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APR 30 2008

JAMES R. MUNDING, CLERK
DEPUTY
U.S. DISTRICT COURT
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

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

v.

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

FIRST AMENDED COMPLAINT- 1

EF S
No. CS-01-0128-JLQ

CS-01-0127-EFS ✓

FIRST AMENDED
COMPLAINT

DEMAND FOR JURY
TRIAL

1 SPOKANE PUBLIC PARKING
2 DEVELOPMENT AUTHORITY, an
3 unregistered Washington corporation
4 doing business as RIVER PARK SQUARE
5 PARKING,

6 Defendants.

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

10 JURISDICTION AND VENUE

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

19 2. Venue of this action lies in this Court pursuant to
20 28 U.S.C. § 1391(b) in that a substantial part of the events or omissions
21 giving rise to Plaintiff's claims occurred in this District, and the property that
22 is the subject of this action is located in this District.

23 SUMMARY OF COMPLAINT

24 3. Defendant Spokane Downtown Foundation (the "Foundation")
25 issued \$31,465,000 of Spokane Downtown Foundation Parking Revenue
26 Bonds, Series 1998 (the "Bonds") on behalf of the City of Spokane,
27 Washington (the "City"), on September 15, 1998. Defendant Prudential
28 Securities Incorporated ("Prudential") was the underwriter of the Bonds. The

1 Bonds were issued in September 1998 to finance the purchase in about
2 August 1999 of the renovated and expanded River Park Square Parking
3 Garage (the "Garage") which is adjacent to the River Park Square shopping
4 mall (the "Mall") in downtown Spokane (the Garage and the Mall are
5 hereinafter collectively referred to as the "Project"). The Bonds are dated
6 September 1, 1998 and bear interest payable to the Bondholders on each
7 February 1 and August 1. Interest began effective February 1, 1999.

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

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

26 6. Defendants singly and together concealed and failed to disclose the
27 fact that the feasibility analysis performed by Walker and included in the
28 Official Statements was not a feasibility analysis at all, and contained wholly

1 unrealistic and unreasonable assumptions. Defendants concealed and/or
2 failed to disclose that Walker was not an independent consultant, but rather
3 had a conflict of interest because before preparing projections which were to
4 be included in the Official Statements, it had prepared far more conservative
5 and reasonable projections for the Developers. Defendants concealed and
6 failed to disclose that the unrealistic and unreasonable assumptions in the
7 Walker Report were prepared for the sole purpose of artificially inflating the
8 purchase price of the Garage and misleading Bondholders into believing that
9 there was a reasonable basis to expect that the Garage would generate
10 sufficient revenues to repay the Bonds.

11 7. The City knew that there was no realistic opportunity that the
12 Garage would generate sufficient revenues to repay the Bonds and that the
13 purchase price for the Garage was grossly and inappropriately inflated well
14 in excess of fair market value. It also knew that the marketplace required its
15 unconditional credit enhancement of the Bond issue to obtain an investment
16 grade rating for the bonds. The Defendants misrepresented both the scope
17 and the unconditional nature of the City's obligation under the Ordinance to
18 provide the credit enhancement for the Bonds in the event of a revenue
19 shortfall. The City secretly never intended to honor its obligation to provide
20 the credit enhancement, which it knew would be required given the almost
21 certain inability of the Garage to generate projected revenues. As a
22 consequence, the Bondholders were deceived into purchasing \$31.5 million in
23 bonds that had no realistic opportunity of ever being repaid and in reliance
24 on false and misleading representations about the City's credit enhancement
25 obligations pursuant to the Ordinance. The below-named Defendants, singly
26 and together, directly and indirectly, conspired with each other and entered
27 into a scheme or artifice to defraud the purchasers of the Bonds, by
28 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

1 million. It was part and parcel of the scheme that the Garage would be sold
2 to the Foundation for \$26 million, thereby generating approximately
3 \$11 million in fraudulent profits for the owners and developers of the RPS
4 Mall and the Garage in violation of Section 10(b) of the 1934 Act and
5 Securities and Exchange Commission Rule 10b-5 promulgated thereunder (17
6 C.F.R. § 240.10b-5), the Washington Securities Act and the common law.

7 THE PARTIES AND THEIR ROLES

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

19 9. Defendant Prudential Securities Incorporated ("Prudential") is a
20 Delaware corporation and registered broker-dealer which does business in
21 the State of Washington. Prudential acted as underwriter for the Bonds and
22 offered and sold the Bonds to each of the Bondholders on about September
23 15, 1998. As the underwriter for the Bonds, Prudential had primary
24 responsibility for performing due diligence in connection with the preparation
25 of the Official Statements to ensure that full and fair disclosure of all
26 material facts was made to all bond purchasers. John C. Moore was, at all
27 pertinent times, an employee of and a Managing Director of Public Finance
28 for Prudential. Moore was charged by Prudential with primary responsibility

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

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

1 11. Walker issued a report in about June 1996 which it called a
2 "Financial Feasibility Analysis," together with two revised and updated
3 reports dated April 22, 1998, and June 29, 1998 (collectively, the "Walker
4 Report"), which Walker knew would be attached as Appendix B to the Official
5 Statements. John Dorsett was, at all pertinent times, a senior project
6 director and department head for Walker, and was charged by Walker with
7 primary responsibility for preparing and approving the Walker Report and
8 for ensuring the reasonableness of the fact-based assumptions, which
9 underlie the Walker Report.

10 12. In May 1995, the developers retained Walker to develop projected
11 net operating income for the Garage. Walker's projected operating income
12 data for the Garage was completed on or about May 17, 1995 (hereinafter the
13 "1995 Secret Walker Report"). The 1995 Secret Walker Report used
14 reasonable and realistic fact-based assumptions. Its resultant cash flow
15 projections were radically different than the projections contained in the 1996
16 Walker Report, and, if extrapolated, would result in a value for the garage of
17 approximately \$10 million. Walker, as an expert in the area, knew the
18 assumptions in the 1996 Walker Report were unreasonable and unrealistic,
19 and were utilized for the sole purpose of increasing projected cash flows so
20 that it would appear the Garage was really worth in excess of \$26 million. As
21 a result, Walker was a willing participant in the scheme or artifice to defraud
22 bond purchasers.

23 13. Defendant Foster law firm is a Washington professional limited
24 liability company engaged in the practice of law with its principal offices in
25 Seattle, Washington. The Foster law firm acted as counsel for the
26 underwriter, Prudential, in connection with the underwriting, issuance, offer
27 and sale of the Bonds and is identified as such on the cover pages of the
28 Official Statements. The Official Statements do not, in any way, limit the

1 scope of the Foster law firm's activities as underwriter's counsel. Prudential
2 retained the Foster law firm to, among other things, advise Prudential
3 regarding disclosure issues, to assist Prudential in performing due diligence
4 with respect to the facts and circumstances of the Bonds and the Project, and
5 to write and edit the Official Statements.

6 14. As underwriter's counsel, the Foster law firm had a duty to
7 conduct a reasonable investigation into the facts and circumstances
8 surrounding the feasibility of the proposed bond issue and to take reasonable
9 steps to ensure the Official Statements did not misrepresent material facts
10 and did not fail to disclose material facts which needed to be disclosed to
11 make the facts that were disclosed in the Official Statements not misleading.
12 The Foster law firm's duty to conduct reasonable due diligence included the
13 duty to investigate the accuracy of any statements in the Official Statements
14 which appeared to be inaccurate or doubtful, the duty to make reasonable
15 inquiry into the reasonableness of assumptions underlying forward-looking
16 statements, the duty to ensure that any "expertised" portions of the Official
17 Statements had, in fact, been prepared by experts who had conducted such
18 independent investigation as was necessary or appropriate under the
19 circumstances, and the duty to correct all portions of the Official Statements
20 which its investigation revealed, or suggested, were false or misleading. The
21 Foster law firm also had the duty not to issue opinions of any kind with
22 respect to the issuance of the Bonds and the adequacy of disclosure in the
23 Official Statements until it reasonably believed that full and fair disclosure of
24 all material facts had been made in the Official Statements.

