station began printing and airing a series of investigative

news reports which, for the first time, uncovered a substantial amount of the fraud addressed in this Complaint. A number of web sites were also established providing information regarding various aspects of the fraudulent scheme.

146. The Bondholders learned of the fraud through references to the web sites, the *Camus* magazine reports and the KXLY news reports.

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

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

149. At present, the revenues generated by the Garage fall far short of projections outset as a direct and proximate result of the grossly inflated value of the Garage. At present, the Foundation is totally incapable of paying any significant amount of debt service on the Bonds.

150. The City filed its Second Amended Complaint in an action styled *City of Spokane v. Walker Parking Consultants/Engineers, Inc., et al.*, Superior Court of the State of Washington for the County of Spokane, Case No. 00-204173-4, in early February 2001. The Second Amended Complaint attributes the inability of the Garage to generate the projected revenues to the hereinabove-alleged fraud.

151. 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.

152. As a direct and proximate result of the wrongful conduct alleged herein, the Bondholders have suffered damages in an amount which is presently unknown, but which is estimated to consist of a substantial portion of the stated principal amount of the Bonds purchased by each Bondholder, plus interest.

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)

153. Plaintiff repeats the allegations of all preceding paragraphs of this Complaint and incorporates the same by reference.

154. All of the Defendants, in connection with the purchases by the Bondholders 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 the Bondholders 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 the Bondholders and engaged in acts, practices and a course of business which operated as a fraud or deceit upon bond purchasers, 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.

155. 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)] due to their ability to appoint the board of directors of the Foundation.

156. 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)] due to 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.

157. The Bondholders read and reasonably relied upon the Official Statements and appendices thereto which were prepared by the Defendants in connection with the offering of the Bonds.

158. 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 the Bondholders to purchase the Bonds, something none of the Bondholders would otherwise have done.

159. Neither Plaintiff nor the Bondholders could have reasonably known of their claims against any of the Defendants until May 2000, at the earliest.

160. All of the Defendants conspired to fraudulently conceal their fraud from the Trustee and Bondholders by virtue of all of the hereinabove-

alleged conduct attributable to the Defendants and events which occurred in connection with and subsequent to the purchase of the Bonds. As a result of such fraudulent concealment, Trustee and the Bondholders, in the exercise of reasonable diligence, did not discover their claims against the Defendants, and each of them, until May 2000, at the earliest. This claim was brought on behalf of those Bondholders not presently asserting claims against Defendants or who are otherwise unable, for any reason, to assert such claims within one year after the discovery of the facts giving rise to this cause of action and within three years of the date of the Bondholders who initially purchased the Bonds.

161. As a direct and proximate result of the hereinabove-alleged violations of Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 promulgated thereunder, Bondholders have suffered damages.

162. As a direct and proximate result of the hereinabove-alleged violations of Section 20(a) of the Securities Exchange Act of 1934, the Bondholders have suffered damages.

SECOND CLAIM FOR RELIEF
(The Securities Act of Washington,
Wash. Rev. Code 21.20.430(1); 21.20.430(3); 21.20.430(7))
(All Defendants Except the City)

163. Plaintiff repeats the allegations of all preceding paragraphs of this Complaint and incorporates the same by reference.

164. This claim is asserted against all Defendants, except the City. Plaintiff intends to amend its Complaint following the expiration of the notice period contained in Wash. Rev. Code 4.96 and 35.1 and Spokane Municipal Code 4.02.030 to include the City.

165. Defendant Prudential sold the Bonds to the Bondholders in violation of Wash. Rev. Code 21.20.010. Defendant the Foundation, through the Official Statements issued on its behalf, offered the Bonds to each of the Bondholders in violation of Wash. Rev. Code 21.20.010. Defendants the Foster law firm, the Preston law firm, Walker, Lincoln, Citizens, RPS, RPS II, and the Authority are deemed to have offered and sold the Bonds to the Bondholders due to their hereinabove-alleged substantial participation in the bond underwriting process.

