



PA2.02

REPORT FOR ACTION

Parking Management Agreement - 4 Rosemount Avenue - Technical Amendments

Date: January 18, 2019
To: Board of Directors, Toronto Parking Authority
From: Acting President, Toronto Parking Authority
Wards: Ward 5 (York-South Weston)

SUMMARY

The Toronto Parking Authority ("TPA") Board of Directors ("Board"), at its meeting of December 19, 2017, authorized staff to enter into a parking management agreement with 30 Rosemount Properties Inc. to manage the 34-space parking facility located at 4 Rosemount Avenue ("Subject Property"), generally in accordance with terms and conditions set out in Board Item PA6.1 as approved. Certain technical adjustments have arisen in the course of finalizing the agreement requiring acknowledgement from the Board and refinement of the approved terms and conditions, namely:

- a change in ownership of the Subject Property;
- that the TPA, not the owner, will supply the required pay and display machine and parking signage; and
- an option to extend the one (1) year pilot term for an additional five (5) years is being deleted.

RECOMMENDATIONS

The Acting President, Toronto Parking Authority recommends that:

1. The Board of Directors of the Toronto Parking Authority authorize staff to make technical amendments to the terms and conditions approved by the Board at its December 19, 2017 meeting (Item PA6.1) in respect of a parking management agreement with Rosemount Properties Inc. to operate the 34-space surface parking facility located at 4 Rosemount Avenue, in general accordance with the Draft Agreement appended as Attachment 1 to this report from the Acting President.

FINANCIAL IMPACT

The technical amendments to the approved terms and conditions do not alter the previously reported financial parameters of the agreement.

DECISION HISTORY

At its meeting of December 19, 2017 (TPA Board Item No.: PA6.1), the TPA Board of Directors authorized staff to enter into a parking management agreement with 30 Rosemount Inc. for a proposed 34-space surface parking facility located at 4 Rosemount Avenue, based on the terms and conditions summarized in the Staff Report. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PA6.1>

COMMENTS

Subsequent to the December 19, 2017 meeting, ownership of the Subject Property changed from one corporate entity, 30 Rosemount Properties Inc. to another, Rosemount Properties Inc. ("RPI", "Owner") through an amalgamation of various related corporate entities. This matter has been reviewed with City Legal, and no concerns have been raised. It is proposed that the pending Agreement, with RPI, for management of the parking facility at the Subject Property, would commence on February 11, 2019, or shortly thereafter, subject to the terms and conditions as identified in *Attachment 1 - 4 Rosemount Avenue - Draft Finalized Parking Management Agreement*, to this report.

Further, the new property owner, RPI, is proposing that the Agreement be limited only to the initial one year term, and the previously contemplated five year extension option be deleted. Finally, TPA and not the owner will be responsible for the supply of the pay and display machine and associated parking signage.

The above-noted technical amendments are reflected in Sections 4 and 5 of *Attachment 1 - 4 Rosemount Avenue - Draft Finalized Parking Management Agreement*, which for convenience replaces those conditions summarized in the previous report. These are minor changes that have no material financial impact.

CONTACT

Patricia Pearsall-Mills, Senior Planning & Policy Analyst
416-393-7259, Patricia.Pearsall-Mills@toronto.ca

SIGNATURE

Robin Oliphant
Acting President, Toronto Parking Authority

ATTACHMENTS

Attachment 1: 4 Rosemount Avenue - Draft Finalized Parking Management Agreement

ATTACHMENT 1: 4 ROSEMOUNT AVENUE - DRAFT FINALIZED PARKING MANAGEMENT AGREEMENT

THIS PARKING FACILITY MANAGEMENT AGREEMENT is made, in duplicate, as of the ____ day of _____, 2019.

BETWEEN: ROSEMOUNT PROPERTIES INC. (the "Owner")
3710 Chesswood Drive, Suite 201
Toronto, Ontario
M3J 2W4

AND: TORONTO PARKING AUTHORITY (the "TPA").
33 Queen Street East
Toronto, Ontario
M5C 1R5

WHEREAS:

- A. The Owner is the legal owner of certain lands bearing the legal description, PIN No. 10323-0114; Firstly Lot 11-12 Plan 272 York; Secondly Lot 13 Plan 272, Part Lot 12 Plan 272 as in TB877413; City of Toronto, municipally known as at 4 Rosemount Avenue, Toronto, (the "Premises");
- B. A portion of the Premises shall be used as a commercial parking facility with approximately 34 parking spaces, which are made available for use by the public in exchange for a payment of a fee, as shown on the plan attached hereto as **Schedule "A"** (the "Parking Facility");
- C. The parties desire that TPA manage and operate the Parking Facility for the Owner;
- D. On December 19, 2017, the Board of Directors of the TPA adopted Item 6.1 which authorizes staff to negotiate and enter into a parking management agreement with the Owner to operate the Parking Facility, containing the terms and conditions specified in the December 4, 2017 Report of the Acting President, Toronto Parking Authority, for a one year term, with an option to extend the parking management agreement for a further five year term.

