

1 (b) That the Authority's unforeseen insolvency has
2 created circumstances in which it is impossible
3 for the parties to negotiate, or for the court to
4 impose, "commercially reasonable" essential terms
5 for this insolvent debtor, preventing the parties
6 from assenting to the same terms and excusing
7 the City from making further loans under
8 Ordinance C-31823;
9

10
11 (c) Ordinance C-31823 contemplated the City's making
12 loans in exchange for promises of repayment; the
13 Authority's intervening subordination of the
14 City's right to repayment and the Authority's
15 intervening insolvency make any promise of
16 payment illusory, and any new disbursement to the
17 Authority under these unforeseen circumstances
18 would not be supported by consideration and would
19 not be "loans," but would be unconstitutional
20 "gifts."
21

22
23
24 (d) That the City is excused from making further
25 loans under Ordinance C-31823 by the
26 impossibility, commercial frustration, failure of
27

1 Washington limited liability
2 company; RWR MANAGEMENT, INC., a
3 Washington corporation, doing
4 business as R.W. ROBIDEAUX AND
5 COMPANY; CITY OF SPOKANE,
6 WASHINGTON, a first-class charter
7 city of the State of Washington;
8 SPOKANE PUBLIC PARKING
9 DEVELOPMENT AUTHORITY, an
10 unregistered Washington
11 corporation doing business as
12 RIVER PARK SQUARE PARKING,

13 Defendants.

14 CITY OF SPOKANE,

15 Third-Party Plaintiff,

16 v.

17 ROY J. KOEGEN and ANNE KOEGEN, a
18 marital community, and PERKINS
19 COIE, LLP,

20 Third-Party Defendants.

21 The City of Spokane answers Plaintiffs' Complaint as
22 follows:

23 JURISDICTION AND VENUE

24 1. - 2. This defendant admits the allegations of
25 paragraphs 1 and 2.

26 SUMMARY OF COMPLAINT

27 3. This defendant lacks knowledge or information

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 2

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1 sufficient to form a belief as to the dollar value of the
2 Bonds purchased by the named plaintiffs or whether they
3 relied upon the Preliminary Official Statement and Official
4 Statement. This defendant admits the remaining allegations
5 of paragraph 3.
6

7 4. Answering paragraph 4, this defendant states that
8 the credit enhancement to be provided by the City of
9 Spokane was subject to the terms of Ordinance C31823,
10 including a clearly-stated contingency and in that sense
11 was not "unconditional." This defendant lacks knowledge or
12 information sufficient to form a belief as to the truth of
13 plaintiffs' allegations about what was "important" or
14 "critical" to prospective purchasers. This defendant
15 admits the remaining allegations of paragraph 4.
16
17

18 5. The City denies all of the allegations of
19 paragraph 5 that address the alleged knowledge, actions or
20 intentions of the City. The City lacks knowledge or
21 information sufficient to form a belief as to the truth of
22 the allegations as they pertain to other defendants.
23
24

25 PARTIES

26 6. - 11. This defendant lacks knowledge or
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 3

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1 information sufficient to form a belief as to the truth of
2 the allegations of paragraphs 6 through 11.

3 12. Paragraph 12 requires no response by this
4 defendant.
5

6 13. This defendant admits the allegations of
7 paragraph 13.
8

9 14. This defendant admits that John C. Moore was a
10 Managing Director of Public Finance for Prudential
11 Securities at pertinent times, but lacks knowledge or
12 information sufficient to form a belief as to the truth of
13 the remaining allegations of paragraph 14.
14

15 15. This defendant admits the allegations of
16 paragraph 15.
17

18 16. This defendant admits the allegations of
19 paragraph 16, but states that it was not aware of certain
20 of the matters alleged by paragraph 16 at times pertinent
21 to its engagement of Walker or its adoption of Ordinance
22 C31823.
23

24 17. This defendant lacks knowledge or information
25 sufficient to form a belief as to the truth of the
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 4

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1 allegations of the last two sentences of paragraph 17
2 pertaining to Walker's motives and intentions, but admits
3 the remaining allegations of paragraph 17.
4

5 18. This defendant lacks knowledge or information
6 sufficient to form a belief as to the truth of the
7 allegations of the last sentence of paragraph 18, but
8 admits the remaining allegations of the paragraph.
9

10 19.- 21. Answering paragraphs 19 through 21, this
11 defendant denies that any portions of the Official
12 Statement reviewed by its agents, and as to which they had
13 knowledge or information, were known or believed by them be
14 false or misleading. This defendant lacks knowledge or
15 information as to the terms of Prudential Securities'
16 engagement of Foster Pepper, or the circumstances of any
17 communication to the Plaintiffs of disclaimers as to its
18 role or engagement, sufficient to form a belief as to the
19 truth of the allegations of those paragraphs.
20
21

22 22. This defendant admits the allegations of
23 paragraph 22.
24

25 23. This defendant lacks knowledge or information
26 sufficient to form a belief as to the truth of the
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 5

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1 allegation about the Preston law firm's intentions, but
2 admits the remaining allegations of paragraph 23.

3 24. - 27. Answering paragraphs 24 through 27, this
4 defendant denies that any portions of the Official
5 Statement reviewed by its agents, and as to which they had
6 knowledge or information, were known or believed by them be
7 false or misleading. This defendant lacks knowledge or
8 information as to the terms of the Foundation's engagement
9 of the Preston law firm, or the circumstances of any
10 communication to the Plaintiffs of disclaimers as to its
11 role or engagement, sufficient to form a belief as to the
12 truth of the allegations of those paragraphs.

13 28. This defendant lacks knowledge or information
14 sufficient to form a belief as to the truth of the
15 allegation the Elizabeth Cowles is and was an owner of
16 Cowles Publishing, although it admits that she is a
17 principal of the company and believes her to have an
18 indirect ownership interest. This defendant admits the
19 remaining allegations of paragraph 28.

20 29. - 33. This defendant admits the allegations of
21 paragraphs 29 through 33.

22 AMENDED ANSWER, COUNTERCLAIM,
23 CROSS-CLAIMS AND THIRD-PARTY
24 CLAIM OF CITY OF SPOKANE - 6

25 **RANDALL & DANSKIN, P.S.**
26 ATTORNEYS AND COUNSELORS
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1 34. - 35. Answering paragraphs 34 and 35, this
2 defendant lacks knowledge whether R.W. Robideaux had
3 knowledge of the content of the Sabey Garage Report or
4 commented on it, but admits the remaining allegations of
5 paragraphs 34 and 35.
6

7 36. Answering paragraph 36, this defendant lacks
8 knowledge or information sufficient to form a belief as to
9 the truth of the allegation that Robideaux's acts or
10 omissions were committed as a scheme or artifice to
11 defraud. This defendant admits the remaining allegations
12 of paragraph 36.
13

14 37. This defendant admits the first sentence of
15 paragraph 37 and admits that it was encouraged by the
16 Developers to instruct appraisers Auble and Barrett to
17 perform an "investment value" appraisal based on the Walker
18 projections. It denies the remaining allegations of
19 paragraph 37.
20

21 38. Answering paragraph 38, this defendant denies the
22 partial and selective characterizations of the Ordinance
23 and opinion letters in deference to the full written
24 documents, which speak for themselves. This defendant
25
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 7

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1 admits that a reason for adopting the Ordinance was bond
2 counsel's recommendation that the Ordinance would serve as
3 a credit enhancement. This defendant denies all remaining
4 allegations of paragraph 38.
5

6 39. Answering paragraph 39, this defendant admits
7 that the Authority was created by Ordinance passed on
8 November 7, 1988, that it is governed by a five-member
9 board whose members are appointed by the Mayor and approved
10 by the City Council and admits that during the period the
11 Bonds were being underwritten and issued, two City Council
12 members, Orville Barnes and Roberta Greene, sat on the
13 Authority board. This defendant denies all remaining
14 allegations of paragraph 39.
15

16 40. Answering paragraph 40, this defendant admits
17 that at the time the Bonds were issued in September 1998,
18 the Authority engaged in no activities other than planning
19 activities relating to expected acquisition, by lease, of
20 the Garage. This defendant denies all remaining
21 allegations of paragraph 40.
22

23 41. Answering paragraph 41, this defendant states
24 that the authority of agents to act for the City is
25
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 8

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1 strictly limited and controlled by applicable law and
2 express action and delegation and denies that any agent's
3 acts were ratified, adopted and approved except as
4 expressly provided by law or by proper legislative action.
5 This defendant admits the allegations as they relate to the
6 actions of Robideaux acting as an agent for the Developers.
7 This defendant lacks knowledge or information sufficient to
8 form a belief as to the truth of the allegations as they
9 relate to other defendants or their agents.

12 42. - 43. Answering paragraphs 42 and 43, this
13 defendant denies the allegations as they pertain to the
14 City. This defendant lacks knowledge and information
15 sufficient to form a belief as to the truth of the
16 allegations as they relate to other defendants.

18
19 GENERAL ALLEGATIONS
20 APPLICABLE TO ALL CLAIMS FOR RELIEF

21 44. - 45. Answering paragraphs 44 and 45, this
22 defendant denies that the Garage had previously served as
23 the dedicated parking facility for RPS Mall and never had
24 operating revenues in excess of \$1 million. This defendant
25 admits the remaining allegations of paragraphs 44 and 45.

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 9

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1 46. Answering paragraph 46, this defendant denies the
2 partial characterization of the conclusion of the 1993
3 parking survey in deference to the complete written
4 document, which speaks for itself. This defendant admits
5 the remaining allegations of paragraph 46.
6

7 47. - 50. Answering paragraphs 47 through 50, this
8 defendant states that the allegations are a partial, but
9 not a full, fair and complete characterization of
10 communications among the parties during the periods of time
11 identified. This defendant further denies that it had any
12 knowledge or belief during the periods identified that
13 projections were "artificially inflated" or that its
14 consultants, professionals or "public-private partner" were
15 providing other than their best, expert guidance on the
16 prospects for future garage operation. This defendant
17 otherwise admits the allegations of paragraphs 47 through
18 50.
19
20
21

22 51. - 52. This defendant denies the allegations of
23 paragraphs 51 and 52.
24

25 53. Answering paragraph 53, this defendant admits
26 that the four assumptions identified were important to
27

1 Walker's projections of revenue. This defendant denies the
2 remaining allegations of paragraph 53 as they pertain to
3 the City and lacks knowledge and information sufficient to
4 form a belief as to the truth of the allegations as they
5 relate to other defendants.
6

7 54. Answering paragraph 54, this defendant admits
8 that Walker was issuing a "financial feasibility study" and
9 had a duty to evaluate the reasonableness of the
10 assumptions underlying its analysis. This defendant denies
11 the remaining allegations of paragraph 54 as they pertain
12 to the City and lacks knowledge and information sufficient
13 to form a belief as to the truth of the allegations as they
14 relate to other defendants.
15
16

17 55. Answering paragraph 55, this defendant admits the
18 allegations of the first sentence of the paragraph. This
19 defendant lacks knowledge or information sufficient to form
20 a belief as to the truth of the remaining allegations,
21 which were the sort of matters as to which it was required
22 to rely on its expert consultants and "public-private
23 partner" for professional judgment.
24
25
26
27
28

1 56. - 62. Answering paragraphs 56 through 62, this
2 defendant denies the allegations as they relate to the
3 City. This defendant lacks knowledge or information
4 sufficient to form a belief as to the truth of the
5 remaining allegations, which were the sort of matters as to
6 which it was required to rely on its expert consultants and
7 "public-private partner" for professional judgment.
8

9
10 63. Answering paragraph 63, this defendant admits
11 that Dennis Beringer recommended that the City seek "fair
12 market value" appraisals of the garage and that an
13 "investment value" appraisal would result in a value which
14 was inflated in the sense that it would exceed a "fair
15 market valuation" and would thereby cause the Foundation to
16 pay more for the garage and for the ground lease than was
17 reasonable and fair. This defendant further admits that it
18 adopted the "investment value" appraisal approach at the
19 urging of Elizabeth Cowles and R.W. Robideaux. This
20 defendant denies the remaining allegations of paragraph 63.
21
22

23 64. - 70. Answering paragraphs 64 through 70, this
24 defendant admits that Auble and Barrett arrived at
25 "investment values" of over \$26 million for the Garage and
26
27

1 denies the partial and selective characterizations of the
2 Auble and Barrett appraisals in deference to the full
3 written documents, which speak for themselves. The City
4 denies the remaining allegations of paragraphs 64 through
5 70.
6

7 71. Answering paragraph 71, this defendant admits
8 that the anticipation of a low interest rate due to the
9 expected tax-exempt status of the Bonds affected, and
10 increased, the "investment valuation" of the Garage. This
11 defendant denies the remaining allegations of paragraph 71.
12

13 72. This defendant denies the allegations of
14 paragraph 72.
15

16 73. Answering paragraph 73, this defendant admits
17 that on November 25, 1996, its City Council adopted
18 Resolution 96-144, denies the partial and selective
19 characterization of that resolution, which is a written
20 document and speaks for itself and denies the remaining
21 allegations and characterizations of paragraph 73.
22

23 74. Answering paragraph 74, this defendant admits the
24 allegations of the second sentence of the paragraph with
25 the exception of the characterization "major" which is
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 13

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1 vague; lacks knowledge or information sufficient to form a
2 belief as to the truth of the first sentence; denies the
3 allegations of the third sentence and states in connection
4 therewith that Sabey Corporation was known to be a
5 competitor, if not the principal competitor of the planned
6 River Park Square Development, and was thereby subject to
7 bias.
8
9

10 75. Answering paragraph 75, this defendant admits
11 that on or about December 10, 1996, Laurent D. Poole
12 provided the City with the identified reports, lacks
13 knowledge or information sufficient to form a belief as to
14 the truth of the remaining allegations of the first and
15 second sentences of the paragraph, and denies the partial
16 and selective characterization of the reports in deference
17 to the written documents, which speak for themselves.
18
19

20 76. Answering paragraphs 76, this defendant lacks
21 knowledge or information sufficient to form a belief as to
22 the allegation of what the Plaintiffs knew and denies the
23 remaining allegations of paragraph 76.
24
25
26
27

1 77. This defendant denies the partial and selective
2 characterization of the Report, which is a written document
3 and speaks for itself.
4

5 78. This defendant denies the allegations of
6 paragraph 78 as they pertain to the City and lacks
7 knowledge or information sufficient to form a belief as to
8 the truth of the allegations as they pertain to other
9 defendants.
10

