



# PA12.7

## REPORT FOR ACTION

### **Agreement - Sale of Development Rights Cresford Capital Corporation and 33 Yorkville Residences Inc.: 50 Cumberland Street / 37 Yorkville Avenue (Municipal Carpark 15)**

**Date:** June 11, 2018  
**To:** Board of Directors, Toronto Parking Authority  
**From:** Acting President, Toronto Parking Authority  
**Wards:** Ward 27 (Toronto Centre - Rosedale)

#### **SUMMARY**

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Toronto Parking Authority ("TPA") entered into a conditional Agreement of Purchase and Sale with MUC Properties Inc. ("MUC") dated February 16, 2011 (the "APS"), for the sale of City-owned lands at Municipal Carpark 15, municipally known as 50 Cumberland Street / 37 Yorkville Avenue, save and except for a strata area sufficient to accommodate a minimum of 800 parking spaces ("Subject Property"). The APS provided that MUC would construct and complete an 800-space municipal parking garage to TPA standards and specifications, within the strata lands retained by the City, and in accordance with the terms and conditions of the APS ("Municipal Garage Construction Obligations").

In December 2015, consent was obtained to an assignment of the APS from MUC of its undivided 40% interest as purchaser in the APS to KingSett Real Estate Growth LP No. 4 ("KingSett"), the owner of the remaining undivided 60% beneficial interest in the APS, with title to be taken in the name of MK 37 Yorkville Inc. As part of the assignment, KingSett assumed the Municipal Garage Construction Obligations.

The sale of the Subject Property was completed by TPA on December 18, 2015. KingSett, who owns adjacent lands at 27 - 29 Yorkville Avenue and 26 - 30 Cumberland Street (collectively the "Development Lands") (refer to *Appendix 'A' - Site Location Map*) will combine the Development Lands with the Subject Property for a proposed mixed-use residential development.

In December 2017, consent was obtained to a further assignment of the APS from KingSett to Cresford Capital Corporation and 33 Yorkville Residences Inc. (collectively, "Cresford") for the sale of the Development Lands and the Subject Property, and the assignment of the Municipal Garage Construction Obligations to Cresford.

This report seeks the approval of the Board of Directors of the TPA to enter into an amending agreement ("Agreement") with Cresford, in accordance with the terms and conditions as detailed in *Table 1.0 - Terms and Conditions of the Agreement*, and on such other or amended terms and conditions considered acceptable to the Acting President of the TPA and the Deputy City Manager, Internal Corporate Services of the City, and in a form acceptable to the City Solicitor.

City Real Estate Services concurs with the TPA staff recommendation and will prepare and process the necessary City authority. City Legal has assisted in the review of this matter.

## **RECOMMENDATIONS**

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The Acting President, Toronto Parking Authority recommends that:

1. The Board of Directors of the Toronto Parking Authority ("TPA") authorize staff to enter into an amending agreement ("Agreement") with Cresford Capital Corporation ("Cresford"), involving:

- (i) a deferral of the provision of shoring and excavation permits;
- (ii) waiving the requirement for a 100% labour and material bond;
- (iii) Cresford shall pay to TPA the sum of \$250,000.00 as compensation for lost income if demolition of the Parking Garage has commenced and Cresford has not obtained the necessary shoring and excavation permits from the City by February 1, 2019; and

in accordance with the terms and conditions as detailed in *Table 1.0 - Terms and Conditions of Agreement*, of this report (June 8, 2018), or such other or amended terms and conditions acceptable to the Acting President and the Deputy City Manager, Internal Corporate Services, and in a form acceptable to the City Solicitor.

## **FINANCIAL IMPACT**

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If Cresford obtains the necessary shoring and excavation permits from the City by February 1, 2019, there are no financial implications as a result of the amendment to the APS. However, should Cresford fail to obtain the said permits by February 1, 2019, then from February 1, 2019 until the date that Cresford obtains said permits, the amount of compensation payable by Cresford to TPA for lost income would increase from \$125,000.00 to \$250,000.00 per month until such time as the said permits are obtained by Cresford.

Funding for this Project (TPA907611 - Redevelopment of Carpark No.15) that includes an 800-space municipal parking garage according to TPA standards and specifications totalling \$7.2 million is included in the Toronto Parking Authority's 2018-2027 Approved

Capital Plan for Toronto Parking Authority. The project is anticipated to be fully implemented in 2020.

Any changes to the schedule and / or financial impact will be reported through the 2019 Budget Process.

The interim Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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At its meeting of June 15, 2010 (TPA Board Minute No. 10-079), TPA Board of Directors authorized TPA staff to proceed with retaining CB Richard Ellis Limited, Brokerage ("CBRE") to market the sale of air rights of the Subject Property.

