



City of Richmond

Memorandum

To: Mayor and Councillors
From: Brian J. Jackson
Director of Development
Date: February 26, 2009
File: RZ 03-254977
SD-07-357988

Re: **Supplemental Information Regarding the Proposal to Abandon Official Community Plan and Zoning Bylaws – Application by Andrew Cheung Architects Inc. for Rezoning at 3131, 3171, 3191, 3211, 3231, 3251, 3271, 3291, 3331, 3371, 3391 & 3411 Sexsmith Road and 3200, 3220, 3240, 3280, 3300 & 3320 No. 3 Road from Single-Family Housing District, Subdivision Area F (R1/F), 3360 No. 3 Road from Roadside Stand (Class C) District (RSC), and 8511 Capstan Way from Automobile-Oriented Commercial District (C6) and Gas Station District (G1) to School and Public Use (SPU), Comprehensive Development District (CD/181), and Comprehensive Development District (CD/182)**

Purpose

The purpose of this memorandum is to provide information concerning the subject rezoning and subdivision applications by Andrew Cheung Architects Inc., on behalf of Pinnacle International, Sun Tech City Development, and Concord Pacific, with regard to:

- Rezoning Considerations – Progress since the January 2009 General Purposes Committee meeting, including correspondence received from the developers, dated February 20, 2009;
- Additional Correspondence – Letter from Thomas Leung, February 25, 2009; and
- Application Fees – Paid by the applicant to date, as requested by General Purposes Committee.

Background

On May 22, 2007, the subject application and related rezoning considerations were considered at Public Hearing and the subject bylaws received third reading of Council. When staff observed that little progress was being made on completing the application and one year had passed since the Public Hearing (May 29, 2008), in accordance with Policy 5017: Bylaws (Zoning and Official Community Plan) – Time After Public Hearing, the City's Chief Administrative Officer sent the applicant a letter indicating that the subject rezoning considerations should be complete by November 28, 2008 or staff would recommend to Council that the subject bylaws be abandoned.

On January 6, 2009, staff presented a report to General Purposes Committee recommending that the subject rezoning and subdivision applications be closed and the associated bylaws be abandoned.

General Purposes Committee resolved:

That the matter regarding Rezoning Application RZ 03-254977 be tabled until the General Purposes Committee meeting scheduled to be held on Monday, March 2, 2009.

The Committee generally agreed that this was a one time only extension and satisfaction of the rezoning considerations must include financial arrangements acceptable to the City for contributions to the Capstan Canada Line Station and substantial progress on all other issues.

Rezoning Considerations

Staff recognize that the subject development is large and complex, and that its rezoning considerations are lengthy and costly, nevertheless:

- The developers agreed to those rezoning considerations in writing prior to Public Hearing;
- As with any rezoning application, the City has little or no ability to modify rezoning considerations without compromising the integrity of the Public Hearing; and
- As the subject application is currently identified as a key funding source for the Capstan Canada Line Station, an indefinite delay in the application's completion could:
 - Pose a significant hardship for other Capstan Village property owners who, under the approved City Centre Area Plan (CCAP), are restricted from rezoning until station funding is secured; and
 - Impede the City's ability to pursue alternative station funding strategies.

Since the January 2009 meeting of the General Purposes Committee, the following has occurred:

- January 14, 2009 – Magdalen Leung, representing Sun Tech, met with Brian Jackson, Director of Development.
- January 21, 2009 – Michael De Cotiis, representing Pinnacle, met with Brian Jackson and Joe Erceg, General Manager, Planning and Development.
- February 20, 2009 – Revised proposal was received from the developers. (**Attachment 1**)
- February 25, 2009 – Additional correspondence was received from Thomas Leung (as addressed in the following section of this memorandum). (**Attachment 5**)

Regardless of this, work on the outstanding rezoning considerations has not progressed. In addition, the developers (at the above noted meetings with staff) contend that the City is impairing their ability to satisfy the rezoning considerations by adding requirements that they were not aware of when they signed the rezoning conditions in May, 2007. This is, however, incorrect, as staff have little ability to deviate from the rezoning considerations as presented at Public Hearing without compromising the Council approval process. Rather, as illustrated in part in **Attachment 2**, it is the developers who have insisted on an on-going process of negotiations.