11 79. This defendant admits that the City Council
12 adopted Resolution 97-2 on January 13, 1997 (not 1998) but
13 denies the partial and selective characterization of the
14 Resolution, which is a written document and speaks for
15 itself.
16

17 80. - 84. Answering paragraphs 80 through 84, the
18 City denies the characterization of Coopers & Lybrand's
19 engagement, lacks knowledge or information sufficient to
20 form a belief as to what Coopers & Lybrand knew or
21 understood other than is disclosed in its report, and
22 denies the partial and selective characterization of the
23 Report in deference to the written document, which speaks
24 for itself.
25
26
27

1 85. Answering paragraph 85, this defendant admits
2 that it knew of the Coopers & Lybrand Report prior to
3 issuance of the Bonds, but states that due to delays caused
4 by others it was provided with the report only on the eve
5 of its adoption of Ordinance C31823 and after it had been
6 pressured, due to claimed emergencies, to adopt resolutions
7 preliminary to the ordinance; this defendant further states
8 that the Report was only one piece of the information it
9 had been collecting and considered in making decisions over
10 a period of many months. This defendant denies the
11 remaining allegations of paragraph 85.
12
13

14 86. - 88. Answering paragraphs 86 through 88, the
15 City admits that it adopted Ordinance C31823 on January 27,
16 1997, which was after it had received the Auble and Barrett
17 appraisals, the Sabey Corporation communications and the
18 Coopers & Lybrand report. This defendant denies the
19 remaining allegations of the paragraphs, including the
20 partial and selective characterizations of the Ordinance,
21 which is a written document and speaks for itself.
22
23
24

25 89. This defendant denies the allegations of
26 paragraph 89.
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 16

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1 90. - 91. Answering paragraphs 90 and 91, this
2 defendant denies the allegations as they pertain to the
3 City. The City lacks knowledge or information sufficient
4 to form a belief as to the truth of the allegations as they
5 relate to other defendants.
6

7 92. This defendant denies the allegations of
8 paragraph 92.
9

10 93. - 94. Answering paragraphs 93 and 94, this
11 defendant denies the allegations as they pertain to the
12 City. This defendant lacks knowledge or information
13 sufficient to form a belief as to the truth of the
14 allegations as they relate to other defendants.
15

16 95. - 96. This defendant lacks knowledge or
17 information sufficient to form a belief as to the truth of
18 the allegation that Prudential provided the Plaintiffs with
19 copies of the Official Statement. This defendant denies
20 the remaining allegations of paragraphs 95 and 96.
21

22 97. Answering paragraph 97, this defendant admits
23 that the rating agency Standard & Poors stated it would
24 give the Bonds a BBB- investment grade rating. This
25 defendant denies the remaining allegations of paragraph 97.
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 17

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1 98. Answering paragraph 98, this defendant admits
2 that the renovation was expected to be conducted in two
3 phases and that Garage renovation and expansion was to
4 occur in the first phase, and admits that parking revenues
5 were expected to increase as tenant space was increasingly
6 occupied. This defendant denies the remaining allegations
7 of paragraph 98, including, in some cases, because it lacks
8 knowledge or information sufficient to form a belief as to
9 the truth of the allegations.
10

11
12 99. Answering paragraph 99, this defendant admits
13 that before transfer of ownership of the Garage was
14 completed, AMC made objections in writings that were
15 circulated among certain defendants, and that in some cases
16 City employees were provided with copies of such writings,
17 which are written documents and speak for themselves. This
18 defendant denies the remaining allegations as they pertain
19 to the City and specifically denies that it was involved
20 in the transfer of ownership of the Garage.
21
22

23 100. Answering paragraph 100, this defendant denies
24 that it was a party to any agreement of the sort alleged or
25 that it had any right or opportunity to participate
26
27

1 therein, and denies the remaining allegations as they
2 pertain to the City. This defendant lacks knowledge or
3 information sufficient to form a belief as to the truth of
4 the allegations as they relate to other defendants.
5

6 101. This defendant denies the allegations of
7 paragraph 101 as they relate to the City, including the
8 characterization of the Authority as controlled by the
9 City. This defendant lacks knowledge or information
10 sufficient to form a belief as to the truth of the
11 allegations as they relate to other defendants.
12

13 102. Answering paragraph 102, this defendant denies
14 that delays in construction made it reasonably appear that
15 reduced Garage revenues were caused solely by construction
16 delays, but admits that construction delays could
17 reasonably appear to be one contributing factor. This
18 defendant admits the remaining allegations of paragraph
19 102.
20
21

22 103. This defendant admits that Standard & Poors
23 downgraded the Bonds on or about February 1, 2000 from BBB-
24 to BB-, but denies the partial and selective
25
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 19

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1 characterization of the ratings report in deference to the
2 written document, which speaks for itself.

3 104. This defendant lacks knowledge or information
4 sufficient to form a belief as to the truth of the
5 allegations of paragraph 104 and therefore denies the same.
6

7 105. This defendant denies the allegations of
8 paragraph 105, including as being vague in the use of the
9 description "new."
10

11 106. This defendant admits the allegations of
12 paragraph 106.

13 107. Answering paragraph 107, this defendant lacks
14 knowledge or information sufficient to form a belief as to
15 the truth of the allegations concerning Prudential's
16 characterization of the City Council's action on April 26,
17 2000. This defendant denies the remaining allegations of
18 paragraph 107.
19
20

21 108. - 109. This defendant lacks knowledge or
22 information sufficient to form a belief as to the truth of
23 the allegations of paragraphs 108 and 109.
24

25 110. This defendant denies Plaintiffs'
26 characterization "substantial amount of the fraud addressed
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 20

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1 in this Complaint" and incorporates its foregoing denials.
2 This defendant admits the alleged timing of the KXLY and
3 Camas magazine reports, as well as the establishment of
4 related web sites.
5

6 111. - 112. This defendant denies the allegations of
7 "fraud" or "fraudulent scheme." It lacks knowledge or
8 information sufficient to form a belief as to the truth of
9 the remaining allegations of paragraphs 111 and 112.
10

11 113. Answering paragraph 113, this defendant denies
12 any allegation that it was involved in concealment.
13 Defendant lacks knowledge or information sufficient to form
14 a belief as to the truth of the remaining allegations.
15

16 114. Defendants admit the allegations of paragraph
17 114.
18

19 115. Answering paragraph 115, this defendant admits
20 the allegations of the first sentence of the paragraph but
21 denies the remaining allegations.
22

23 116. - 117. Answering paragraphs 116 and 117, this
24 defendant denies the allegations as they pertain to the
25 City and lacks knowledge or information sufficient to form
26

27
28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 21

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1 a belief as to the truth of the allegations as they relate
2 to other defendants.

3
4
5 FIRST CLAIM FOR RELIEF

6 118. This defendant incorporates its answers to the
7 preceding paragraphs.

8 119. - 126. This defendant denies all allegations as
9 they pertain to the City and any person or entity alleged
10 or determined to be its employee or agent. The allegations
11 relating to other parties require no response by this
12 defendant.
13

14
15 SECOND CLAIM FOR RELIEF

16 127. This defendant incorporates its answers to the
17 preceding paragraphs.

18 128. - 134. This defendant denies all allegations as
19 they pertain to the City and any person or entity alleged
20 or determined to be its employee or agent. The allegations
21 relating to other parties require no response by this
22 defendant.
23
24

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THIRD CLAIM FOR RELIEF

135. This defendant incorporates its answers to the preceding paragraphs.

136. - 141. This defendant denies all allegations as they pertain to the City and any person or entity alleged or determined to be its employee or agent. The allegations relating to other parties require no response by this defendant.

FOURTH CLAIM FOR RELIEF

142. This defendant incorporates its answers to the preceding paragraphs.

184. - 146. This defendant denies all allegations as they pertain to the City and any person or entity alleged or determined to be its employee or agent. The allegations relating to other parties require no response by this defendant.

AFFIRMATIVE DEFENSES

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

2. Plaintiffs' claims are barred by RCW 35.21.750.

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

3 4. Plaintiffs' claims are barred by applicable
4 statutes of limitation.

5 5. The Plaintiffs' claimed losses were caused by
6 other factors and the acts or omissions of other parties,
7 and were not caused by any act or omission of this
8 defendant.

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

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

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

17 9. Any damages suffered by the Plaintiffs were the
18 proximate result of the negligence of persons other than
19 this defendant, for whom this defendant is not responsible.

20 10. Plaintiffs' claims are barred by laches.

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

3 COUNTERCLAIMS AND CROSS-CLAIMS
4

5 By way of counterclaim against the Plaintiffs and
6 cross-claim against the other defendants, the City of
7 Spokane alleges as follows:

8 1.1 For many years the Developers have owned River Park
9 Square and the adjacent Parking Garage.
10

11 1.2 At some point in the early 1990s, the Developers
12 decided to redevelop River Park Square and the Parking Garage.
13 The redevelopment involved building a new and larger retail
14 space for Nordstrom (an existing tenant), adding new retail
15 stores and entertainment uses, and expanding the Parking
16 Garage.
17

18 1.3 By early 1995, the Developers began to empty River
19 Park Square of tenants so that it could be remodeled.
20

21 1.4 By early 1995, the Developers had hired Walker,
22 through Robideaux or other agents, to develop a pro forma
23 statement of net operating income for the Parking Garage.
24

25 1.5 Walker had previously provided consulting services
26 for other Nordstrom-related projects.
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 25

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1 1.6 After the Developers and their agents had the pro
2 forma statements in hand, they approached the City about a
3 public-private partnership to redevelop River Park Square. By
4 no later than the first half of 1995, City representatives and
5 the Developers were engaged in extensive communication over
6 possible City contributions to the redevelopment project.
7

8 1.7 Initially, the Developers asked that the City apply
9 for a \$23 million \$108 HUD loan and a HUD EDI grant of \$3.6
10 million. The City agreed, although a loan request that size
11 would consume the entire \$108 community development loan funds
12 available to the City, pending repayment by the Developers.
13
14

15 1.8 HUD eventually approved Spokane's request for the
16 \$108 loan. HUD also made a \$1 million EDI grant to Spokane to
17 apply to a debt service reserve for its HUD loan.
18

19 1.9 Later in 1995, the Developers suggested that the City
20 assume financial responsibility for the renovations and
21 expansion of the Developers' Parking Garage.
22

23 1.10 Initially, the Developers, through their agents,
24 proposed to sell the existing Parking Garage to the City, lease
25 the real property under the Parking Garage to the City for the
26 useful life of the garage, and rely upon the City to build the
27

1 expansion and improvements. The costs were projected by the
2 Developers' agents to be as follows:

3 Sale price offered for existing garage: \$4.8 million
4 Cost to City of structural improvements: \$2 million
5 Lease rate offered for underlying ground: \$320,000/year

6 The Developers projected that the City could accomplish what
7 was necessary to acquire, renovate and expand the Parking
8 Garage by issuing \$14 million in principal amount of revenue
9 bonds.
10

11 1.11 In a June 2, 1995 letter, Roy Koegen of Perkins Coie
12 LLP, Bond Counsel for the City (hereafter "Bond Counsel")
13 notified counsel to the Developers that the City would need to
14 retain a consultant independently to review projected revenues
15 and expenses for the project.
16

17 1.12 On June 12, 1995, the Spokane City Council (the
18 "Council") passed a resolution (Resolution 95-74) authorizing
19 and directing the City Manager to develop a proposal to acquire
20 and develop the Parking Garage through the issuance of revenue
21 bonds. The Council's resolution provided that the proposal
22 should require the issuance of no more than \$15 million in
23 principal amount of bonds, repayable exclusively from Parking
24 Garage revenues.
25
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 27

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1 1.13 The Council recognized the need for independent
2 expertise on the financial feasibility of the Parking Garage
3 project, and on June 26, 1995 it authorized the City Manager to
4 negotiate a contract with Walker to conduct such a feasibility
5 study for the Parking Garage.
6

7 1.14 The Council's resolution also authorized the City
8 Manager to contract for Walker to perform a construction review
9 of the Parking Garage.
10

11 1.15 Walker was known to the City to be the preeminent
12 national consulting firm on garage design and operations. The
13 Council necessarily would rely, and did rely, on Walker's
14 superior knowledge in making decisions about participating
15 financially in the Parking Garage project.
16

17 1.16 The contract between the Council and Walker expressly
18 recited the City's reliance on Walker's expertise, including
19 the fact that Walker's analysis would be included in any
20 Official Statement for bonds issued to finance the Parking
21 Garage acquisition, rehabilitation and expansion.
22

23 1.17 Among the expert services Walker was to provide were
24 to recommend a parking rate structure, project annual operating
25 expenses, and, on the basis of parking demand estimates it
26
27

1 would generate, project the annual net operating income for the
2 Parking Garage for a ten-year period.

3 1.18 Another service to be provided by Walker was to
4 provide its expert estimate of construction costs, contingency
5 costs, consulting fees and financing costs associated with the
6 Parking Garage renovation and expansion.
7

8 1.19 Walker committed by contract to perform its services
9 in accordance with generally accepted engineering and
10 consulting standards. In those cases where it relied upon
11 information or assumptions provided by others, it promised to
12 exercise its professional skill and judgment to determine the
13 reasonableness of that information or those assumptions. A
14 true and correct copy of the Consultant Agreement between the
15 City and Walker is attached as Exhibit A.
16
17

18 1.20 The Developers and their agents had made the case to
19 the City that a purchase price for the Parking Garage
20 determined by a traditional fair market value appraisal would
21 not adequately compensate the Developers for the value of the
22 Parking Garage where, through the Developers' substantial
23 promised investment in the adjacent retail center, they
24
25
26
27
28

1 contended they would deliver a Parking Garage capable of
2 generating greatly-increased revenues.

