

IN THE MATTER OF AN ARBITRATION PURSUANT TO THE *ARBITRATION ACT*,
1991, S.O. 1991, C. 17, the *CONDOMINIUM ACT, 1998*, SO 1998, c 19 and THE ADR
CHAMBERS' *EXPEDITED ARBITRATION RULES*

B E T W E E N:

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820

Applicant

-and-

CURATED CABIN INC.

Respondent

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(TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820)

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B E T W E E N:

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CURATED CABIN INC.

Respondent

**WRITTEN MEMORANDUM
(TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820)**

PART I - INTRODUCTION

1. Condo corporations in Ontario are unique statutory entities created by and subject to the *Condominium Act, 1998* (the "Act"). Unlike traditional freehold land ownership, the financial/property interests of unit owners – individually and collectively – are affected by the decisions of their condo's Board of Directors. As such, the Act is defined by a strong spirit of consumer-protection.
2. A key example is in the democratic framework the Act provides for owners to elect, appoint, remove and replace the Board of Directors. However, owners do not always have this right; notably, when less than half of all condo units have been sold.
3. This is considered the "Pre-Turnover" phase of a condo. In this phase, the Board of Directors are appointed by the condo declarant (commonly referred to as the "developer" or "builder"). It is only at a "Turnover Meeting" after more than half of the units are sold that the owners get the right to elect *their* first Board of Directors.

4. Condos are vulnerable during Pre-Turnover: declarants want to maximize their profits from selling units, yet they are expected to act in the condo's best interests until Turnover. For example, a declarant can heavily cut the condo's operating costs to justify a lower asking price if sales are slow, though this might not be in the condo's best interest. A declarant-controlled Board can set a condo up for success after Turnover or it can leave the condo with a financial hole.

5. To safeguard against this, declarants have a duty under the Act to provide prospective purchasers with disclosure statements containing crucial information about the condo – in particular, a disclosure statement must include a budget statement for the condo's first fiscal year. The goal is to promote informed purchases of condo units.

6. Declarants can be held liable under the Act for misrepresentations in their disclosure statements or any material documents they issue. Notably:

- (a) Under Section 75 of the Act, declarants are financially responsible for the difference between (a) the total common expenses stated in their budget statement for the condo's first fiscal year and (b) the total common expenses actually incurred by the condo for this period. Declarants are responsible for the condo's budgetary deficit arising from the declarant's budget statement; and
- (b) Under Section 133 of the Act condos can pursue a declarant for damages where the declarant makes or omits "material statements/information that are false, deceptive or misleading".

7. These remedial provisions are why the Parties are in this Arbitration: Toronto Standard Condominium Corporation No. 2820 ("TSCC 2820") seeks an arbitral award

finding Curated Cabin Inc. (“Curated”) liable for TSCC 2820’s first-year budgetary deficit in the amount \$41,137.60 (the “Deficit”); alternatively it seeks this amount as damages under Section 133. It also seeks its costs, expenses and fees to recover the Deficit on a full-indemnity basis.

8. Curated’s disclosure statement (the “Disclosure Statement”)¹ stated that TSCC 2820 would not require the services of a property manager; naturally, no amount was this included in its first-year budget statement (the “Budget Statement”).² Despite this, Curated signed a property management agreement for TSCC 2820 during Pre-Turnover.

9. On the face of the Statements and Sections 75 and 133 of the Act, there is no justification for Curated’s refusal to pay the Deficit. TSCC 2820 has tried to resolve this matter without resorting to legal action, to no avail.

PART II - SUMMARY OF FACTS

TSCC 2820’s Pre-Turnover Operations and the Declarant Board

10. TSCC 2820 is a 25-unit residential condominium corporation created by the registration of a Declaration and Description on November 26, 2020.

11. Curated is TSCC 2820’s declarant. Curated controlled, managed and administered TSCC 2820’s property during the Pre-Turnover Phase. Curated appointed its directors and officers³ – Adam Ochshorn, Lucas Eisen and Gary Eisen – to fill TSCC 2820’s Board of Directors (collectively, the “Declarant Board”).⁴

¹ Exhibit A: Excerpts of Disclosure Statement prepared by Curated on November 18, 2015

² Exhibit B: First-year Budget Statement prepared by Curated on November 18, 2015

³ Exhibit C: Corporate profile report for Curated and snapshot of Curated’s website.

⁴ Exhibit D: Minutes from board meeting of December 5, 2020.