NOW THEREFORE THIS AGREEMENT WITNESSES, for good and valuable consideration (the receipt and sufficiency of which is acknowledged), the parties hereto hereby agree as follows:

1.00 DEFINITIONS

1.01 For the purposes of this Agreement:

- (a) "Authorities" means all federal, provincial, municipal and other governmental authorities, departments, boards and agencies having or claiming jurisdiction, and "Authority" shall have a corresponding meaning;

Page 1

- (b) “**Business**” means the parking of motor vehicles at the Parking Facility;
- (c) “**Business Day**” means a day other than a Saturday, Sunday or any day on which the principal commercial banks located at Toronto, Ontario are not open for business during normal banking hours. Should there be any unforeseeable and uncontrollable interruption in registered mail delivery, any notice shall be hand delivered or sent by email or facsimile transmission;
- (d) “**Capital Improvements**” has the meaning as set out in Article 5;
- (e) “**Confidential Information**” means all information of a confidential or secret nature possessed or controlled by the Parties which may have been furnished to either of the Parties, whether orally, in writing or otherwise (whether human or machine readable), including, without limiting the generality of the foregoing, all technical data, trade secrets, plans, copyrights, trademarks, trade names, financial information, processes, methods, business systems, flow charts, designs, drawings, sketches, records (of any type of media), or any other intellectual property of the Parties including the terms of this Agreement and any prior proposals;
- (f) “**Defaulting Party**” has the meaning as set out in Section 8.02;
- (g) “**Disclosing Party**” means a Party providing Confidential Information to the Receiving Party pursuant to this Agreement;
- (h) “**Environmental Laws**” means any statutes, laws, regulations, rules, ordinances, codes, and similar acts of any Authority and the common law relating to pollution or the protection of human health, safety, the environment, or damage to natural resources;
- (i) “**Event of Default**” has the meaning as set out in Section 8.01;
- (j) “**Gross Revenue**” means all revenue received from customers parking at the Parking Facility, whether hourly, daily or monthly, collected by TPA in connection with the Business, excluding Taxes, violation revenue and less declined credit cards, their related bank fees, and credit card transaction fees, which shall be retained by TPA less Taxes applied to the foregoing;
- (k) “**Hazardous Substances**” includes (i) any materials or substances defined as or included in the definition of “hazardous substance,” “hazardous material,” “hazardous waste,” “solid waste,” “toxic substance,” “extremely hazardous substance,” “pollutant,” “contaminant,” or words of similar import under any applicable Environmental Laws or (ii) any other materials or substances which is prohibited, limited, or regulated by Environmental Laws;
- (l) “**Law**” or “**Laws**” means any federal, provincial, and local laws, ordinances, rules,

Page 2

regulations, building codes, court orders, and governmental or regulatory agency orders;

- (m) "**Management Fee**" means an amount payable to TPA as set out in Article 3;
- (n) "**MFIPPA**" has the meaning as set out in Section 10.01;
- (o) "**Mobile Pay**" means an application used by customers of the Parking Facility to pay for the use of the Parking Facility through their mobile device from a customer's existing "Green P" Account;
- (p) "**Non-Defaulting Party**" has the meaning as set out in Section 8.02;
- (q) "**Owner's Net Profit**" means an amount payable to the Owner as set out in Article 3;
- (r) "**Parking Facility**" has the meaning as set out in the second recital above;
- (s) "**Parties**" means the Owner and TPA and "**Party**" means either one of the Parties;
- (t) "**Pay and Display Machine**" means a machine used by customers of the Parking Facility to pay for the use of the Parking Facility, which accepts both cash and credit cards and generates a ticket or receipt that is displayed on a customer's vehicle's dashboard;
- (u) "**Premises**" means the property and all buildings thereon, bearing the legal description PIN No. 10323-0114; Firstly Lot 11-12 Plan 272 York; Secondly Lot 13 Plan 272, Part Lot 12 Plan 272 as in TB877413; City of Toronto and municipally known as 4 Rosemount Avenue, in the City of Toronto, in the Province of Ontario;
- (v) "**Statement**" means a monthly written statement setting out the Gross Revenue, the Management Fee, Taxes, and the Owner's Net Profit;
- (w) "**Taxes**" means all goods and services, transaction value, *ad valorem*, sales and any other taxes, rates, charges or assessments levied, rated, charged or assessed or required to be collected or paid (or both collected and paid) in the operation of the Parking Facility; and
- (x) "**Term**" means the term of this agreement set out in Section 2.01.

2.00 TERM

- 2.01** The Owner hereby engages TPA to operate for and on behalf of the Owner, the Business at the Parking Facility for a term of one (1) year commencing the ____ day of ____, 2019, or such other date thereafter agreed to by both parties in writing, and ending 365 days thereafter (the "**Term**").

