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December 1, 2017

Vice-Chair Elizabeth Usprich  
Landlord & Tenant Board  
119 King Street West, 6<sup>th</sup> Floor  
Hamilton, Ontario  
L8P 4Y7

**DELIVERED BY FAX ONLY**

File No.: 24707-007  
Fax: 905-521-7870  
From: Paul Cappa  
Pages: 2

Dear Madame Vice Chair:

**Re: Landlord's Submissions**  
**L5 Application – SOL-40297-13-RV2-IN3**  
**165 Ontario Street, St. Catharines, Ontario**

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We are writing to provide the Landlord's additional submissions in response to the Interim Order of November 17, 2017.

At issue is the Landlord's expenditure for coating the exterior of the building. The project and related cost is two-fold: painting of the balcony slab edges and coating of the exterior brick.

At page 55 of the Landlord's Application Brief the contractor, Tritan Inc., breaks down the cost for each component. The cost for painting the balcony slab edges was \$29,800.00 +HST. The cost for coating of the exterior brick was \$59,900.00 +HST.

Testimony was provided by the Landlord's witness Michael Dorion with respect to the repair of the balcony slabs and re-casting the slab edges. Both the Pretium report [LL Ex. #2] and the Landlord's Photographic exhibits [LL Ex #3] make reference to peeling paint on the balcony soffits. The Landlord's witness explained that the balcony slab edges were coated to maintain the integrity of the repair.

In our submission this was a necessary component of the balcony slab repair and was undertaken to maintain the physical integrity of the balcony slab.

The Pretium report indicated there was spalling brick at various locations on the building and significant deterioration along the garage wall. Mr. Dorion also testified that he observed spalling brick. He explained that water infiltration was causing the brick faces to pop off. It was recommended in the Pretium report that consideration be given to applying a coating or a cladding system to the brick exterior to minimize water infiltration.

Mr. Dorion explained that coating the exterior was a less expense alternative to installing a cladding system. He further recommended it to address ongoing deterioration issues within the brick walls.

In our submission coating the building exterior was necessary to protect the physical integrity of the exterior walls of the building and prevent further deterioration of the brick. The project qualifies as an eligible capital expenditure under s. 126(7)(a) of the RTA.

The Tenant representative advanced two arguments to suggest that the expenditure be disallowed. The first argument is that the work was undertaken for branding purposes.


There is no dispute that the colour scheme selected by the landlord is similar in appearance to other buildings under its management. However, this is irrelevant as the underlying reason for applying the water repellant coating was to minimize water infiltration and prevent further spalling of the brick exterior.

The second argument is that the ceramic print should not be coated as it will not adhere to the brick. The Pretium report recognizes that the brick is ceramic and they recommended coating as a treatment option. There is nothing in the tenant's documents to support a finding that ceramic brick cannot or should not be coated. The paint specifications tendered by the Landlord do not contain any cautions or limitations with respect to coating ceramic brick [LL Ex #4].

With the exception of a few localized patches on the brick exterior the objective photographic evidence shows that the coating has adhered to the brick and is performing as intended [LL Ex #3 and Ex #9].

We respectfully request that the components of the exterior coating expenditure be allowed in full in accordance with the statute and regulations.

Yours very truly,  
**COHEN HIGHLEY LLP**



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