166. All of the Defendants, in connection with the purchases by the Bondholders, directly and indirectly, singly and in concert, negligently, recklessly, knowingly or with an intention to defraud, engaged in, offered for sale and sold to the Bondholders, 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 defraud the Bondholders and engaged in acts,

practices and a course of business which operated as a fraud or deceit upon each of the Bondholders, all in violation of Wash. Rev. Code § 21.20.010(1), (2) and (3).

167. Defendants Lincoln, Citizens, RPS and RPS II are persons who directly or indirectly controlled the Foundation within the meaning of the Washington Securities Act. The Foundation is liable as a principal for violation of Wash. Rev. Code § 21.20.430(1).

168. Defendant Prudential is a broker-dealer within the meaning of Wash. Rev. Code § 21.20.430(3). Defendants Walker, the Foster law firm, the Preston law firm, Citizens, Lincoln, RPS, RPS II, RWR Management, and the Authority are persons who are exempt under the provisions of Wash. Rev. Code § 21.20.040 who materially aided in the hereinabove-alleged transaction.

169. Any Defendant that falls within the scope of Wash. Rev. Code § 21.20.430(7) acted with scienter within the meaning of Wash. Rev. Code § 21.20.430(7). Defendant Prudential is an underwriter within the meaning of Wash. Rev. Code § 21.20.430(7). Defendant the Preston law firm is a bond counsel within the meaning of Wash. Rev. Code § 21.20.430(7).

170. Each of the Defendants, by engaging in the hereinabove-alleged conduct, materially aided the Foundation in connection with the underwriting, issuance, offer and sale of the Bonds to Bondholders when,

having knowledge that the Official Statements, including the Walker Report, were false and misleading as hereinabove alleged, nonetheless failed to take action to ensure that full and fair disclosure of all material facts was made to prospective bond purchasers in the Official Statements including the Walker Report.

171. The following Defendants materially aided the Foundation in connection with the underwriting, issuance, offer and sale of the Bonds to the Bondholders:

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

(b) Walker issued the Walker Report with all of the hereinabove-alleged false and misleading statements.

(c) The City was instrumental in obtaining an investment grade rating for the bonds by purporting to provide a credit enhancement through the Ordinance and by directing its agents to issue false and misleading statements.

(d) The Foster law firm issued its opinion in connection with the issuance of the Bonds and served in the capacity of underwriter's counsel.

(e) 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, directed the City to cause Auble and Barrett to utilize the highly improper investment value method in connection with preparing the Auble and Barrett Reports, and took an active role in minimizing, deflecting and shutting down all of the legitimate challenges which were made to the Project, including, specifically, the challenges set forth in the Sabey Garage Report and Coopers and Lybrand Report.

(f) The Authority, with full knowledge of the hereinabove-alleged fraudulent scheme, agreed to and did enter 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.

(g) The Preston law firm served as bond counsel and issued the bond opinion with knowledge of the hereinabove-alleged false and misleading statements.

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

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

172. Plaintiff repeats the allegations of all preceding paragraphs of this Complaint and incorporate the same by reference.

173. This claim is asserted against all Defendants, except the City. Plaintiff intends to amend its Complaint following the expiration of the notice period contained in Wash. Rev. Code 4.96 and 35.1 and Spokane Municipal Code 4.02.030 to include the City.

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

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

176. The misrepresentations and omissions, as hereinabove alleged, were made with the intent to induce the Bondholders to purchase the Bonds.

177. Each of the Bondholders justifiably relied upon the representations contained in the Official Statements and, as a direct and proximate result, has suffered substantial damages.

178. As a direct and proximate result of Defendants' fraud or aiding and abetting fraud, the Bondholders have suffered damages.

FOURTH CLAIM FOR RELIEF
(Common Law Negligent Misrepresentation)
(All Defendants Except the City)

179. Plaintiff repeats its allegations of all preceding paragraphs of this Complaint and incorporates the same by reference.