On February 22, 2011, the conditional APS involving a sale to MUC Properties Inc. of the Subject Property was executed by TPA.

As detailed in DAF 2011-609, on October 3, 2011, the Subject Property was declared surplus by the City, with the intended manner of sale being a sale of air rights to MUC, with the City retaining a strata area sufficient to accommodate a minimum of 800 parking spaces for a replacement municipal parking garage.

On June 26, 2011, TPA executed an assignment of the rights under the APS between MUC, as assignor, to a nominee and bare trustee, MK37 Yorkville Inc. ("MK37"), for and on behalf of Minto 37 Yorkville Limited Partnership ("Minto-owned entity") and Kingsett Real Estate Growth LP No. 4. KingSett subsequently acquired a 60% interest in the APS with MUC retaining 40%.

At its meeting on November 22, 2011 (TPA Board Minute No. 11-168), TPA Board of Directors approved the APS between TPA and MUC (and, as assigned to MK37).

At its meeting on January 25, 2012 (TPA Board Minute No. 12-009), TPA Board of Directors approved an amendment to the APS with MUC (and, as assigned to MK37). The amending agreement contemplated the payment of interest on the purchase price of the sale of air rights of the Subject Property until closing, and addressed the resolution of any tenant matters with respect to the Subject Property.

At its meeting of March 5, 6, and 7, 2012, City Council adopted the recommendations in Item GM11.13 - Sale of Stratified Portion of 50 Cumberland Street / 37 Yorkville Avenue Municipal Carpark No. 15 (Ward 27), and authorized the sale of the Subject Property.

At its meeting of August 25, 26, 27, and 28, 2014, City Council approved applications to amend the Official Plan and Zoning-By-Law to permit two linked mixed-use towers of 62 storeys on Yorkville Avenue and of 40 storeys on Cumberland Street with a 2, 7, and 10-storey base for the properties on 27-37 Yorkville Avenue, 26-32 Cumberland Street, and the Subject Property.

At its meeting of September 17, 2015 (TPA Board Minute No. 15-145), TPA Board of Directors approved a consent and assumption agreement which contemplated TPA providing its consent to the assignment by Minto (40% beneficial owner of MK37) of all its beneficial right, title and interest in and to the APS to KingSett such that KingSett would hold a 100% beneficial interest in the APS. In addition, TPA Board of Directors approved an amending agreement to the APS addressing density bonus compensation, closing date revisions, and approving plans relating to the proposed 800-space municipal parking garage.

As detailed in DAF 2015-302, on December 15, 2015, the City of Toronto authorized the consent and assumption agreement along with revisions to the APS.

On December 18, 2015, TPA completed the sale of the Subject Property.

On June 1, 2017, KingSett and Cresford entered into a conditional Purchase and Sale Agreement whereby KingSett would transfer to Cresford, the Development Lands and the Subject Lands, and all obligations pursuant to the APS, including the obligations to construct the 800-space municipal parking garage.

At its meeting of November 21, 2017 (Item PA5.4), TPA Board of Directors approved a consent and assumption agreement with KingSett Real Estate Growth LP No. 4 and Cresford Capital Corporation ("Cresford"), assigning the construction obligations for the 800-space municipal parking garage to Cresford.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PA5.4>

As detailed in DAF 2017-333, on December 12, 2017, the City of Toronto authorized the consent and assumption agreement assigning the construction obligations for the 800-space municipal parking garage to Cresford.

## **COMMENTS**

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Cresford has requested the TPA's concurrence to revise the terms of the APS as follows; (i) the postponement of their obligation to provide shoring and excavation permits prior to the start of construction; and (ii) waiving the requirement for a 100% labour and material bond. As part of the consideration of being granted these proposed amendments, Cresford has agreed to double the amount of compensation payable to TPA for lost income beginning February 1, 2019 until such time as they obtain from the City their shoring and excavation permits. All other terms and condition of the APS with Cresford to remain unchanged.

The Ward Councillor has been informed of the amendments requested by Cresford.

### **Agreement - Terms and Conditions**

Table 1.0 on the following page, summarizes the major terms and conditions of the proposed Agreement between TPA and Cresford, which agreement remains to be executed between the parties, subject to TPA Board approval and City approval by way of Delegated Authority:

*Table 1.0 - Terms and Conditions of the Agreement*

## **1. Commencement of Construction**

Notwithstanding the definition of "Commence Construction" or "Commencement of Construction" in clause 1.1(n) of the Purchase Agreement, TPA agrees that Cresford may commence and proceed with demolition of the Parking Garage without having obtained a shoring and excavation permit from the City provided that:

- (i) all necessary permits including demolition permits have been obtained by Cresford for such demolition;
- (ii) Cresford shall not carry out any excavation of the Retained Lands until it has obtained the necessary shoring and excavation permits from the City; and
- (ii) if Cresford has commenced demolition of the Parking Garage and has not obtained the necessary shoring and excavation permits from the City by February 1, 2019, then from February 1, 2019 until the date that Cresford obtains said permits, Cresford shall pay to TPA twice the amount of compensation otherwise payable to TPA for lost income pursuant to Section 11.12 of the APS plus HST thereon;

## **2. Labour and material Bond**

The requirement for delivery of a 100% labour and material bond, as referred to in Section 11.1(d)(i) of the Purchase Agreement and in Section 3.1(e)(i) of the Construction Procedures Agreement, is hereby waived.