3 1.21 The Developers persuaded the City to commission
4 appraisals that dropped customary appraisal consideration of
5 comparable sales, replacement cost and income analysis, and
6 which relied instead on a seldom-used projected income analysis
7 approach known as an "investment appraisal."
8

9
10 1.22 The "investment appraisal" approach dispensed with
11 income analysis based on historical performance or industry
12 norms, and instead relied on the income projections unique to
13 the project which had been prepared by Walker. It also
14 operated to transfer the benefit of the City's favorable
15 borrowing rate and lesser profit motive from the City to the
16 Developers. Thus, while a private investor would have insisted
17 on a lower purchase price in order to cover its higher
18 borrowing cost and desired rate of return, the City was
19 expected, through the investment appraisal approach, to forego
20 the lower "fair market value" purchase price that would have
21 been required by a private purchaser.
22
23
24

25 1.23 On April 9, 1996, in a project start-up meeting
26 between Walker and City staff, Walker was asked to meet, and
27

1 later that day did meet with the appraisers who may be engaged
2 to provide appraisals to the Council. The appraisers were told
3 during the meeting, with Walker representatives present, that
4 any appraiser engaged would be expected to render an investment
5 appraisal based on Walker's operating projections.
6

7 1.24 Walker was on notice that its revenue projections
8 would be unusually material to the City in making
9 determinations whether to participate financially in the
10 Parking Garage project. Walker was on notice that its
11 projections would be relied upon not only in projecting the
12 future financial performance of the Parking Garage, but would
13 drive the values for the Parking Garage being provided by the
14 appraisers.
15

16
17 1.25 On June 14, 1996, Walker issued its feasibility
18 analysis ("the Feasibility Analysis"). The Feasibility
19 Analysis projected revenues from the renovated and expanded
20 Parking Garage at levels dramatically higher than historic
21 levels.
22

23
24 1.26 The City thereafter contracted with Walker to perform
25 a public use parking study for the Parking Garage. On October
26 16, 1996, Walker issued its public use study (the "Public Use
27

1 Study.") The Public Use Study concluded that parking demand
2 at public buildings located in the immediate vicinity of the
3 Parking Garage exceeded their parking capacity by 1,000 spaces,
4 and that patrons of these buildings would undoubtedly park in
5 the Parking Garage.
6

7 1.27 Although Walker was hired to conduct independent
8 review, Walker did not disclose to the City in any meaningful
9 way, if at all, the existence and extent of its business
10 relationships with Nordstrom, the Developers and Robideaux, or
11 the existence of the prior study performed for the Developers
12 and Robideaux.
13

14 1.28 Neither the Developers nor Robideaux disclosed to the
15 City in any meaningful way, if at all, either Walker's prior
16 relationship with Nordstrom, the Developers and Robideaux, or
17 the existence of the prior study performed for the Developers
18 and Robideaux.
19

20 1.29 The revenues projected by Walker in the Feasibility
21 Analysis relied upon assumptions about rates and duration of
22 stay that were materially more aggressive than those employed
23 in its 1995 work for the Developers.
24
25
26
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28

1 1.30 Walker's parking demand projections failed to account
2 meaningfully, if at all, for price competition by on-street
3 parking and other lots and garages, or, in the case of cinema
4 parking demand, for competition by movie theaters offering free
5 parking.
6

7 1.31 Walker was aware in preparing its feasibility
8 analysis that validation programs for downtown parking had
9 varied in the past and that the details of any future
10 validation program had not been determined. Walker knew, or
11 could have determined and should have known, that there were
12 political and financial obstacles to the downtown business
13 improvement district's subsidizing a validation program at the
14 parking volumes Walker projected. On information and belief,
15 Walker did not attempt to determine from Robideaux or the
16 Developers whether retail tenants of the River Park Square
17 expected to bear the cost of subsidizing a validation program.
18
19
20

21 1.32 Walker represented in its feasibility study that
22 because of the uncertainties about any future validation
23 program, its assumption in formulating revenues was that there
24 would be no such program. On information and belief, while
25 Walker assumed no validation program would exist for purposes
26
27

1 of projecting that the Parking Garage operator would not
2 discount rates, it did not carry that "no validation program"
3 assumption through in to the balance of its work, including its
4 projection of a reasonable rate structure and parking volumes.
5 Walker did not disclose, in its Feasibility Analysis or
6 otherwise, that its stated assumption that there would be "no
7 validation program" was being inconsistently applied.
8

9
10 1.33 Neither Walker, the Developers nor Robideaux
11 meaningfully disclosed to the City, if at all, the dramatic
12 difference between the assumptions and conclusions reached in
13 its 1995 work for the Developers and its June 1996 assumptions
14 and conclusions reported to the City.
15

16 1.34 Neither Walker, the Developers nor Robideaux
17 meaningfully disclosed to the City that Walker's 1996
18 assumptions and conclusions reported to the City were extremely
19 aggressive and there was substantial risk that the revenues
20 projected by its feasibility study might never be reached, even
21 if the retail portion of the River Park Square project proved
22 successful.
23

24
25 1.35 Although Walker, Robideaux and the Developers later
26 contended that a validation program was important to the Walker
27

1 projections (even though Walker said that it assumed no
2 validation program) neither Walker, Robideaux nor the
3 Developers disclosed to the City information about retail
4 tenants' and prospective retail tenants' attitudes and
5 understandings concerning parking costs and validation
6 programs. For example, and on information and belief,
7 Robideaux and the Developers knew or should have known that the
8 cinema tenant did not understand its patrons would be required
9 to pay to park in the Parking Garage, and knew or should have
10 known through its lease negotiations with other retail tenants,
11 including Nordstrom, that they were unlikely to be willing to
12 make any substantial contribution to a validation program.
13 Robideaux and the Developers failed to disclose this
14 information to the City.
15

16
17
18 1.36 By October 1996, City staff had reached a proposed
19 basis on which the City would participate in the Parking Garage
20 renovation and expansion. It was expected that the Developers
21 would oversee the renovation and expansion of the Parking
22 Garage. The City would issue revenue bonds sufficient to
23 purchase the renovated and expanded Parking Garage from the
24
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AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 35

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1 Developers. The proposed approach was reflected in three
2 proposed ordinances, Ordinances 31763, 31764 and 31765.

3 1.37 Under the revenue bond approach as reflected in
4 Ordinances 31763, 31764 and 31765, the City would not pledge
5 its general credit in payment of the Parking Garage bonds.
6 Only Parking Garage revenues would be dedicated to repayment of
7 bond principal and interest.
8

9 1.38 The public hearing on the City's participation in the
10 off-street parking project, which was required, *inter alia*, by
11 RCW 35.86.050, was held on October 17, 1996. Ordinances 31763,
12 31764 and 31765 were before the Council for consideration at
13 that time.
14

15 1.39 A representative of Prudential Securities testified
16 at the public hearing that revenues derived from operation of
17 the Parking Garage would be applied first to pay operating
18 expenses, which he characterized as a typical flow of funds for
19 revenue bonds. The Prudential representative and the
20 Developers' representative also testified that to enhance the
21 creditworthiness of the bonds, the Developers had agreed that
22 payment of one operating expense - ground rent - would be
23 subordinated to payment of debt service.
24
25
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27

1 1.40 Glen Edwards, a representative of Walker Parking,
2 also made a presentation at the public hearing, and testified
3 regarding the methodology employed by Walker to arrive at
4 "realistic" parking ratios. Edwards' testimony to the Council
5 on parking demand, as reported in the Transcript of Council
6 Proceedings (October 17, 1996) at p. 13, included the
7 following:
8
9

10 . . . The conclusion was that if the developments that are
11 on the table proceed, the parking demand will exceed the
12 parking supply during the week, during weekdays, during
13 the day will be - the garage, River Park Square, will fill
14 up and there will be 5,200 cars looking for a place to
15 park.

16 In the evening peak at 9:00, will be in the neighborhood
17 of 2- to 300 cars, the garage fills up and 2- to 300 cars
18 looking for a place to park.

19 On Saturday, which is the peak on the weekend, the garage
20 fills up - the demand is much higher on Saturday, and the
21 garage fills up and there will be 500 cars running around
22 looking for a place to park. So the demand is very high
23 on Saturday.

24 1.41 A number of citizens present at the October 17, 1996
25 public meeting testified against the City's financial
26 participation in the Parking Garage project, which was becoming
27 increasingly controversial. Most Council members viewed the
28 redevelopment project favorably, but stated that their support
of City financial participation was conditioned on being

AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 37

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1 satisfied of the project's viability and the City's protection
2 from financial risk.

3 1.42 It was resolved at the October 17, 1996 public
4 meeting to engage a second consultant to prepare a financial
5 study of the entire River Park Square project in connection
6 with the City's \$108 HUD loan application, as well as financial
7 review of the Walker studies and Parking Garage appraisals.
8

9 1.43 By late October 1996, Coopers & Lybrand had been
10 identified to perform the HUD \$108 loan study and review, and
11 had submitted a project proposal, including the extensive
12 financial information it would need in order to conduct its
13 work. Coopers & Lybrand's proposal projected that its work
14 would take four to six weeks to complete.
15

16 1.44 The Developers objected to providing much of the
17 financial information required by Coopers & Lybrand.
18 Negotiations then ensued towards developing a confidentiality
19 agreement under which the Developers would provide Coopers &
20 Lybrand with access to the necessary financial information.
21

22 1.45 Although the City's advance agenda for October 28,
23 1996 contemplated further consideration of the City revenue
24 bond proposal, consideration was deferred at that meeting. The
25
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 38

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1 City later abandoned the concept of using revenue bonds to
2 purchase the Parking Garage.

3 1.46 At a meeting on November 25, 1996, City Manager Bill
4 Pupo testified on a new financing structure under which the
5 City would not be the issuer of Parking Garage revenue bonds.
6 Rather, a non-profit corporation would be established by the
7 Developers to issue the bonds.
8
9

10 1.47 Pursuant to the provisions of IRS Revenue Ruling 63-
11 20, interest on the non-profit corporation's bonds would be
12 tax-exempt so long as the non-profit corporation was acquiring
13 the Parking Garage for a public purpose and would give the
14 Parking Garage to the City of Spokane, at no cost, once the
15 Parking Garage bonds were retired.
16

17 1.48 Mayor Jack Geraghty introduced discussion of the new
18 financing structure by testifying that following the public
19 meeting on October 17, 1996, the City had been looking at ways
20 to ensure a mechanism the would be "as risk-free to City
21 taxpayers as possible." The Developers' counsel testified at
22 the hearing that the structure arrived at over the prior month
23 as one that would minimize "City involvement" to the greatest
24
25
26
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28

1 extent possible, in an effort to "distance the City in terms of
2 its financial exposure as much as possible."

3 1.49 In order to make this tax-advantaged financing method
4 available to the non-profit corporation, Pupo testified that
5 the City would need to agree to accept ownership of the Parking
6 Garage once the bonds were fully repaid. Pupo also explained
7 during the course of the Council meeting that the City was
8 considering a contingent pledge to loan its parking meter
9 revenues, in the event Parking Garage revenues were
10 insufficient to make payment of operating expenses, including
11 ground rent.
12
13
14

15 1.50 Although attendance at the November 25, 1996 meeting
16 was low due to a severe ice storm suffered by Spokane the prior
17 week, the Council resolution approving the new financing
18 structure was prominently reported the next day in the City's
19 daily newspaper, owned by an affiliate of the Developers. The
20 Council action was described, in part, as follows:
21

22 After months of negotiations with developers, council
23 members settled on a way of helping fund redevelopment of
24 River Park Square that substantially limits the City's
25 responsibility.

26 . . .

27 Parking fees generated by the River Park Square garage
28 will pay for the revenue bond debt, operation and

1 maintenance, and ground and building leases. No tax
2 dollars will be used to repay the debt. When the debt is
3 paid, the city will own the garage.

4 The new funding arrangement was reached after the council
5 balked at issuing \$30 million worth of revenue bonds in
6 the city's name to pay for the garage. Under that
7 proposal, the city would have also rented the land under
8 the garage for 20 years.

9 "Three months ago, there was no way on earth I would've
10 supported it," said Councilman Mike Brewer of the previous
11 proposal. "We've come to a different solution. This can
12 work."

13 But the city has not been left completely out of the deal.
14 If money for operation and maintenance or the ground lease
15 falls short, the city will make up the difference with
16 money from its parking meters.

17 1.51 A mutually agreeable confidentiality agreement under
18 which Coopers & Lybrand could perform its review work was not
19 reached with the Developers until late December 1996.
20 Resolution of the confidentiality issues significantly delayed
21 Coopers & Lybrand's ability to obtain full financial
22 information and meaningfully commence its work.

23 1.52 Ordinance C-31823, the off-street parking ordinance
24 whereby the City would, *inter alia*, agree to accept title to
25 the Parking Garage in the future, agree to create a Parking
26 Meter Fund and agree to contingently pledge its Parking Meter
27 Revenues, had its first reading at the Council meeting of

1 January 13, 1997. A true and correct copy of Ordinance C-31823
2 is attached as Exhibit B.

3 1.53 The trigger for the City's contingent pledge to loan
4 Parking Meter Revenues as presented at that meeting and
5 thereafter adopted by the Council was as follows:
6

7 " . . . [I]n the event Parking Revenues [*defined as "all*
8 *income, receipts and revenues received by the Authority*
9 *through the ownership and operation of the Facility,*
10 *including investments [sic] earnings on money in the*
11 *Revenue Fund"*] are insufficient to make Ground Lease
12 Payments and pay Operating Expenses, the City shall loan
13 money from the Parking Meter Revenue Fund . . ."

14 By the terms of Ordinance C-31823, read at that meeting and
15 thereafter adopted by the Council, the City specifically did
16 not pledge any assets of the City to the payment of principal
17 of or interest on the bonds.

18 1.54 Under Ordinance C-31823, as read at the January 13
19 meeting and thereafter adopted, if Parking Revenues are *less*
20 *than* the sum of Ground Lease Payments and Operating Expenses,
21 then the contingency is satisfied. Under these circumstances,
22 the Ordinance provides that the City will loan funds to the
23 Authority to make up the deficiency in Parking Revenues.
24
25
26
27

1 1.55 If on the other hand, Parking Revenues are greater
2 than or equal to the sum of Ground Lease Payments and Operating
3 Expenses, then the contingency is not satisfied. Under these
4 circumstances, the Ordinance creates no obligation to loan
5 funds to the Authority, because there is no deficiency in
6 Parking Revenues.
7

8 1.56 The Authority's inability to pay principal and
9 interest on the Foundation's bonds does not trigger the City's
10 contingent pledge to loan. Debt service is not part of the
11 comparison of Parking Revenues with the sum of Ground Lease
12 Payments and Operating Expenses. The language of the Ordinance
13 does not decrease or offset Parking Revenues by the amount of
14 debt service, nor does it augment Ground Lease Payments or
15 Operating Expenses by the amount of debt service.
16
17

18 1.57 The language that the City would "loan" money to the
19 Authority if the contingent pledge were triggered was
20 intentionally selected, reflecting a revision from a prior
21 draft of the ordinance that had provided the City would
22 "transfer" money to the Authority in that event.
23
24

25 1.58 At the January 13, 1997 meeting, testimony by Bond
26 Counsel and questioning by the mayor underscored the fact that
27

1 the contingent loan pledge would not cover any insufficiency of
2 the revenues to pay debt service. The testimony and
3 questioning appear at Transcript of Council Proceedings
4 (January 13, 1997) pp. 265-266 (emphasis added):
5

6 [BOND COUNSEL]: . . . [T]he money will not leave the City
7 of Spokane at any time unless the revenues received by the
8 public development authority from the garage and only at
9 that time are **insufficient to pay, again, only lease
payments and operational costs.**

10 There's not an obligation on behalf of the city to make
11 any deposits or to accumulate any money, it's only
12 available if and only if the garage revenues are
13 insufficient and, again, **only insufficient to make rent or
lease payments and operating costs, not debt service.**

14 THE MAYOR: **Not debt service, that is important . . .**

15
16 1.59 At the January 13, 1997 hearing, the parties'
17 reliance on the Walker projections was again underscored. Bond
18 Counsel testified as follows, according to the Transcript of
19 City Council Proceedings (January 13, 1997) at pp. 261-262:
20

21 [BOND COUNSEL]: When the bonds are repaid, the money
22 accumulated by the public development authority, which is
23 projected to be significant, will revert back to the City
24 of Spokane.

