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Continued Deposition of

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Michael C. Ormsby

December 5, 2002

IN RE: RIVER PARK SQUARE

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**CONDENSED TRANSCRIPT AND CONCORDANCE**

**PREPARED BY**

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1 discussions with counsel, I don't want you to reveal  
 2 the content of those discussions, I instruct you not  
 3 to answer that question, otherwise you can answer it.  
 4 A. The only information I have about that came from our  
 5 attorneys.  
 6 Q. (BY MR. LOWERY) At the time of the AMC dispute that  
 7 we were talking about yesterday in the summer of  
 8 1999, you said that the Walker, the new Walker  
 9 projections exceeded debt service obligations,  
 10 correct?  
 11 MR. CRONIN: Object to the form.  
 12 A. I am not sure I specifically said that, I think what  
 13 I said was all the numbers that I ever saw, and I  
 14 don't specifically have in mind the new Walker  
 15 numbers, always showed sufficient money to cover debt  
 16 service.  
 17 Q. (BY MR. LOWERY) Well, we looked at yesterday, you  
 18 are aware that Walker did some new projections in  
 19 1999 after the bond sale, but before the garage  
 20 closing, correct?  
 21 A. That is what Mr. Novak's letter said, yes.  
 22 Q. And Mr. Novak's letter pointed out the magnitude of  
 23 those new projections?  
 24 MR. CRONIN: Object to the form.  
 25 A. There was a figure in his letter, yes.

291

1 Q. Was it your understanding that even those new  
 2 projections exceeded debt service?  
 3 A. I don't recall specifically checking those new  
 4 numbers.  
 5 Q. You are not sure whether the new projections even  
 6 covered debt service, right?  
 7 A. I don't recall at this point checking that, yes.  
 8 Q. Did you receive additional assurances at the time of  
 9 this AMC dispute in 1999 that the City would honor  
 10 its loan pledge of parking meter revenues to pay any  
 11 shortfall in operating and maintenance expenses?  
 12 MR. CRONIN: Object to the form.  
 13 A. I am not sure what you mean by additional assurances.  
 14 Q. Did you have any discussions with anyone with respect  
 15 to whether or not the City loan pledge would be  
 16 honored or was still available to pay any shortfall  
 17 in revenues?  
 18 A. You know, I can honestly say that's been an issue  
 19 that has been discussed throughout this but, I can't  
 20 specifically relate to a conversation in that time  
 21 frame where that occurred, but I suspect it did.  
 22 Q. You understood that if the City didn't honor its loan  
 23 pledge that was going to be a catastrophe for the  
 24 garage?  
 25 MR. CRONIN: Object to form.

292

1 A. I didn't understand that, I understood that it was  
 2 important that they have a pledge in place.  
 3 Q. And by the time of this AMC blowup had the City  
 4 Council membership changed from the time of the bond  
 5 sale?  
 6 A. I don't believe that it had.  
 7 Q. When was Mr. Eugster elected to the City Council?  
 8 A. I believe it was in November of, this is 2000, I  
 9 believe it was November of 1999.  
 10 Q. Prior to the garage real estate closing?  
 11 A. No, it was not.  
 12 Q. Was the AMC dispute and the resolution of that  
 13 dispute subject to a confidentiality agreement?  
 14 MR. CRONIN: Object to the form.  
 15 A. I believe so.  
 16 Q. (BY MR. LOWERY) Why?  
 17 A. That was a request of the developer, and I believe  
 18 the City agreed.  
 19 Q. Did you agree?  
 20 A. Yes, obviously we did.  
 21 Q. Why did the developer want to keep confidential the  
 22 AMC dispute and the proposed resolution of it?  
 23 MR. LEAVENS: Object to the form.  
 24 MR. CRONIN: Object to the form.  
 25 A. At this time I don't recall that I ever was told

293

1 that, but if I was, I don't remember.  
 2 Q. (BY MR. LOWERY) Why would you agree to a  
 3 confidentiality agreement with respect to the AMC  
 4 dispute and the potential release of it?  
 5 MR. LEAVENS: Object to the form.  
 6 MR. CRONIN: Object to the form, asked and  
 7 answered.  
 8 A. I didn't see any reason not to, and it was a way to  
 9 resolve the issues in a way that was acceptable to  
 10 the PDA and the City to have us move forward with  
 11 completing the closing.  
 12 Q. (BY MR. LOWERY) Who at the City agreed to the  
 13 confidentiality agreement?  
 14 A. I don't specifically know who at the City agreed to  
 15 it. Mr. Koegen was the person with whom I had  
 16 contact.  
 17 Q. Was he agreeing as the PDA or the City or both?  
 18 A. I guess, Mr. Lowery, I never distinguish between the  
 19 two, so I can't specifically say.  
 20 Q. Who made the decision at the Foundation to agree to  
 21 the confidentiality with respect to the AMC dispute  
 22 and resolution?  
 23 MR. CRONIN: Object to the form.  
 24 A. Well, I would have been the one that communicated it  
 25 to the other counsel involved and I believe we shared

