

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

JAN 11 2002

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

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6 Attorney for Defendant
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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF WASHINGTON**

12 IN RE THE RIVER PARK SQUARE)
13 PROJECT BOND LITIGATION)
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No. CS-01-0127-EFS
Consolidated With
CS-01-0128-JLQ

**SPOKANE PUBLIC PARKING
DEVELOPMENT AUTHORITY'S
ANSWER TO THE U.S. BANK &
TRUST'S COMPLAINT AND THE
COMPLAINT AND AMENDED
COMPLAINTS OF NUVEEN
QUALITY INCOME MUNICIPAL
FUND, INC., NUVEEN PREMIUM
INCOME MUNICIPAL FUND 4
INC.; STRONG MUNICIPAL BOND
FUND, INC.; SMITH BARNEY
MUNICIPAL LIMITED TERM;
SMITH BARNEY MUNICIPAL
HIGH INCOME FUND; AND
VANGUARD HIGH-YIELD TAX
EXEMPT FUND; ASSET
GUARANTY INSURANCE
COMPANY'S COMPLAINT IN
INTERVENTION AND THE
COUNTERCLAIM OF THE CITY
OF SPOKANE; AFFIRMATIVE
DEFENSES AND CROSS-CLAIM
AGAINST THE CITY OF
SPOKANE AND WALKER**

COMES NOW the defendant, cross-defendant, and cross-complainant **SPOKANE
PUBLIC PARKING DEVELOPMENT AUTHORITY dba RIVER PARK SQUARE**

**ANSWER, AFFIRMATIVE DEFENSES AND
CROSS-CLAIMS - 1**

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1 PARKING, and for answer to U.S. Bank Trust National Association's Complaint, Nuveen
2
3 Quality Income Municipal Fund, Nuveen Premium Income Municipal Fund 4, Inc., Strong
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5 Municipal Bond Fund, inc., Smith Barney Municipal Fund Limited Term, Smith Barney
6
7 Municipal High-Income Fund, Vanguard High-Yield Tax-Exempt Fund's Complaint, Asset
8
9 Guaranty Insurance Company's Complaint, and by the way of Cross-Claim against the City
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11 of Spokane, and Walker Parking Consultants Engineers, Inc., a Michigan corporation,
12
13 alleges as follows:

14
15 **I.**

16 Unless specifically admitted herein, the Spokane Public Parking Development
17
18 Authority (hereinafter "PDA") denies each and every allegation made against it or involving
19
20 it in the Consolidated Pleadings referred to above.

21 **AFFIRMATIVE DEFENSES**

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23 **I.**

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25 Plaintiffs' Complaint fails to state a claim against this defendant upon which relief
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27 can be granted.

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29 **II.**

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31 Plaintiffs' tort claims are barred in that plaintiffs have failed to properly serve and file
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a statutory claim notice and the Court therefore lacks jurisdiction.

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III.

Plaintiffs' claims of fraud against this defendant are inadequately pleaded.

IV.

Plaintiffs' claims are barred by applicable statutes of limitation.

V.

Plaintiffs' claimed losses were caused by other factors and the acts or omissions of others, and were not caused by any act or omission of this defendant.

VI.

Plaintiffs' claims are barred by the doctrines of res judicata or collateral estoppel.

VII.

Plaintiffs' claims are barred by their lack of due diligence.

VIII.

Plaintiffs' claims are barred by their agent's decision to go forward with the closing of the Garage transaction in September 1998, at a time when the agent had notice of matters as to which it now complains.

IX.

Any damages suffered by the plaintiffs were the proximate result of the negligence of persons other than this defendant, for whom this defendant is not responsible.

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X.

Plaintiffs' claims are barred by laches.

XI.

Plaintiffs' claims are barred by ratification, estoppel or waiver.

XII.

Plaintiffs lack standing to assert the claims made herein.

XIII.