12. On January 19, 2021, the Declarant Board advised TSCC 2820's owners that a Turnover meeting would be held on February 25, 2021.

13. On the day of the Turnover meeting, the Declarant Board tendered their resignations from the Board and refused attend the meeting.⁵ The Declarant Board denied TSCC 2820's owners the opportunity to ask questions about TSCC 2820's operations during the Declarant Board's tenure: this is a customary and vital function of a Turnover meeting.⁶

Post-Turnover Discovery of Deficit and Management Agreement

14. On May 19, 2022, TSCC 2820 received its audited financial statements and auditor's report for its first operating year (the "Audit Report"),⁷ covering the period between November 26, 2020 (when TSCC 2820 was created) and November 30, 2021.

15. The Audit Report stated that TSCC 2820's first-year operating budget showed a deficit of \$36,858.00 when compared to the Budget Statement. This figure composes the bulk of the Deficit;⁸ the balance of the Deficit results from Curated failing to tend to a roof anchoring/window washing project despite including it in the Budget Statement.

16. TSCC 2820's Board later discovered that the Deficit was primarily attributable to a property management agreement (the "Management Agreement") between Summa

⁵ Exhibit E: Signed resignations of A. Oschorn, L. Eisen and G. Eisen from TSCC 2820's board of directors; Exhibit F: Minutes from turnover meeting of February 25, 2021, at note

⁶ Exhibit G: Affidavit of Neeraj Seth affirmed on May 30, 2023, at para 8.

⁷ Exhibit H: Audited financial statements and auditor's report for first-year, dated May 19, 2022.

⁸ *Ibid*, at p. 9, note 5.

Property Management and TSCC 2820. The Management Agreement was executed by the Declarant Board.⁹

17. The Board also discovered that Curated and the Declarant Board made contradictory and conflicting statements regarding the Management Agreement:

- (a) The Disclosure Statement was issued on November 18, 2015; the Budget Statement was included. The preamble to the Disclosure Statement indicated that it contained "*important information about TSCC 2820 as required by Section 72 of the Act*";¹⁰
- (b) The Budget Statement allocated no funds towards property management fees. It specifically indicated that TSCC 2820 would be self-managed by its owners with the following note:¹¹

Management Fees	Note: The Budget has been prepared on the basis that the Condominium will be Self-managed by the Owners. In the event the Owners decide at a general meeting of Owners to retain a Management Company to manage the Condominium then the Management Contract will be an additional annual cost to the costs set out in the Budget herein and will not be part of the Declarant's responsibility for the first year costs after date of registration. For the second year the estimated will be approximately \$10,800 plus HST.
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- (c) In 2019, Curated prepared a "Homeowner Manual" with the following note:¹²

For the first 8 months of your occupancy the property (common areas & suites) is managed by Curated Properties. After this 8-month period management will be transferred over to a designated property management company.

18. Despite these statements and representations:

⁹ Exhibit I: Excerpts of Management Agreement dated November 28, 2020.

¹⁰ *Supra*, note 1.

¹¹ *Supra*, note 2, at p. 5.

¹² Exhibit J: Homeowner Manual circa 2019.

- (a) The Declarant Board held a Board meeting on December 5, 2020 – merely two months before the Turnover meeting – to pass a resolution for TSCC 2820 to enter into the Management Agreement;¹³
- (b) On January 5, 2021, Adam Oschorn and Gary Eisen signed the Management Agreement; and
- (c) TSCC 2820 discovered a separate management agreement between Curated and Summa Property Management executed around June 22, 2020. Though Curated was the party to this agreement, this was an agreement for management services at 45 Dovercourt Road, where TSCC 2820 is located.¹⁴

This was for a one-year and five-day term beginning on June 25, 2020; this term overlapped with TSCC 2820's first operating year.

TSCC 2820 Demands Curated Pay Deficit under Section 75 of the Act – Curated Refuses

19. On May 20, 2022 – the day after receiving the Audit Report – TSCC 2820 emailed Curated to demand payment of the Deficit (the “Written Notice”).¹⁵ TSCC 2820 emphasized that because its “*cash flow is quite poor, we respectfully request expedited payment of this amount*”.

20. Despite repeated follow-ups, Curated provided no meaningful response nor paid the Deficit within 30 days of the Written Notice.¹⁶

21. Curated only responded on July 27, 2022. It refused to pay and noted:¹⁷

¹³ Exhibit K: Minutes from board meeting of December 5, 2020.