3.00 MANAGEMENT FEE

- 3.01** As compensation for the services rendered by TPA pursuant to this Agreement, the Owner will pay TPA, on a monthly basis, the Management Fee and any Taxes thereon.
- 3.02** TPA may deduct the Management Fee, and any Taxes on the Management Fee from the monies received from its operation of the Business.
- 3.03** "TPA Operating Expenses" shall be the costs incurred by the TPA in relation to the Business, including Capital Improvements to the Premises, where the costs were incurred prior to the end of the twentieth (20th) day of to which the Gross Revenue relates. The Parties acknowledge and agree that the Net Revenue shall be equal to Gross Revenue less TPA Operating Expenses; and that Owner's Net Profit shall be equal to the Gross Revenue less the Management Fee, any taxes applicable on the Management Fee, and the TPA Operating Expenses.
- 3.04** The Management Fee shall be the sum which is equal to 50% of Net Revenue (net of HST) which shall be deducted and retained by TPA monthly during the Term.
- 3.05** On or before the twentieth (20th) day of each month, TPA will give the Owner the Statement for the preceding calendar month together with payment for Owner's Net Profit for such month.

4.00 TPA OBLIGATIONS

- 4.01** During the Term, TPA will, without limitation:
- (a) operate the Parking Facility: (i) in accordance with TPA's standard operating procedures, which may be amended from time to time; and (ii) twenty-four (24) hours a day, seven (7) days a week during the Term as providing for the use of a Pay and Display Machine and "Mobile Pay"
 - (b) purchase, supply and maintain the Pay and Display machine;
 - (c) pay for the signage at the Parking Facility;
 - (d) operate, and enforce payments at, the Parking Facility diligently; and in an economical, and efficient manner; and to maximize Gross Revenue of the Parking Facility;
 - (e) keep accurate books of account and records of any and all monies received and disbursed in the operation and maintenance of the Parking Facility, such books of account and records will be available for inspection and audit by the Owner or its authorized representatives at any time during normal business hours;

- (f) set the rate for parking fees which may be amended from time to time by TPA in its sole, absolute, and unfettered discretion and in accordance with its rate-setting policy, and charge and collect fees from the public for the privilege of parking in the Parking Facility. TPA has proposed - subject to alteration by the TPA - that the following rates be charged for use of the Parking Facility:

Each Half Hour	\$1.00
Maximum (rolling 12 hours)	\$5.00

- (g) promptly pay over the Owner's Net Profit to the Owner at the time and in the manner provided herein;
- (h) handle complaints and claims made for loss or damage to vehicles parked at the Parking Facility, save and except complaints and claims made for loss or damage due to poor maintenance of parking surface and any other reasons as a result of the failure of the Owner (together with its affiliates, parents, subsidiaries, shareholders, directors, officers, agents, servants and employees, successors, contractors, licensees, and assigns) to fulfill its obligations under this agreement, including but not limited to poor maintenance of the Parking Facility surface, the negligence or wilful misconduct of the Owner (together with its affiliates, parents, subsidiaries, shareholders, directors, officers, agents, servants and employees, successors, contractors, licensees, and assigns);
- (i) where the need for repairs and maintenance is necessitated by the acts or negligence of the TPA make and pay, to the extent that the need for repairs and maintenance relates to the acts or negligence of the TPA;
- (j) obtain and keep in force commercial general liability insurance against claims for bodily injury, death or property damage occurring in or on the Parking Facility arising as a direct result of the negligence of the TPA in the operation of the Business in an amount per occurrence of not less than two million dollars (\$2,000,000). The Owner will be named as an additional insured party(s). The TPA will provide the Owner with a confirmation of insurance upon written request from the Owner; and,
- (k) obtain all licenses and permits required to construct and operate the Business at the Parking Facility.
- 4.02** The Owner and TPA acknowledge and agree that there shall be no monthly permits issued in respect of the Parking Facility.
- 4.03** TPA shall, during and after the termination of this agreement, indemnify and save the Owner completely free and harmless from any and all damages or injuries to persons or property, or claims, actions, obligations, liabilities, costs, expenses and fees by reason of any cause whatsoever as a result of, arising from, or in connection with (i) any breach, violation, or non-performance of any covenant or term of this Agreement by TPA; and (ii) the negligent and/or intentional acts or omissions of TPA or those for whom TPA is in law

Page 5

responsible, including without limitation, the persons employed by TPA to operate and manage the Parking Facility.

- 4.04** At its option, the Owner may cause at any reasonable time, upon not less than 5 days' prior written notice to TPA, at the Owner's sole cost, a complete audit to be made of TPA's records relating to the Parking Facility during the Term. Any information obtained by the Owner as a result of such audit shall be held in strict confidence by the Owner provided; however, that the Owner shall have the right to disclose to its agent, mortgagees and prospective purchasers of the Premises the contents of any such statements, reports and audits.
- 4.05** TPA may install in and upon the Parking Facilities its usual signage, Pay and Display machines, repeaters and any machinery or apparatus in connection therewith and all such signage, fixtures, equipment, machinery and apparatus so installed whether before or after the commencement of the Term and whether by the Owner or TPA shall be and remain the property of the TPA, which the TPA may remove and/or replace from time to time regardless of the degree of affixation, provided that the TPA shall repair any damage caused by such installation and/or removal.
- 4.05** TPA hereby acknowledges and agrees that the Owner's Net Profit received and held by TPA shall be held in trust for the benefit of the Owner and shall not be considered as the property of TPA for any reason.