The Court lacks jurisdiction over this defendant under the Securities & Exchange Act of 1934 and 28 U.S.C. Section 1331, and lacks jurisdiction over any alleged pendant or supplemental state claim in that this defendant was not an issuer of any securities. Any allegation that this defendant knew that the "investment value" method was used to allegedly artificially and wrongfully inflate the value of the garage, knew that the Official Statements including the Walker Report or materials were false and misleading, or that this defendant participated in the underwriting and issuance of the bonds and thereby engaged a scheme or artifice to defraud or an unlawful conspiracy or that this defendant participated in making factual representations to bond holders in the Official Statements that were substantial factors in causing the bonds to be issued or that the "authority" issued the bonds are made without any factual basis, or are made without an appropriate investigation of the underlying

1 facts and circumstances, are frivolous, should be stricken, and should allow this defendant
2
3 to an award of attorneys' fees.
4

5 **CROSS CLAIM AGAINST THE CITY OF SPOKANE**
6

7 **I.**

8 The PDA is a Washington public corporation created by the City of Spokane pursuant
9 to RCW 35.21, et seq.
10
11

12 **II.**

13 The PDA was created by Spokane City Ordinance No. C-29241 passed by the City
14 Council of the City of Spokane on November 7, 1988.
15
16

17 **III.**

18 The basic powers of the PDA are set forth in RCW 35.21.730 through RCW
19 35.21.757.
20
21
22

23 **IV.**

24 The powers of the PDA include the power to acquire, own, and sell property, to lend
25 and borrow funds, to enter into contracts, and to do anything a natural person may do.
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V.

The purpose for which the PDA was created by the City of Spokane include improving governmental efficiency and services and general living conditions within the City and performing all matter and types of community services.

VI.

The PDA is to be governed by a five-member Board of Directors appointed by the Mayor of the City of Spokane and approved by the City Council.

VII.

The City of Spokane is a first-class charter city of the State of Washington, and as such, is authorized to exercise powers granted by the City Charter and the Laws of the State of Washington unless otherwise restricted by the Constitution of the State of Washington.

VIII.

The defendant Spokane Downtown Foundation (hereinafter "Foundation") is a non-profit corporation created under the Washington Non-Profit Corporation Act, Chapter 24.03 RCW. The Foundation was formed in 1996 and is authorized to assist in economic development and community revitalization of the City.

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IX.

Citizen's Realty Company (hereinafter "Citizen's") is a wholly owned subsidiary of Cowles Publishing Company of Spokane, Washington.

X.

Riverbank LLC ("RPS") is a limited liability company comprised of Lincoln Investment Company of Spokane ("Lincoln") and Citizens. Both Lincoln and Citizens are the owners of land in downtown Spokane.

XI.

RPS II, LLC (hereinafter "RPS II") is a wholly owned subsidiary of RPS. RPS is the owner of land upon which the parking garage at issue in this case is located.

XII.

R. W. ROBIDEAUX AND COMPANY of Spokane, Washington (hereinafter "ROBIDEAUX") is a Spokane corporation and at times material to this cause of action acted as the Project Director for a commercial project leading to the development of a shopping center and parking garage in downtown Spokane, Washington.

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XIII.

Pursuant to various agreements between the parties previously named, the Developer (RPS, Citizens, RPS II, and Robideaux) agreed to renovate and expand the existing parking facility attached to the north side of Riverbank Square in downtown Spokane.

XIV.

The City Council of the City of Spokane determined, and thereafter passed, City of Spokane Ordinance No. C-31823 (the "Ordinance") on January 27, 1996, prior to the creation of the PDA, that the project would improve the City's downtown central business district by promoting economic activity, increasing employment, enhancing public safety and increasing revenue to the City. The City further determined that construction and acquisition of the Parking Facility would improve vehicle and pedestrian circulation of the central business district by providing convenient public parking for visitors and users of the City Hall and other facilities in the central business district of the City of Spokane.

XV.

On or about September 1, 1990, the Foundation issued \$31,465,000 in parking revenue bond for the Riverbank Square Project pursuant to an indenture of trust created August 1, 1998, between the Foundation and U.S. Bank Trust National Association as Trustee for the purpose of acquiring the Riverbank Square parking facility in downtown

1 Spokane, to fund a debt service reserve account, to capitalize interest on the bonds, to pay
2
3 costs of issuing the bonds.
4

5 **XVI.**
6

7 Ordinance C-31823 of the City of Spokane provides as follows:
8

9 The City hereby pledges, as a first charge and lien, that in the event parking
10 revenues are insufficient to make Ground Lease Payments and pay Operating
11 Expenses, the City shall loan money from the Parking Meter Fund (but only
12 to the extent money or investments are then deposited or allocable to the
13 Parking Meter Revenue Fund (to the Authority's Ground Lease Account and
14 Operating and Maintenance Account) in such an amount that it is no more than
15 necessary, together with such other money as is on hand and available in the
16 Ground Lease Account and the Operating and Maintenance Account, to permit
17 the Authority to make Ground Lease Payments and to pay Operating
18 Expenses. The City covenants to maintain Parking Meter rates at a level to
19 produce an amount each year that, together with other legally available money
20 loaned to the Parking Meter Fund, will equal Ground Lease Payments and
21 Operating Expenses budgeted for that year. Notwithstanding the foregoing,
the City specifically does not:

- 22 (i) Pledge to maintain money in the Parking Meter Revenue Fund;
23
24 (ii) Pledge revenue derived from the enforcement of the City parking
25 laws to the Parking Meter Revenue Fund or any transfer
26 therefrom;
27
28 (iii) Pledge the City's full faith, credit, and resources, or money, to the
29 City's General Fund to the payment of Ground Lease Payments
30 or Operating Expenses; or,
31
32 (iv) Pledge any assets of the City to the payment of the principle or
interest on the Foundation's Bonds.

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XVII.

The Offering Statement issued by the Spokane Downtown Foundation with the approval and ratification of the City of Spokane states that the City of Spokane would lend money to the PDA whenever the PDA was unable to pay Ground Lease or Operating Expenses:

City Pledge of Parking Meter Revenue. The City, by the City Ordinance, has pledged to make loans to the Authority from the City's Parking Meter Revenue if and to the extent necessary to enable Authority to pay Fixed Ground Rent Operating Expenses. The City's pledge is contingent upon a deficiency of revenue to make such payments, and any loans must be repaid from Authority Revenues as described herein under "Sources of Payment and Security for the Bonds - Flow of Funds." The City has pledged to maintain its parking meter rates at a level sufficient to produce each year an amount, together with other legally available money, equal to the Fixed Ground Rent Operating Expenses budgeted by the Authority that year. City generated approximately 1.3 million dollars of Parking Meter Revenue in each of 1996 and 1997.

XVIII.

The Offering Statement was approved and ratified by the City of Spokane. Under the section entitled, "City Pledge of Parking Meter Revenues," there is reference to the "Flow of Funds" section of the Offering Statement which provides that Fixed Facility Rent which

1 is specifically defined in the Operating Statement as debt served is to be paid before ground
2
3 rent and operating expenses.
4

5 **XIX.**
6

7 The Offering Statement defines "Fixed Facility Rent" as "the Schedule of Payments
8 set forth in Lease Agreement" which is equal to the debt service on the bond.
9

10 **XX.**
11

12 As was made clear in the Offering Statement, approved and ratified by the City of
13 Spokane, the PDA was obligated to pay Fixed Facility Rent (debt service) first before
14 paying Fixed Ground Rent or Operating Expenses. After the enactment of the Ordinance
15 and the issuance of the Offering Statement and after significant litigation involving
16 Riverpark Square and the meaning and intent of the Ordinance, the City of Spokane, for the
17 first time in the year 2001, argued that its loan obligation to the PDA was not triggered
18 unless revenues from the operation of the parking garage were insufficient to meet only the
19 Ground Rent and Operating Expenses and thereafter claimed that debt service on the bond
20 was to be paid last out of parking garage revenue rather than first.
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XXI.

The City's authorized agent, the City Attorney, approved the statements in the Offering Statement which now are directly contradicted by the City's position in this litigation and in its claims against the PDA.

XXII.

The City, on September 9, 1998, certified in writing that the information contained in the Preliminary Official Statements concerning the City's role in the bond offering and specifically regarding the City's pledge of Parking Meter Revenues was final and that prospective purchasers had a right to rely on that information.

XXIII.

On September 24, 1998, the Deputy City Manager specifically certified all of the statements pledged in the Offering Statement regarding the City and the Parking Meter Revenue

XXIV.

Despite the representations of the City through its agents in the Offering Statement, and despite the plain and clear language of the Ordinance, the City of Spokane now claims it is obligated to lend money to the PDA only when parking garage revenues fail to meet the

1 total of the Ground Lease Payments and the Operating Expenses without regard to the
2
3 absolute obligation of the PDA to make payments on the debt service for the bonds.
4

5 **XXV.**
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7 The City has alleged as follows:

8
9 Under Ordinance C-31823 . . . if Parking Revenues are less than the sum of
10 Ground Lease Payments and Operating Expenses, then the contingency to
11 satisfy. Under the circumstances, the Ordinance provides that the City will
12 loan funds to the Authority to make up the deficiency in Parking Revenue.