Summary

In short, staff do not support the developers' revised proposal (**Attachment 1**). Moreover, that proposal does not demonstrate that the developers are willing to abide by the rezoning considerations presented at Public Hearing, but rather appear to indicate that they see this phase of their application as a time for negotiation. This is neither acceptable nor appropriate, given that such negotiations would compromise the Council approval process.

Additional Correspondence – Letter from Thomas Leung, February 25, 2009 (Attachment 5)

Mr. Leung is one of the subject developers, but he indicates that his letter is not intended to represent Pinnacle or Sun Tech (Concord Pacific). Mr. Leung provides information in support of the developers' revised proposal (**Attachment 1**), however, staff disagree with the points raised, as follows:

- **Capstan Station Funding** – Of the total \$15 million developer contribution, the developers propose to contribute \$1 million prior to bylaw adoption, rather the \$2.5 million requested by staff. Mr. Leung argues that the discrepancy in the amounts should be unimportant to the City; however, staff have indicated to the developers on numerous occasions that:
 - The amount is not negotiable, as the \$2.5 million payable prior to bylaw adoption is intended to reimburse Translink for costs it has already incurred in preparation for the future construction of Capstan Station;
 - Staff's proposal that the City accept payment of the \$15 million developer contribution in instalments (with \$2.5 million, payable prior to bylaw adoption, as the first such instalment) was an attempt to address the developers' request that payments be phased to reflect the anticipated staging of the subject development; and
 - To date, Council has anticipated that the \$15 million developer contribution would be fully paid prior to bylaw adoption.
- **Affordable Housing** – The developers propose that they only provide the previously agreed to affordable housing if it represents no cost to their project. (**Attachment 1**, "financial No Net Loss") Mr. Leung argues that developer-funded affordable housing is "economically unfeasible" and the City should re-negotiate this item. This is not supportable, however, because:
 - Such a change would be substantively different than that approved by Council and agreed to by the applicants, and would compromise the Council approval process and require a new Public Hearing; and
 - If a new Public Hearing was to be undertaken, staff suggest that the subject development should be considered in the context of the Richmond Affordable Housing Strategy, which requires a project the size of the subject development to provide roughly twice the amount of affordable housing as that currently proposed under the subject application
- **Childcare Facility** – Mr. Leung indicates that this item will be satisfied as directed by the City, but staff have no assurance of this, as it is omitted from the developers' revised proposal. (**Attachment 1**)
- **Developer Purchase of City-Owned Lot** – The developers propose to purchase the City-owned lot for "current appraised value". (**Attachment 1**). Mr. Leung argues that a lower price is reasonable in light of changes in the real estate market; however, staff disagree, because:
 - When Council considered the subject application and rezoning considerations at Public Hearing, it did so in the knowledge of a specific price previously approved at a Closed Council Meeting;
 - Staff have no instructions from Council to negotiate with the applicants for an amount less than that previously agreed to by the applicants; and
 - The failure to complete on this sale at an earlier date is due to the developers' inability to agree amongst themselves on the lot's purchaser.

- Servicing Agreement – Staff disagree with Mr. Leung’s argument in favour of the developers’ revised proposal (**Attachment 1**) to:
 - Remove pump station upgrades from the project’s requirements –
 These upgrades are identified as part of the capacity analysis requirements agreed to in writing by the developers. (**Attachment 3 & 4**) As indicated by Mr. Leung, staff are willing to help relieve the financial burden on the subject developers by the possible implementation of a latecomers policy, but this does not release the subject development from either the need for the upgrades or its responsibility for their implementation.
 - Provide security at 105% of estimated construction cost (not 200%, as staff propose) –
 The purpose of this security is to enable Richmond to complete the required works at no cost to the City in the event the developer defaults. The rate of the security appropriate to a project reflects the degree of risk it poses for the City, and a project only warrants a rate of 105% where this risk is very low. In the case of the subject development, the engineering design is not yet complete due to the developers’ failure to act expeditiously, thus, making a rate of 200% appropriate. Staff estimate that it could take roughly one year for the subject engineering design to be brought to a standard that would warrant a rate of 105%. In light of this, it would be inappropriate for the City to accept security at 105% as a basis for adopting the pending bylaws at this time. If as an alternative, as suggested by Mr. Leung, the City was to delay final adoption of the subject bylaws until adequate work had been completed to warrant a rate of 105%, this could satisfy engineering-specific concerns, but, as explained in the staff report tabled on January 6, 2009, this extended and indefinite approval period could pose significant hardships for other Capstan Village developers and impair the ability of the City to secure adequate funding for the Capstan Station.