180. This claim is asserted against all Defendants, except the City. Plaintiff intends to amend its Complaint following the expiration of the notice period contained in Wash. Rev. Code 4.96 and 35.1 and Spokane Municipal Code 4.02.030 to include the City.

181. All Defendants had a duty to disclose or cause to be disclosed to potential purchasers of the Bonds the material facts set forth hereinabove. All Defendants had a duty to ensure that the representations made in the Official Statements for the Bonds were accurate.

182. Defendants breached their duty to the Bondholders by negligently making the misrepresentations of and failures to disclose material facts as set forth hereinabove.

183. As a direct and proximate result of the Defendants' negligent misrepresentations, each of the Bondholders has suffered damages.

FIFTH CLAIM FOR RELIEF
(Breach of Contract)
(City of Spokane and the Authority)

155. Plaintiff repeats the allegations of all preceding paragraphs of this Complaint and incorporate the same by reference.

156. This claim is specifically brought as an alternative to and supplements the previous claims for relief.

157. The enactment of the Ordinance by the City created a binding contractual obligation with the Bondholders, consisting of the mandatory commitment by the City to loan funds from its Parking Meter Fund to pay River Park Square Parking Garage operating expenses and Ground Lease rent.

158. The City's refusal to loan money under the Ordinance breached the aforesaid contract, and Plaintiff on behalf of the Bondholders is entitled to recover reasonable damages caused by such breach.

159. In addition, the ongoing refusal by the City to loan Parking Meter Funds under the Ordinance constitutes an ongoing breach of contract which can only be remedied by a decree of specific performance requiring the City to honor its mandatory commitment under the Ordinance in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, having asserted claims for relief, now prays for judgment against Defendants, and each of them, jointly and severally, as follows:

A. Declaring and adjudging that Defendants are liable under §§ 10(b) and 20(a) of the Exchange Act and SEC Rule 10b-5 by reason of the misconduct alleged herein;

B. Declaring and adjudging that Defendants are liable under the Washington Securities Act and common law by reason of the misconduct alleged herein;

C. Awarding rescission for those Bondholders that still own the Subject Bonds;

D. Alternatively, declaring and adjudging that Defendants City of Spokane, Spokane Downtown Foundation, and Spokane Parking Public Development Authority have breached a contract and are accordingly liable therefor in damages, and ordering said Defendants specifically to perform said contract in the future;

E. Awarding damages as may be proven at trial;

F. Awarding pre-judgment interest as provided for under RCW 21.20.430 and other applicable law;

G. Awarding attorney fees as provided for under RCW 21.20.430 and other applicable law; and

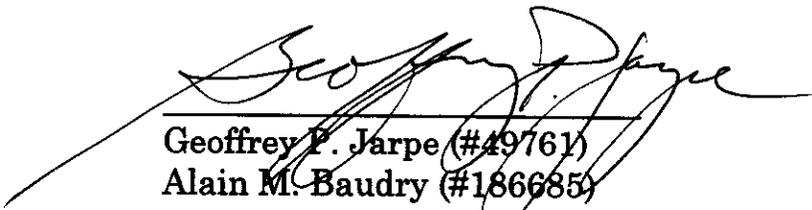
H. Imposing a constructive trust on the City of Spokane's Parking Meter Revenue Fund and on loans issued by the City of Spokane pursuant to the Ordinance, and on the Garage itself;

I. Appointing a receiver to perform all obligations under the Garage Lease, and provide a monthly accounting of such performance; and

J. Awarding such other and further relief as the Court may deem just, proper and equitable.

Dated: April 23, 2001

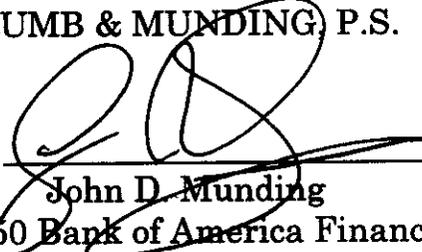
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