294

1 what was happening with the board as we went along.  
 2 Q. And did the board make a decision to agree to the  
 3 confidentiality agreement?  
 4 A. I can't recall specifically about the confidentiality  
 5 agreement, but they did agree to the resolution that  
 6 was achieved which included the confidentiality  
 7 agreement. I don't know that we singled that out  
 8 specifically.  
 9 Q. Did you rely on Prudential as the underwriter of the  
 10 bonds to conduct due diligence with respect to the  
 11 preliminary and final Official Statements?  
 12 A. Yes.  
 13 Q. Did you rely on them to determine that the purchase  
 14 price of the garage was fair and reasonable?  
 15 MR. CRONIN: Object to the form.  
 16 A. I can't say that.  
 17 Q. (BY MR. LOWERY) Did you rely on Prudential to make  
 18 sure that the Walker Report that was attached to the  
 19 Official Statement was reliable?  
 20 MR. CRONIN: Object to the form.  
 21 A. I can't say that.  
 22 Q. (BY MR. LOWERY) Did you rely on anybody to  
 23 investigate and determine whether or not the Walker  
 24 Report was reliable?  
 25 MR. CRONIN: Object to the form.

1 A. I guess I knew that both the City had the report done  
 2 and both the City and Prudential were looking at it  
 3 and asking questions, so I knew they were working on  
 4 it, but to make that next step and say rely on them,  
 5 I'm not sure whether, Mr. Lowery, I could go that  
 6 far.  
 7 Q. (BY MR. LOWERY) Did you believe that anyone was  
 8 looking at the Walker Report to try to determine  
 9 whether or not it was reliable?  
 10 A. Yes.  
 11 Q. And who were you looking to for that?  
 12 A. Prudential and the City.  
 13 Q. And do you have any idea what either Prudential or  
 14 the City did with respect to determining whether or  
 15 not the Walker report was reliable?  
 16 A. Not specifically.  
 17 Q. What about generally?  
 18 MR. LEAVENS: What about?  
 19 Q. (BY MR. LOWERY) What about generally.  
 20 MR. CRONIN: I missed the prior question and  
 21 answer, I don't know what generally means.  
 22 Q. (BY MR. LOWERY) Did you generally understand what  
 23 Prudential or the City had done to determine whether  
 24 or not the Walker Report was reliable?  
 25 A. As I'm sitting here today, what I recall, and I may

1 have known more then, was that they were reviewing  
 2 information and numbers and asking for additional  
 3 information between themselves. But that's kind of  
 4 the general sense that I have. I don't specifically  
 5 recall more than that.  
 6 Q. Do you know whether anybody from Prudential ever even  
 7 that talked to Walker, the Walker Company about its  
 8 report and its reliability?  
 9 A. Certainly not when I was present. And I can't recall  
 10 specifically ever hearing anyone say they had talked  
 11 with someone at Walker. It could have occurred.  
 12 Q. Did you rely on Prudential to do due diligence with  
 13 respect to the entire Official Statement and all  
 14 attachments to it?  
 15 MR. OLDHAM: Object to form.  
 16 MR. LEAVENS: Object to form.  
 17 A. I guess I knew that they were, but I don't know that  
 18 I would go on to say that I relied on that.  
 19 Q. (BY MR. LOWERY) Is it a fair statement that your  
 20 firm did not do due diligence on the entire Official  
 21 Statement including all the attachments?  
 22 A. No, that is not a fair statement.  
 23 Q. Your firm did do due diligence on the entire Official  
 24 Statement and all the attachments?  
 25 A. We reviewed the entire Official Statement, yes.

1 Q. And all the attachments?  
 2 A. I know I did not review the Walker Report and I guess  
 3 without specifically knowing what Mr. Thompson did or  
 4 didn't review, I can't say what the firm did or  
 5 didn't do. I can tell you I reviewed the entire  
 6 Official Statement, the text and many of the  
 7 attachments. I did not review the Walker Report.  
 8 Q. So you don't know whether or not your firm reviewed  
 9 the Walker Report?  
 10 A. I do not.  
 11 Q. You understand there to be a difference between  
 12 reviewing the Official Statement and performing due  
 13 diligence on the Official Statement?  
 14 MR. CRONIN: Object to the form.  
 15 A. There could be a difference but not necessarily a  
 16 difference.  
 17 Q. (BY MR. LOWERY) In connection with this Official  
 18 Statement for the Spokane garage bonds did your firm  
 19 do due diligence as opposed to review of the Official  
 20 Statement?  
 21 MR. CRONIN: Object to the form.  
 22 A. I think that they could be the same thing.  
 23 Q. (BY MR. LOWERY) Well, were they the same thing in  
 24 this case?  
 25 A. We did perform due diligence on the Official