5.00 OWNER'S OBLIGATIONS

5.01 During the Term, the Owner shall:

- (a) pay all charges for electricity, water and any other utility services furnished to the Parking Facility and maintain all such utilities in good order and working condition;
- (b) make and pay for any repairs and maintenance including, without limitation, repairs to parking surface, fencing, light standards and line striping, where and so often as need be to maintain the Parking Facility in good and substantial repair and condition with the exception of the repairs and payments for which the TPA is responsible under section 4.01(h); shall make good and pay for any such repairs and maintenance
- (c) keep the Parking Facility free and clear of litter and debris and pay for any line striping, power sweeping or other general maintenance required;
- (d) notwithstanding the obligations of TPA provided in subsection 4.01(i), insure the Parking Facility with "all risks" property insurance, and such other appropriate insurance for the use of the Parking Facility as the Business;
- (e) pay all real property taxes, rates, charges and assessments and any other taxes, rates, charges or assessments levied, rated, charged or assessed against the Parking Facility, the

Page 6

operation thereof, the Business, the Management Fee including, without limitation, any tax directed, directly or indirectly, at the parking of motor vehicles;

- (f) make and pay for any improvements or developments required by any governmental authority or body.
- (g) perform snow clearing duties and pay all snow clearing charges and garbage removal for the Parking Facility. All walkways and entrance areas to the Parking Facilities shall be cleared and salted in keeping with the TPA's current operating standards as more particularly described in **Schedule "B"** attached hereto;
- (h) install signage, as directed by the TPA, at the Parking Facility; and,
- (i) complete in a good and workmanlike manner; and pay for any work required to correct or rectify any deficiencies, as determined by the TPA, with the premises which would prevent the economical and efficient operation of the premises as the Parking Facility ("Capital Improvements").

5.02 Upon the due performance by TPA of its obligations under this agreement, the Owner shall allow TPA to peaceably and quietly manage and operate the Parking Facility during the Term, free from interference or disturbance by the Owner or by any person claiming by, through or under the Owner.

5.03 The parties agree that if, at any time during the Term, if – in the opinion of the TPA - additional work is required to correct or rectify any deficiencies with the premises which would prevent the economical and efficient operation of the premises as the Parking Facility, the TPA shall provide the Owner with a detailed list of any deficiencies, together with a list of the TPA's specifications (if applicable), and the Owner shall forthwith complete such Capital Improvements. If the Owner fails to perform such Capital Improvements, the TPA shall have the right, but not the obligation, to perform such Capital Improvements to the Parking Facilities and deduct the costs and expenses incurred by the TPA in doing so from the Gross Revenue in the calculation of the Management Fee payable to the TPA. In the event these costs exceed the Gross Revenue for the calendar month in which such costs were incurred, TPA may deliver an invoice for costs of rectify any deficiency together with the Statement for such month and the Owner will pay such deficiency within fifteen (15) days of receipt of such invoice. For clarity, the costs of any Capital Improvements required at the Parking Facility, shall remain the sole responsibility of the Owner.

6.00 ENVIRONMENTAL PROVISIONS

6.01 The Parties acknowledge and agree that the Owner has reviewed a document known as Phase I Environmental Site Assessment, dated October 2016 and another document known as Limited Soil Sampling Program, dated November 10, 2016 both drafted by S2S

Page 7

Environmental Inc. The Owner represents and warrants that the Owner has a good faith belief that no further investigations concerning Parking Facility and its soil, surface, or subsurface strata were required with respect to the portions of the Premises, assessed at about the time the Limited Soil Sampling Program described in the November 10, 2016 document was conducted, until such time as the condition in which these portions of the Premises were altered from that which existed at the time of assessment; and that at that time, Toxicity Characteristic Leaching Procedure analysis related to off-site soil disposal may be something that the Owner would consider. The Owner represents and warrants that the Owner's use and the use of any Owner's licensees or any current and prior tenants' use of the Parking Facility have been and are in compliance with all applicable laws, regulations and orders relating to the environment, transportation and worker safety and that there are no underground fuel tanks under the Parking Facility. The Owner further represents and warrants that the Owner is not aware of any environmental claims by any third party or governmental authority in relation to the Parking Facility or its soil, surface, or subsurface strata.

