

# HENDRICKS & LEWIS

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February 19, 2001

John Powers, Mayor  
City of Spokane  
808 West Spokane Falls Boulevard  
Spokane, Washington 99201-3303

Laurel H. Siddoway, Esq.  
Randall & Danskin, P.S.  
1500 Seafirst Financial Center  
West 601 Riverside  
Spokane, Washington 99201

Re: *RPS v. Miggins, et al.*

Dear John and Laurie:

Because we have spoken only briefly since the filing of the Second Amended Complaint, I know nothing about your strategy or how you plan to proceed. I have also accepted the likelihood that because of your other commitments we probably won't have an opportunity to talk by telephone. For these reasons, I am writing to share the following observations, which I think warrant your consideration.

(1) At this point, the principal legal avenue available to the Developers seems to be a breach of contract claim against the City. To prevail on that claim the Developers must prove the existence of an enforceable contract with specific terms in which the Developers have enforceable interests as third-party beneficiaries. Additionally, the Developers must successfully overcome all of the City's defenses. Given the wide array of defenses that are available to the City—many of which are set out in the Supreme Court briefing and the *Spokane v. Walker* complaint—prevailing on each of the foregoing elements will be exceedingly difficult for the Developers.

(2) The City may or may not prevail on the argument that the City's loan pledge arises only when the PDA's operations, maintenance and ground rent expenses (without regard to fixed facility rent) exceed garage revenue. As we have discussed several times, that argument has both great appeal and substantial weaknesses, and raises acute securities issues. Regardless, there is no

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good reason, of which I am aware, to undercut or devalue the City's other arguments on the assumption that it will win by a knock out on that particular argument.

(3) I again urge you not to ignore the possibility that the Developers grossly overstated their cash investment in the overall RPS remodel. Publicly, they have repeatedly claimed an investment of \$100 million to \$110 million. If the actual cash investment in the construction project (including A&E fees and demolition costs) did not exceed \$50 million, the difference between the two begs for exploration, both as a matter of contract and securities law.

If either of you would like a further discussion of those points, please let me know.

Sincerely,

HENDRICKS & LEWIS



O. Yale Lewis, Jr.