25 15. In the process of drafting the Official Statements, representatives
26 of the Foster law firm reviewed the statements made in the Official
27 Statements regarding the \$26 million purchase price for the Garage, the
28 existence of two MAI appraisals using the "investment value" method, the

1 Walker Report, and certain "concerns" expressed about the risks inherent in
2 the assumptions used by Walker to generate the projected cash flows in the
3 Walker Report. As a result, the Foster law firm knew the above statements
4 in the Official Statements were potentially false and misleading unless the
5 Official Statements made full, fair and accurate disclosures of all material
6 facts regarding the content of the MAI appraisals and the Coopers & Lybrand
7 Report. Given that, the Foster law firm had a duty to carefully review the
8 MAI appraisals and the Coopers & Lybrand Report. The Foster law firm
9 either reviewed the Coopers & Lybrand Report and the Auble and Barrett
10 Reports (which are the documents characterized as "MAI appraisals" in the
11 Official Statements) and learned, among other things, that the Walker
12 Report was not a financial feasibility study, that the Walker Report was
13 totally unreliable, that the so-called "MAI appraisals" were not really MAI
14 appraisals, that the Garage was really worth nowhere near \$26 million and
15 that, as a result, the Official Statements it was drafting were materially false
16 and misleading, or negligently and recklessly failed to review such
17 documents. The Foster law firm, having obtained such information, could not
18 go forward with the preparation of the Official Statements and the issuance
19 of any opinions in connection with the closing on the bond issue without first
20 ensuring that full and fair disclosure was made of all material facts.

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

26 We also examined information made available
27 to us in the course of our participation in the
28 preparation of the Official Statement as
counsel for the Underwriter, including legal
matters and certain records, documents and

1 proceedings, and we have attended conferences
2 with, among others, representatives of the
3 Underwriter, the Issuer, Preston Gates & Ellis
4 LLP, bond counsel and general counsel to the
5 Issuer, the Trustee, the Spokane Parking
6 Public Development Authority, a Washington
7 public corporation (the "Authority"), Perkins
8 Coie LLP, counsel to the Authority and the City
9 of Spokane, Washington, at which conferences
10 the contents of the Official Statement were
11 discussed; however, our examination of
12 information and participation in such
13 conferences does not necessarily constitute
14 such diligence as may be specified, required or
15 implied in Sections 12(b) and 17 of the
16 Securities Act of 1933, as amended, Section
17 10(b) of the Securities Exchange Act of 1934, as
18 amended, and similar provisions under state
19 securities or 'blue sky' laws or regulations
20 promulgated pursuant thereto, to the extent
21 such provisions and regulations may be
22 applicable (and no opinion is expressed as to
23 such applicability). Without undertaking to
24 determine independently or assuming any
25 responsibility for the accuracy, completeness or
26 fairness of the statements contained in the
27 Official Statement, we have no reason to
28 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).

26 Even ignoring that such statement is not, as a matter of law, sufficient to
27 disclaim the duties imposed upon the Foster law firm by virtue of its role as
28 underwriter's counsel and primary draftsman of the Official Statements, the

1 Foster law firm acquired actual knowledge that the Official Statements were
2 materially false and misleading as a result of taking the hereinabove-alleged
3 actions. As a result, the final sentence in the above paragraph of the Foster
4 Opinion is both false and misleading.

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

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

23 19. As issuer's counsel, the Preston law firm had a duty to
24 thoroughly investigate the facts and circumstances surrounding the proposed
25 bond issue and to take reasonable steps to ensure that the Official
26 Statements did not misrepresent material facts and did not fail to disclose
27 material facts which needed to be disclosed in order to make the facts that
28 were disclosed in the Official Statements not misleading. The Preston law

1 firm's due diligence duties were heightened because the Preston law firm
2 knew its client, the issuer of the Bonds, owed a duty to potential bond
3 purchasers to make full, fair and accurate disclosure of all material facts in
4 the Official Statements and also knew the issuer and its directors did not
5 have the desire or the sophistication to conduct their own due diligence. The
6 Preston law firm also knew the Foundation was controlled by the Developers
7 (who were selling the Garage to the Foundation) and therefore lacked
8 independence.

9 20. As bond counsel, the Preston law firm had a duty to thoroughly
10 investigate the facts and circumstances surrounding the proposed bond issue
11 to determine, among other things, that the Foundation would not be paying
12 more than the fair value of the Garage to the Developers. The Preston law
13 firm understood the Developers either owned or controlled the owners of the
14 Garage and planned to sell the renovated and expanded Garage to the
15 Foundation, which the Developers also controlled, for approximately
16 \$26 million. As bond counsel and as counsel for the issuer, the Preston law
17 firm had a duty to take reasonable steps to ensure that the lack of
18 independence of its client and conflicts of interest of the Developers did not
19 impair full, fair and accurate disclosures made in the Official Statements.

20 21. The Preston law firm did, in fact, review the Walker Report, the
21 Auble and Barrett Reports, the Coopers & Lybrand Report, drafts of the
22 Official Statements and the Official Statements, and, as a result, knew the
23 Official Statements were materially false and misleading. The Preston law
24 firm, having obtained such information, owed a duty to the Foundation and
25 the Bondholders not to go forward with the issuance of any opinions without
26 first ensuring that full, fair and accurate disclosure was made of all material
27 facts and without first ensuring that that Foundation was not paying any
28 more to the Developers than the fair value of the Garage. The Preston law

1 firm, having knowledge that the Official Statements were materially false
2 and misleading, nonetheless issued three opinions in connection with closing
3 on issuance of the Bonds. The Bonds could not and would not have been
4 issued had the Preston law firm refused to issue any of the three opinions.

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

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

25

26 (10) Based upon our experience as counsel for
27 the Issuer and on our review of and
28 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.

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

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

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

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

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

23 27. Citizens, Lincoln, RPS, RPS II, and Elizabeth Cowles are
24 hereinafter referred to collectively as the "Developers." The Developers
25 directly or indirectly owned the Garage and sold it to the Foundation in about
26 September 1999 after completion of the renovation and expansion of the
27

1 Garage by the Developers. The Foundation paid the Developers for the
2 Garage with proceeds from the Bonds.

3 28. Defendant RWR Management, Inc. is a Washington corporation
4 doing business as R. W. Robideaux and Company ("Robideaux & Company")
5 which has its principal offices in Spokane, Washington.
6 Robideaux & Company holds itself out as a professional real property
7 management company providing specialized financial and administrative
8 expertise in the financing, development and management of commercial
9 properties. At all pertinent times, Robideaux & Company was the project
10 director for the Developers' efforts to renovate and expand both the RPS Mall
11 and the Garage.

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

27 30. Robideaux & Company was, at all times pertinent hereto, an
28 agent for the Developers acting within the course and scope of its agency

1 relationship with the Developers and, as a result, all actions and knowledge
2 of Robideaux & Company are imputed to the Developers.
3 Robideaux & Company acted in the above capacities in connection with the
4 formation of the Foundation on behalf of the Developers and was
5 instrumental in carrying out the scheme or artifice to defraud by knowingly
6 providing erroneous or unrealistic fact-based assumptions to Walker, and by
7 convincing representatives of the City of Spokane to instruct the appraisers
8 of the Garage to use an appraisal method which would wrongfully inflate the
9 value of the Garage.

10 31. Defendant City is a first-class charter city of the State of
11 Washington. In April 1996, the City retained Walker to prepare a financial
12 feasibility study. Walker issued its feasibility analysis (the "Walker Report")
13 on June 14, 1996. The City knew the assumptions used by Walker were
14 unreasonable and that the Walker Report was totally unreliable based upon
15 the City's knowledge of the historic performance of the Garage and the
16 review, by representatives of the City, of the 1995 Secret Walker Report, the
17 Walker Report, the Auble and Barrett Reports, the Coopers & Lybrand
18 Report, and the Sabey Garage Report, among other documents. The City,
19 having such knowledge and acting at the behest of the Developers,
20 nonetheless instructed the appraisers, Auble and Barrett, to use the cash
21 flow projections and fact-based assumptions in the Walker Report for the sole
22 purpose of establishing an artificially inflated value of the Garage. The City
23 then used the Walker Report and the wrongfully inflated value of the Garage
24 in the Auble and Barrett Reports to "negotiate" the \$26 million purchase
25 price for the Garage with representatives of the Developers. The City,
26 despite such knowledge, permitted the Bonds to be sold to the Bondholders,
27 by means of Official Statements which the City knew were false and
28 misleading.

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

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

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

24 35. For all of the hereinabove and hereinbelow alleged reasons, each
25 of the Defendants had actual knowledge that the renovated and expanded
26 Garage would be worth less than \$10 million, knew that the "investment
27 value" method was used to artificially and wrongfully inflate the value of the
28 Garage, and knew that the Official Statements, including the Walker Report,

1 were materially false and misleading. By continuing to participate in the
2 underwriting and issuance of the Bonds, as herein alleged, all of the
3 Defendants knowingly engaged in a scheme or artifice to defraud and an
4 unlawful conspiracy.