- 6.02** The Owner covenants and agrees that, by entering into this Agreement and managing the Parking Facility for the Owner, TPA shall have no responsibility or liability whatsoever for environmental contamination resulting or arising from any Hazardous Material existing on, in or from the Parking Facility as of the commencement date of the Term.
- 6.03** The Owner hereby covenants and agrees to indemnify and hold TPA, (together with its affiliates, parents, subsidiaries, shareholders, directors, officers, agents, servants and employees, successors, and assigns) harmless from and against any liabilities, claims, actions, suits, costs (including demands, judgments, orders, fines, dues, damages, expenses, and fees (including lawyer's fees on a substantial indemnity basis and all other professional fees) as a result of, or arising from, or in connection with the existence of any Hazardous Material in or about the Parking Facility, or Premises, (whether or not such materials or substances were a Hazardous Material at the time they were brought upon the Parking Facility), except to the extent that such Hazardous Material is brought upon the Parking Facility, or allowed to be brought upon the Parking Facility, by TPA. The indemnification obligations contained in this paragraph shall indefinitely survive the termination or expiry of this Agreement.
- 6.04** From the commencement date of the Term, TPA shall not bring into, or allow to be brought into, or allow to be present in the Parking Facility, any Hazardous Substances, other than substances of a type and in quantities used in the normal operation of an automobile parking facility, and shall immediately remove any such Hazardous Substances at its own expense and shall indemnify and save harmless the Owner (together with its affiliates, parents, subsidiaries, shareholders, directors, officers, agents, servants and employees, successors, and assigns) from and against any liabilities, claims, actions, suits, costs (including demands, judgments, orders, fines, dues, damages, expenses, and fees (including lawyer's fees on a substantial indemnity basis and all other professional fees), arising in connection with the presence of Hazardous Substances in the Parking Facility as a result of TPA's

failure to comply with the provisions of this section. This indemnity shall indefinitely survive the expiration or termination of this agreement.

7.00 SPECIFIC TERMINATION RIGHTS

- 7.01** In the event that: (a) any Law comes into force; or (b) there exists any restrictive condition (including, without limitation, gasoline rationing, gasoline shortages, construction, roadwork, parking reduction regulations, and price control or air quality regulations); which, in the reasonable opinion of TPA, hinders TPA's ability to conduct the Business in a material way or negatively affects the profitability of the Business in a material way, then TPA may, by written notice to the Owner, request that the terms and conditions of this agreement be adjusted in an equitable manner by agreement between the parties. If the Parties are unable to reach an agreement with respect to the foregoing, within thirty (30) days of TPA providing the Owner with such notice, either Party may, without penalty, terminate this agreement upon a thirty (30) days' written notice to the other. If neither Party so terminates, this agreement shall continue in full force and effect.
- 7.02** In the event of the sale of the Premises in an arm's length transaction to an independent third party, either Party may terminate this agreement, without penalty, upon not less than thirty (30) days' prior written notice to TPA.
- 7.03** The Parties shall have the right to terminate this agreement for any reason whatsoever, without penalty, upon no less than ninety (90) days written notice to the other Party.
- 7.04** On any termination of this agreement pursuant to this Article 7 or Section 8.02, TPA shall return to the Owner all monies held in trust on behalf of the Owner in relation to the Business and all accounting records concerning operation of the Parking Facility.
- 7.05 **Damage and Destruction**** - If, at any time during the Term, any of the Parking Facilities shall be damaged or destroyed, either in whole or in part, by fire or other peril, then, and in every such event:
- (a) If the damage or destruction to the Parking Facility is such that, in the opinion of the TPA provided to the Owner within twenty (20) days of the date of the occurrence of such damage or destruction (the "**Date of Damage**"), the Parking Facility is rendered partially unfit for occupancy or impossible or unsafe for use or occupancy, then the Owner shall repair the Parking Facility and the Capital Construction with all reasonable speed. During such period of repair, the TPA shall be entitled to collect the Management Fee pursuant to Article 3 hereto.
 - (b) If the damage or destruction to the Parking Facility is such that, in the opinion of the TPA within twenty (20) days of the Date of Damage, the Parking Facility is rendered wholly unfit for operation of the Business or impossible or unsafe for use or occupancy, or that reasonable or convenient access is prevented thereto, and if, in either event, the damage, in the opinion of the TPA to be provided to the Owner within twenty (20) days of the Date of Damage, cannot be repaired with reasonable diligence within ninety (90) days of the Date

Page 9

of Damage, then either the Owner or TPA may terminate this Agreement within twenty (20) days following the date of the giving of the TPA's opinion, upon written notice to the other party, in which event this Agreement and the Term will cease and be at an end as of the Date of Damage and all payments hereunder shall be apportioned and paid in full to the Date of Damage.

- (c) In the event that neither the Owner nor TPA shall terminate this Agreement in accordance with the provisions of Section 7.05(b) above, then the Owner shall repair the Parking Facilities with all reasonable speed and all payments hereby reserved shall abate from the Date of Damage until the date that is the later to occur of the following: (i) the Parking Facility are restored to their condition as of the Commencement Date, and (ii) reasonable and convenient access is restored thereto.
- (d) The decision of the TPA as to the time within which the damage or destruction to the Parking Facility can or cannot be repaired, the extent of the damage, or the state of tenability of the Parking Facility, as the case may be, shall be final and binding upon the parties, unless shown to be in substantial error.
- (e) Notwithstanding anything contained in this Section 7.05, if the Owner does not commence to repair or restore the Parking Facility within fifteen (15) days of the date of delivery of the TPA's opinion, or, having commenced the repair or restoration of the Parking Facility but does not continue to complete same with reasonable dispatch (and in any event, within ninety (90) days of the Date of Damage), the TPA may terminate this Agreement upon fifteen (15) days' prior notice to the Owner, in which case, this Agreement and the Term shall cease and be at an end as of the date of such damage or destruction and all payments shall be apportioned and paid in full to the date of such damage or destruction.