¹⁴ Exhibit L: Excerpts of Management Agreement dated June 22, 2020

¹⁵ Exhibit M: Emails from N. Seth of TSCC 2820 to Curated between May 30, 2023 to July 27, 2023

¹⁶ Exhibit N: Overview of Curated’s Delays and Unreasonable Conduct (the “Overview”).

¹⁷ *Supra*, note 15.

We have had the statement reviewed by our lawyer and there is a management fee of \$26 466 shown. In the condo docs the project is listed as self managed and there is no line item in the budget for a management fee. Curated is not responsible for the additional charge and is only liable for the overages on the first year operating expenses. Curated is willing to pay a total of \$7821.89 for the overages and will not be covering a 3rd party management charge. Please let me know if you have any questions and we can determine how to proceed. Thank you.

22. Though Curated claimed it “is not responsible for the additional charge” for the Management Agreement, it has not explained why the Declarant Board negotiated and signed the Management Agreement.

TSCC 2820’s Lawyers’ Efforts to Resolve Dispute are Unreasonably Opposed and Application is Issued

23. Not satisfied with Curated’s response, TSCC 2820 turned to its lawyers for assistance. On September 19, 2022, Tony Bui of Gardiner Miller Arnold LLP wrote to Curated:¹⁸

- (a) Referencing the suspicious circumstances surrounding the Declarant Board’s role in executing the Management Agreement (see paras 17-18);
- (b) Demanding payment of the Deficit;
- (c) Noting that an additional \$6,580 was payable under the Deficit resulting from Curated’s failure to tend to a roof anchoring/window washing project despite budgeting for it;
- (d) Alleging that Curated made “false, deceptive and misleading statements” in the Disclosure Statement, in breach of Section 133 of the Act; and

¹⁸ Exhibit O: Letter from T. Bui to Curated dated September 19, 2022.

(e) Warning that a court Application under Section 133 of the Act would be brought against Curated if payment of the Deficit was not received by October 6, 2022.

24. On October 5, 2022, Curated's lawyer, Nicholas Tibollo, responded noting that Curated "*did not agree with [Mr. Bui's] version of events*" and suggested there are material facts in dispute such that the dispute should be addressed in Small Claims Court, Mr. Tibollo provided no further elaboration for these positions.¹⁹

25. The October 6, 2022 payment deadline passed without any payment from Curated.

26. Mr. Bui wrote to Mr. Tibollo to provide a final November 10, 2022 deadline for Curated to pay the Deficit, failing which TSCC 2820 would commence its Application. Mr. Tibollo was asked to confirm if he would accept service on behalf of Curated, but Mr. Tibollo did not respond.²⁰

Procedural Overlap Between Application and This Arbitration

27. TSCC 2820 issued its Application on November 18, 2022 to seek relief under Sections 75 and 133 of the Act as the factual matrix surrounding the Deficit, Disclosure Statement, Budget Statement and Homeowner's Manual overlapped.²¹

28. Procedurally however, Section 75 disputes are addressed via mandatory mediation/Arbitration under the Act while Section 133 disputes are addressed via court

¹⁹ Exhibit P: Email from N. Tibollo to T. Bui on October 5, 2022.

²⁰ Exhibit Q: Letter from T. Bui to N. Tibollo dated November 4, 2022.

²¹ Exhibit R: Notice of Application issued November 18, 2022.

Applications. Mr. Bui asked Mr. Tibollo to confirm if Curated would agree to determine address both heads of relief in mediation/Arbitration in the interest of efficiency.²²

29. Curated seemingly agreed and TSCC 2820 agreed to suspend the Application provided a binding Arbitration agreement would be executed. But while a mediation took place (albeit unsuccessfully), Curated would not agree to execute a binding Arbitration agreement until March 6, 2024 due to repeated delays from Curated and Mr. Tibollo. To appreciate the gravity of these delays, TSCC 2820 provides an overview of the discussions on this matter at Exhibit N of its materials (hereinafter, the “Overview”).

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

30. Per the Notice of Arbitration, these are the summarized issues in dispute:

- (a) Is Curated liable under Section 75 of the Act with respect to the Deficit and Budget Statement?
- (b) Did Curated breach Section 133 of the Act and if so, did TSCC 2820 suffer damages?
- (c) Is Curated liable for TSCC 2820’s costs, fees, damages and legal expenses (plus interest) in seeking compliance with the above-noted provisions of the Act?

31. In a word, the answer to each issue is a clear “yes”.

A. Curated is Liable under Section 75 of the Act

32. Section 75 of the Act states:

²² Overview, at “March 24, 2023”.

