

Responding to Toronto Artscape Inc. Receivership Proceedings

Date: October 11, 2023

To: City Council

From: General Manager, Economic Development and Culture; Executive Director, Housing Secretariat; Executive Director, Corporate Real Estate Management; and City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

Confidential Attachment #1 is about potential litigation that affects the City of Toronto, and contains advice or communications that are subject to solicitor-client privilege.

Confidential Attachment #2 is about potential litigation that affects the City of Toronto and positions, plans, procedures, criteria or instructions to be applied to negotiations carried on or to be carried on by or on behalf of the City, and involves the security of property belonging to the City and the proposed or pending acquisition or disposition of land by the City.

SUMMARY

Toronto Artscape Inc. ("Artscape") is a not-for-profit developer and manager of creative live, work and convening space in Toronto that, over its forty-year history, developed an important portfolio of creative spaces across the city, frequently through various forms of City assistance. On August 28, 2023, following a period of significant financial challenges, Artscape announced that it was insolvent and would soon enter into receivership.

Since then, City staff worked closely with Artscape and its primary lender to secure two extensions to the commencement of receivership proceedings, first to September 29, and a second and final extension which is presently expected to expire on October 20. City staff and Artscape have worked collaboratively during this period to develop a comprehensive transition plan to identify successor operators for Artscape's properties, with the objective of maintaining stability and security for their 390 residential and commercial tenants.

It is anticipated that receivership proceedings will be initiated in late October, prior to the next regular meeting of City Council. As such, the Confidential Attachments to this report contain various recommendations that may be necessary to respond to the receivership proceedings.

RECOMMENDATIONS

The General Manager, Economic Development and Culture; Executive Director, Housing Secretariat; Executive Director, Corporate Real Estate Management; and City Solicitor recommend that:

1. City Council adopt the confidential instructions to staff in Confidential Attachments 1 and 2.
2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1, if adopted by City Council, but that all other information contained in Confidential Attachment 1 remain confidential as it is about potential litigation that affects the City of Toronto, and contains advice or communications that are subject to solicitor-client privilege.
3. City Council direct that the confidential information contained in Confidential Attachment 2 remain confidential in its entirety, as it relates to litigation, contains advice which is subject to solicitor-client privilege, contain positions, plans, procedures, criteria or instructions to be applied to negotiations carried on or to be carried on by or on behalf of the City, concerns the security of property belonging to the City, and / or the proposed or pending acquisition or disposition of land by the City.
3. City Council direct the General Manager, Economic Development and Culture to report back to the Economic Development and Culture Committee in Q4 2023 regarding the status of both interim and long-term efforts to preserve the facilities and services established by Artscape, and the use of any delegated authorities sought through this report.

FINANCIAL IMPACT

In addition to the annual operating grant of \$415,000 provided by Economic Development and Culture to Artscape through the Cultural Organizations Operating Partnership program, the City also provided Artscape with a one-time emergency grant of \$125,000 through Economic Development and Culture's 2023 Council Approved Operating Budget.

There may be impacts in future years related to implementing new operating arrangements for properties currently managed by Artscape. Any such impacts and associated budget requests will be reported to Council as part of the annual budget process.

The Interim Chief Financial Officer and Treasurer has reviewed this report and agrees with the information as presented in the Financial Impact Section.

DECISION HISTORY

At its meeting of July 19-21, 2023, City Council approved terms and conditions for staff to negotiate and enter into agreements to guarantee a \$1.5 million extension to Toronto Artscape Inc's existing line of credit with its primary lender in order to provide working capital while the organization embarked on financial and strategic restructuring. Staff were ultimately unable to reach an agreement to provide this guarantee in accordance with the terms approved by Council as Artscape's financial situation materially changed following Council's decision.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.EX6.27>

COMMENTS

Toronto Artscape Inc. - Background

Established in 1986, Artscape is a not-for-profit developer and manager of creative space in Toronto. Artscape operates 14 unique properties that provide live and work spaces for 265 residential and 125 commercial tenants. The organization also delivers a broad range of accessible community programs. In 2022, Artscape showcased the work of 400+ artists at over 30 exhibitions; held more than 20 events featuring 50+ artists, mentors, and leaders in creative technology; and provided professional development programming for over 400 artists and creative workers.

Artscape's properties can be organized into the following categories. Some properties are listed under more than one category, as Artscape operates more than one type of program at the property in question.

Affordable Residential Rental Properties

- Owned by Artscape
 - Triangle Lofts - 38 Abell Street
 - Artscape Lofts at 210 Simcoe - 210 Simcoe Street
- Owned by City
 - Parkdale Arts & Culture Centre - 1313 Queen Street West
 - Bayside Lofts - 30 Merchants Wharf
- Owned by a Third Party (City interest)
 - Weston Common - 33 King Street / 34 John Street (tripartite)

Community Artist Hubs / Event Properties

- Owned by Artscape
 - Triangle Lofts - 38 Abell Street
 - Youngplace - 180 Shaw Street
 - Sandbox - 301 Adelaide Street West

- Launchpad - 130 Queens Quay East
- Owned by the City
 - Wychwood Barns - 601 Christie Street
 - Gibraltar Point - 443 Lakeshore Avenue
 - Parkdale Arts & Culture Centre - 1313 Queen Street West
- Owned by a Third Party (City interest)
 - Weston Common - 33 King Street / 34 John Street (tripartite)

Affordable Residential Ownership Properties

- Owned by Third Parties
 - Triangle Lofts - 38 Abell Street
 - Artscape Lofts at Waterworks - 505 Richmond Street West
 - Artscape Lofts at PACE - 163 Dundas Street East
 - Artscape Lofts at 210 Simcoe - 210 Simcoe Street

This list is not inclusive of properties owned or leased by legal entities which are separate, but related, to Artscape, namely, Artscape Non-Profit Homes Inc. (ANPHI), and Regent Park Arts Non-Profit Development Corporation (RPAD). Per an exchange of communications between the City and Artscape's primary lender, TD Bank, these entities are not within the scope of the contemplated receivership. RPAD owns Daniels Spectrum, a community cultural hub in Regent Park, and ANPHI owns Artscape West Queen West, an affordable housing development at 900 Queen Street West and leases affordable residential rental units at Wychwood Barns (601 Christie Street) from the City.