25 So not only will the City receive the garage unencumbered,
26 all accumulated revenues, after paying debt service,
27 operating costs and rent, will be accumulated and returned
28 to the city for street purposes.

1 2.57 Elizabeth Cowles, on behalf of the Developers,
2 conveyed the Developers' shared belief that the City's pledge
3 would not be triggered by financial operation of the Parking
4 Garage, testifying as follows according to the Transcript of
5 City Council Proceedings (January 13, 1997) at p. 279:
6

7 . . [T]he city is not issuing the bonds, it's being done
8 by the Spokane Downtown Foundation, an independent non-
9 profit, it's private investors that will buy the bonds; it
10 is garage revenue that will repay those bonds.

11 Fourth, the statement that we as a developer receiving a
12 gift of public money or that this is simply corporate
13 welfare, that is a very easy turn of phrase, and all I
14 want to say is it's simply false and unfair.

15 The city is contingently pledging parking meter revenue,
16 not tax money, and they're pledging it to the PDA. That
17 money will only be used if the garage revenue is
18 insufficient to cover land rent, operation and
19 maintenance, and that is highly unlikely to happen, as Mr.
20 Koegen pointed out.

21 Thus, the Developers clearly understood that the contingency
22 that would trigger the City's pledge to loan involved a
23 comparison of Parking Revenues and the sum of Ground Lease
24 Payments and Operating Expenses.

25 1.60 Although the Council could not act on Ordinance C-
26 31823 at the January 13, 1997 meeting, it did act on
27 resolutions reflecting its intention to move toward adoption of

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 45

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1 the ordinance so long as the Coopers & Lybrand analysis did not
2 identify some unforeseen unfeasibility.

3 1.61 Ordinance C-31823 was scheduled for final
4 consideration at the Council meeting of January 27, 1997.
5 Only on the eve of that final hearing did the Council receive
6 the Coopers & Lybrand analyses.
7

8 1.62 Although the Coopers & Lybrand analyses raised new
9 questions about the project, which some citizens urged required
10 additional review and consideration, the Developers and the
11 Developers' agents insisted at the January 27, 1997 meeting
12 that a vote must be taken on the ordinance that night. The
13 Developers and their agents testified that a true emergency
14 existed and that any further delay, no matter how short, would
15 literally determine whether they could go forward with the
16 project. These representations of urgency were consistent with
17 representations that had been made by the Developers over the
18 prior couple of months that timing was becoming critical.
19
20
21

22 1.63 The City relied upon the representations of the
23 Developers and the Developers' agents that the Council must
24 make a final decision at the January 27, 1997 meeting.
25
26
27

1 1.64 In reliance on those representations of an emergency,
2 Council members were required to forego full or careful
3 consideration of the Coopers & Lybrand materials submitted to
4 them shortly prior to the January 27, 1997 Council meeting, in
5 deference to the conclusions of Walker.
6

7 1.65 The Council members' decision to defer to the
8 conclusions of Walker was reasonable in light of Walkers'
9 special expertise on parking matters, and the fact that the
10 Parking Garage, as to which Coopers & Lybrand claimed no
11 special expertise, was only one aspect of Coopers & Lybrand's
12 more far-ranging analysis.
13
14

15 1.66 At the conclusion of discussion of the project at the
16 January 27 hearing, the Council passed Ordinance C-31823,
17 committing the City, *inter alia*, to make loans to the Authority
18 from Parking Meter Revenue or other available funds in the
19 event Parking Revenues were insufficient to pay Operating
20 Expenses and Ground Rent.
21

22 1.67 True to characterizations of the new financing
23 structure at the November 25, 1996 Council meeting, Ordinance
24 C-31823 - if construed to mean what it says -- did
25 substantially reduce the City's financial exposure over the
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 47

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1 prior revenue bond proposal. Parking Revenues were projected to
2 be well more than the sum of Operating Expenses and Ground
3 Rent.
4

5 1.68 Prior to the January 27, 1997 meeting at which
6 Ordinance C-31823 was adopted, some members of the Council had
7 become aware that lease arrangements between the as-yet-to-be
8 reactivated Authority and the Foundation were contemplated by
9 the underwriter and Bond Counsel to reflect a flow of funds
10 under which the Authority would pay debt service prior to other
11 expenses. On information and belief, Coopers & Lybrand was
12 also apprised by Bond Counsel or the Developers of this as-yet-
13 unadopted flow of funds. Any private understandings and
14 beliefs on the part of Council members about the flow of funds
15 were not disclosed at Council meetings in ways that would
16 contradict the language of the Ordinance and the public meeting
17 record and are irrelevant as a matter of law to the meaning of
18 Ordinance C31823.
19
20
21

22 1.69 In the Council's public meetings prior to the
23 adoption of Ordinance C-31823 the contingent pledge to loan was
24 consistently and repeatedly characterized, consistent with its
25 express terms, as involving only a comparison of Parking
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 48

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1 Revenues with Operating Expenses and Ground Rent. Debt service
2 was never discussed as being a part of the comparison.

3 1.70 To have treated debt service as part of the
4 comparison would have reduced the revenue coverage for the
5 Ground Rent and Operating Expenses and increased the financial
6 risk to the City. In the public meetings prior to the adoption
7 of Ordinance C-31823 there was never any disclosure that
8 discussions between some Council members and Bond Counsel
9 outside Council meetings, concerning the contemplated terms of
10 future agreements, were viewed as giving Ordinance C-31823
11 anything other than its plain meaning.
12
13
14

15 1.71 On January 21, 1997, the Mayor appointed and Council
16 approved Authority board members.

17 1.72 In May 1997, the Authority Board adopted its first
18 resolution, approving its first proposed form of agreement by
19 which the Authority would lease the Parking Garage from the
20 Foundation.
21

22 1.73 The proposed lease agreement included a flow of funds
23 provision under which revenues received by the Authority would
24 be applied first to pay debt service, second to pay ground
25
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 49

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1 rent, third to pay operating expenses, and thereafter to make
2 other types of payments.

3 1.74 Subject to statutory limitations the Authority could,
4 for itself, agree to this flow of funds, but it could not
5 thereby increase the magnitude or change the trigger for the
6 City's contingent loan pledge.
7

8 1.75 The Authority's promise to pay debt service before
9 other expenses invited the possibility that Parking Revenues
10 would be sufficient to pay Operating Expenses and Ground Rent;
11 the City's contingent pledge to loan Parking Meter Revenues
12 would therefore not be triggered; and yet, through the
13 Authority's prior payment of debt service, Parking Revenues
14 left over after that payment (hereafter "Net Parking Revenues")
15 would not be enough to pay Operating Expenses and Ground Rent.
16

17 1.76 The Council was never asked to amend, and never did
18 amend Ordinance C-31283 to provide that the trigger for a loan
19 would be the insufficiency of Parking Revenues to pay Debt
20 Service, then Operating Expenses and then Ground Rent.
21

22 1.77 In November 1997, the Washington Supreme Court
23 rejected a facial challenge to the City's participation in the
24 Parking Garage project that had been filed by Citizens for
25
26
27

1 Leaders with Ethics and Accountability Now! (CLEAN). In its
2 decision issued on November 13, 1997 in *CLEAN v. City of*
3 *Spokane*, reported at 133 Wn.2d 455, the Supreme Court held,
4 *inter alia*, that the public purpose cited by the City in
5 adopting Ordinance C-31823 was at least debatable and the
6 City's determination of public purpose was entitled to
7 deference; and that while the parking garage did not serve a
8 "fundamental purpose" of government, there was no facial
9 showing that the City intended to donate funds or that the
10 consideration being received was grossly inadequate. The
11 decision of the Supreme Court in *CLEAN* did not address the
12 constitutionality of Ordinance C-31823 as applied.

16 1.78 In August 1998 the Authority approved the final form
17 of its Parking Facility Lease Agreement with the Foundation.

18 1.79 In August and September 1998, on the eve of the
19 Foundation's signing a bond purchase agreement and going to
20 market with the bonds, the City was continuing to receive
21 assurances that the Walker projections remained not only
22 realistic, but conservative. At a Council meeting on August
23 31, 1998, Bond Counsel told the Council that, based upon the
24 projections from nationally recognized feasibility consultants
25
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 51

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1 as discounted by the City, the Parking Garage would be very
2 profitable, and it was determined that the City's ratepayers
3 and taxpayers would be better served if those profits came to
4 the City for street repairs and other purposes than go into the
5 hands of a private party.

7 1.80 In a letter to the Mayor and Council dated September
8 14, 1998, Bond Counsel reiterated that the transaction "has
9 been carefully thought out and prudently structured based upon
10 conservative estimates."
11

12 1.81 The bonds were sold in September 1998 and the
13 proceeds were invested pending completion of the Developers'
14 construction of the Parking Garage.
15

16 1.82 In or about June 1999, and prior to the Foundation's
17 purchase of the Parking Garage, a dispute developed between
18 American Multi-Cinema, Inc. ("AMC") and the Developers over the
19 cost of patron parking in the Parking Garage. AMC threatened to
20 pull out of the River Park Square project.
21

22 1.83 Cinema patrons had been projected by Walker to be an
23 important source of projected parking revenues.
24

25 1.84 In light of the threat, counsel for the Authority or
26 the Foundation secured an agreement from the Developers to
27

1 guarantee certain parking garage revenues in the event AMC
2 pulled out of the project. AMC thereafter agreed to remain a
3 tenant, and the guarantee never became effective.
4

5 1.85 Counsel for the Authority and/or the Foundation were
6 told that the Developers had reached a settlement with AMC, the
7 terms of which the Developers refused to disclose, including to
8 the City. On information and belief, information known to the
9 Developers about AMC's complaints and position was material to
10 the feasibility of the rate structure recommended by Walker for
11 the Parking Garage and tenant satisfaction with that rate
12 structure, and would have foretold problems with the rate
13 structure that would surface within weeks after the Parking
14 Garage opened.
15
16

17 1.86 The information known by the Developers about the AMC
18 dispute and its settlement was material, but was not shared
19 with all members of the City Council.
20

21 1.87 The Parking Garage opened in September 1999.

22 1.88 On or about September 27, 1999, the Authority took
23 possession of the Parking Garage from the Foundation.
24

25 1.89 Almost immediately, parking rates had to be reduced
26 from the rate structure recommended by Walker.
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 53

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1 1.90 Almost immediately, Parking Revenues proved
2 insufficient to pay Operating Expenses and Ground Rent.

3 1.91 On October 18, 1999, the Council by resolution
4 approved a loan of \$200,000 to the Authority and an agreement
5 that called for repayment on or about December 31, 2000.
6

7 1.92 In months thereafter, Parking Revenues remained
8 insufficient to pay Operating Expenses and Ground Rent. The
9 Council approved a loan in February 2000 in the amount of
10 \$80,000 to pay Keyser Marston Associates, Inc. ("KMA"), a
11 consultant, for a study of future garage revenues, and again in
12 June 2000 when additional funds were needed for the Keyser
13 Marston study.
14
15

16 1.93 By February 1, 2000, it had become clear that the
17 Parking Revenues would not come anywhere near to covering all
18 of the Authority's expenses.
19

20 1.94 The Foundation's bonds have been downgraded twice by
21 bond rating agencies, first on or about February 1, 2000 and
22 thereafter on or about April 18, 2000, due to the substantial
23 shortfall of actual revenues from the revenues projected by
24 Walker.
25
26
27

1 1.95 Unaudited Authority operating results for 2000
2 reflect a year-end loss of in excess of \$1.8 million. The
3 Authority projects continuing losses, including a projected
4 \$1.8 million projected loss for 2001.

6 1.96 In February 2000, KMA and TDA, Inc. (together
7 referred to as "Keyser Marston") were retained by the Authority
8 to prepare a projection of the Parking Garage's net income for
9 the years 2000 through 2019.

11 1.97 On April 26, 2000, Keyser Marston delivered its
12 report to the Council.

14 1.98 The operating revenue projected by Keyser Marston is
15 much less than the revenue projected by Walker's Feasibility
16 Analysis, but approximately the same as projections Walker had
17 made for the Developers and their agents before Walker was
18 hired by the City.

20 1.99 The report concluded that the expenses associated
21 with operation of the Parking Garage were significantly greater
22 than what most garages must bear. Among the expenses
23 identified by Keyser Marston as significantly higher than what
24 would be expected were (1) debt service, which reflected a
25 purchase price much higher than the typical cost of building a
26
27

1 parking garage and (2) ground rent, which appeared to be based
2 on the assumption that the garage would generate higher
3 revenues than were being produced.
4

5 1.100 Given actual revenues and reasonable projected future
6 revenues, the ground rent provided by the ground lease between
7 the Developers and the Foundation, and which the Foundation
8 assigned to the Authority, is far above market values.
9

10 1.101 On April 18, 2000, the Authority requested a new loan
11 of \$450,000 from the Council.

12 1.102 The Council, after considering substantial public
13 testimony and the Keyser Marston report, determined that there
14 was no realistic expectation that the Authority would ever be
15 able to repay any loan that the City might make to the
16 Authority. In an April 26, 2000 letter to counsel for the
17 Developers from the Council's then-attorney, Harry Schneider of
18 Perkins Coie, Schneider said:
19
20

21 Pursuant to the Ordinance, the City assumed a contingent
22 obligation to loan funds from the Parking Meter Revenue
23 Fund to the PDA. The PDA is now in default under
24 controlling agreements with the Foundation and it is the
25 City's understanding that the PDA stands no realistic
26 chance of ever repaying any funds loaned to it, including
27 those funds requested on March 28, 2000. Accordingly, the
City's obligation to "loan" funds to the PDA does not
arise because any transfer of funds under the present
circumstances would constitute a gift rather than a loan,

1 and any such action by the City Council to make a gift
2 would run counter to the express provisions of the
3 Ordinance.