13
14 If, on the other hand, the Parking Revenues are greater than or equal to the sum
15 of Ground Lease Payments and Operating Expenses, then the contingency is
16 not satisfied. Under these circumstances, the Ordinance creates no obligation
17 to loan funds to the Authority, because there is no deficiency in Parking
18 Revenues.

19
20 The Authority's inability to pay principle and interest on the Foundation's
21 bonds does not trigger the City's contingent pledge to loan . . . Debt services
22 is not part of the comparison of Parking Revenues with sum of Ground Lease
23 Payments, i.e., Ground Rent Payments and Operating Expenses. The language
24 of the Ordinance does not decrease or offset Parking Revenues by the amount
25 of debt service, nor does it augment Ground Lease Payments or Operating
26 Expenses by the amount of debt service.

27 (See Answer to City of Spokane, Nuveen Quality Income Municipal Fund,
28 Inc., et al v. Prudential Securities Incorporation, et al., pages 42 through 43.)
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XXVI.

The City of Spokane has taken the position in this litigation that it is only required to lend money to the PDA in an amount equal to any shortfall between gross parking revenue and Ground Rent and Operating Expenses even though the PDA, created specifically by the City of Spokane as the entity which would be responsible for operating the garage, for collecting revenue, and for making debt service payments on the bonds, is required under the Official Statement to pay debt service first and because of revenue deficiencies is presently unable to pay part or all of the Ground Rent or Operating Expenses.

XXVII.

The City of Spokane in its new interpretation of the City Ordinance, ignores the fact that the Riverpark Square Project can continue as a going concern, and in keeping with its public purpose, only if it is able to satisfy debt service on the bonds. The City likewise ignores that a purpose of the contingent pledge contained in the Ordinance was to allow the City to, at a point in the future, obtain title to the parking garage. The City's novel and new interpretation of the Ordinance makes it clear that because default is assured if revenues are insufficient to pay debt service, that it never intended to and never will obtain title to the garage structure.

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XVIII.

The City's new and novel interpretation of its Ordinance logically means that the City of Spokane would never be required to lend money to the PDA for the Riverpark Square Project.

XXIX.

The City's interpretation of the Ordinance that it must loan money only if Parking Garage Revenue is insufficient to pay Operating Expenses can only occur after the PDA has had insufficient revenue to pay other expenses including debt services, Ground Rent or Operating Expenses which means that the parking garage project itself cannot continue.

XXX.

The City further claims that it is prohibited from lending money if the PDA is insolvent.

XXXI.

Because the PDA has insufficient revenue from operation of the garage to pay even Ground Rent or Operating Expenses, let alone debt service, and because the Authority would not be able to meet its obligations, it would be by definition insolvent. Since the City asserts it cannot lend money to an insolvent entity, the result is that City would never be obligated to lend money to the PDA.

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XXXII.

The City of Spokane, through its agents and representatives, and by its conduct as alleged herein, has subjected the PDA to claims and causes of action being asserted by the City of Spokane and others against the PDA. By virtue of ordinances, inter-local agreements, custom and practice, the City of Spokane has an obligation to provide to the PDA, its agents and representatives, an appropriate defense, as well as, full indemnification from any damages, and sufficient funds for attorney's fees to represent itself in any claims or causes of action. The City of Spokane, since causing this lawsuit against the PDA to be initiated, has failed and/or refused to provide adequate funding to the PDA to retain and compensate counsel to provide an independent defense of the PDA in this cause of action.

XXXIII.

The conduct of the City of Spokane in failing to indemnify and defend the PDA, has resulted in the PDA being named as a party in multiple other suits and claims involving the River Park Square Parking Garage, the City has failed and refused, to defend and/or appropriate pay for a defense or offer full indemnity to the PDA, and has failed and refused to extend such loans as may be necessary for the PDA to retain counsel to adequately and properly defend itself, and to pursue its claims and causes of action against culpable parties and/or entities all to the consequent damage and harm of the PDA.

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XXXIV.

The novel interpretation and self-serving construction of its own Ordinance by the City of Spokane as alleged herein, has subjected the PDA to claims and liability in the pending litigation and in other courts to the consequent damage of the PDA for which conduct the PDA is entitled to appropriate monetary compensation for all monetary damages sustained in such amounts that will be shown at the time of trial.

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XXXV.