Accountability for budget statement

75 (1) The declarant is accountable to the corporation under this section for the budget statement that covers the one-year period immediately following the registration of the declaration and description.

Common expenses

(2) The declarant shall pay to the corporation the amount by which the total actual amount of common expenses incurred for the period covered by the budget statement, except for those attributable to the termination of an agreement under section 111 or 112, exceeds the total budgeted amount.

Revenue

(3) The declarant shall pay to the corporation the amount by which the total actual amount of fees, charges, rents and other revenue paid or to be paid to the corporation, during the period covered by the budget statement, for the use of any part of the common elements or assets or of any other facilities related to the property, is less than the total budgeted amount.

Set-off

(4) If the total actual amount of revenue described in subsection (3) exceeds the total budgeted amount, the declarant may deduct the excess from any amount payable under subsection (2).

Notice of payment

(5) After receiving the audited financial statements for the period covered by the budget statement, the board shall compare the actual amount of common expenses and revenue described in subsections (2) and (3) for the period covered by the budget statement with the budgeted amounts and shall, within 30 days of receiving the audited financial statements, give written notice to the declarant of the amount that the declarant is required to pay to the corporation under this section.

Time for payment

(6) Within 30 days of receiving the notice, the declarant shall pay the corporation the amount that it is required to pay under this section.

33. Applying Section 75 is a basic accounting exercise that looks at “what the declarant’s first-year budget contemplated” and “what was actually incurred according to

the audited financial statements". The legislative intention of Section 75 was discussed in *90 George Street Ltd. v. OCSCC 815*:²³

...to hold declarants fully liable for any budget shortfall in the first-year of operation between the actual expenses and the budgeted amount, regardless of whether the elements going to the total actual amount are contemplated in the budget, are reasonable, or are excessive.

34. As confirmed by the Audit Report, the Deficit represents the monetary difference between "what Curated disclosed in the Budget Statement" and "what TSCC 2820 actually incurred in its first operating year". The Deficit is squarely within the scope and contemplation of Subsections (1) to (3).

35. To satisfy Subsection (5), TSCC 2820 provided the Written Notice to Curated the day after it received its audited financial statements (i.e. the Audit Report). This is well within the 30 days contemplated by the provision.

36. Curated had a corresponding duty under Subsection (6) to pay the Deficit within 30 days of receiving the Written Notice: that deadline was June 20, 2022. To-date, no payment has been tendered.

37. While Section 75 does not prevent a declarant from challenging the reasonableness or excessiveness of the actual amount incurred, Curated has advanced no such arguments. In any event, any challenges would be manifestly meritless: the Deficit is solely attributable to Curated and the Declarant Board's decision to bind TSCC 2820 to the Management Agreement despite declaring it was not necessary.

²³ 3A of Brief of Materials, at para 82

B. Curated is Liable under Section 133 of the Act

38. Section 133 of the Act states:

False, misleading statements

133 (1) A declarant shall not, in a statement or information that the declarant is required to provide under this Act,

- (a) make a material statement or provide material information that is false, deceptive or misleading; or
- (b) omit a material statement or material information that the declarant is required to provide.

Right to damages

(2) A corporation or an owner may make an application to the Superior Court of Justice to recover damages from a declarant for any loss sustained as a result of relying on a statement or on information that the declarant is required to provide under this Act if the statement or information,

- (a) contains a material statement or material information that is false, deceptive or misleading; or
- (b) does not contain a material statement or material information that the declarant is required to provide.

39. Section 133 is the spiritual successor to Section 52 (5) of the previous *Condominium Act* (RSO 1990, c C.26), which similarly states:

Where statement false or misleading

(5) Where any statement or material required under this Act to be provided by a declarant or proposed declarant to a purchaser of a unit or proposed unit for residential purposes contains any material statement or information that is false, deceptive or misleading or fails to contain any material statement or information, the corporation or any unit owner who relied on such statement or material is entitled, as against the declarant or the proposed declarant to damages for any loss sustained as a result of such reliance.

40. The essential elements of both provisions are (a) “false, deceptive or misleading statements/omissions”, (b) “materiality” and (c) “reliance”.

41. The scope of “false, deceptive or misleading statements or omissions” is discernable on a plain and ordinary reading of those words. However, “materiality” and “reliance” call for further analysis.

42. In *WCC 61 v. Marilyn Drive Holdings Limited* [“Marilyn Drive”],²⁴ the Ontario Court of Appeal addressed these elements under Section 52 of the predecessor Act.