4 Schneider went on to state that if the City could receive
5 assurances that an advance could be repaid, it would be willing
6 to pursue appropriate loan arrangements. No assurances were
7 forthcoming from the Authority or other parties.

8 1.103 The City's bond rating was downgraded on June 6, 2000
9 because of its unwillingness to make loans to the Authority.
10

11 1.104 As of May 2000, Parking Revenues collected by the
12 Authority remained insufficient to pay Operating Expenses and
13 Ground Rent. On May 9, 2000, the Developers filed a mandamus
14 action in Spokane County against City Manager Henry Miggins and
15 City Attorney James Sloane under Cause No. 00-2-02777-4.
16

17 Following an ex parte hearing, the Court ordered Miggins and
18 Sloane to make a prescribed advance or show cause on May 24,
19 2000 why they should not do so.
20

21 1.105 Following the May 24, 2000 hearing, the Superior
22 Court issued a Writ of Mandamus and Order directing Miggins and
23 Sloane to loan an amount sufficient to pay Ground Lease
24 payments and the operations and maintenance costs relating to
25 the facility as of May 24, 2000.
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 57

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1 1.106 Mr. Miggins and Mr. Sloane appealed the Writ and
2 Order and requested direct review by the Washington Supreme
3 Court and a stay pending appeal.
4

5 1.107 Based on unaudited operating results for the Parking
6 Garage reported to the Authority for 2000, Parking Revenues
7 finally became sufficient to cover Operating Expenses and
8 Ground Rent in July 2000, although they proved insufficient in
9 September and October 2000. Parking Revenues were sufficient
10 to cover Ground Rent and Operating Expenses in November and
11 December 2000.
12

13 1.108 The Washington Supreme Court reversed the Superior
14 Court's decision in the mandamus proceeding and vacated the
15 writ of mandamus on February 16, 2001.
16

17 II. CLAIMS
18

19 First Claim - Declaratory Relief Re Scope of Loan Pledge
20 (Against All Parties)

21 2.1 The City realleges and incorporates the
22 allegations of paragraphs 1.1 through 1.108 as if fully set
23 forth herein.

24 2.2 The contingent loan pledge created by Ordinance
25 C-31823 is triggered only in the event "Parking Revenues"
26 are insufficient to make "Ground Lease Payments" and pay
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 58

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1 "Operating Expenses" as those terms are defined in the
2 Ordinance.

3 2.3 "Parking Revenues" were insufficient to make
4 "Ground Lease Payments" and to pay "Operating Expenses"
5 from the time the Parking Garage opened in September 1999,
6 through year-end 1999.

7
8 2.4 On information and belief, based on unaudited
9 financial results for 2000 made available earlier this year
10 through the Authority, "Parking Revenues" were insufficient
11 to make "Ground Lease Payments" and pay "Operating
12 Expenses" from January through June 2000, and in September
13 and October 2000. Based on those unaudited financial
14 results, "Parking Revenues" were sufficient to make "Ground
15 Lease Payments" and pay "Operating Expenses" for the first
16 time in July 2000, and were thereafter sufficient to pay
17 those expenses in August, November and December 2000.

18
19 2.5 In Ordinance C-31823 the City specifically did
20 not pledge any assets of the City to the payment of
21 principal or interest on the Foundation's bonds.

22
23 2.6 In the several public meetings at which the off-
24 street parking ordinance was addressed prior to its
25
26
27

1 enactment on January 27, 1997, the structure of the
2 transaction that would ultimately be reflected in Ordinance
3 C-31823 was described as a structure that would
4 "substantially reduce" the financial risk to the City over
5 a revenue bond structure.
6

7 2.7 In the several public meetings at which the off-
8 street parking ordinance was addressed prior to its
9 enactment on January 27, 1997, the structure of the
10 transaction that would ultimately be reflected in Ordinance
11 C-31823 was never described as one whose financial risk to
12 the City was substantially similar to the City's risks
13 under a revenue bond structure.
14
15

16 2.8 The agreement by the Authority to make priority
17 payment of debt service from its available revenues did not
18 and could not operate to change the trigger for, or
19 magnitude of, the City's contingent pledge to loan funds to
20 the Authority.
21

22 2.9 There is an actual and existing controversy between
23 The City and the Plaintiffs and the other defendants over the
24 meaning of the contingent loan pledge of Parking Meter Revenues
25 created by Ordinance C-31823.
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 60

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1 2.10 The controversy potentially exists with the other
2 Defendants as well, all of who have an interest in the subject
3 matter.
4

5 2.11 The City and the Plaintiffs and other defendants have
6 genuine and opposing interests in this controversy.
7

8 2.12 The City and the Plaintiffs and other defendants have
9 direct and substantial interests in this controversy.
10

11 2.13 Judicial determination of this controversy will be
12 final and conclusive.
13

14 2.14 The City seeks a determination that the contingent
15 pledge to loan Parking Meter Revenues provided by §9 of
16 Ordinance C-31823 is triggered only if, and to the extent to
17 which, all income, receipts and revenues received by the
18 Authority through the ownership and operation of the Parking
19 Garage are insufficient to make Ground Lease Payments and pay
20 Operating Expenses; and in this connection, Ground Lease
21 Payments must be construed to mean only those payments to the
22 Developers under the Ground Lease as consideration for the use
23 and possession of the real property underlying the Parking
24 Garage; and neither the trigger for the pledge nor its
25 magnitude is affected by the Authority's later decision to
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 61

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1 contract with others to make priority payment toward debt
2 service.

3 Second Claim - Alternative Declaratory Relief Re Loan Pledge
4 (Against All Parties)

5 2.15 The City realleges and incorporates the
6 allegations of paragraphs 1.1 through 2.14 as if fully set
7 forth herein.
8

9 2.16 There is an actual and existing controversy between
10 The City, the Plaintiffs and other defendants over the City's
11 duty to make loans pursuant to its contingent pledge to loan
12 Parking Meter Revenues created under Ordinance C-31823, given
13 the Authority's unforeseen insolvency. Depending upon the
14 meaning of the contingent loan pledge, the City seeks a
15 determination of its duty to make loans thereunder, given
16 present circumstances.
17
18

19 2.17 The controversy potentially exists with the other
20 defendants as well, all of whom have an interest in the subject
21 matter.
22

23 2.18 The City and the other defendants have genuine and
24 opposing interests in this controversy.
25

26 2.19 The City and the other defendants have direct and
27 substantial interests in this controversy.
28

AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 62

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1 2.20 Judicial determination of this controversy will be
2 final and conclusive.

3 2.21 The contingent loan pledge provided by Ordinance C-
4 31823 was developed, and must be construed, against a backdrop
5 of Constitutional, statutory and City Charter provisions which
6 limit the authority of the City Council to make transfers
7 without receiving value in exchange, including, e.g.,
8 Wa.Const., Art. VIII, Section 7, RCW 35.21.757, RCW 43.09.210,
9 and Spokane City Charter § 85.
10

11 2.22 Following the enactment of Ordinance C-31823, the
12 Authority contracted to subordinate the City's right to
13 repayment of any loan to a variety of other payments,
14 including "profit-sharing" payments to others.
15

16 2.23 Following the enactment of Ordinance C-31823, the
17 Authority entered into a lease providing for excessive
18 ground rent.
19

20 2.24 Since the enactment of Ordinance C-31823,
21 material flaws have been identified in Walker's analysis,
22 which have been borne out by dramatic shortfalls in
23 operating results.
24
25
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 63

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1 2.25 Given the material flaws in Walker's analysis, as
2 borne out by operating results and confirmed by the Keyser-
3 Marston Report, there is no reasonable basis for believing
4 that the Authority will ever be able to repay even the
5 principal amount of any City loan, let alone interest.

7 2.26 Following the enactment of Ordinance C-31823, the
8 Authority has failed to repay the first two loans made to
9 it, according to their terms.

11 2.27 Following the enactment of Ordinance C-31823, the
12 Authority has failed or been unable to respond to the City's
13 request for reasonable and reliable assurances of repayment,
14 including through a mutually agreeable recasting of the
15 parties' rights and responsibilities under the controlling
16 agreements.

18 2.28 If the Court does not declare Ordinance C-31823
19 to have the meaning requested by the City's First Claim for
20 relief, the City seeks the following determinations:
21

- 22 (a) That the Authority's failure to respond with
23 reasonable assurances has operated as a
24 repudiation, excusing the City from making
25 further loans under Ordinance C-31823;
26
27

1 (b) That the Authority's unforeseen insolvency has
2 created circumstances in which it is impossible
3 for the parties to negotiate, or for the court to
4 impose, "commercially reasonable" essential terms
5 for this insolvent debtor, preventing the parties
6 from assenting to the same terms and excusing
7 the City from making further loans under
8 Ordinance C-31823;
9

10
11 (c) Ordinance C-31823 contemplated the City's making
12 loans in exchange for promises of repayment; the
13 Authority's intervening subordination of the
14 City's right to repayment and the Authority's
15 intervening insolvency make any promise of
16 payment illusory, and any new disbursement to the
17 Authority under these unforeseen circumstances
18 would not be supported by consideration and would
19 not be "loans," but would be unconstitutional
20 "gifts."
21

22
23
24 (d) That the City is excused from making further
25 loans under Ordinance C-31823 by the
26 impossibility, commercial frustration, failure of
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a condition precedent and breach of a condition subsequent.

2.29 Since the January 1997 adoption of Ordinance C-31823, the following events, which had not occurred and were therefore not a part of the record before the Washington Supreme Court in *CLEAN v. City of Spokane*, have occurred:

- (a) The parking revenues projected to be achieved by Walker have proved grossly overstated;
- (b) The ground rent ultimately agreed between the Foundation and the Developer is far in excess of a fair market value rent;
- (c) The City's rights to repayment by the Authority of any loan were subordinated in the Authority's facility lease to a variety of other payments;
- (d) On information and belief, the Developers invested materially less in the Parking Garage than was represented to the City by the Developers and by Walker;
- (e) If the Developers rely for the constitutionality of the contingent loan pledge on their investment in the overall River Park Square project then, on

1 information and belief, the Developers invested
2 materially less in the River Park Square project than
3 had been represented to the City would be invested;

4
5 (f) Based on flaws that have been identified in Walker's
6 work, borne out by current operating results, there
7 is no reasonable basis for believing that the
8 Authority will never be able to operate profitably or
9 ever repay any City loan and, unless the Court
10 determines that the City's contingent pledge to loan
11 Parking Meter Revenues has the meaning identified in
12 the First Claim, the cost of the City's pledge will
13 be in the tens of millions of dollars; and

14
15
16 (g) Given the reduced construction investment in the
17 Parking Garage and the absence of revenues to fund
18 the restoration account, the Parking Garage will not
19 have the value in 2019 promised (unless the City
20 fully finances the required maintenance and repair),
21 and the requirement that the City take possession of,
22 and operate the Parking Garage beginning in 2019 has
23 become a burden rather than a benefit.
24
25
26
27
28

1 (h) Based upon the poor financial performance of the
2 Parking Garage, there is a substantial likelihood
3 that, as a result of a default, the Bondholders or
4 Developers will elect rights of foreclosure or the
5 Authority will be required to seek bankruptcy
6 protection, and the ownership of the Parking Garage
7 will never transfer to the City.
8
9

10 As the various participants have effectuated the River Park
11 Square project, the consideration received by the City for its
12 contingent loan pledge is grossly inadequate and any future
13 loans made under these circumstances could only be made with
14 donative intent, and Ordinance C-31823 is therefore
15 unconstitutional under Washington Constitution Art. 8, §7.
16

17 Third Claim - Professional Negligence and Negligent
18 Misrepresentation
19 (Against Defendant Walker)

20 2.30 The City realleges and incorporates the
21 allegations of paragraphs 1.1 through 2.24 as if fully set
22 forth herein.
23

24 2.31 As a consultant and professional engineering
25 firm, Walker owed a duty to use the ordinary care, skill,
26 diligence, judgment and knowledge commonly possessed and
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 68

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1 exercised by a reasonable, careful and prudent
2 consultant/engineer in the performance of its business.

3 2.32 Walker breached its duty to the City by failing
4 to exercise reasonable care and skill in the performance of
5 its work for the City.

6 2.33 Walker breached its duty to the City by providing
7 the City with misinformation, and by omitting to disclose
8 to the City a variety of information material to the City's
9 decision-making in the absence of which its reports to the
10 City were misleading. The City reasonably relied upon such
11 misinformation in the course of its decision making.

12 2.34 As a proximate result of Walker's negligence in
13 its work for the City, including its negligent
14 representations, the City has been damaged in an amount to
15 be proved at trial.

16 Fourth Claim - Breach of Contract
17 (Against Defendant Walker)

18 2.35 The City realleges and incorporates the allegations
19 of paragraphs 1.1 through 2.29 as if fully set forth herein.

20 2.36 Walker entered into contracts with the City in April
21 1996 and November 1996.

22 AMENDED ANSWER, COUNTERCLAIM,
23 CROSS-CLAIMS AND THIRD-PARTY
24 CLAIM OF CITY OF SPOKANE - 69

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1 2.37 Under the terms of its contracts with the City,
2 Walker contracted to perform specific tasks identified in the
3 scope of services, and to do so in accordance with generally
4 accepted engineering and consulting standards, including in
5 assessing the reasonableness of assumption information provided
6 by others.
7

8 2.38 Walker breached its contracts with the City by
9 failing to perform the tasks identified, and by failing to
10 perform such tasks as were performed with the contracted-for
11 level of care.
12

13 2.39 As a consequence of Walker's breach of its contracts
14 with the City, the City has been injured and suffered damages
15 in an amount to be proven at trial.
16

17 Fifth Claim - Indemnification
18 (Against Defendant Walker)

19 2.40 The City realleges and incorporates the allegations
20 of paragraphs 1.1 through 2.34 as if fully set forth herein.
21

22 2.41 In its contracts with the City, Walker agreed to
23 indemnify and hold harmless the City, its officers and
24 employees, against all claims for damages, liabilities, costs
25 and expenses arising out of Walker's negligent conduct.
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 70

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1 2.42 The City has been subjected to claims for damages,
2 liabilities, costs and expenses arising out of Walker's
3 negligent conduct. The City has previously tendered to Walker,
4 and Walker has declined to accept, defense of all claims now
5 pending or hereafter asserted arising out of its financial
6 participation in the Parking Garage transaction to Walker.
7

8 2.43 As a consequence of Walker's indemnification, Walker
9 is liable for any damages suffered by the City, in an amount to
10 be proved at trial.
11

12 Sixth Claim - Mistake and Commercial Frustration
13 (Against the Authority and Developers)

14 2.44 The City realleges and incorporates the allegations
15 of paragraphs 1.1 through 2.38 as if fully set forth herein.
16

17 2.45 The City relied upon Walker's projections, which were
18 not merely material to its decision-making, but were, for all
19 intents and purposes, the sole source of information used in
20 determining a purchase price to be paid for the Parking Garage
21 and the Ground Rent that would be negotiated with the
22 Developers.
23

24 2.46 The Foundation relied upon Walker's projections,
25 which were, for all intents and purposes, the sole source of
26 information used in determining the purchase price to be paid
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 71

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1 for the Parking Garage and the Ground Rent negotiated with the
2 Developers.