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

10 GENERAL ALLEGATIONS
11 APPLICABLE TO ALL CLAIMS FOR RELIEF

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

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

21 38. A 1993 parking survey prepared by the City's Planning
22 Department concluded that downtown Spokane had a relatively high surplus
23 of parking spaces. The operating revenues of the Garage never exceeded
24 approximately \$1 million per year prior to the issuance of the Bonds in
25 September 1998.

26 39. The Developers were undertaking a redevelopment of the RPS
27 Mall which was anticipated to cost in excess of \$100 million. One component
28

1 of the redevelopment of the RPS Mall was the renovation and expansion of
2 the Garage.

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

10 41. The 1995 Secret Walker Report projected that the Garage would
11 generate approximately \$1,750,000 in total revenues during its first year of
12 operation following the renovation and expansion of the Garage, and would
13 not generate any more than approximately \$2.28 million in revenues after
14 ten years of operation. In contrast, the Walker Report in June 1996
15 artificially inflated the projected revenues by almost three hundred percent
16 by changing key fact-based assumptions. This resulted in projected first full
17 year of operation revenues of over \$4.3 million, with revenues increasing to
18 almost \$10 million after ten (10) years.

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

25 43. The Developers caused the Foundation to be formed so it could be
26 used as the vehicle for issuing the Bonds and using the Bond proceeds to
27 purchase the renovated and expanded Garage from the Developers.
28

1 Prudential was hired on behalf of the Foundation to serve as underwriter for
2 any bonds issued by the Foundation.

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

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

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

13
14 B. The Bogus Walker Feasibility Study

15 47. In about June or July 1996, the City and the Developers
16 determined that if the City was willing to pledge approximately \$1.6 million
17 per year from its parking meter revenue fund in support of the proposed
18 Bonds in order to support a much larger bond issue. However, the City and
19 the Developers all knew the Garage, as renovated and expanded, together
20 with the ground underneath the Garage, would still be worth less than
21 \$10 million even if the City took steps to pledge parking meter revenues.
22 About this time, the City, at the behest of the Developers, decided to use the
23 a bogus and highly improper "investment value" valuation method to
24 wrongfully and artificially inflate the purchase price of the Garage to
25 \$26 million which would, in turn, generate a profit of approximately \$11
26 million, albeit fraudulent and wrongful, to the Developers. The Developers,
27 acting through Robideaux, proceeded to supply Walker with new assumptions
28

1 which Walker, the Developers and the City knew were both unrealistic and
2 unreasonable.

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

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

16 49. The Walker Report stated that it has not considered the impact of
17 a parking validation program, implying that it had insufficient data available
18 to it to determine the financial impact a parking validation program would
19 have upon future revenues. Since Walker was issuing a "financial feasibility
20 analysis" and had a duty to evaluate the reasonableness of the assumptions
21 underlying its analysis, the Walker Report and the Official Statements, taken
22 as a whole, created the false impression that Walker did not have enough
23 information to evaluate the impact of a future parking validation program.
24 In fact, such information was readily available and known to
25 Robideaux & Company, the City, the Developers and Walker. It was ignored
26 because Robideaux & Company, Walker, the Developers and the City all
27 knew that if a parking validation program similar to that currently in place
28 was factored into the proformas, there was insufficient revenue to repay the
debt.

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

8 51. In fact, Walker had evaluated various parking validation
9 scenarios at the request of the Developers and Walker, the City and the
10 Developers knew prior to the issuance of the Bonds that any validation
11 program would significantly affect Garage revenues. The Developers, acting
12 through Robideaux & Company, intentionally caused Walker to change
13 certain critical assumptions with respect to reduced parking rates and a
14 validation program for the specific purpose of falsely inflating the projected
15 revenues and with the knowledge and intent that the reduced rates and
16 validation program would be implemented after the Bonds were issued. As a
17 result, at the time the Bonds were issued, the Developers, Walker and the
18 City knew there was little or no likelihood that the revenues projected in the
19 Official Statements would be realized.

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

24 53. In view of the above, Walker, the City, the Developers and
25 Robideaux & Company all knew that a subsidized parking validation
26 program would be implemented soon after the Bonds were issued and that
27 Cinema patrons would not pay \$1.50 per hour.
28

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

3 54. The Developers, the City and Walker knew that the historic
4 average parking stay in the Garage prior to the issuance of the Bonds was
5 approximately 1.2 hours or less. There was no legitimate reason to believe
6 parkers would increase their length of stay after the RPS Mall was
7 renovated. Nonetheless, the Walker Report projects that the average retail
8 shopper at the RPS Mall would, on average, park for three hours, more than
9 double the historic average length of stay, in the Garage. Accordingly, the
10 City, the Developers, Robideaux & Company and Walker all knew, based
11 upon historic parking statistics, that an average stay of three hours was
12 totally unreasonable and that, to the extent the projected revenues were
13 based upon this assumption, the Official Statements were knowingly false
14 and misleading. This material fact was never disclosed to potential bond
15 purchasers.

16 3. It Was Completely Unrealistic to Expect Mall Patrons to
17 Pay \$1.50 Per Hour.

18 55. Downtown Spokane parking garages could not realistically expect
19 to charge customers an hourly rate for parking in the evenings and on
20 weekends because evening and weekend parkers, including movie goers,
21 could easily find parking which was both convenient and cheaper elsewhere.
22 As a result, the Developers, the City, Walker and Robideaux & Company
23 knew that even though the Walker Report stated the assumption that the
24 Garage would charge \$1.50 per hour to all Garage customers, the Garage
25 would actually have to charge much lower rates to induce people to park in
26 the Garage in the evening and on weekends. This material fact was never
27 disclosed to potential bond purchasers. The significance of the false and
28 misleading Walker Report (and the false assumptions upon which it is based)
is heightened by the manner in which the participants to the fraudulent

1 scheme then used the inflated revenues in the Walker Report to “justify” and
2 inflated “value” to be paid to the Developers to purchase the Garage.

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

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

13 C. Warnings to Defendants by Appraisers

14 57. The City real estate manager, Dennis Beringer, advised the City
15 to seek market value appraisals of the Garage. However, at the urging of
16 Elizabeth Cowles and R.W. Robideaux, acting on behalf of the Developers, the
17 City instructed its appraisers to use the unusual and, in this case, highly
18 misleading “investment value” method to value the Garage. Beringer
19 objected to use of the “investment value” and advised the City that its use
20 would substantially and unreasonably inflate the value of the Garage,
21 thereby causing the Foundation to pay much more for the Garage than it was
22 really worth, pay much more to the Developers under the ground lease than
23 was reasonable and fair, and would jeopardize the Foundation’s ability to
24 service and pay off the Bonds (all of which are material facts that were never
25 disclosed to prospective purchasers of the Bonds). The City, in furtherance of
26 the conspiracy and artifice to defraud, ignored Beringer and retained John
27 Evans and David Auble of Auble & Associates and Daniel E. Barrett to
28

1 perform "investment value" appraisals of the Garage and land underlying the
2 Garage. Barrett, Evans and Auble are all MAI certified appraisers.

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

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

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

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

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

6 As requested, I have completed an
7 investigation and analysis relative to providing
8 an appraisal of the 'investment value' of the
9 River Park Square Parking Garage under the
10 criteria which you supplied. It is important to
11 note that this is not an appraisal of the 'market
12 value' of this property which would represent
13 the value of the property in the open market to
14 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. . . .

15 This assignment is unusual in several aspects. .
16 . . . This appraisal report places significant
17 weight upon a 'financial feasibility analysis'
18 and condition report for the River Park Square
19 Parking Garage' prepared by Walker Parking
20 Consultants and Engineers, dated June 14,
21 1996. Several questions are raised regarding
22 the validity of the Walker report. I question
the weight which Walker places upon the
potential income which the cinema patrons will
generate.

23 As a result of this and other concerns, Barrett provided his "investment
24 value" of the Garage under three different scenarios. Based upon the above
25 limitations and conditions, together with other limitations and conditions,
26 Barrett concluded that the "investment value" of the Garage was over
27 \$26 million in his moderate case scenario.