In breach of past custom and practice, and in violation of the interlocal agreements and understandings by the City of Spokane has refused and failed to provide funds to the PDA for costs of litigation, provoked, precipitated, encouraged and incited by the City of Spokane to the consequent damage of the PDA entitling the PDA to recover such amounts as may be shown at the time of trial based upon the failures of the City of Spokane as alleged herein.

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**CROSS-CLAIM AGAINST CO-DEFENDANT WALKER PARKING
CONSULTANTS/ENGINEERS, INC.,**

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I.

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Defendant PDA incorporates by reference its previous allegations and assertions herein.

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II.

During times material to this cause of action, Walker Parking Consultants was retained for valuable consideration to provide and recommend parking rate structure, project annual operating expenses, and on the basis of estimated demand, project annual net operating income for the parking garage for a ten year period.

The defendant and cross-claimant was an intended third-party beneficiary of the services to be performed by Walker which services were to be performed with reasonable prudence in accordance with the standard of care imposed upon an engineering and parking consulting firm similarly situated to Walker in the State of Washington.

III.

In connection with the services rendered, Walker was on notice that the defendant and cross-claimant was relying on its estimates and expertise and that its revenue projections would be of great significance to the defendant and cross-claimant and would be relied upon in regard to the future financial performance of the parking garage and would in part be used to value the parking garage and any financing used to construct or obtain title to it.

IV.

On June 14, 1996, Walker issued a feasibility analysis and contained projected revenues from a renovated and expanded parking garage. The study projected revenues

1 much higher than historic levels. Thereafter, Walker performed a public use parking study
2 for the parking garage and on October 16, 1996, issued a Public Use Study concluding that
3 demand in the immediate vicinity exceeded capacity and that patrons of other locations
4 would park in the proposed parking garage. The revenues projected by Walker as well as
5 its utilization study relied upon assumptions about rates and duration of stay that were
6 materially more substantial than historical performance or a reasonably prudent study would
7 have disclosed and Walker's assessments and projections failed to account for competition
8 by on street parking and other lots and garages.
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16 **V.**
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18 Walker likewise, in performing its services, failed to take into account validation
19 programs from downtown parking which had varied widely in the past and was aware that
20 there were obstacles to ongoing subsidation of a validation program at the parking volumes
21 estimated by Walker.
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25 **VI.**
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27 While Walker was aware that there was a substantial possibility that there would be
28 no parking subsidy through a validation program, it failed in its projections of reasonable
29 rate structures and parking volumes to take this into account and failed to consistently apply
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1 to its analysis the assumptions that there would be no parking subsidy or validation program
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3 to the consequent damage of the defendant and cross-claimant.
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5 **VII.**

6 In connection with the performance of its service, Walker failed to disclose that its
7 assumptions and conclusions were extremely aggressive, that there was substantial
8 probability that the revenues projected might not be attained and that the validation program
9 may not come to pass and that the validation program or subsidy was not being consistently
10 applied in terms of Walker's analysis and estimates.
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16 **VIII.**

17 As a consultant and professional engineering firm, Walker owed a duty to use
18 ordinary care under the circumstances and breached that duty to the consequent damages
19 of the defendant and cross-claimant by failing to exercise reasonable care and skill in the
20 performance of its services.
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25 **IX.**

26 As a proximate result of Walker's negligence, including its negligent representations,
27 and its lack of disclosures, the Parking Development Authority has been damaged in an
28 amount to be shown at the time of trial.
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1 **WHEREFORE**, having answered plaintiffs' Complaint, Amended Complaints,
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3 Complaint in Intervention and Cross-Claims, having asserted its cross-claims and
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5 counterclaims, the PDA prays for judgment as follows:
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7 1 For a monetary judgment against Walker in such amounts as will be shown at
8
9 the time of trial based upon the culpable conduct of Walker in the conduct and management
10
11 of its professional duties and obligations to the PDA.