Summary

At the time the subject application received third reading of Council, the project was considered to be desirable, as it:

- Promised a high-amenity, transit-oriented development;
- Was understood to be economically viable for the developers, the City, and Translink; and
- Took advantage of considerable “bonus” density and other considerations designed to offset the cost of the amenity package.

Unfortunately, it appears that the developers now find the commitments they made prior to Public Hearing are no longer financially feasible and, in staff’s view, the changes to the conditions proposed by the developers go beyond the scope that can be negotiated at this stage in the Council approval process.

It is also noted that the subject application is inconsistent with the recently approved City Centre Area Plan (CCAP). Staff believe that this application should be abandoned and that any future application should be made in accordance with that Plan.

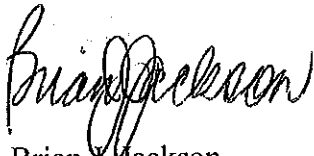
Application Fees

Application fees paid by the applicant are non-refundable and include the following:

- Rezoning \$32,745
- Subdivision \$ 1,500
- Total \$34,245

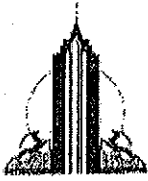
Conclusion

In light of the developers' positions with respect to the rezoning considerations and the implications of this for the integrity of the subject Public Hearing and development elsewhere in Capstan Village, staff recommend that, as per the staff report tabled January 6, 2009, the subject bylaws be abandoned, a bylaw to repeal the related Highway Closure bylaw be brought forward to Council, and the developers' concurrent subdivision application be closed.



Brian J. Jackson
Director of Development

BJJ:spc
Att. 5



PINNACLE
INTERNATIONAL

Brian Jackson, Director of Development
City of Richmond
6911 No. 3 Road
Richmond, BC V6Y 2C1

February 20, 2009

Dear Brian,

RE: Pinnacle Park place/Western Centre, Richmond

Please find for your review and consideration our collective position between Pinnacle and Sun Tech regarding the outstanding major issues for the above proposed development.

1) Capstan Station Funding \$15 million:

Both parties agree with the City's proposal presented to us with respect to the meeting we had with yourself on October 28, 2008 where you indicated the City would accept \$2.5 million paid upon re-zoning with the balance of \$12.5 million to be paid upon issuance of final occupancy permit for the first 50% of total project density. We propose to pay \$ 1 million upon re-zoning as opposed to \$2.5 million.

2) Affordable Housing:

Both parties agree to accept the City's Affordable Housing Agreement as drafted with our proposed adjustment to include the wording which clearly defines that the developer will provide the Affordable Housing on a "financial No Net Loss" basis.

3) Servicing Agreement:

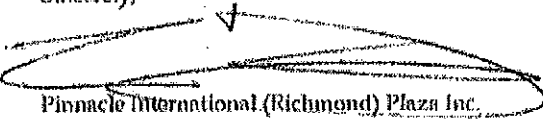
Both parties agree that the Pump Station should not be part of the projects Servicing Agreement commitment. We agree with all other aspects of the City's Servicing Agreement conditions except that we expect the plans to be 100% approved so that the bond can be calculated at 105% of the cost rather than 200% and a provision that allows for the phasing of the project.

4) City Lot Purchase:

Pinnacle is prepared to buy the city lot but only at current appraised value.

Both Pinnacle and Sun Tech are committed to working together with the City to move this project forward. We would ask of the Planning department and City Council to support an additional time extension so we may finalize our discussions and documentation. Trusting that this meets your expectations we look forward to your response.

Sincerely,



Pinnacle International (Richmond) Plaza Inc.
Michael De Cotis

Cc. Peter Webb
Thomas Leung
Grace Kwok

A MEMBER OF THE PINNACLE INTERNATIONAL GROUP
WWW.PINNACLEINTERNATIONAL.CA

Suite 300 - 911 Homer Street • Vancouver, BC, Canada • V6B 2W6 • Tel: 604 602-7747 • Fax 604 688-7749