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

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

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

26 Should all these facilities be built, there would
27 be 93 screens, or approximately twice the
28 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:

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

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

13 64. The Bonds could be issued at an artificially low interest rate
14 because the Bonds would be federal tax-exempt instruments which were to
15 receive an investment grade rating from a bond rating agency prior to
16 issuance. The "investment value" used by Auble and Barrett was driven by
17 the proposed and artificially low interest rate for the Bonds, together with
18 the wrongfully inflated cash flow projections in the Walker Report, to arrive
19 at the "investment value" of the Garage. Thus, the low interest rate paid to
20 purchasers of the Bonds was used by the City and the Developers as a
21 mechanism for fraudulently inflating the value of the Garage.

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

27 D. The Sabey Warnings

28 66. Sabey Corporation ("Sabey") is a commercial real estate company
which maintains its principal place of business in Seattle, Washington.

1 Sabey was a major landowner, business operator and taxpayer in the City
2 and, among other things, owned and operated a retail mall which was located
3 in the City outside downtown Spokane. As a result, Sabey was competent to
4 express opinions regarding the manner in which the proposed financing of
5 the renovation and expansion of the RPS Mall and the proposed financing of
6 the renovation and expansion of the Garage was being handled by the City
7 and the Developers.

8 67. On December 10, 1996, Laurent D. Poole, the executive vice
9 president of Sabey, provided the mayor and city council with two reports,
10 entitled "Analysis of: Economic Impact Study Downtown River Park Square
11 Project" (the "Sabey RPS Mall Report") and "Analysis of: Financial Feasibility
12 Analysis Condition Assessment for the River Park Square Parking Garage"
13 (the "Sabey Garage Report"). The Sabey RPS Mall Report and the Sabey
14 Garage Report were provided to the Developers and Robideaux & Company.
15 The Sabey Garage Report was highly critical of the manner in which the City
16 and the Developers were proceeding with the renovation and expansion of the
17 Garage through the proposed issuance of the Bonds. The Sabey Garage
18 Report was prepared based upon, among other things, a detailed review of
19 the Auble and Barrett Reports.

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

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

- 26 (a) The Sabey Garage Report focused upon, quoted and adopted
27 the portions of the Auble Report which conclude the Walker
28 Report was not a legitimate financial feasibility analysis. The

1 Sabey Garage Report challenged Walker's failure to consider
2 the negative impact on parking usage at the Garage when
3 parking rates are raised 50%, from \$1.00 to \$1.50 per hour as
4 assumed in the Walker Report. The Sabey Garage Report
5 noted that the Walker Report fails to address the claims of
6 Spokane's downtown association to have "6,000 parking stalls
7 in the downtown area" and to fund a "trolley shuttle to access
8 inexpensive parking nearby."

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

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

23 [I]n 1995 Spokane had 28 first-run movie
24 screens which took in \$6.4 million in revenue.
25 The proposed downtown, AMC 24-plex will
26 nearly double the number of screens in the
27 market. It is highly unlikely that demand for
28 movie theaters will also double. The AMC 24-
plex's success is questionable, hence the
parking demand it will generate is also
questionable.

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

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

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

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

23 (g) The Sabey Garage Report concludes:

24 With these unrealistically high best case
25 scenario numbers, one would only expect the
26 anticipated valuation analysis of the parking
27 structure to be just as unrealistically inflated.
28 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

1 the Walker Report and the City's discount rate
2 and investment criteria. Both appraisers state
3 that the market value of this garage would be
4 significantly lower.

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

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

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

35 70. All of the hereinabove alleged statements contained in the Sabey
36 Garage Report were true and accurate statements of material existing fact

1 which were actually known to the City, the Developers and Walker as of
2 December 1996. They were not disclosed in the Official Statements or
3 otherwise.

4 E. The Coopers & Lybrand Warnings to Defendants

5 71. The City retained the real estate advisory services group of the
6 international accounting and consulting firm of Coopers & Lybrand to
7 perform certain market and financial analyses regarding the proposed
8 renovation and expansion of the Garage. Coopers & Lybrand issued a report
9 on January 27, 1997. The Coopers & Lybrand Report criticized the
10 reasonableness of the hereinabove-alleged assumptions utilized by Walker
11 and determined that the Garage was not worth \$26 million.
12 Coopers & Lybrand understood, in connection with preparing the
13 Coopers & Lybrand Report, that the analyses and conclusions in the Barrett
14 and Auble Reports were among the things used as a basis for determining the
15 acquisition price of the Garage by the Foundation, the anticipated bond
16 financing structure, and the economic terms of the ground lease.

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

19 The Walker projections do not consider the
20 financial implications of a parking validation
21 program. It is clearly difficult at this time to
22 assess what form of parking validation
23 program, if any, will be in place upon
24 completion of the proposed RPS project.
25 However, if a parking validation program
26 similar to the Easy Pass program in place today
27 is available to customers in the year 2000, the
28 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

1 used in the Walker analysis. To the extent that
2 this does not occur, the financial operations of
3 the RPS garage could be materially overstated.

4 Considering the anticipated competition of
5 theater screens in the market, the cinema
6 operator may likely expect that its patrons will
7 not be required to pay for parking, so as to
8 avoid creating a competitive advantage for
9 competing screens. At the same time, it is
unclear whether the cinema operator will
contribute significantly to cover lost parking
revenues from movie patrons.

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

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

15 (b) Walker identified a historical length of stay for transient
16 parkers of 1.9 hours which they state they received from the
17 current management of the garage.

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

23 (d) The hourly parking rate for weekdays and Saturdays is
24 assumed to be \$1.50. The currently hourly rate for RPS
25 parking is approximately \$1.00. Assuming the increase in the
26 average stay for transient retail customers from 1.5 hours to
27 1.3 hours, the average cost to park will increase from \$1.50
28 (\$1.00 x 1.5 hours) to \$4.50 (\$1.50 x 3 hours).

1 (e) The average parking cost to cinema patrons, according to the
2 Walker Report, is \$3.75 per car on weekdays and Saturdays
3 (\$1.50 x 2.5 hours) and \$2.50 on Sundays (\$1.00 x 2.5 hours).
4 Considering the anticipated competition of theater screens in
5 the market, the cinema operator may likely expect that his
6 patrons will not be required to pay for parking, so as to avoid
7 creating a competitive advantage from competing screens. At
8 the same time, it is unclear whether the cinema operator will
9 contribute significantly to cover lost parking revenues from
10 movie patrons.

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

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

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

20 theater transient customer of over 623,000 in year 2000.
21

22 74. Coopers & Lybrand also reviewed the Auble and Barrett Reports,
23 and a representative of Coopers & Lybrand spoke with John Evans of Auble
24 and Daniel Barrett to better understand the Reports and their views on the
25 Project. Coopers & Lybrand made the following findings and observations
26 regarding the Auble and Barrett Reports in the Coopers & Lybrand Report:
27
28

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

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

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

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

14 79. The allocation of land value in the Auble Report was based on
15 25% of the investment value for the entire property, including both the land
16 and the Garage building, which resulted in a land allocation value of
17 \$8,575,000. Coopers & Lybrand concluded that "this analysis overstates the
18 contributory value of the land due to the fact that the excess of investment
19 value over market value is created by the City's discount rate applied to the
20 cash flows." Coopers & Lybrand stated that this excess value "is not
21 reflective of, nor should it be attributable to, the underlying land."
22

23 80. The Coopers & Lybrand Report states that, despite being
24 provided with cash flows and discount rate parameters to be used in the
25 determination of investment value of the Garage, both appraisers addressed
26 concerns with respect to the aggressiveness of certain operating assumptions
27 used in the Walker Report.
28

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

10 82. After the Coopers & Lybrand Report was issued and provided to
11 Prudential, the City, the Developers, the Preston law firm and
12 Robideaux & Company, Walker was instructed by the Developers, with the
13 consent of the City, to change its parking revenue assumptions because the
14 seating capacity of the theater would be changed from 3,400 seats to 4,500
15 seats. This resulted in an increase in projected Garage revenues of almost
16 12% over the June 1996 portion of the Walker Report. Based upon the
17 hereinabove-alleged material facts, there was no reason to believe increasing
18 the seating capacity for an already oversized theater would result in any
19 meaningful increase in revenues.