3 2.47 The Authority relied upon Walker's projections, which
4 were, for all intents and purposes, the sole source of
5 information used in determining the Ground Rent liability it
6 would agree to assume to the Developers and the Fixed Facility
7 Rent it would agree to pay to the Foundation.
8
9

10 2.48 The Developers relied upon Walker's projections,
11 which were, for all intents and purposes, the sole source of
12 information used in determining whether the purchase price and
13 Ground Rent they demanded from the Foundation was fair and
14 reasonable.
15

16 2.49 Both the \$26 million purchase price for the garage
17 and the \$780,000 ground rent for the Developers' underlying
18 land were predicated on the shared belief of the City, the
19 Foundation, the Authority and the Developers, based on the
20 Walker report, that the Parking Garage would support the
21 parking rate structure proposed by Walker and could reasonably
22 be expected to generate revenues growing from \$4 to \$7 million
23 a year over the life of the Authority lease.
24
25
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 72

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1 2.50 The parties' shared material assumption in this
2 connection proved to be seriously mistaken, and was material.

3 2.51 Alternatively, if other parties claim not to have
4 been mistaken or are proved not to have been mistaken, then the
5 mistake was a unilateral mistake on the part of the City, and
6 the fact that the City was mistaken in this respect was known or
7 should have been known to the other parties.
8

9 2.52 Although the City may have initially contracted
10 Walker's services to prepare the Feasibility Analysis, the
11 analysis was in aid of all parties to the transaction, others of
12 whom were likewise Walker clients, who shared in payment for the
13 expense for Walker's work and who repeatedly invoked the results
14 of the Walker Study in attempting to persuade the City to
15 participate and remain a participant in the Parking Garage
16 project. Under these circumstances, it can not be contended
17 that the City alone assumed a risk that the Walker projections
18 were mistaken.
19

20 2.53 As a result of the parties' mutual mistake, or the
21 City's unilateral mistake, the City is entitled to rescission or
22 reformation of the contingent loan pledge provided by Ordinance
23 C-31823.
24
25
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 73

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1 2.60 The Developers had a duty to disclose to the City
2 facts which were peculiarly within their knowledge, or which
3 could not readily have been determined by the City.
4

5 2.61 The Developers persuaded the City to undertake
6 substantial commitments to assist the Developers' renovation
7 and expansion of River Park Square.
8

9 2.62 Although the Developers were engaged in an ambitious
10 project to attract high-end retailers to the Spokane market,
11 and although the Developers' own risk might thereby be
12 increased and their return thereby lowered, that did not excuse
13 the Developers' duties to deal fairly with their public
14 partner, on a controversial project, as to which there was
15 significant public and Council concern that the City be
16 protected from financial risk.
17

18 2.63 The Developers and their agents breached their duties
19 to the City in failing to disclose facts known to them which
20 they knew may justifiably induce the City to refrain from
21 acting in the Parking Garage transaction. The failures to
22 disclose included (1) failing meaningfully to disclose their
23 prior relationship with Walker, (2) failing to disclose the
24 Walker pro formas privately prepared for the Developers or
25
26
27

1 their agents, (3) failing to disclose that Walker pro formas
2 prepared privately for the Developers or their agents relied
3 upon much less aggressive assumptions, (4) failing to disclose
4 information concerning the unlikelihood of retailer or other
5 third party subsidization of a validation program,
6 particularly at the parking volumes projected by Walker, and
7 (5) failing to disclose the nature of the dispute arising with
8 AMC or the terms of its resolution.
9
10

11 2.64 If the relationship of the parties is fiduciary or
12 quasi-fiduciary in nature, or a special relationship with
13 heightened duties of disclosure, then the Developers and their
14 agents had an absolute obligation to disclose the foregoing
15 matters.
16

17 2.65 To the extent that the foregoing matters were
18 material, there was an absolute obligation to disclose them.
19

20 2.66 Alternatively, the Developers and their agents knew
21 or should have known that their disclosure of the foregoing
22 matters was necessary in order to prevent their prior
23 statements from being misleading.
24

25 2.67 The Developers and their agents breached their duties
26 to the City by misrepresenting, either innocently or culpably,
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 76

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1 facts which they knew may justifiably induce the City to act in
2 the Parking Garage transaction, including the amount of private
3 investment the Developers would be making in the River Park
4 Square Project.
5

6 2.68 The City has been damaged by the breach by the
7 Developers and their agents of these duties, in an amount to be
8 proved at trial.
9

10 THIRD PARTY COMPLAINT AGAINST

11 THIRD PARTY DEFENDANTS KOEGEN AND PERKINS COIE LLP

12 By way of third party complaint, the City of Spokane
13 alleges as follows:
14

15 1. Roy J. Koegen (Koegen) is a citizen of the State
16 of Washington residing within the Eastern District.
17

18 2. Anne Koegen is a citizen of the State of
19 Washington residing within the Eastern District. At all
20 times relevant to this third-party complaint, Roy and Anne
21 Koegen comprised a valid marital community under the laws
22 of the State of Washington.
23

24 3. All acts of Roy Koegen alleged in this third-
25 party complaint were authorized by and performed on behalf,
26
27

28 AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 77

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1 for the benefit, and with the knowledge and approval of the
2 marital community.

3 4. Perkins Coie LLP (Perkins Coie) is an active
4 Washington limited liability partnership in good standing
5 with the Secretary of State. Perkins Coie maintains offices
6 for the transaction of business and transacts business
7 within the Eastern District.
8

9
10 5. At all times relevant to this third-party
11 complaint, Koegen was a partner of Perkins Coie.

12 6. All acts of Koegen alleged in this third-party
13 complaint were authorized by and performed on behalf, for
14 the benefit, and with the knowledge and approval of Perkins
15 Coie.
16

17 7. At all times relevant to this third-party
18 complaint, an attorney-client relationship existed between
19 Koegen and the City, giving rise to a duty of care owed by
20 Koegen and Perkins Coie to the City.
21

22 8. Koegen's representation of the City included, but
23 was not limited to, representation with respect to the
24 River Park Square (RPS) development.
25
26
27

1 9. Koegen never sought any limits on the scope of
2 matters with respect to the RPS development as to which the
3 City expected him to provide counsel and legal advice.
4

5 10. Although Koegen's authority to act in a way that
6 would bind the City was strictly limited by applicable law
7 and any express delegation of authority, the City did not
8 agree to any limits on the scope of matters with respect to
9 the RPS development as to which the City expected him to
10 provide counsel and legal advice.
11

12 11. Koegen did not disclose, nor did he seek waiver
13 of, any actual or potential conflicts of interest with the
14 City with respect to the RPS development.
15

16 12. In the event the City is held liable to the
17 Plaintiffs or other parties herein on account of any
18 claimed misrepresentation or omission (which liability it
19 denies), then Koegen will have in turn breached his duty
20 owed the City, by failing to exercise the degree of care,
21 skill, diligence, and knowledge commonly possessed and
22 exercised by a reasonable, careful, and prudent lawyer in
23 the practice of law in this jurisdiction, thereby breaching
24
25
26
27
28

1 his duty of care, without limitation, in one or more of the
2 following ways:

3 (a) By failing to advise the City that the Official
4 Statement contained or may contain materially
5 misleading information or inadequate disclosure of
6 material facts or risks, and that the City may thereby
7 be exposed to securities claims by purchasers of the
8 Bonds;
9

10 (b) By failing to require revisions, modifications or
11 additions to the Official Statement so that it would
12 fully disclose all material facts or risks and thereby
13 protect the City from exposure to claims by purchasers
14 of the Bonds;
15

16 (c) By providing repeated public assurances of the
17 adequacy of the Walker work and the City's
18 reasonableness in relying thereon;
19

20 (d) By advising the City Attorney to sign an opinion
21 letter regarding the issuance of Bonds by the Spokane
22 Downtown Foundation which included matters outside of
23 the City Attorney's reasonable scope of knowledge and
24 understanding and which described Ordinance C31823 in
25
26
27

1 ways which failed to track its actual terms and which
2 Plaintiffs' Complaint alleges misrepresented the
3 City's duties under that ordinance;

4
5 (e) By failing, prior to the closing of the Parking
6 Garage purchase by the Foundation, to bring to the
7 attention of all City Council members certain adverse
8 developments which he knew or should have known
9 significantly compromised the financial feasibility of
10 the Garage;

11
12 (f) By allowing simultaneous representation of the
13 Authority to interfere with his representation of the
14 City; and

15
16 (g) By allowing his personal interest in attorney's
17 fees to be paid from the proceeds of the bonds issued
18 by the Foundation to interfere with his representation
19 of the City.
20

21 13. These and other breaches by Koegen will in that
22 event have proximately caused the City to suffer damages
23 in an amount to be proven at trial. Such damages include
24 attorney's fees and costs because the foregoing breaches by
25
26
27

1 Koegen have exposed the City to litigation. Such damages
2 also include damage to the City's bond and credit ratings.

3 14. Perkins Coie and the marital community of Roy and
4 Anne Koegen are vicariously liable for the foregoing
5 breaches by Koegen, and each of them.

6 15. To the extent that the City is held liable for
7 damages as alleged in Plaintiffs' Complaint, the City has
8 rights of contribution and indemnification against both
9 Koegen, the marital community of Roy and "Jane Doe" Koegen,
10 and Perkins Coie pursuant to RCW 4.22.040-.050, RCW
11 21.20.430, and the common law.

12 WHEREFORE, Defendant and Third Party Plaintiff City of
13 Spokane prays as follows:

14 1. That the Plaintiffs' claims against it be dismissed
15 with prejudice and that it take nothing thereby,

16 2. If and to the extent of any recovery by the
17 Plaintiffs against this defendant, for a determination of this
18 defendant's limited fault and an allocation of responsibility
19 to the other named defendants and third party defendants,

20 3. For contribution against the other named defendants
21 and third party defendants,

22 AMENDED ANSWER, COUNTERCLAIM,
23 CROSS-CLAIMS AND THIRD-PARTY
24 CLAIM OF CITY OF SPOKANE - 82

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CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of July, 2001, I caused a true and correct copy of the foregoing to be served on the parties to this action or their counsel at the address and in the manner set forth below:

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AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 84

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AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 85

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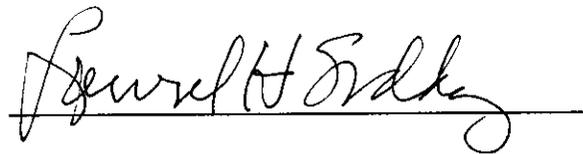
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AMENDED ANSWER, COUNTERCLAIM,
CROSS-CLAIMS AND THIRD-PARTY
CLAIM OF CITY OF SPOKANE - 86

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EXHIBIT A

CONSULTANT AGREEMENT

THIS AGREEMENT is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City," and WALKER PARKING CONSULTANTS/ENGINEERS, INC., whose address is 150 Executive Park Boulevard, Suite 3750, San Francisco, California 94134, as "Consultant" collectively referred to herein as the "Parties".

W I T N E S S E T H:

The Parties agree as follows:

1. PERFORMANCE. The Consultant's work shall be in accordance with the "Scope of Services," attached hereto and made a part of this agreement for a PARKING STRUCTURE FINANCIAL FEASIBILITY STUDY, AND A CONDITION ASSESSMENT of the existing Riverpark Square Parking Garage and proposed garage expansion.

2. TIME OF PERFORMANCE. This agreement shall take effect immediately upon execution and shall remain in effect until completion of all applicable contractual requirements, which shall occur no later than June 15, 1996, provided that all necessary factual information and drawings in the possession of the City and Riverpark Square Associates ("Developer") are made available to the Consultant in a timely manner.

3. MODIFICATIONS. The Consultant agrees to accept reasonable changes in the scope of work, with reasonable corresponding changes in compensation and time of performance, whenever the City determines it to be necessary or advisable. Such modification will become effective upon execution by the Parties of a written amendment to this agreement.

4. COMPENSATION. The City will pay the Consultant in accordance with the following fee schedule:

Financial Feasibility Study	\$20,000
Condition Assessment	\$17,000

Customary reimbursable expenses will be invoiced at actual cost and include such items as: materials testing, sustenance, transportation, toll telephone calls and FAX transmissions, postage, express delivery services, reproduction of reports and drawings, and similar project-related items. The Consultant will submit invoices to the City monthly and a final bill upon completion of services. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. The City agrees to pay a finance charge of one and one-half percent per month, or the maximum rate allowed by law, on past due amounts. In addition, in the event any amount is past due, the Consultant may, after giving ten (10) days written notice, withhold unissued work and suspend services under this agreement until paid in full.

5. TERMINATION. Either party may terminate this agreement by ten (10) days' written notice to the other party. In the event of such termination, the City shall pay the Consultant for all work previously authorized and performed prior to date of termination. The City is not obligated to pay any fees or expenses for specific work found by the City to be defective due to negligent acts or omissions on the part of the Consultant. In the event the City determines the Consultant's work to be defective, the City may withhold payments without interest accruing thereon for the period of dispute or until the work is no longer found to be defective.

6. LIABILITY. In the performance of this Agreement, the Consultant is an independent contractor and the Consultant, its officers, employee, agents, or shall not be considered an employee or agent of the City. The Consultant shall indemnify and hold harmless the City, its officers and employees, from and against all claims for damages, liability, cost and expense arising out of the negligent conduct of the Consultant, its officers, employees and subcontractors in connection with the performance of this Agreement, except to the extent that those claims arise from the negligence or willful conduct of the City, its officers and employees. The Consultant's indemnification shall include defense costs, attorneys' fees and liability incurred by the City, its officers, and employees in defending against such claims, whether or not litigation is instituted. The Consultant's indemnification of the City shall not be limited by any prior or subsequent declaration by the Consultant.