Attachment 2
Status of Rezoning Considerations

Rezoning Considerations Requirements Prior to Bylaw Adoption	Developer Proposal November 28, 2008 As per the staff report tabled January 6, 2009	Revised Developer Proposal February 20, 2009 (Attachment 1)	
		Summary Proposal	Staff Comments
A. Capstan Canada Line Station Developer Contribution • \$15 million developer contribution secured	<ul style="list-style-type: none"> The developers propose: <ul style="list-style-type: none"> \$500,000 prior to bylaw adoption; Remainder upon completion of 50% of project construction (no fixed schedule); and No security for the outstanding payment to the City's satisfaction (i.e., no Letter of Credit or equivalent). 	<ul style="list-style-type: none"> No change, <u>EXCEPT</u> the developers propose: <ul style="list-style-type: none"> \$1 million prior to bylaw adoption. 	<ul style="list-style-type: none"> <u>Not acceptable</u>, as it: <ol style="list-style-type: none"> Does NOT satisfy Translink's needs; Could indefinitely delay other developments in Capstan Village, which are dependent on Station construction; and Does <u>NOT</u> propose to secure the outstanding payment to the City's satisfaction (e.g., Letter of Credit), which could impair the ability of the City to ensure the developers complete this item once rezoning is adopted.
B. Affordable "Subsidized Rental" Housing • 4,645 m ² (50,000 ft ²) to be provided at the developers' sole cost	<ul style="list-style-type: none"> No proposal. 	<ul style="list-style-type: none"> The developers propose to provide the required affordable housing: <ul style="list-style-type: none"> <u>ONLY</u> if it represents "No Net [Financial] Loss" to the developers. 	<ul style="list-style-type: none"> <u>Not acceptable</u>, as it is: <ol style="list-style-type: none"> Inconsistent with normal City practice; and A disincentive for the developers' provision of cost-effective units.
C. Childcare Facility • 25-child "turnkey" facility	<ul style="list-style-type: none"> No proposal. 	<ul style="list-style-type: none"> No proposal. 	<ul style="list-style-type: none"> <u>Not acceptable</u> – Still outstanding.
D. Developer Purchase of City-Owned Lot • Price as approved by Council, May 2007 (and verbally agreed to by the developers)	<ul style="list-style-type: none"> The developers propose: <ul style="list-style-type: none"> Approximately \$1.6 million <u>less</u> than the Council-approved price. 	<ul style="list-style-type: none"> The developers propose: <ul style="list-style-type: none"> "Current appraised value". 	<ul style="list-style-type: none"> <u>Not acceptable</u>, as: <ol style="list-style-type: none"> When Council considered the subject application and rezoning considerations at Public Hearing, it did so in the knowledge of a specific price previously approved at a Closed Council Meeting; and Failure to complete on this sale at an earlier date is due to the developers' inability to agree amongst themselves on the lot's purchaser.
E. Legal Documents • 100% completion required	<ul style="list-style-type: none"> The City has provided documents to the developers, but has received nothing in return. 	<ul style="list-style-type: none"> No progress. 	<ul style="list-style-type: none"> <u>Not acceptable</u>, as this item will require several months of work to complete.
F. Servicing Agreement • Approved design for roads, park & engineering (as per the approved capacity analysis) • All works to be constructed in "Phase 1" & secured by a Letter of Credit	<ul style="list-style-type: none"> <u>Parks</u>: No proposal <u>Roads</u>: Construction includes - <ul style="list-style-type: none"> "Phase 1" – Hazelbridge Way Other Works – Concurrent with development (i.e. lot-by-lot) <u>Engineering</u>: Construction includes - <ul style="list-style-type: none"> No pump station upgrades (Developers propose that this item is the City's responsibility.) "Phase 1" – Only those works needed to service the new lots Other Works – Concurrent with development (i.e. lot-by-lot) <u>Security</u>: <ul style="list-style-type: none"> "Phase 1" – Letter of Credit at 105% of estimated costs (Staff expect this standard of work to require +/-1 year to complete.) Other Works – No security 	<ul style="list-style-type: none"> The developers propose to undertake all works specified by the City, <u>EXCEPT</u>: <ul style="list-style-type: none"> <u>Engineering</u>: <ul style="list-style-type: none"> No pump station upgrades <u>Security</u>: <ul style="list-style-type: none"> Letter of Credit at 105% for both "Phase 1" and subsequent works, <u>BUT</u> implies that the standard of design will be lower than normal City standards. 	<ul style="list-style-type: none"> <u>Not acceptable</u>, as: <ol style="list-style-type: none"> Pump station upgrades are required based on the project's approved capacity analysis and the developers agreed in writing to implement such works (Attachments 3 & 4); and Bonding at 105% based on a lower standard of design: <ul style="list-style-type: none"> Could leave the City vulnerable to cost overruns that the developer would not be obliged to cover; and Would set an undesirable precedent for other Richmond developers.