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

24 84. The Official Statements for the Bonds misrepresent the following
25 material facts and fail to disclose the following material facts which needed to
26 be disclosed in order to make the facts which were disclosed in the Official
27 Statements not misleading:
28

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

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

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

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

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

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

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

26 \$21.7 million Developer equity (including land)

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

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

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

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

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

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

25 The above section of the Official Statements is
26 misleading because it states "[t]he City engaged
27 Walker to conduct the Feasibility Analysis, which
28 was issued on June 14, 1996," but fails to disclose

1 that the Developers had engaged Walker to prepare
2 initial projections based upon the historical
3 performance of the Garage as reflected in the 1995
4 Secret Walker Report which indicated the value of
5 the Garage as renovated and expanded was less than
6 \$10 million, and the Garage as renovated and
7 expanded could not be reasonably expected to
8 generate anywhere close to the amount of revenue
9 needed to service and repay over \$31 million in bond
10 debt.

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

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

24 92. Table 1: “Projected Operating Revenues and Expenses, Debt
25 Service Requirements and Debt Service Coverage” on page 21 of the Official
26 Statements is misleading. The source of the Projected Operating Revenues
27 column for the first ten years after the Bonds were issued is stated to be the
28 Walker Report. The Projected Operating Revenues column of Table 1 is

1 misleading because it fails to disclose that the cash flow projections contained
2 in the Walker Report as reflected in the Projected Operating Revenues
3 column of Table 1 were grossly inflated by Walker at the request of the City
4 and the Developers without any reasonable justification or basis in fact.

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

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

19
20 First, the Feasibility Analysis projects a rate of
21 \$1.50 per hour combined with an anticipated
22 stay per transient retail parking customer of
23 3.0 hours. This represents an increase from the
24 current rate of approximately \$1.00 and a
25 current average length of stay of 1.5 hours. If
26 these increased rates and longer anticipated
27 stays are not achieved, revenues generated by
28 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

1 of the Garage do not, on average, stay for three hours, or potential patrons of
2 the Garage decide to park elsewhere rather than pay \$1.50 per hour,
3 revenues could fall short of projections without disclosing any of the
4 hereinabove-alleged material facts which indicated the \$1.50 per hour across-
5 the-board rate was too high and the length of stay per transient retail
6 parking customer had historically been substantially less than three hours.

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

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

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

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

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

22
23 Second, the Feasibility Analysis does not
24 account for the potential impact on revenues of
25 a parking validation program or other
26 negotiated arrangements with tenants of the
27 Commercial Project. The Authority is
28 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

1 generated by additional parking, revenues
2 generated by the Parking Facility could fall
3 short of projections. Third, the impact of any
4 parking validation program between the
Authority and the cinema operator is unknown.

5 The above statement is both false and misleading because the statement that
6 "the validation program currently in place is revenue neutral" is false and
7 misleading because the current validation program and all prior validation
8 programs were subsidized at the expense of the Garage. The statement that
9 "the impact of any validation program between the Authority and the cinema
10 operator is unknown" is likewise both false and misleading because there was
11 good reason to believe many potential cinema patrons would refuse to pay for
12 parking, and the cinema operator, AMC, would refuse to sign a lease that
13 clearly required its patrons to pay any significant amount for parking. Due
14 to the failure to report completely and accurately the content of the
15 hereinabove-quoted portions of the Coopers & Lybrand Report, the Sabey
16 Garage Report and the Auble and Barrett Reports which pertain to parking
17 validation programs.

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

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

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

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

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

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

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

21 Section 1: Public Development Authority

22 The City Manager and Deputy City Manager,
23 the City Attorney and Perkins Coie as the City's bond
24 counsel (collectively, the "City Staff") are hereby
25 authorized and directed to prepare the necessary
26 resolutions or ordinances to appoint current members
27 to the Board of Directors (the "Board") of the
28 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

1 order for it to recommend action to the Council in
2 conjunction with the acquisition of the Facility by the
3 Foundation, the issuance of the Bonds on behalf of
4 the City by the Foundation and the transfer of the
5 Facility to the City unencumbered at such time as
6 the tax-exempt bonds of the Foundation are paid or
7 otherwise defeased.

8
9 Section 3: Tax-Exempt Bond Rating

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

16 (Emphasis added).

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

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

21 Section 1. Findings.

22 It is hereby found and declared that the public
23 interest, welfare and benefit require the acquisition
24 of the Facility for public use. The Council finds that
25 the proposal of the Foundation to acquire the
26 Facility, to lease the Facility to the Authority and
27 assign the Ground Lease to the Authority is in the
28 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

1 supplemented by Revenue Procedure 82-26 of the
2 U.S. Department of Treasury).

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

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

20 Section 4. General Authorization.

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

26 Section 5. Ratification of Past Acts.

27 All actions heretofore taken by City officers,
28 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

1 specifically acknowledges the Foundation "issuing tax-exempt bonds on
2 behalf of the City." The key undertaking in the Ordinance is the City's
3 pledge of and obligation to loan Parking Meter Revenue funds to insure that
4 the Authority had the ability to fulfill its payment obligations under the
5 leases discussed hereinafter. The primary, if not exclusive, purpose of this
6 mandatory undertaking was to provide vital financial support for the
7 financing and operation of the Garage. The unconditional obligations of the
8 City to issue loans pursuant to the Ordinance were falsely and misleadingly
9 described in the Official Statements. The misrepresentations were highly
10 material because the credit enhancement provided by the City was critical to
11 obtaining the investment grade rating required to sell the Bonds. The
12 Ordinance enhanced the credit of the Bonds by assuring prospective investors
13 that substantial resources existed to fund the financial needs of the Garage,
14 thereby assuring that principal and interest would be timely paid in
15 accordance with the terms of the Bonds and the Indenture.

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

19 The City hereby pledges, as a first charge and lien,
20 that, in the event Parking Revenues are insufficient
21 to make Ground Lease Payments and pay Operating
22 Expenses, the City shall loan money from the
23 Parking Meter Revenue Fund (but only to the extent
24 money or investments are then on deposit or allocable
25 to the Parking Meter Revenue Fund) to the
26 [Authority]'s Ground Lease Account and Operating
27 and Maintenance Account in an amount that is no
28 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

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

8 106. Pursuant to both the Garage Lease (§ 5.C.) and the Ground Lease
9 (§ 4.1), the Authority must apply revenues generated by the Garage in the
10 following priority:

- 11 > First, Fixed Facility Rent, from which the Foundation must pay
12 principal of and interest on the Bonds;
- 13 > Second, Fixed Ground Rent;
- 14 > Third, Operating Expenses;
- 15 * * *
- 16 > Sixth, "to repay any loans made by the City, if any, required by
17 the (Authority) to pay Fixed Ground Rent or Operating
18 Expenses."

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

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

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

14 110. Numerous persons and entities purchased the Bonds. They did
15 so in reliance on the Ordinance, representations made in two opinion letters
16 dated as of September 24, 1998, and written by Spokane City Attorney James
17 C. Sloane and "special counsel" for the City of Spokane, Perkins Coie
18 (collectively, the "Opinion Letters"), and on the statements contained in the
19 Official Statements. The investors relied on both the preliminary and final
20 form of the Opinion Letters and Official Statements. Such reliance was at all
21 times reasonable and intended and expected by Defendants.

22 111. The Opinion Letters were prepared and issued at the request of
23 the City. City Attorney Sloane and Perkins Coie each was the City's
24 authorized agent and had the authority to make binding statements on
25 behalf of the City concerning the issues addressed in the Opinion Letters.
26 The City is legally responsible for all affirmative misrepresentations and
27 omissions in the Opinion Letters.
28

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

8 113. In the Opinion Letters the City Attorney and Perkins Coie
9 represented: "The ... City Ordinance ha[s] been duly enacted by the City
10 Council and [is] in full force and effect ... and [is] the valid and legally
11 binding obligation[] of the City, enforceable against the City in accordance
12 with [its] respective terms" The City and its authorized agent, Perkins
13 Coie, also represented in these Opinion Letters: "The enactment of ... the
14 City Ordinance and the performance by the City of its obligations thereunder
15 ... do not and will not result in a violation of any provision of, or in default
16 under, the City's Charter or any agreement or other instrument to which the
17 City is a party or by which it or its properties are bound." The Opinion
18 Letters then cited specific provisions of the Official Statement as being
19 accurate, correct and a complete disclosure of all material facts concerning
20 the Garage project and the subject City Ordinance:

21 The statements contained in the Official Statement
22 under the captions "Introduction - Purpose of the
23 Bonds - Public Purpose," "- Project Participants - the
24 City," "-Financing Structure - City Pledge of Parking
25 Meter Revenues," "Sources of Payment and Security
26 for the Bonds - City Pledge of Parking Meter
27 Revenues" and "Project Participants - The City,"
28 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

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

4 114. In the last paragraph of each Opinion Letter the City's
5 authorized agents stated: "We hereby consent to the references made to us in
6 the Official Statement."