7. INSURANCE. The Consultant represents that it and its employees, agents and subcontractors, in connection with the performance of the contract, are protected against the risk of loss by the following insurance coverages:

- A. Statutory Worker's Compensation Insurance;
- B. Comprehensive or Commercial General Liability Insurance including Business Automobile Insurance coverage and Employer's Liability (Stop Gap) coverage in the amount of \$500,000 combined single limit, on the occurrence form, and naming the City of Spokane as an Additional Insured. The policy shall be primary to any policy which the City may otherwise carry ("Primary Coverage"), and treat the employees of the City in the same manner as members of the general public ("Cross-liability Coverage"); and
- C. Errors and Omissions insurance in the amount of \$500,000, unless the Errors and Omissions coverage is included in the General Liability policy.

The above policies shall be issued by companies that meet with the approval of the City's Risk Manager. The policies shall not be cancelled without at least thirty (30) days' written notice to the City as an Additional Insured.

The Consultant shall provide proof of insurance coverage prior to beginning performance of this Agreement through a Certificate of Insurance demonstrating the Additional Insured Coverage. The certificate shall be sent to the department representative and is subject to review and approval by the City's Risk Manager.

8. COMPLIANCE WITH LAWS. The Consultant shall comply with all applicable federal, state of Washington and local laws and regulations.

9. OWNERSHIP OF DOCUMENTS. All documents prepared or provided by the Consultant, including without limitation, drawings, non-paper information storage, such as, tape, film, optical memory, disk storage, CD Rom, and/or other computer memory devices, reports, estimates, specifications, field notes and data are and remain the property of the Consultant as instruments of service. The City reserves the right to inspect and copy at reasonable times, documents prepared by the Consultant pursuant to this Agreement.

10. ASSIGNMENTS. This agreement is binding on the Parties and their heirs, successors, and assigns. Neither Party may assign or transfer its interest, in whole or in part, without the other Party's prior written consent.

11. DISPUTES. This agreement shall be performed under the laws of the State of Washington. Any litigation to enforce this agreement or any of its provisions shall be brought in Spokane County, Washington.

12. NON-DISCRIMINATION. During the performance of this agreement, the Consultant and its subcontractors shall not discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age or the presence of any sensory, mental or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefits under this Agreement.

13. ANTI-KICKBACK. No officer or employee of the City having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in this Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement.

14. STANDARD PERFORMANCE. The Consultant shall perform its services in accordance with generally accepted engineering and consulting standards. It is acknowledged by the Parties that estimates or projections provided by the Consultant will be premised, in large part, upon assumptions provided by the City and others. While the Consultant will not independently investigate the accuracy of the assumptions or the information provided by the City or others, the Consultant will exercise its professional skill and judgment with due care in accordance with generally acceptable standards of practice to determine the reasonableness of the

information and assumptions. The Consultant is advised that the purpose of the work herein is to provide financial information and analysis to the City in order to acquire, improve, renovate and construct both the existing Riverpark Square Parking Garage and a new attached parking facility with an estimated 550 new parking spaces. The Consultant acknowledges and consents to the use of its final report in the City's preliminary and official statements issued in connection with any bonds, notes or other financial instruments issued by the City to construct new parking facilities and renovate the existing Riverpark Square Parking Garage.

15. BUSINESS LICENSE REQUIREMENT. Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid business license. The Consultant shall be responsible for contacting the City's Taxes and Licenses Department at (509) 625-6070, to obtain a business license. The Consultant shall NOT be deemed to engage in business with the City, and therefore exempt from the business license requirement for purposes of SMC 8.01.070; if (1) the business dealing arises solely as a result of a contract/purchase order with the City; (2) the City initiated the contact; (3) the Consultant does not otherwise engage in business activities in or with the City; and (4) the Consultant's contracts/purchase orders with the City in any calendar year do not have an accumulated value exceeding \$5,000. Businesses claiming this exemption shall certify to the City's Department of Taxes and Licenses that they neither solicit nor conduct any other business activities within the City and that the business contact with the City was initiated by the City.

SIGNED this 9th day of April, 1996.

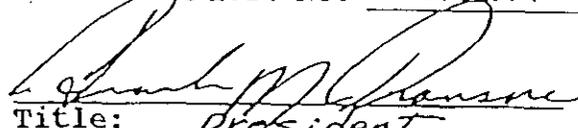
CITY OF SPOKANE

By: 
City Manager

Attest: 
Acting City Clerk

WALKER PARKING CONSULTANTS/
ENGINEERS, INC.

Federal Tax I.D. No. 38-1782774

By: 
Title: President

By: 
Title: Sr. Vice President

Approved as to form:


Assistant City Attorney

Attachment which are a
part of this Agreement:

Scope of Services - Financial Feasibility Study
Scope of Services - Condition Assessment

7-3715

SCOPE OF SERVICES
FINANCIAL FEASIBILITY STUDY

1. Meet with the appropriate representatives from the City of Spokane and other pertinent parties to discuss and agree upon the study boundaries, study goals, financial criteria, current parking conditions and related parking issues.
2. Collect data describing the area's parking characteristics to more accurately assess the existing parking situation in the vicinity of the facility. This program will include the following:
 - a) Inventory competitive parking facilities, record rate structures, restrictions, etc.
 - b) Conduct occupancy counts for selected parking spaces within study area.
 - c) Determine turnover and duration characteristics at selected parking facilities.
 - d) Interview select merchants and business owners to discuss parking activity/needs.
 - e) Project user mix for retail, cinema and business users, volume turnover and length of stay of the parking facility's probable users, including hourly, daily and monthly patrons.
 - f) Interview the developer or owner of Riverpark Square.
3. Determine the hours of operation and parking rate structure for the proposed parking facility.
4. Using Consultant's database of operating expenses, project annual operating expenses for a ten-year period, including but not limited to: direct labor (cashiering, supervision, accounting, maintenance and security) fringe benefits, utilities, daily maintenance and structural maintenance (stated in a sinking fund for periodic major expenses)
5. Estimate construction costs, contingency costs, consulting fees and financing costs. The City shall provide financing assumptions related to the interest rate, loan term and the method of financing.
6. Based on the parking demand estimation generated by the Consultant, project the annual net operating income of the facility for a ten-year period. In addition, prepare a proforma statement of net operating income and debt service coverage and a proforma statement of projected cash flow for a ten-year period.
7. Prepare a draft report and discuss the findings with the City. Issue a final report which incorporates the City's comments. At the City's request, meet and discuss the parking feasibility study with the appropriate personnel.

SCOPE OF SERVICES
CONDITION ASSESSMENT

1. Review available structural and/or architectural drawings and specifications, to study details of the original construction. Review available reports pertaining to the current condition of the Riverpark Square Parking Facility (the "Facility").
2. Conduct a field observation of the physical condition of the Facility and collect samples for testing of concrete. The field observations will include a detailed visual examination and thorough chain drag survey of the floor slab areas of the entire structural system.
3. Based on conditions found during the course of Consultant's condition appraisal, recommend any repairs that are immediately necessary for the safety of users or protection of property.
4. Perform materials testing of concrete core and powder samples collected from the Facility. Testing to include:

- a) Petrographic (microscopic) examination to determine general concrete quality and/or air entrainment characteristics of the concrete. Representative locations will be selected for testing.

For typical parking structures, Consultant recommends a minimum of two petrographics examinations for a one supported level facility, three for a two level facility, or one test for every 50,000 to 100,000 square feet for a multi-level structure.

- b) Compressive strength testing of core samples removed from the concrete floor slab. Representative specimens will be obtained.

For typical parking structures, Consultant recommends a minimum of three compressive strength tests, or one test for every 35,000 to 50,000 square feet for a multi-level structure.

- c) Chloride ion content testing of powder samples to determine the extent of potential salt contamination. Representative high exposure (entrance lane) and light exposure (parking stall) locations will be sampled.

For typical parking structures, Consultant recommends a minimum of two chloride sample locations per supported level, or one test for every 10,000 to 15,000 square feet for a multi-level structure.

5. Evaluate all field observation and materials testing data.
6. Prepare a report which will document all work performed in field observations, materials testing and analysis of data, and description of alternative restoration programs and their associated service lives.

ORDINANCE NO. C31823

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SPOKANE RELATING TO OFF STREET PARKING FACILITIES; PROVIDING FOR THE DEVELOPMENT AND ACCEPTANCE OF FULL LEGAL AND UNENCUMBERED TITLE TO THE RIVER PARK SQUARE PARKING GARAGE LOCATED ADJACENT TO CIVIC CENTER FACILITIES; CREATING THE PARKING METER REVENUE FUND; CONTINGENTLY PLEDGING MONEY IN SAID FUND TO MAKE CERTAIN PAYMENTS TO THE CITY'S PUBLIC DEVELOPMENT AUTHORITY; DECLARING AN URGENCY AND EMERGENCY AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

OFF-STREET PARKING FACILITIES

THE CITY OF SPOKANE DOES ORDAIN:

WHEREAS, the City of Spokane, Washington (the "City"), is a first-class charter city duly organized and existing under and by virtue of the Constitution and the laws of the State of Washington and the Charter of the City;

WHEREAS, the Council of the City (the "Council") recognizes the public interest in sustaining the Spokane Downtown Central Business District (the "CBD") as described in the Downtown Spokane Development Plan prepared November 20, 1990, as the region's economic, cultural and civic activity center;

WHEREAS, the City has committed public finances and resources to the CBD by constructing, maintaining and operating numerous civic center facilities such as: (i) the Spokane City Hall, (ii) the main branch of the Spokane Public Library, (iii) Riverfront Park, (iv) the Spokane Agricultural Trade Center, (v) the Spokane Convention Center and Opera House and (vi) other infrastructure and service improvements in or adjacent to the CBD, which improves the character, role and function of the CBD for Spokane citizens, employers, employees and visitors;

WHEREAS, the provision of convenient, accessible, and attractive off-street public parking in the CBD will provide a benefit to the civic center facilities, prevent and alleviate traffic congestion, improve vehicular access and circulation, directly and indirectly improve public safety and promote the use of municipal streets by facilitating the movement of vehicles in the CBD, all of which serves a public purpose;

WHEREAS, the most efficient use of the CBD street system requires the availability of conveniently located off-street parking for vehicles where large numbers of persons congregate;

WHEREAS, the inability to temporarily park vehicles discourages the public from: (i) travel to and within the City, (ii) congregating at public events and (iii) using civic center facilities;

WHEREAS, off-street public parking is a necessary extension and ancillary to an efficient street system in the CBD;

WHEREAS, the City is authorized by chapter 35.86 RCW to provide off-street parking facilities as a public purpose;

WHEREAS, on June 12, 1995, the Council adopted its Resolution 95-74, which authorized and directed the City Manager to proceed with the development of a proposal for the acquisition and development of a public parking facility, recognizing the public benefit that would accrue as a result of the City acquiring off-street parking facilities;

WHEREAS, on June 10, 1996, the Council adopted its Resolution 96-77, which further directed City staff to represent the City in meetings with Lincoln Investment Company of Spokane and Citizens Realty Company (collectively, the "Developer"), as owners of the River Park Square Parking Garage and to prepare a report for the Council on the economic feasibility and legal authority of the City acquiring said parking garage;

WHEREAS, the Council authorized the City Manager to commission into a financial feasibility study and a condition assessment with Walker Parking Consultants/Engineers (the "Walker Report"), with the City receiving a report from Walker plus an addendum on October 16, 1996, concluding that additional off-street public parking is required to serve the Project and civic center facilities;

WHEREAS, the Developer owns certain real property situated in the City which is proposed to be redeveloped into a two block mixed-use project containing, in addition to public parking facilities, approximately 300,000 square feet of gross area available for lease for new retail stores, restaurants and entertainment uses (the "Project"), which will improve the CBD by promoting economic activity, increasing public safety and revenue to the City,

WHEREAS, the acquisition of off-street parking facilities will provide convenient public parking for users and visitors to City Hall, Riverfront Park, and the main branch of the Spokane Public Library as well as other municipal and governmental offices and civic center facilities, some of which are connected to the existing off-street parking facilities by a pedestrian skywalk system;

WHEREAS, the Developer intends to design and construct off-street parking facilities to consist of an existing parking garage, plus an additional underground and above ground parking structure connected to the existing parking garage, with 1,304 public parking spaces to serve the civic facilities and the parking needs of the CBD (the "Facility");

WHEREAS, the provision of safe and reliable public parking will increase downtown activity and improve public safety;

WHEREAS, the Spokane Downtown Foundation (the "Foundation") has been formed as a nonprofit corporation of the State of Washington which anticipates issuing tax-exempt bonds on behalf of the City payable over 21 years from the revenues from the Facility;

WHEREAS, the Foundation will enter into a ground lease (the "Ground Lease") with the Developer for the lease of the land upon which the Facility will be situated;

WHEREAS, the Public Development Authority (the "Authority"), a duly created public corporation pursuant to RCW 35.21.730 through 35.21.757, inclusive, is authorized as a public purpose to own and acquire property and property rights by purchase, gift, devise, or lease for the construction, maintenance, or operation of off street parking facilities, including the acquisition of the Facility in order to improve governmental efficiency and services, the general living conditions in the City, which necessarily includes the City transportation system;

WHEREAS, development of the Facility will promote the growth and development of retail businesses and office uses in the CBD which will increase payrolls, business productivity, and property values thereby benefiting the public health, safety and welfare;

WHEREAS, the City has been advised by the Developer that the Foundation will acquire the Facility from the Developer to provide off-street public parking;

WHEREAS, the City has been advised by the Foundation that the Foundation anticipates leasing the Facility and assigning the Ground Lease to the Authority;

WHEREAS, on October 17, 1996, the Council held a public hearing on the Facility pursuant to the requirements of RCW 35.86.050;

WHEREAS, the City has been advised that the Authority will publicly bid the operation of the Facility;

WHEREAS, after the payment of the principal of and interest on bonds issued by the Foundation (the "Bonds"), full legal and unencumbered title to the Facility will pass to the City without cost;

WHEREAS, the City has determined it is in the best interests of the City and its inhabitants, ratepayers and taxpayers that the Facility be maintained and operated in a first-class condition;

WHEREAS, RCW 35.21.730(1) authorizes the City to transfers its funds to the Authority with or without consideration;

WHEREAS, the Council is desirous of creating a parking meter revenue fund, into which parking meter revenue will be deposited and contingently pledged to pay Operating