One key benefit from TPA's perspective of approving the requested APS amendment is that it will allow for the earlier commencement of construction of the project which in turn is expected to advance the timeline related to the delivery of the completed public parking garage. The initial stages of construction will involve the demolition of the existing parking garage structure which is anticipated to take approximately 6 months (to be completed by February 1, 2019), during which time Cresford expects to receive their shoring and excavation permits. Should Cresford fail to obtain the necessary shoring and excavation permits by February 1, 2019, then from February 1, 2019 until the date that Cresford obtains said permits, the amount of compensation payable by Cresford to TPA for lost income would increase from \$125,000.00 to \$250,000.00 per month plus HST until such time as the said permits are obtained by Cresford.

Cresford has also advised that labour and material bonds ("L&M Bonds") will not be provided to the TPA on the project. L&M Bonds can only be written on behalf of a general contractor working for the project owner. A trustee arrangement is set up between the project owner, the general contractor and its direct sub-contractors, for payment from the project owner to the general contractor, which in turn would be paid to the sub-contractor. In the case of the project, there is no general contractor between the project owner, Cresford, and its sub-contractors. Cresford is acting as its own general contractor. As such, there is no separation between the project owner and the

general contractor, which is a pre-condition to L&M Bonds being underwritten on behalf of a general contractor. Without the trustee arrangement, the L&M Bonds have no validity. Therefore, Cresford has requested that their requirement to provide a 100% L&M Bond be waived as a requirement for Commencement of Construction under the APS and Construction Procedures Agreement.

### **Termination - Net Parking Facility Lease**

On May 31, 2018, Cresford delivered a Termination Notice in respect of the Net Parking Facility Lease dated December 18, 2015 between MK 37 Yorkville Inc. as original landlord and TPA (the "Lease"). Pursuant to the Termination Notice, the landlord will require vacant possession of the Lease Parking Facility on July 30, 2018 (the "Termination Date"). Cresford invocation of the right to terminate, however, remains conditional upon the compliance with the applicable terms and conditions of the Lease including, without limitation, completion and / or delivery of the following:

- *Security contemplated by Section 11.1(d) of the APS (i.e. Letter of Credit, Performance Bond, Labour and Material Bond). This report (June 8, 2018) seeks approval to waive the provision of the Labour and Material Bond.*
- *TPA review and approval of Cresford's construction loan commitment which will be limited to a review of the amount of debt incurred in respect of the Project and the amount of equity invested and maintained in the Project. The APS contemplates maintenance of equity of not less than 20% of the Project Costs.*
- *TPA review and approval of the Lender's Agreement pursuant to terms of Section 19.9(c) of the APS (as substituted by Paragraph 13 of the Amending Agreement dated August 11, 2011).*
- *Receipt of all demolition permits. This report (June 8, 2018) seeks approval to postpone the delivery of shoring and excavation permits as a precondition of construction commencement.*
- *Confirmation that tie-back and crane swing agreements ("Good Neighbour Agreement") are settled and in place in respect of all of the abutting parcels of land including the owner of 22 Cumberland Street.*

The TPA anticipates that the timeline for the orderly shutdown and termination of the parking operation of the Leased Parking Facility is approximately 30 days, allowing sufficient time for the removal of equipment and notification of patrons and the general public of the pending closure. In the event that the Construction Commencement conditions as detailed above are not satisfied 30 days prior to the effective date of termination, the Termination Date will be extended for a further period of 30 days. The effective date of termination will continue to be extended for 30 day increments until the Construction Commencement conditions have been satisfied in full.

## **Development Fees**

Cresford has advised TPA that they expect to be in a position to submit their development application within the next week or two. Along with their submission, Cresford will be remitting fees of \$1,365,684.02 representing 60% of their total development fees of \$2,276,140.03. The application fee associated with the shoring and excavation permit totals \$285.97.

## **CONTACT**

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## **SIGNATURE**

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Andrew Koropeski  
Acting President, Toronto Parking Authority

## **ATTACHMENTS**

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Appendix 'A' - Site Location Map

# APPENDIX 'A'

## SITE LOCATION MAP