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

11 INTRODUCTION

12 * * *

13 Financing Structure

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

16 * * *

17 City Pledge of Parking Meter Revenues. The City, by
18 the City Ordinance, has pledged to make loans to the
19 Authority from the City's parking meter revenues if
20 and to the extent necessary to enable the Authority to
21 pay Fixed Ground Rent and Operating Expenses.
22 The City's pledge is contingent on a deficiency of
23 Authority revenues to make such payments, and any
24 loans must be repaid from Authority revenues as
25 described herein under "SOURCES OF PAYMENT
26 AND SECURITY FOR THE BONDS - Flow of
27 Funds." The City has pledged to maintain its
28 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

1 and 1997. City parking meter revenues are not
2 pledged to and may not be applied to pay Fixed
3 Facility Rent on otherwise to pay debt service on the
4 Bonds. (p. 8)

5 * * *

6 SOURCES OF PAYMENT AND SECURITY FOR
7 THE BONDS

8 * * *

9 City Pledge of Parking Meter Revenues

10 The City by the City Ordinance has created and
11 established its Parking Meter Revenue Fund, into
12 which fund that City has pledged to deposit all
13 income, receipts and revenues, except revenue
14 derived from the enforcement of City parking laws,
15 received by the City through its ownership and
16 operation of its system of parking meters ("Parking
17 Meter Revenues"). Pursuant to the City Ordinance,
18 the City has pledged to loan money available in the
19 Parking Meter Revenue Fund to the Authority to the
20 extent necessary to enable the Authority to pay Fixed
21 Ground Rent and Operating Expenses. The City has
22 further pledged in the City Ordinance to (i) maintain
23 the number of parking meters operated by the City at
24 approximately the number that existed as of the date
25 of the City Ordinance, (ii) charge market parking
26 meter rates, and (iii) maintain parking meter rates at
27 a level required to produce in each year Parking
28 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

1 pledged its full faith, credit and resources, or money
2 in the City's General Fund to the payment of Fixed
3 Ground Rent or Operating Expenses, nor are any of
4 the City's assets or funds pledged to the payment of
principal of or interest on the Bonds. (p. 16)

5 * * *

6 Operating Expenses. The Operating Expenses set
7 forth in the Feasibility Analysis are an estimate.
8 Actual Operating Expenses may vary materially from
9 those projected in the Feasibility Analysis. The
10 Authority is required to apply revenues generated by
11 the Parking Facility first to Fixed Facility Rent, from
12 which the Foundation will pay principal of and
13 interest on the Bonds, before paying Fixed Ground
14 Rent or Operating Expenses. If revenues generated
15 by the Parking Facility are not sufficient to pay Fixed
16 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)

17 [Emphasis in original.]

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

25 117. The City Manager certified in writing that "the information
26 contained in the Official Statement ... relating to the City ... and parking
27 meter revenues is true and correct in all material respects and does not
28 contain any untrue or incorrect statement of material fact or omit to state a

1 material fact necessary in order to make the statements made ... in light of
2 the circumstances under which they were made, not misleading.” On the
3 same date, the Authority wrote to the Foundation that the Authority “hereby
4 agrees to enforce the obligations of the City pursuant to (the) Ordinance ... to
5 make loans to the (Authority) from the City’s parking meter revenues ...”

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

16 H. The Misrepresentations About the Ordinance

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

21 120. The validity, enforceability and mandatory obligation of the City
22 under the Ordinance were intentionally misrepresented in the Official
23 Statement and in the City Attorney’s and Special Counsel’s Opinion Letters.
24 As discussed below, after the sale of the Bonds, the City refused to loan
25 parking meter funds to the Authority, claiming that it had no obligation to do
26 so. Accordingly, the credit enhancement that the Ordinance was represented
27 to provide has been rendered illusory. The Bondholders therefore did not
28

1 purchase Bonds of the quality that were represented to them in the Official
2 Statement and Opinion Letters.

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

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

- 19 ➤ The City Manager and City Attorney may not effectuate the
20 City's loan to the Authority because "[t]hey have not been
21 authorized to do so by an appropriation ordinance or order of the
22 City Council[.]"
- 23 ➤ The City Manager and City Attorney may not effectuate the
24 City's loan to the Authority because "[t]here is no loan agreement
25 approved by the City Council pursuant to which the requested
26 'advances' could be made[.]"
- 27 ➤ The City Council may reject loan requests by the Authority.
- 28 ➤ The City Manager and City Attorney have discretion not to
approve loans to the Authority.

- 1 ➤ Any loan under the Ordinance to the Authority would be a “gift”
2 in violation of Washington law.
- 3 ➤ No “legally enforceable loan agreements between the City and the
4 Authority” can be proven to require a loan under the Ordinance.
- 5 ➤ “Even if the existence of an enforceable loan agreement between
6 the City and the Authority were established, the City would be
7 entitled to raise any number of defenses to an action to enforce
8 that agreement.”

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

- 11 ➤ The City officials charged with loaning the City’s money to the
12 Authority are prohibited from doing so unless and until the City
13 Council expressly votes to authorize them to loan the money by
14 separate City Ordinance.
- 15 ➤ “[U]nder the Spokane City Charter, Spokane City Ordinance C
16 31823 is [not] an appropriations ordinance[.]”
- 17 ➤ “[I]n the absence of an appropriations ordinance or council order
18 appropriating specific money from a special fund, the Spokane
19 City Manager and Spokane City Attorney have [no] authority to
20 disburse public funds [under the Ordinance.]”
- 21 ➤ “[A] transfer of funds [under the Ordinance] that all parties know
22 cannot be repaid is [not] a loan” and therefore the subject
23 Ordinance cannot be enforced against the City.
- 24 ➤ The agreements that were identified in and contemplated to be
25 entered into after passage of the Ordinance do not satisfy Section
26 38 of the Spokane City Charter[.]”
- 27 ➤ Loaning the money contemplated in the Ordinance to the
28 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

1 agreement that would then be submitted to the City Council for
2 approval.

- 3 ➤ There is no valid and enforceable loan obligation under the
4 Ordinance until such time as there is a fully negotiated document
5 that sets forth the essential terms of the anticipate loan, such as
6 the repayment schedule, the interest to be charged, terms of
7 default, security for the loan, etc.
- 8 ➤ The City Council may at its discretion direct the City officials not
9 to loan money under the Ordinance to the Authority, and the City
10 officials must follow the Council's direction.
- 11 ➤ If an enforceable loan obligation between the City and the
12 Authority were established under the Ordinance, the City still
13 would be entitled to raise a number of defenses to any action to
14 enforce that obligation.

15 124. Most notably, nowhere within City Attorney Sloane's and special
16 counsel's Opinion Letters (or within the numerous Official Statement
17 paragraphs specifically referenced in those letters) is there any mention of
18 the City's true intent or the myriad of legal and factual hurdles that the City
19 now claims to exist to make unenforceable the Ordinance's loan provision.
20 Indeed, the Opinion Letters and the Official Statement omit any mention of
21 the facts that the City could take the position that it had discretion whether
22 to loan money under the Ordinance, thus creating an option rather than an
23 obligation; that the Ordinance was subject to later challenge or repudiation
24 by the very entity which enacted it; and that no investor could rely on the
25 Ordinance as an integral component of the overall financial structure of the
26 Parking Garage (and hence the River Park Square project itself) and the
27 economic viability of the Bond issue. Had such risks been disclosed to the
28 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

1 have accordingly greatly depreciated in value, all of which has been directly
2 and proximately caused by the actions of Defendants described above.

3 I. Other Material Misrepresentations in the Official
4 Statements

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

9 (a) The Official Statements fail to disclose: (i) the true content
10 of the Coopers & Lybrand Report; (ii) the existence and content of the
11 1995 Secret Walker Report; (iii) the existence and content of the Sabey
12 Garage Report; (iv) the existence and content of the Auble and Barrett
13 Reports; and (v) the true nature of the City's obligation to provide a
14 credit enhancement pursuant to the Ordinance.

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

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

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

1 alleged facts pertaining to the investment value methodology used to arrive
2 at the \$26 million purchase price.