8.00 DEFAULT

8.01 The following shall each constitute an “Event of Default”:

- (a) either Party's breach of any covenant or condition to be performed by such Party hereunder, provided such breach has not been remedied within thirty (30) days of the breaching Party's receipt of written notice outlining said breach from the non-breaching Party;
- (b) any assignment by either Party for the benefit of creditors;
- (c) the admission by either Party in writing of its inability to pay its debts generally as they become due;
- (d) the appointment of a receiver, trustee or similar official for either Party;
- (e) the filing by or against either Party of a petition in bankruptcy or a petition for the reorganization or liquidation of either Party under any Laws; and

- (f) any other act of bankruptcy or insolvency or any other act or omission by either Party in furtherance of any of the above purposes.

8.02 On the occurrence of any Event of Default by either Party (the “**Defaulting Party**”), the other Party (the “**Non-Defaulting Party**”) may, at its option, immediately terminate this agreement by written notice to the Defaulting Party.

9.00 REPRESENTATION AND WARRANTIES OF OWNER

9.01 The Owner hereby represents and warrants that the Owner is a corporation subsisting under the laws of Ontario and has the necessary corporate power, authority and capacity to enter into this Agreement and to carry out the transaction contemplated by this Agreement on the terms and subject to the conditions set out in this Agreement.

9.02 The Owner represents and warrants that it is a resident of Canada within the meaning of the Income Tax Act (Canada).

9.03 The Owner hereby represents and warrants that the Premises and Parking Facility being used as a commercial parking facility is in accordance with applicable Laws.

9.04 The execution and delivery of this Agreement and the completion of the transaction contemplated by this Agreement have been duly authorized by all requisite corporate proceedings on the part of the Owner.

10.00 CONFIDENTIALITY AND PRIVATE INFORMATION

10.01 Subject to the applicable law, including without limitation, the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56 (“**MFIPPA**”), TPA hereby covenants and agrees that the contents, terms and conditions of this Agreement and any Confidential Information shall be kept strictly confidential. TPA’s duty of confidentiality hereunder shall not apply to legal and real estate advisors of TPA.

11.00 Indemnity

11.01 TPA’s Indemnity. Except to the extent caused by the negligence or wilful misconduct of TPA or those for whom TPA is in law responsible, the Owner hereby indemnifies and holds harmless TPA (together with its affiliates, parents, subsidiaries, shareholders, directors, officers, agents, servants and employees, successors, contractors, licensees, and assigns) from and against any liabilities, claims, actions, suits, costs, demands, judgments, orders, fines, dues, damages, expenses, and fees (including lawyer’s fees on a substantial indemnity basis and all other professional fees and costs) as a result of, arising from, or in connection with (i) any breach, violation, or non-performance of any covenant or term of this Agreement by the Owner; and (ii) the negligent and/or intentional acts or omissions of the Owner. The obligations contained in this paragraph shall indefinitely survive the termination or expiry of this Agreement.

Page 11

11.02 Owner's Indemnity. Except to the extent caused by the negligence or wilful misconduct of the Owner or those for whom the Owner is in law responsible, TPA hereby indemnifies and holds harmless the Owner (together with its affiliates, parents, subsidiaries, shareholders, directors, officers, agents, servants and employees, successors, contractors, licensees, and assigns) from and against any liabilities, claims, actions, suits, costs, demands, judgments, orders, fines, dues, damages, expenses, and fees (including lawyer's fees on a substantial indemnity basis and all other professional fees and costs) as a result of, arising from, or in connection with (i) any breach, violation, or non-performance of any covenant or term of this Agreement by TPA; and (ii) the negligent and/or intentional acts or omissions of TPA. The obligations contained in this paragraph shall indefinitely survive the termination or expiry of this Agreement.

12.00 GENERAL PROVISIONS

12.01 Unless otherwise stated, any notice given under this agreement must be in writing and delivered personally, by prepaid courier or by prepaid registered mail to the address of the recipient set out on page 1 of this agreement (or such other address as has been stipulated by written notice). Any notice given shall be addressed as follows:

(a) if to the Owner:

Attention: Toni Varone, President & Secretary
3710 Chesswood Drive, Suite 201
Toronto, Ontario M3J 2W4

(b) if to TPA:

Attention: President
33 Queen Street East
Toronto, Ontario M5C 1R5

If the postal service is interrupted or substantially delayed or threatened to be interrupted or delayed, any notice shall only be delivered by one of the alternative methods stated above. Notwithstanding any law relating thereto, service by means of electronic mail of any notice hereunder shall not constitute good and effective service.

12.02 This Agreement does not constitute a lease, a partnership nor an agency agreement, and nothing contained in this Agreement shall be construed as constituting any Party as the agent of the other or to limit, in any manner, either party in the carrying on of its own respective business or activities.