Of the properties owned by Artscape, Launchpad and Youngplace were obtained with minimal financial participation by the City. The remaining properties owned by Artscape were obtained by Artscape via the City arranging for the properties to be conveyed to Artscape by developers - either for nominal or below-market prices in exchange for height and density increases as permitted under the Planning Act. The City's purpose in so doing was so that Artscape could provide not for profit housing, or community arts and culture programs and activities to the public, on behalf of the City.

Current Status

Over the years, Artscape funded its expansion through project development fees, asset sales, and debt. However, expansion between 2017-2019, most notably with the opening of Artscape Launchpad on the central waterfront, combined with the effects of business disruption during COVID-related shutdowns, led to Artscape facing cash flow challenges and a related inability to service its debt. To address these issues, Artscape's Board of Directors adopted a restructuring plan in May 2023 to reduce debt and refocus the organization on its core mandate of providing affordable live, work and presentation space for artists. The restructuring plan was premised on the sale of Launchpad, which was listed on the market in spring 2023. No buyer has been found to date.

The City sought to support Artscape as it undertook this restructuring by guaranteeing a \$1.5 million extension to its existing line of credit to provide working capital ahead of the sale of Launchpad. City Council approved terms and conditions for this guarantee at its July 19-21 meeting. However, on August 8, Artscape's primary lender, TD Bank, issued a demand letter to Artscape to fully repay the entirety of its debt to the lender, then valued at \$20.5 million, within 10 days. As a result, the City was no longer able to provide the line of credit guarantee in accordance with the terms approved by Council. Without available cash, and with no prospective buyer for Launchpad, Artscape effectively became insolvent and announced on August 28 that it would be shutting down operations and enter into receivership.

Following this announcement, the City moved quickly to ensure stability and security for the 390 tenants living and working in Artscape buildings. The City worked closely with Artscape and its lenders to secure two temporary stays of receivership, the first to September 29 and a second and final stay which is estimated through to October 20, to allow for sufficient time to develop a comprehensive transition plan for Artscape's properties, including identifying successor operators for Artscape's properties and making arrangements for the re-assignment of operating contracts. Artscape accordingly entered into forbearance agreements with all major secured creditors to formalize the stay of receivership.

The City also provided Artscape with a one-time emergency grant of \$125,000 through the Economic Development and Culture Division's existing 2023 Council-approved operating budget to retain approximately 40 staff to continue to provide property management services for tenants, protect the value of its real property assets, and assist the City in longer-term transition planning. This funding supplemented the regular monthly rents collected by Artscape, and was further matched by other philanthropic donors. Artscape has sufficient funding to continue these core operations through to the commencement of receivership proceedings, and additional financial support from the City will not be required for this period.

Proposed Response to Receivership and Next Steps

With Artscape's forbearance agreements with its lenders currently expected to expire on October 20, it is anticipated that receivership proceedings will commence towards the end of the month. As a court date is expected to occur prior to the next regular meeting of City Council, the Confidential Attachments to this report contain various recommendations that may be necessary to respond to the receivership proceedings to protect the City's interests.

The City of Toronto has many interests across Artscape's portfolio of 14 properties, which includes affordable housing units, community hubs and event spaces. Specific City interests include ownership of properties leased by Artscape, contribution agreements for affordable housing for artists and artist families, and encumbrances on title through agreements under Section 37 of the Ontario Planning Act.

More broadly, Toronto's cultural community faces a crisis related to the lack of affordable, sustainable spaces for artists to live and work, leading to a wave of prominent venue closures across the city in recent years, and the continued threat of

displacement of artists and creative workers. Recognizing these challenges, it is critically important for the City to take action to ensure that these properties can be maintained as affordable housing for creative workers, and cultural hubs for the broader community.

Toronto's arts community has rallied in support of maintaining services at the Artscape properties since the news of the organization's insolvency broke, demonstrating the significant community impact and value of Artscape's sites and services. Recognizing the importance of these sites to the community, staff will work in partnership with current tenants, as well as other artists, arts organizations and community stakeholders in order to develop a fulsome and sustainable long-term vision for the Artscape properties. City staff will report back to Council in Q4 2023 with an update on both the interim and longer-term plans for the sites.

CONTACT

Patrick Tobin, General Manager, Economic Development and Culture,
Patrick.Tobin@toronto.ca, 416-392-4166

Abigail Bond, Executive Director, Housing Secretariat, Abigail.Bond@toronto.ca, 416-338-1143

Patrick Matozzo, Executive Director, Corporate Real Estate Management,
Patrick.Matozzo@toronto.ca, 416-392-9158

Christopher J. Henderson, Deputy Director, Land Development and Real Property Litigation, Legal Services, Christopher.Henderson@toronto.ca, 416-397-7106

SIGNATURE

Patrick Tobin
General Manager, Economic Development and Culture

Abigail Bond
Executive Director, Housing Secretariat,

Patrick Matozzo
Executive Director, Corporate Real Estate Management

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1
Confidential Attachment 2