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

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

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

10 \$21.7 million Developer equity (including land)

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

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

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

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

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

1 which exceeded current parking supply by 1,000 spaces without
2 disclosing the hereinabove-alleged material facts.

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

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

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

26 (iii) The statement that "[a]t the City's request,
27 Robideaux engaged Walker to revise the Feasibility
28 Analysis on April 22, 1998 and again on June 29,

1 1998" is misleading due to the failure to disclose
2 Robideaux's prior engagement of Walker on behalf of
3 the Developers to prepare the 1995 Secret Walker
4 Report.

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

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

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

23 (i) This section states the City hired the
24 accounting firm Coopers & Lybrand to perform an analysis
25 of the Garage and that Coopers & Lybrand described four
26 primary areas of concern in the Walker Report. The stated
27 areas of concern are misleading because they are expressed
28

1 in the form of "risks" rather than by disclosing the existing
2 factual basis for the concerns.

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

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

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

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

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

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

4

5 The purchase price of the Parking Facility of
6 \$26 million is the result of negotiations
7 involving the Foundation, the City and the
8 Developer. The purchase price is based
9 primarily on two MAI appraisals commissioned
10 by the City. Those appraisals determine the
11 'Investment Value' rather than the 'Market
12 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.

13 The above statement regarding the lack of an independent appraisal of the
14 market value of the land is misleading because both Auble and Barrett state
15 in their Reports that use of the investment value method would result in an
16 inflated and unrealistic value for the land underneath the Garage. This
17 statement is also misleading due to the failures to disclose the criticisms of
18 using the investment value method in the Auble and Barrett Reports, the
19 Coopers & Lybrand Report and the Sabey Garage Report. The statement
20 that the purchase price is based primarily on two MAI appraisals
21 commissioned by the City is both false and misleading. The statement is
22 false because the Auble and Barrett Reports are not MAI appraisals. The
23 Auble and Barrett Reports are, in fact, intellectual exercises calculated to
24 derive an artificially inflated value for the Garage. This statement is
25 misleading because it falsely indicates that the \$26 million purchase price is
26 fair and reasonable because it is backed up by not one, but two, MAI
27 appraisals. The above statements are misleading because they fail to disclose
28 that the "investment value" set forth in the appraisals was derived based

1 upon the investment criteria of the City and the Developers which would
2 result in an highly-inflated and unrealistic value for the Garage rather than
3 investment value criteria which were fair, reasonable and calculated to arrive
4 at a fair value for the Garage. The statement that "it is not certain the
5 amount realized upon the sale of the leasehold interest in the Parking
6 Facility would be sufficient to redeem all of the then-outstanding principal
7 amount of the Bonds" is misleading due to the failure to disclose all of the
8 herein alleged material facts set forth in the Auble Report, the Barrett
9 Report, the Coopers & Lybrand Report and the Sabey Garage Report which
10 express very serious and legitimate fact-based concerns that the Garage was
11 worth nowhere near \$26 million.

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

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

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

26 (c) The Walker Report is misleading due to the failure to disclose
27 that Walker had no reasonable factual basis for assuming the Garage could
28

1 increase the hourly parking rate from \$1.00 to \$1.50 and generate the
2 revenues projected based upon that assumption.

3 (d) The Walker Report is misleading due to the failure to disclose
4 that Walker had no reasonable factual basis for assuming the garage could
5 charge the stated rates on evenings and weekends to cinema patrons.

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

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

21 (g) The Walker Report is misleading because it fails to disclose that
22 Walker had no reasonable fact-based reason for believing that retail shopping
23 patrons would spend, on average, three hours parked in the Garage and that
24 cinema patrons would spend an average of 2.8 hours parked in the garage,
25 and that the retail parking figures substantially exceeded the historic length
26 of stay of parking garage customers.
27
28

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

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

13 130. Each of the Defendants substantially participated in making
14 factual representations to the Bondholders in the Official Statements and, as
15 a result, owed Bondholders a duty to make full and fair disclosure of all
16 material facts of which they were aware or reasonably should have been
17 aware of under the circumstances alleged herein.

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

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

25 133. Prior to issuance of the Bonds, the rating agency
26 Standard & Poors stated it would give the Bonds a BBB- investment grade
27 rating. The rating was based in large part upon approval of the parking
28

1 meter revenue Ordinance by the City and caused potential bond purchasers
2 to believe the Bonds were, in fact, investment grade.

3 J. Events Following Sale of the Bonds

4 134. The Bonds were issued with the understanding that renovation of
5 the RPS Mall, which was expected to attract the vast majority of customers
6 parking in the Garage, was to be conducted in two phases and the subject
7 tenant space was not expected to be fully occupied until late in the year 2000
8 at the earliest. The Garage was to be renovated and expanded in the first
9 phase along with a portion of the RPS Mall. The remainder of the RPS Mall
10 was to be renovated in the second phase. As a result, parking revenues were
11 expected to be reduced until construction was completed and all or
12 substantially all the tenant space was occupied. The Walker Report accounts
13 for the phasing of the project and projects reduced revenues for the project
14 during 1999.

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

22 136. After the Bonds were issued in September 1998, the bond
23 proceeds were placed in escrow for the benefit of the Bondholders and were
24 subject to special mandatory redemption which would result in repayment of
25 the bond proceeds to the Bondholders if the Garage was, for some reason, not
26 completely renovated or could not be transferred to the Foundation. The
27 City, Prudential, the Developers, and the Preston law firm proceeded with
28 the transfer of ownership of the Garage from the Developers to the

1 Foundation in about September 1999. However, before that transfer could be
2 completed, the owners of AMC theaters objected to their cinema patrons
3 being required to pay for parking and stated in writings which were
4 circulated to the Defendants that AMC either would not occupy the theater or
5 would enter into more appropriate parking arrangements with the operators
6 of a competing parking garage. To mollify AMC theaters, an agreement was
7 reached whereby parking rates for the Garage would be reduced in the
8 evenings and on weekends to, in effect, subsidize AMC theaters at the
9 expense of the Garage. The Defendants knew that this agreement would
10 seriously compromise the ability of the Garage to generate the revenues
11 needed to service and pay off the Bonds. Although all of this was known to
12 the Defendants, none of it was disclosed to the Bondholders.

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

24 138. The actual process of completing renovations to the RPS Mall
25 took substantially longer than anticipated and, to some extent, the
26 renovations are still being made. During late 1999 and early 2000, the
27 construction delays made it reasonably appear that reduced Garage revenues
28 were caused by the construction delays. The January 21, 2000, edition of The

1 Spokesmen Review, a Spokane newspaper owned by Cowles Publishing,
2 attributed the lower-than-expected revenues to the RPS Mall being "only 65%
3 complete" and stated that "parking numbers are expected to increase after
4 the mall is finished this year." Standard & Poors downgraded the Bonds on
5 about February 1, 2000, from BBB- to BB-. The Standard & Poors ratings
6 report characterized the projections in the Walker Report as "exceedingly
7 optimistic," but did not attribute the downgrade to fraud. The reduced
8 Garage revenues were attributed to changes in the validation program, a
9 two-month delay in completing renovations to the Garage, and operational
10 problems at the Garage. The Standard & Poors report stated that
11 approximately 100,000 square feet of the RPS Mall was still being renovated
12 and was not expected to be complete until at least late 2000 and that
13 approximately 40,000 square feet of renovated tenant space was unoccupied.
14 Thus, as of February, the RPS Mall was about 25% vacant and the continued
15 renovation activity was expected to cut into Garage revenue for the
16 remainder of 2000. The reduced revenues were not attributed to fraud or
17 even negligence by Walker. The true reasons for the reduced revenues were
18 still being concealed from the public.

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

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

4 141. Standard & Poors downgraded the Bonds a second time on April
5 20, 2000, from BB- to CCC. The downgrading was announced in late April
6 2000.

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

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

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

26 145. In about late May or early June 2000, Camus magazine and the
27 local KXLY TV station began printing and airing a series of investigative
28

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

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

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

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

22 149. At present, the revenues generated by the Garage fall far short of
23 projections outset as a direct and proximate result of the grossly inflated
24 value of the Garage. At present, the Foundation is totally incapable of paying
25 any significant amount of debt service on the Bonds.
26

27 150. The City filed its Second Amended Complaint in an action styled
28 City of Spokane v. Walker Parking Consultants/Engineers, Inc., et al.,

1 Superior Court of the State of Washington for the County of Spokane, Case
2 No. 00-204173-4, in early February 2001. The Second Amended Complaint
3 attributes the inability of the Garage to generate the projected revenues to
4 the hereinabove-alleged fraud.