Attachment 3

Pinnacle International – Capacity Analysis Requirements, Letter of Assurance (Signed)

April 17, 2007

City of Richmond
6911 No. 3 Road
Richmond BC V6Y 2C1

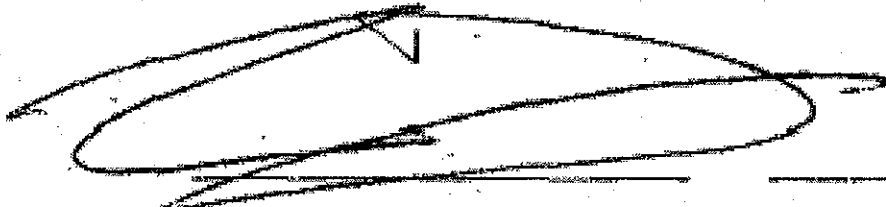
Attention: Suzanne Carter-Huffman, Senior Planner

Dear Suzanne:

Re: No. 3 Road/See Island Way, Rezoning Application R2-03-254977

This is to confirm that Pinnacle International and Concord Pacific agree to the capacity analysis for the above mentioned rezoning application will be completed as a condition of subdivision, and this analysis will be done to the satisfaction of the City. Pinnacle International and Concord Pacific agree to be responsible for implementing all the works indicated in that analysis at the applicant's sole cost.

We trust that this satisfies your request for a letter of assurance.



Approved for and on behalf of
Mr. Michael De Coble
Pinnacle International

Approved for and on behalf of:
Mr. Peter Webb
Concord Pacific

Concord Pacific – Capacity Analysis Requirements, Letter of Assurance (Signed)

April 17, 2007

City of Richmond
8911 No. 3 Road
Richmond, BC V6Y 2C1

Attention: Suzanna Carter-Huffman, Senior Planner

Dear Suzanna:

Re: No. 3 Road/Sea Island Way, Rezoning Application R2-03-254977

This is to confirm that Pinnacle International and Sun Tech City Development Corp. agree to the capacity analysis for the above mentioned rezoning application will be completed as a condition of subdivision, and this analysis will be done to the satisfaction of the City. Pinnacle International and Sun Tech City Development Corp. agree to be responsible for implementing all the works indicated in that analysis at the applicant's sole cost.

We trust that this satisfies your request for a letter of assurance.

Approved for and on behalf of
Mr. Michael De Cola
Pinnacle International



Approved for and on behalf of
Mr. Peter Webb
Sun Tech City Development Corp.



February 25, 2009

Planning and Development
City of Richmond
6911 No.3 Road
Richmond, B.C. V6Y 2C1

Attn: Mr. Joe Erceg, MCIP, General Manager, Planning and Development

Dear Sir:

**Re: Pinnacle Park Place/Western Centre
Re-zoning Application**

I am writing this letter on behalf of Magdalen and myself as concerned citizens and developers who have worked on the project over the past 12 years. The opinions and comments rendered in this letter do not represent Pinnacle and Sun Tech. Magdalen and I are grateful and appreciative of Staff's hard work and effort over the years trying to create a prized development in this important section of land in Richmond. We were so happy in May 2007 when the re-zoning application obtained Third Reading, receiving full support and commendation from Council. It was a long and grueling process but we finally have a development project that encompasses a sky train station built without public funding, a much needed park with amenities, affordable housing, daycare and the support of the Airport Authority, yet it is a project that is economically feasible for the applicants/developers.

The current recession hit the world economies hard and deep. The local real estate market suffered along with the rest of the B.C. economy. Many factors vital to the development industry, such as market and financing, are no longer favorable and all developers had to make drastic amendments in their development plans, both in terms of timing and costing. I do not believe Pinnacle and Sun Tech intend to repudiate the agreement on the re-zoning conditions as passed in the Third Reading. They just need City's flexibility in finalizing the fine details of these conditions. On this, I refer to Pinnacle's letter to Mr. Brian Jackson, Director of Development on February 20, 2009, in which it outlines the collective position of Pinnacle and Sun Tech regarding the outstanding issues.

