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**By Canada Post
Copy by fax**

Westsea Construction Ltd.
#2108—1330 Harwood Street,
Vancouver, BC, V6E 1S8
Fax 604-684-8075

July 16, 2018

Dear madams and sirs,

Re: Operating Costs shortfall for 2017; your letter of June 7, 2018

I write in response to your letter of June 7, 2018 and the enclosed Schedule of Operating Costs for 2017.

You have indicated a total deficiency of \$551,954 for calendar year 2017, of which \$426,337 is shown to be for “legal” expenses. It is apparent that these costs are almost entirely attributable to litigation costs you have incurred in court actions *Trenchard v. Westsea Construction Ltd.* 14-2941, and *Trenchard v. Westsea Construction Ltd.* 16-3355, and related appeals.

Please be advised that until there is a court order that indicates that these costs are payable as operating costs under the lease, I refuse to pay the indicated proportionate cost of the noted “legal” expenses.

I am, however, prepared to pay the balance, and enclose a cheque for \$840.75. I arrive at this figure as follows:

$$\begin{aligned} \$551,954 * 0.006693 &= \$3694.23 \\ \$426,337 * 0.006693 &= \$2853.47 \\ \$3694.23 - \$2853.47 &= \underline{\underline{\$840.76}} \end{aligned}$$

The reasons for refusing to pay “legal” costs at this time are as follows:

- In *Trenchard v. Westsea Construction Ltd.* 2016 BCSC 1752, Mr. Justice MacKenzie found that litigation costs are not operating costs under the lease. His reasons remain viable and were not overturned by the Court of Appeal.

- Even if a subsequent decision shows Mr. Justice MacKenzie's reasons are wrong, any litigation costs charged as operating costs in action 16-3355 prior to the conclusion of the proceedings and a decision as to whom costs are payable, is contrary to *Supreme Court Civil Rule* 14-1(13) and (9). Presently, it is unknown which party will be awarded costs in action 16-3355, and it is improper to charge such costs as operating costs in that circumstance.
- Costs payable to me personally forthwith under the order of Madam Justice Power dated August 2, 2017 (settled for ~\$2800) cannot be charged as operating costs under the lease, and therefore neither can the costs of your application to strike my pleadings, which was dismissed by the same order of Madam Justice Power.
- In action CA44007 the Court of Appeal specifically ordered that there was no award as to costs. This was affirmed by the Court of Appeal Registrar. This means that each party bears their own costs. This means, in turn, that I bear my own costs personally, and Westsea bears its own costs personally, and Westsea's costs are not chargeable as operating expenses.

I re-state an earlier request for an itemized breakdown of the legal costs you are claiming, including costs for each of the different individual legal proceedings; i.e. each interim application, each appeal proceeding, and the appointment before the Court of Appeal Registrar.

You have indicated that interest will be charged on overdue balances. I will pay interest in this matter only as might be ordered by a court.

Further, I respond to Mr. Stacey's letter of January 16, 2018 in which he indicated that he has instructions to pursue an order to terminate my lease for non-payment of operating expenses, or for a court-ordered sale of my lease interest. In my view, the law is clear that unless there is a fundamental breach of a term of a contract, a party cannot repudiate the contract. My refusal to pay one item among a variety of operating costs surely would not constitute a fundamental breach. In this respect, I refer you to *Williams v. Ron Will Management & Construction*, 2009 BCCA 543, and *Stearman v. Powers*, 2014 BCCA 206. In addition, in my view it is inappropriate to refer to a court-ordered sale in the context of disputed operating expenses, when court-ordered sales ordinarily occur in the context of a mortgage default.

Regards,



Hugh Trenchard

Encl (1) cheque for 840.76

cc. Mark Stacey, Claire Immega, counsel for Westsea, by email