Expenses of the Facility and Ground Lease Payments in the event that Facility revenues are insufficient, thereby ensuring the Facility is maintained in a first-class condition;

WHEREAS, chapter 35.59 RCW authorizes the City to combine two or more facilities in a single multi-purpose community center in order to more effectively and economically provide municipal services. City Hall, Riverfront Park, and the main branch of the Spokane Public Library, constitute the multi-purpose community center system for the downtown area;

WHEREAS, the acquisition, development and operation of the Facility will reduce costs, avoid duplication of off-street parking facilities that serve the existing downtown system and make off-street parking more convenient and useful to the residents of Spokane;

WHEREAS, chapter 35.71 RCW, authorizes the Council to establish pedestrian malls and related facilities in rights-of-way, including off-street parking facilities in the vicinity of a pedestrian mall when the right-of-way is proposed to be vacated;

WHEREAS, the Council, upon receipt of a petition to vacate a portion of Post Street from Spokane Falls Boulevard to Main Avenue, adopted Resolution 95-75 declaring the intent of the Council to proceed with the street vacation as set forth in Ordinance C31403 which will facilitate the development of a pedestrian mall area for the Riverpark Square project as set forth above;

WHEREAS, the Developer, on May 7, 1996, submitted to the City an Environmental Checklist (pursuant to SEPA), including a Traffic Impact Analysis-Riverpark Square Expansion (including Level of Service Worksheets) and an Air Quality Analysis plus Study Update ("Environmental Reports") with the City through its responsible official issued a Mitigated Declaration of Nonsignificance;

WHEREAS, the CBD has experienced a serious economic decline which affects the built environment and climate for civic facilities with remaining business operators facing reduced employment, all adversely affecting the citizens of the City and causing deterioration of the public and private investment in improvements and services in the CBD, including the downtown multi-purpose community center system comprising of City Hall, Riverfront Park and the main branch of the Spokane Public Library;

WHEREAS, the Project is expected to contain 300,000 square feet of new retail, entertainment and other business uses, preserving and creating approximately 2,800 jobs in Spokane;

WHEREAS, the Project will improve public safety in the CBD, including the financial stability of the City, by adding an estimated \$3 million in tax revenues per year;

WHEREAS, the Walker Report, the Environmental Reports, other reports, analyses and testimony indicated that the Facility will aid downtown vehicle and pedestrian circulation by efficiently removing vehicles from the street system, promoting improved vehicle movements and providing for the parking demand created by the downtown multi-purpose

community center system, including City Hall, Riverfront Park and the main branch of the Spokane Public Library;

WHEREAS, the Council has received reports and testimony from individuals and experts that support the acquisition of the Facility for public purposes, reviewed plans for development of the Project, as well as listened to and considered public testimony and received reports concerning the parking needs in the CBD, projected Facility revenue, benefits to the City and its citizens and the transfer to the City of the Facility and related property interests;

WHEREAS, the City will acquire full legal and unencumbered title to the Facility without cost or other consideration upon payment of the Bonds;

WHEREAS, the City has received a letter from the Developer containing Project information and a deadline indicating that time is of the essence concerning the Project and the Facility, such that immediate assurances must be given by the City in order for the Developer to proceed with the Project, including the Facility, thereby serving a public purpose;

WHEREAS, the Developer has stated that for the Project to proceed commitments must immediately be received from tenants and lenders so that preparations for demolition and construction can commence in order to timely complete the Project as represented to Developer's lenders and other project participants, including the City, the Foundation, the Authority and the major Project tenants;

WHEREAS, without a commitment from the City to immediately contingently pledge its parking meter revenue to Operating Expenses and Ground Lease Payments, tenants and lenders are not assured that there will be adequate public parking to serve the Project and civic facilities, thus placing the Project in jeopardy; and

WHEREAS, the City finds, based on studies, documents and public testimony presented to the Council, that the Project will: (i) provide new jobs to the Spokane area, (ii) stimulate the economy, (iii) provide cultural opportunities and (iv) improve the quality of life through a reinvestment in the CBD which will generate additional tax revenue and that the failure of the Project to proceed will cause the City to suffer economic decline;

NOW, THEREFORE, IT IS FURTHER ORDAINED, as follows:

Section 1. Definitions.

All words and terms as used in this Ordinance and the preambles hereto shall have the following meanings unless the context or use clearly indicates another or different meaning or intent. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words imparting the singular number shall include the plural number and vice versa unless the context shall otherwise indicate.

"Authority" shall mean the Spokane Public Development Authority duly created by Ordinance No. C-29241 of the City of Spokane, adopted by the Council on November 7, 1988.

"Bonds" shall mean the bonds issued by the Foundation to finance the cost of acquiring the Facility.

"City" shall mean City of Spokane, Washington.

"Council" shall mean the City Council, as the same may be duly constituted from time to time.

"Developer" shall mean, collectively, Lincoln Investment Company of Spokane and Citizens Realty Company.

"Facility" shall mean the seven-level above ground and one-level below ground off-street parking facility in the vicinity of Spokane Falls Boulevard and Post Street.

"Foundation" shall mean the Spokane Downtown Foundation.

"Ground Lease" shall mean the Ground Lease between the Developer and the Foundation regarding the real property underlying the Facility.

"Ground Lease Account" shall mean the account by that name created by the Authority within its Revenue Fund from which the Authority shall make Ground Lease Payments.

"Ground Lease Payments" shall mean all payments the Foundation is required to make under the Ground Lease.

"Operating and Maintenance Account" shall mean the account by that name created by the Authority within its Revenue Fund from which the Authority shall pay Operating Expenses.

"Operating Expenses" shall mean all of the Authority's expenses incurred with respect to operating and maintaining the Facility. The term "Operating Expenses" shall not include any extraordinary, nonrecurring expenses, any costs or expenses for new construction, interest, amortization, any allowance for depreciation or any taxes or payments in lieu of taxes upon the properties or earnings of the Facility payable to the City.

"Ordinance" shall mean this Ordinance No. C31823.

"Parking Meter Revenue Fund" shall mean a special fund of the City created by Section 4 of this Ordinance.

"Parking Meter Revenues" shall mean all income, receipts and revenues, except revenue derived from the enforcement of City parking laws, received by the City through its ownership and operation of its system of parking meters.

"Parking Revenues" shall mean all income, receipts and revenues received by the Authority through the ownership and operation of the Facility, including investments earnings on money in the Revenue Fund.

"Project" shall mean, in addition to the Facility, an approximately 300,000 square feet of gross feasible area for new retail stores, restaurants and entertainment uses in the project area.

"Revenue Fund" shall mean the Authority's Parking Facility Revenue Fund, which includes the Ground Lease Account and the Operating and Maintenance Account.

Section 2. Public Hearing.

In accordance with RCW 35.86.050, a public hearing has been conducted on the receipt by the City of full legal and unencumbered title to the Facility, including the presentation of reports related to the parking needs of civic center facilities in the CBD, traffic impacts of the Project, economic projections of Facility revenue, and a description of the plans which relate to the development of the Facility and the Project. Further, the Council has considered testimony from members of the public, representatives of the Developer and experts employed by the City in connection with the Facility. Reports and plans relating to off-street parking needs and the Facility have been presented and received by the Council and are filed in the office of the City Clerk.

Section 3. Authority of the City.

The City, pursuant to chapters 35.86 and 35.71 RCW and other laws of the state of Washington, shall acquire, without any consideration, for public parking purposes, full legal and unencumbered title to the Facility described in the plans and specifications on file in the office of the City Clerk and a leasehold interest for property underneath the Facility after the Foundation has paid, in full, the principal of and interest on its Bonds.

Section 4. Public Purpose.

The public purpose and interest will be served by providing short-term public parking in the CBD through operation and maintenance of the Facility by the Authority in accordance with Parking Covenants and a Parking Agreement and transfer full legal and unencumbered title of the Facility from the Foundation to the City.

Section 5. Valuable Asset.

The leasehold interest in the real property under the Facility and the Facility itself are valuable municipal assets which will benefit adjacent municipal properties including, but not

limited to, Spokane City Hall, the main branch of the Spokane Public Library, and Riverfront Park by providing safe, convenient and adjacent public parking.

Section 6. Improved Access.

The Facility will improve public access to, and circulation within, the CBD, preventing congestion and facilitating private and public transportation within a part of the City that contains arterial streets by providing approximately 1,304 public parking spaces for use, all as set forth in the Environmental Reports and the Walker Report as supplemented, which are on file in the office of the City Clerk. Further, the Facility will also increase pedestrian activity by efficiently removing automobiles from the street, thereby contributing the viability and safety of pedestrian movement within the CBD.

Section 7. Documents.

The receipt by the City, without cost or any consideration, of full legal and unencumbered title to the Facility will be accomplished by:

- A. a resolution of the Council, approving a plan to finance the acquisition of a public parking facility by the Foundation through the issuance of tax-exempt revenue bonds for a term of not to exceed 21 years, and providing for other matters properly relating thereto;
- B. a Parking Garage Purchase and Sale Agreement between Developer and the Foundation;
- C. a Ground Lease between the Developer and the Foundation;
- D. a Parking Agreement and Parking Covenants between the Developer and Nordstrom, Inc., a Washington corporation;
- E. a Parking Garage Lease Agreement by and between the Foundation and the Authority;
- F. an assignment of the Ground Lease by the Foundation to the Authority; and
- G. a Ground Lease between City and the Developer.

In addition, the City shall enter into a contract with the Housing and Urban Development ("HUD") to loan \$23,800,000 for the Project, as described and according to the terms of the HUD loan application which was submitted to HUD on June 23, 1995.

Section 8. The Parking Meter Revenue Fund.

There is hereby created and shall be maintained in the office of the Treasurer a fund separate and distinct from all other funds and accounts of the City, designated the "Parking Meter Revenue Fund" (the "Parking Meter Revenue Fund"). All Parking Meter Revenue shall

be deposited into the Parking Meter Revenue Fund upon receipt. Money shall be withdrawn from the Parking Meter Revenue Fund to maintain public streets and roadways within the City and for the purposes set forth in Section 9 of this Ordinance. The City shall maintain the number of parking meters at approximately the number that exists on the date of this Ordinance and shall charge parking meter rates that are market rates.

Section 9. Contingent Pledge of Parking Meter Revenue Fund.

The City hereby pledges, as a first charge and lien, that, in the event Parking Revenues are insufficient to make Ground Lease Payments and pay Operating Expenses, the City shall loan money from the Parking Meter Revenue Fund (but only to the extent money or investments are then on deposit or allocable to the Parking Meter Revenue Fund) to the Authority's Ground Lease Account and Operating and Maintenance Account in an amount that is no more than is necessary, together with such other money as is on hand and available in the Ground Lease Account and the Operating and Maintenance Account, to permit the Authority to make Ground Lease Payments and to pay Operating Expenses. The City covenants to maintain parking meter rates at a level to produce an amount each year that, together with other legally available money loaned to the Parking Meter Fund, will equal Ground Lease Payments and Operating Expenses budgeted for that year. Notwithstanding the foregoing, the City specifically does not: (i) pledge to maintain money in the Parking Meter Revenue Fund; (ii) pledge revenue derived from the enforcement of City parking laws to the Parking Meter Revenue Fund or any transfer therefrom; (iii) pledge the City's full faith, credit and resources, or money in the City's General Fund to the payment of Ground Lease Payments or Operating Expenses; or (iv) pledge any assets of the City to the payment of principal of or interest on the Foundation's Bonds.

Section 10. Operation of the Facility.

The City hereby covenants that once it receives full legal and unencumbered title to the Facility that it will: (i) operate and maintain the Facility in a first-class condition, (ii) establish reasonable hours of operation, (iii) operate the Facility for the use of the general public and (iv) establish parking rates at levels sufficient to pay the City's Operating Expenses and Ground Lease payments relating to the Facility and to encourage short-term hourly parking.

Section 11. Delegated Authority.

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.

Section 12. Repeal of Section 43 of Ordinance No. C31398.

Section 43 of Ordinance No. C31398 (codified as 16.61.5920), adopted June 5, 1995 is hereby repealed in its entirety.

Section 13. Severability.

If any one or more of the covenants or agreements provided in this Ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements of this Ordinance and shall in no way affect the validity of the other provisions of this Ordinance.

Section 14. Urgency and Emergency; Effective Date.

Pursuant to Section 19 of the City Charter, this Ordinance will: (i) have the direct benefit of promoting the creation of employment in the CBD, (ii) have the effect of stimulating the economy, (iii) provide recreational and cultural opportunities and (iv) improve the quality of life for the Spokane community through a reinvestment in the CBD, which will generate increased tax revenues as estimated in the studies, documents and public testimony presented to the Council. The immediate passage and effectiveness of this Ordinance will promote downtown revitalization and reverse the economic decline of the CBD by promoting the construction of the Project, including the Facility, which will become a valuable municipal asset inuring to the public benefit. The public purposes of this Ordinance will be lost if assurances of City participation, including a contingent pledge of its Parking Meter Revenue to pay Operating Expenses and Ground Lease Payments, are not immediately made and effective upon passage of this Ordinance..

The City further recognizes that the Developer must immediately execute leases to commit Nordstrom, plus other major tenants to the Project otherwise the Project will not be ready for occupancy and operation by the dates contractually required. If this contractual promise cannot be performed the Project will not be built and severe economic and other consequences will ensue. Further, the Developer has indicated that adequate public parking must be available to serve the Project and civic facilities before tenants will commit to the Project. Therefore, the Developer must receive assurances of City participation prior to pledging land and capital in order to obtain public and private financing to develop and construct the Project which will enable the Foundation to issue tax-exempt bonds and acquire the Facility.

Based on such facts and studies, reports and testimony, the Council finds that the loss of the Project will result in a loss of jobs, tax revenue, recreational opportunities which at the same time diminishing the quality of life for a substantial number of the City's citizens.

Based on such facts, the Council finds and declares that an urgency and emergency exists such that this Ordinance shall be immediately effective upon adoption in order to preserve the public peace, health or safety and provide support of the City government and its existing public institutions, facilities and infrastructure.

Section 15. Publication.

The City Clerk shall publish in the City's official newspaper, the title and text of this ordinance, which will be available for inspection in the Office of the City Clerk.

PASSED the City Council this 27th day of January, 1997.



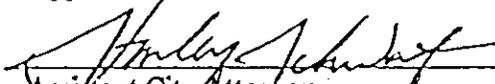
Jack Geraghty, Mayor

Attest:



Terri L. Pfister, City Clerk

Approved as to form:



Assistant City Attorney