1. Capstan Station Funding \$15 million

We appreciate Staff's effort in negotiating with Canada Line on behalf of the applicants in working out the delayed payment schedule. As the targeted construction date of the Capstan Station is 2017 or may be even later, if the ridership is not there, and as long as the commitment is secured, the initial payment of \$1 or 2.5 million should not be a critical factor. Canada Line already took a big chunk of the valuable land from the applicants, and I believe discussion on providing non-financial security on the unpaid balance of the \$15 million did not receive any resistance from the applicants.

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Western International Construction (2002) Ltd.

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2. Affordable Housing

The general consensus in the development community is that Richmond has the most demanding affordable housing requirements. The terms and conditions imposed on the subject re-zoning application are the toughest. I understand that there are other re-zoning applications that are in process and the affordable housing issue is being negotiated on a case by case basis. The applicants have committed on the 50,000 sq.ft. of affordable housing and I believe they are willing to work out a program that is similar to the other applications that are pending. There is a lot of work to be done on this item and we should get on with it to secure a workable solution. The current terms and conditions are economically unfeasible.

3. Servicing Agreement

The pump station basically benefits all future developments in North Richmond. Our engineer declared that the pipe size dictated by City Engineer is the biggest he has ever encountered. I believe Staff has now taken the current economic conditions into consideration and is willing to let the applicants to up-grade the pump station based on their development requirements. If the capacity of the up-graded or new pump station is more than that required by the subject development, a latecomer agreement for repayment will be allowed. Based on this arrangement, to leave it out of the servicing agreement will not change its significant position in the development plan, but it certainly will help the applicants in their financing needs in these poor economic times. On 105% bonding, I believe Staff is uncomfortable with this percentage because the current engineering design is not ready for City Engineer's approval. We should wait till the plans are approved and then obtain pricing from contractors and if Staff is still not comfortable with 105%, further security can be determined at that time. The City can hold off Final Reading until the servicing agreement is signed and bonded.

4. City Lot Purchase

The applicants agreed on the Third Ready re-zoning conditions to purchase the City Lot, and Pinnacle further agreed to be the purchaser. The purchase price of \$3.75 million was proposed based on City appraisal done towards the end of 2007. The City issued a letter to Pinnacle stating that the price would only be good for four months and the price could be changed after that time period. Real estate prices can go up and down. A current appraised value to set the price is not unreasonable, bearing in mind that the price set-back suffered by the developers is more significant.

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5. Daycare

Daycare will be provided as per the detailed terms prescribed by Staff.

There is no doubt that we are in the midst of harsh economic conditions. To delay a major development project is a reasonable and possibly, the only option. To scrap a project that took years of hard work and effort, one that can bring about substantial economic and social benefits to the City is not an optimal option. City Staff has invested a lot of time and energy on the project. The applicants have also invested a lot of money in carrying the land, in architecture and consulting fees and on prepaying the \$13.5 million D.C.C., plus time and effort. The fact is at current market conditions, the project has a negative bottom line. To fulfill all the Third Reading conditions with the current detailed terms as prescribed by Staff will require millions of additional funding instantly, way before any construction can be started. Financing on such large and long-term project with a current negative return is not well received by the banks at this time. I have to reiterate that based on my knowledge, the applicants have no intention to change the Third Reading re-zoning conditions. In fact, they have worked hard to try to fulfill them. They only have problem delivering the detailed terms of these conditions, which were not available at the time of Third Reading. Some of these detailed terms are excessive and harsh in view of the current economic climate. A good degree of flexibility from the City will be needed to save the development project. As citizens of Richmond for over 35 years, and having nurtured the project for so many years, Magdalen and I will be really heart-broken if the current project goes down the drain.

Please have another look at the overall situation and see what you can do, and if Magdalen and I can be of any assistance, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Leung", is written over a horizontal line.

Thomas C. Leung, CA, MBA
President

TCL/iw
c.c. Mr. George Duncan, Chief Administrative Officer
Mr. Brian Jackson, MCIP, Director of Development

Western International Construction (2002) Ltd.

#250 - 9833 Oxlin Crescent, Richmond, B.C., V6X 3Z7 • Tel: (604) 214-9833 • Fax: (604) 214-8844 • Email: tleung@westernmba.ca