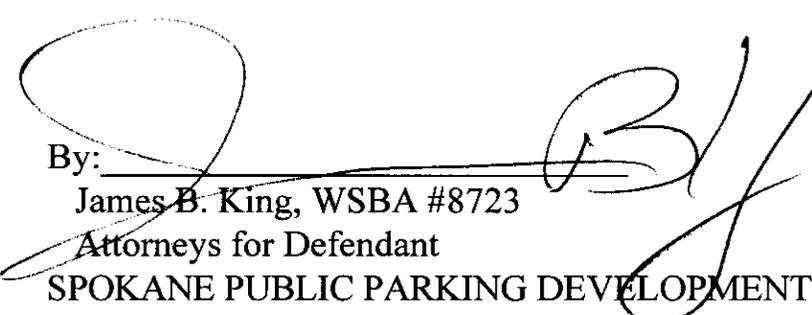
12 2. For a judgment against the City of Spokane, declaring, *inter alia*, the City of
13
14 Spokane is obligated to provide, at its sole expense, independent counsel to represent the
15
16 PDA in connection with the litigation that the City has initiated against the PDA under
17
18 applicable ordinances, agreements, custom, and practice.

19 3. For judgment against the City of Spokane declaring, *inter alia*, the City of
20
21 Spokane is obligated to lend monies to the PDA in keeping with the language and intent of
22
23 the Ordinance in order to allow the PDA to meet its obligations in the ordinary course and
24
25 for further determination by this Court that the interpretation of its own Ordinance, now
26
27 urged by the City of Spokane is frivolous, without merit, and is sanctionable.
28

1 For such other and further relief as to the Court may seem just and equitable.

2
3 DATED this 11 day of January, 2002.

4
5 **KEEFE, KING & BOWMAN, P.S.**

6
7
8
9 By: 

10 James B. King, WSBA #8723

11 Attorneys for Defendant

12 SPOKANE PUBLIC PARKING DEVELOPMENT
13 AUTHORITY dba RIVER PARK SQUARE
14 PARKING
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ANSWER, AFFIRMATIVE DEFENSES AND
CROSS-CLAIMS - 22

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HAND DELIVERED []

23 William F. Etter
24 Etter, McMahon, Lamberson &
25 Clary P.C.
26 421 W. Riverside, Ste. 1600
27 Spokane, WA 99201-0401
28 **Def. Spokane Downtown Foundation**
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VIA REGULAR MAIL []
VIA CERTIFIED MAIL []
VIA FACSIMILE []
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ANSWER, AFFIRMATIVE DEFENSES AND
CROSS-CLAIMS - 24

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5 Seattle, WA 98154-1135
6 **Def. Preston Gates & Ellis, LLP**

VIA REGULAR MAIL [X]
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VIA FACSIMILE []
HAND DELIVERED []

7 Ladd B. Leavens
8 Davis Wright Termain, LLP
9 1501 Fourth Avenue
10 2600 Century Square
11 Seattle, WA 98101-1688
12 **Def. Citizens Realty Company and**
13 **Lincoln Investment Company of**
14 **Spokane**

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VIA CERTIFIED MAIL []
VIA FACSIMILE []
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17 Toole, P.S.
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19 1100
20 Spokane, WA 99201-0302
21 **Def. RPS Mall LLC and RPS II LLC**

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VIA CERTIFIED MAIL []
VIA FACSIMILE []
HAND DELIVERED []

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26 Vance PLLC
27 600 University Street, Ste. 2700
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29 **Def. RPS Management, Inc. dba**
30 **R.W. Robideaux & Company**
31
32

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VIA CERTIFIED MAIL []
VIA FACSIMILE []
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ANSWER, AFFIRMATIVE DEFENSES AND
CROSS-CLAIMS - 25

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9 **Plaintiff City of Spokane**

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VIA FACSIMILE []
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10 Arthur W. Harrigan, Jr.
11 Karl F. Oles
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14 999 3rd Avenue, Ste. 4400
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16 **Defs. Ann Koegen, Roy J. Koegen**
17 **and Perkins Coie LLP**

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VIA CERTIFIED MAIL []
VIA FACSIMILE []
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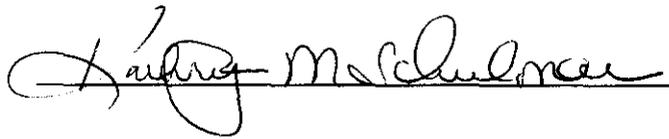
18 John D. Lowry
19 James Rhett Brigman
20 Daniel J. Gunter
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22 1001 Fourth Avenue Plaza, Ste.
23 4500
24 Seattle, WA 98154-1065
25 **Intervenor Plaintiff**
26 **Asset Guaranty Insurance Company**

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VIA FACSIMILE []
HAND DELIVERED []



**ANSWER, AFFIRMATIVE DEFENSES AND
CROSS-CLAIMS - 27**

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