12.03 TPA may not assign this agreement without the prior written consent of the Owner, which consent shall not be unreasonably withheld. The Owner shall have the right to assign this

agreement only to any purchaser of the Premises, whereupon the Owner shall be released from any further obligation under this Agreement.

12.04 This Agreement shall be binding upon, and enure to the benefit of, the parties hereto and any successors and permitted assigns of the parties.

12.05 If the singular or the neuter pronoun is used, the plural or the masculine or feminine shall be construed wherever the circumstances so require.

12.06 Time shall, in all respects, be of the essence hereof.

12.07 This Agreement embodies the entire agreement of the parties with respect to the matters contained herein and no other agreement shall be deemed to exist except as entered into in writing by both parties to this Agreement. No amendment to this Agreement shall be valid or binding unless set out in writing and executed by both Parties.

12.08 **Dispute Resolution Procedure** Except as otherwise provided in this Agreement, any Dispute in respect of this Agreement shall, at the sole option of TPA be resolved in according with the following:

- (a) the parties shall attempt to resolve such Dispute by negotiations, which shall be initiated by one of them giving to the other written notice containing details of the Dispute and the other shall provide written reply thereto within ten (10) business days;
- (b) if, for any reason, the Dispute remains unresolved after the expiration of the aforesaid ten (10) business day period, either party may provide a written request to the other party that the Dispute be resolved by referral to arbitration between the parties pursuant to the *Arbitration Act, 1991* (Ontario). The arbitration shall be conducted by a single arbitrator, the place of arbitration shall be Toronto, Ontario, and the language of the arbitration shall be English. If the parties cannot agree upon the appointment of the single arbitrator within ten (10) business days of receipt of the request to arbitrate, either party may apply to a Judge of the Ontario Superior Court of Justice in Toronto, Ontario, to appoint same. A decision of the arbitrator shall be final and binding on the parties and there shall be no appeal therefrom; and
- (c) the time limits referred to in this section may be abridged or extended by mutual agreement of the parties.
- (d) Except for any action necessary to enforce the award of the arbitrator, or any actions initiated by the insurer of a party, and subject to the provision of paragraph (b), the provisions of this section are a complete defence to any suit, action or other proceeding instituted in any court or before any administrative tribunal with respect to any Dispute arising under or in connection with this Agreement.
- (e) The parties shall continue to fulfill their respective obligations in respect of this Agreement during the Dispute Resolution Procedure.

Page 13

(f) Section 12.08 shall survive any termination of this Agreement.

12.09 This Agreement shall be governed by the Laws of the province in which the Parking Facility is located and the laws of Canada applicable therein.

12.10 Every provision of this Agreement is intended to be severable. If any term, condition or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, condition or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term, condition or provision shall be separately valued and enforceable to the fullest extent permitted by law. To the extent possible, the Parties shall agree on new provisions which, legally and as nearly as possible, deliver the same effect as was intended by the term, condition or provision held to be invalid or unenforceable.

12.11 The failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of any such covenant, and no waiver by either Party of any provision of this Agreement shall be deemed to have been made unless expressed in writing.

12.12 No Party to this Agreement shall be in default in performing its obligations to the extent that failure to perform is prevented or delayed by reason of "force majeure" including, but not limited to, hostilities, war, revolution, civil commotion, strike, labour disturbance or unrest, epidemic, accident, fire, lightning, flood, wind, storm, earthquake, explosion, blockade or embargo, or any law, proclamation, regulation or ordinance, demand or requirement of any government or government agency having jurisdiction over the Parties, or any act of God, or any other cause that is beyond the control and without the fault or negligence of the Party asserting the benefit of this section; provided, however, that each Party undertakes to do all such things and to take such actions as may be reasonable to remove or overcome the force majeure.

12.13 All schedules attached to this Agreement form an integral part of this Agreement.

IN WITNESS WHEREOF the parties have executed this agreement as of the date set out on the first page of this agreement.

OWNER:

TPA:

ROSEMOUNT PROPERTIES INC.

TORONTO PARKING AUTHORITY

Name: Toni Varone
Title: President

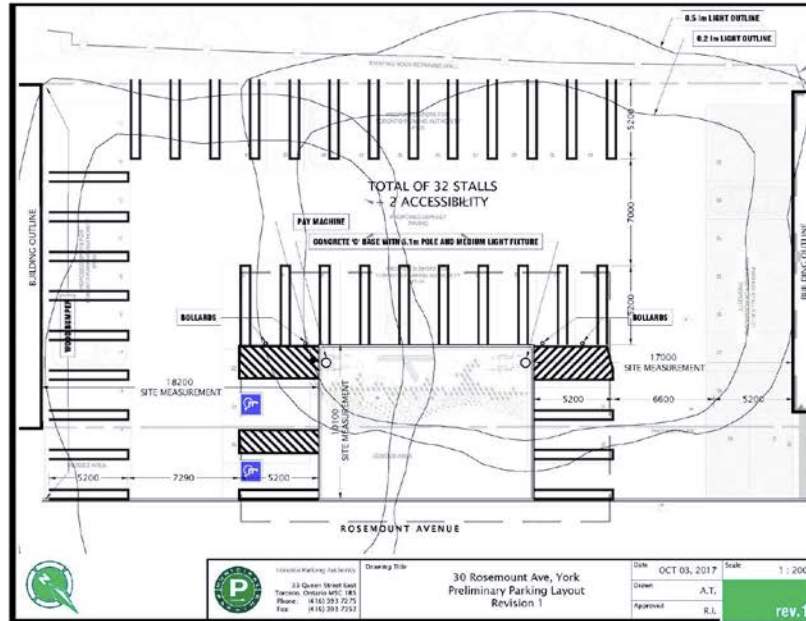
Name:
Title: President, (Acting)

