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AUG 06 1997

OFFICE OF THE CITY ATTORNEY

August 5, 1997

TO: Peter G. Fortin
William Pupo
Board of the Public Parking Development Authority

FROM: Roy J. Koegen *RJK*

RE: **Riverpark Square**

I have enclosed, for your review, a response from Bill Mantle indicating that the Parking Agreement and Parking Covenants still constitute an encumbrance which will prevent tax-exempt financing. I will arrange for a meeting of all parties to endeavor to resolve this matter.

RJK:rrs

Enclosure



PRESTON GATES & ELLIS LLP
ATTORNEYS

RECEIVED

AUG 06 1997

OFFICE OF THE CITY ATTORNEY

July 31, 1997

Mr. Roy J. Koegen
Perkins Coie
North 221 Wall Street, Suite 600
Spokane, WA 99201

Re: City of Spokane, River Park Square

Dear Roy:

This letter is in response to your letter of July 24, 1997, forwarding the Parking Agreement and Parking Covenants with respect to the proposed River Park Square project. You ask if these documents will constitute an "encumbrance" that will prevent us from issuing a favorable bond opinion with respect to bonds to be issued by a not-for-profit corporation pursuant to the provisions of Revenue Ruling 63-20 and Revenue Procedure 82-26.

As you know, under Revenue Ruling 63-20 and Revenue Procedure 82-26, one of the requirements is that the political subdivision on whose behalf the bonds are issued must have a beneficial interest in the not-for-profit corporation. One of the ways this may be accomplished is to provide that the political subdivision have the right to acquire, at any time, unencumbered title and exclusive possession of the financed property by paying a sum sufficient to defease the bonds. Section 7.12 of the Parking Covenants makes that document a covenant running with the land and constitutes an equitable servitude on the property. We view the Parking Agreement and the Parking Covenants (as well as any valet or other operating agreements entered into pursuant to the Parking Agreement and Parking Covenants) as "encumbrances" on the use of the financed facility. Thus, they may not survive defeasance of the bonds by the City.

In addition, pursuant to Revenue Ruling 63-20 and Revenue Procedure 82-26, the political subdivision on whose behalf the bonds are issued must receive full legal and unencumbered title to the facilities upon retirement of the bonds for no additional consideration. This requirement has been interpreted by the IRS to require that all leases and management contracts cease upon discharge of the bonds. The Parking Agreement and Parking Covenants conflict with this requirement as well.

Over the past months we have had many telephone conferences with the parties to this transaction in an attempt to craft a business deal that will comply with the tax rules described above and still meet the business requirements of the parties. We are aware of the importance of

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Mr. Roy J. Koegen

July 31, 1997

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this project to the Spokane area, but have been blocked in all of our attempts at crafting a business deal that meets tax rules. Perhaps a meeting is required with all parties to deal with the tax issues if this bond issue is to proceed.

Very truly yours,

PRESTON GATES & ELLIS LLP



By

William E. Mantle

WEM:wem

cc: Mike Ormsby

David Thompson

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