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

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

13 FIRST CLAIM FOR RELIEF

14 (Section 10(b) of the 1934 Act [15 U.S.C. § 78j],

15 Violation of S.E.C. Rule 10b-5 Promulgated Thereunder)

16 (Asserted Against All Defendants)

17 (Violation of Section 20(a) of the 1934 Act [15 U.S.C. § 78t(a)])

18 (Asserted Against the Developers and the City)

19
20 153. Plaintiff repeats the allegations of all preceding paragraphs of
21 this Complaint and incorporates the same by reference.

22 154. All of the Defendants, in connection with the purchases by the
23 Bondholders of the Bonds, directly and indirectly, singly and in concert,
24 recklessly, knowingly or with an intention to defraud, engaged in, offered for
25 sale and sold to the Bondholders securities by means of one or more
26 misrepresentations of failures to disclose material facts, which material facts
27 were necessary in order to make the statements made in connection with
28 those offerings and sales not misleading in light of the circumstances under

1 which those statements were made and, in addition, employed a device,
2 scheme or artifice to defraud the Bondholders and engaged in acts, practices
3 and a course of business which operated as a fraud or deceit upon bond
4 purchasers, all in violation of Section 10(b) of the Securities Exchange Act of
5 1934 [15 U.S.C. § 78j] and subsections 2(a), (b), and (c) of SEC Rule 10b-5
6 promulgated thereunder.

7 155. Defendants Lincoln, Citizens, RPS, and RPS II are each,
8 individually, persons who directly or indirectly controlled the Foundation
9 within the meaning of Section 20(a) of the Securities Exchange Act of 1934
10 [15 U.S.C. § 78t(a)] due to their ability to appoint the board of directors of the
11 Foundation.

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

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

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

25 159. Neither Plaintiff nor the Bondholders could have reasonably
26 known of their claims against any of the Defendants until May 2000, at the
27 earliest.
28

1 160. All of the Defendants conspired to fraudulently conceal their
2 fraud from the Trustee and Bondholders by virtue of all of the hereinabove-
3 alleged conduct attributable to the Defendants and events which occurred in
4 connection with and subsequent to the purchase of the Bonds. As a result of
5 such fraudulent concealment, Trustee and the Bondholders, in the exercise of
6 reasonable diligence, did not discover their claims against the Defendants,
7 and each of them, until May 2000, at the earliest. This claim was brought on
8 behalf of those Bondholders not presently asserting claims against
9 Defendants or who are otherwise unable, for any reason, to assert such
10 claims within one year after the discovery of the facts giving rise to this cause
11 of action and within three years of the date of the Bondholders who initially
12 purchased the Bonds.

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

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

19 SECOND CLAIM FOR RELIEF

20 (The Securities Act of Washington,

21 Wash. Rev. Code 21.20.430(1); 21.20.430(3); 21.20.430(7))

22 (All Defendants Except the City)

23
24 163. Plaintiff repeats the allegations of all preceding paragraphs of
25 this Complaint and incorporates the same by reference.

26 164. This claim is asserted against all Defendants, except the City.
27 Plaintiff intends to amend its Complaint following the expiration of the notice
28

1 period contained in Wash. Rev. Code 4.96 and 35.1 and Spokane Municipal
2 Code 4.02.030 to include the City.

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

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

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

27 168. Defendant Prudential is a broker-dealer within the meaning of
28 Wash. Rev. Code § 21.20.430(3). Defendants Walker, the Foster law firm, the

1 Preston law firm, Citizens, Lincoln, RPS, RPS II, RWR Management, and the
2 Authority are persons who are exempt under the provisions of Wash. Rev.
3 Code § 21.20.040 who materially aided in the hereinabove-alleged
4 transaction.

5 169. Any Defendant that falls within the scope of Wash. Rev. Code §
6 21.20.430(7) acted with scienter within the meaning of Wash. Rev. Code §
7 21.20.430(7). Defendant Prudential is an underwriter within the meaning of
8 Wash. Rev. Code § 21.20.430(7). Defendant the Preston law firm is a bond
9 counsel within the meaning of Wash. Rev. Code § 21.20.430(7).

10 170. Each of the Defendants, by engaging in the hereinabove-alleged
11 conduct, materially aided the Foundation in connection with the
12 underwriting, issuance, offer and sale of the Bonds to Bondholders when,
13 having knowledge that the Official Statements, including the Walker Report,
14 were false and misleading as hereinabove alleged, nonetheless failed to take
15 action to ensure that full and fair disclosure of all material facts was made to
16 prospective bond purchasers in the Official Statements including the Walker
17 Report.

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

21 (a) Prudential served in the role of underwriter with respect to
22 the bond issue and had primary responsibility for conducting due
23 diligence, drafting the Official Statements, and for ensuring that the
24 Official Statements made full and fair disclosure of all material facts.
25

26 (b) Walker issued the Walker Report with all of the
27 hereinabove-alleged false and misleading statements.
28

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

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

8 (e) The Developers, both individually and collectively, caused
9 the Foundation to be formed, controlled the Foundation, instructed
10 Walker to utilize unreasonable and unrealistic assumptions, knowing
11 that the use of such assumptions would result in substantially
12 increased but unachievable projected cash flows, directed the City to
13 cause Auble and Barrett to utilize the highly improper investment
14 value method in connection with preparing the Auble and Barrett
15 Reports, and took an active role in minimizing, deflecting and shutting
16 down all of the legitimate challenges which were made to the Project,
17 including, specifically, the challenges set forth in the Sabey Garage
18 Report and Coopers and Lybrand Report.

19 (f) The Authority, with full knowledge of the hereinabove-
20 alleged fraudulent scheme, agreed to and did enter into the lease of the
21 Garage with the Foundation, entered into the sublease of the ground
22 from the Foundation, and undertook the day-to-day management of the
23 Garage.

24 (g) The Preston law firm served as bond counsel and issued the
25 bond opinion with knowledge of the hereinabove-alleged false and
26 misleading statements.
27
28

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

3 THIRD CLAIM FOR RELIEF

4 (Common Law Fraud/Aiding and Abetting Common Law Fraud)

5 (All Defendants Except the City)

6
7 172. Plaintiff repeats the allegations of all preceding paragraphs of
8 this Complaint and incorporate the same by reference.

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

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

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

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

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

24 178. As a direct and proximate result of Defendants' fraud or aiding
25 and abetting fraud, the Bondholders have suffered damages.
26
27
28

1 FOURTH CLAIM FOR RELIEF

2 (Common Law Negligent Misrepresentation)

3 (All Defendants Except the City)

4
5 179. Plaintiff repeats its allegations of all preceding paragraphs of this
6 Complaint and incorporates the same by reference.

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

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

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

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

20
21 FIFTH CLAIM FOR RELIEF

22 (Breach of Contract)

23 (City of Spokane and the Authority)

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

26 185. This claim is specifically brought as an alternative to and
27 supplements the previous claims for relief.
28

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

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

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

13 PRAYER FOR RELIEF

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

17 A. Declaring and adjudging that Defendants are liable under
18 §§ 10(b) and 20(a) of the Exchange Act and SEC Rule 10b-5 by reason of the
19 misconduct alleged herein;
20

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

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

26 D. Alternatively, declaring and adjudging that Defendants City of
27 Spokane, Spokane Downtown Foundation, and Spokane Parking Public
28 Development Authority have breached a contract and are accordingly liable

1 therefor in damages, and ordering said Defendants specifically to perform
2 said contract in the future;

3 E. Awarding damages as may be proven at trial;

4 F. Awarding pre-judgment interest as provided for under RCW
5 21.20.430 and other applicable law;

6 G. Awarding attorney fees as provided for under RCW 21.20.430 and
7 other applicable law; and
8

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

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

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

16 Dated: April 27, 2001

MASLON EDELMAN BORMAN &
17 BRAND, LLP

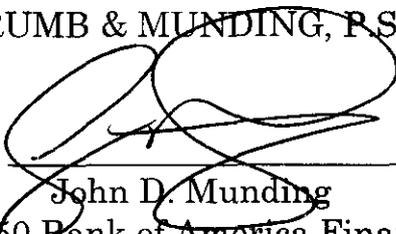
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28 Trust National Association, solely in its
capacity as Indenture Trustee

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