I have authority to bind the corporation

I have authority to bind the corporation

Page 14

SCHEDULE "A"
(the "Parking Facility")



Page 15

SCHEDULE "B"

Standard for Performance of Winter Maintenance and Snow Removal

1. Scope of Work

The Owner, at its own expense, will be responsible for:

- a. The clearing and removal of snow and ice from the Parking Facility, including access and exit roads and pedestrian pathways to the Parking Facility;
- b. The handling and spreading of salt on the Parking Facility in order to keep same free of snow and ice at all times; and
- c. The clearing of snow and ice to provide safe access to fire hydrants, pay stations and gates located along the areas to be cleared of snow or ice. All signage is to be kept free of obstructions due to snow or ice removal operations.

The Owner, or Contractor as may be retained by the Owner for such purposes, shall provide all labour including appropriate supervision, equipment, and materials required to provide these operations as set out herein. The Owner shall be responsible for satisfying all licensing and certification requirements of personnel and equipment to be deployed, and carry out its winter maintenance operations in accordance with all applicable legislation. The Owner shall provide signs and other safety devices concerned with plowing operations for the care and convenience of traffic. Care and courtesy to customers and their property on the Parking Facility must be observed by the Owner's crews at all times. All winter maintenance shall be provided 24 hours a day, seven days a week, including statutory holidays for the term of this Agreement.

2. Method of Operation

- a. The Owner shall start snow clearing operations promptly and carry them out in a continuous operation until the work is completed following each snowfall. Snow shall be cleared and removed so that the accumulation does not promote unsafe driving conditions. Upon completion of the snowfall, the snow shall be promptly cleared and removed to the bare pavement level. Under no circumstances should any snow be ploughed onto sidewalks or abutting streets.
- b. The Owner shall give special consideration to the maintenance of dangerous areas and narrow access / exit ways, curves, walkways, etc. to prevent accidents.
- c. All snow plowing will be complete within 8 hours of the end of any snowfall.
- d. Snow piling is to be performed in such a manner as to not occupy or block driveways or pathways.
- e. In the event of a continuing snowfall, the Owner shall clear and remove snow so that the accumulation shall at no time exceed 10 centimeters (approx. 3.5"). No portion of the Parking Facility shall be permitted to become unusable or impassable.
- f. In the event of drifting snow (including blowing snow with no actual precipitation) that impedes the flow of traffic, the Owner shall clear and remove snow immediately from the

Parking Facility and access/exit roads so as to ensure normal traffic conditions to vehicles and pedestrians. Snow shall be permitted to accumulate only in those areas as designated by the Authority.

- g. Removal will begin with 48 hours after plowing of the Parking Facility. The Owner shall load by mechanical means banked up snow and transport to a dumping area to be arranged by the Owner. No snow shall be left on the pavement so as to create the formation of hardened snow or icy conditions.
- h. If an icing situation should occur due to weather conditions, the Owner shall return to the lot without notification from the Authority's representative, to apply salt as required.

3. Damage to Facilities

The Owner shall be responsible for all damage caused to but not limited to fences, barrier curbs or other fixtures, by snow and ice clearing and removal operations.

4. Salt Spreading

In 2001, Environment Canada released an assessment report stating that road salts are entering the environment in large amounts and are posing a risk to plants, animals, birds, fish, lake and stream ecosystems and groundwater. The report recommended that salt be designated toxic under the Canadian Environment Protection Act (CEPA). It should be noted that Health Canada stated that road salts are not harmful to humans. Environment Canada has stated they will encourage users in developing a management strategy.

In 2004, Environment Canada issued a document entitled "*Best Practices for Salt Use on Parking Lots and Private Roads*". It is a guidance document dealing with the environmental management of road salts used for the control of snow and ice on parking lots and private roads. The intention is that it be used as advice to property owners and contractors for consideration in the development of their own practices, policies and procedures.

To this end, good handling procedures and practices for salt handling, storage and distribution are to be followed at all times and shall incorporate pre-wetting and anti-icing practices in the distribution of salt. In no case shall the spread pattern formed by the material extend beyond the boundaries of the Parking Facility. Spreading techniques shall be as outlined in the Salt Institute's Handbook, "*The Snow Fighters*".

5. Record Keeping

The Owner must track and keep detailed service records for all work performed to support work performed and potential claims. The Owner may be requested to provide via fax and E-mail the following report including but not exclusive to a listing of work performed, outlining: date, time, equipment type, service provided, amount of salt applied, site inspection and weather conditions.