43. Concerning “materiality”, the Court of Appeal held that condos have the onus to demonstrate that demonstrating that “...*the degree of deficiency in the disclosure is such that it has occasioned a loss or expense to the unit owners as a whole that can be measured in damages*”.

44. “Reliance” requires different considerations depending on whether the party seeking relief was a unit owner or the condo corporation:

Another reason for adopting a different test lies in the fact that s. 52(5) gives a remedy to the condominium corporation as well as the unit owner. In my view, by providing that the corporation is entitled to damages, the legislature must have envisaged that there could be a loss to the owners as a group, as represented by the corporation.

[...]

...reasonable approach to reliance in the context of the condominium corporation would require the corporation merely to demonstrate that it cannot reasonably carry out its duty to control, manage and administer the common elements and the assets of the corporation... without incurring the expense occasioned by the false, deceptive or misleading statement or information or the expense that should have been disclosed in the disclosure statement.

²⁴ 3B of Brief of Materials; decision does not contain numbered paragraphs.

45. *Marilyn Drive* is factually analogous to the facts in this Arbitration. In *Marilyn Drive*, the declarant's budget statement indicated the condo would require the services of a full-time resident maintenance worker. However, the budget statement did not provide for the maintenance worker's accommodations. The Court of Appeal granted the condo's appeal and awarded damages under Section 52, noting:

In view of the information in the budget statement provided to the purchasers that it was "anticipated that one full-time resident maintenance man/ janitor" would be hired, expenses for housing that person could reasonably be expected to become a common expense. Accordingly, the first-year costs to the purchasers of providing that accommodation should have been disclosed. The failure to make this disclosure could reasonably be expected to involve the purchasers in expenses that can be quantified in damages.

[...]

Dealing particularly with the first-year budget statement, it is clear to me that the legislature has manifested an intention that purchasers know with a relatively high degree of certainty the expenses they are likely to incur within the first year.

...[the condominium corporation] has demonstrated the requisite degree of reliance. On the evidence, all of the parties envisaged it reasonable for there to be a resident superintendent so that the corporation could properly manage the common elements, the assets of the corporation and the property. The trial judge seems to have been of the same view. As pointed out above, he found that "there can be no doubt that both the developer and the unit purchasers always intended that the building would have a permanent live-in superintendent". However, because of the inadequate disclosure by the declarant no provision was made in the budget for housing this superintendent.

...[the condominium corporation] proved that it suffered damages within the meaning of s. 52(5) as a result of the improper disclosure.

46. Where the Statements indicated that TSCC 2820 would not require a property manager, only for the Declarant Board to subsequently execute the Management

Agreement (two months before resigning no less), it cannot be disputed that Curated made “false, deceptive and misleading” statements.

47. This statement is “material”. The deficiency the Statements caused a direct loss to TSCC 2820’s owners, in the form of the Deficit.

48. Regarding “reliance”, Curated had two options: it could have (a) not executed the Management Agreement or (b) updated the Statements to disclose the Management Agreement. It did neither, leaving TSCC 2820 in a position where it cannot reasonably carry out its duty to control, manage and administer the common elements and the assets because of the Deficit.

C. Curated is Responsible for TSCC 2820’s Costs to Recover the Deficit

49. TSCC 2820 respectfully requests its costs, expenses and fees, plus interest, to recover the Deficit, as sought in the Notice of Arbitration. This claim includes costs that TSCC 2820 expects to incur leading up to the conclusion of this Arbitration; As these costs will continue to accrue, TSCC 2820 respectfully submits that it be permitted to provide copies of its invoices further to its Reply submissions, as that it anticipates that will be the last event where it will incur costs on this Arbitration.

50. TSCC 2820 relies on the guiding principles for costs under Rule 57 of the *Rules of Civil Procedure* to seek its full costs against Curated. In particular:

- (a) 57.01 (1) (c): This is not a complex matter given the factual matrix and clear wording of Sections 75 and 133 of the Act. Curated ought to have paid the Deficit at the outset and this Arbitration should have been avoided;

- (b) 57.01 (1) (d): Recovering the Deficit is fundamentally important to TSCC 2820 and its owners; unfortunately, they are the ones stuck paying for the property manager's services despite Curated advising this would not be required. Curated's flagrant disregard for the consumer-protection objective of the Act ought to be sanctioned with increased costs;
- (c) 57.01 (1) (e): Beyond its refusal to concede it was responsible for the Deficit, Curated's conduct unnecessarily lengthened this dispute. TSCC 2820 and Mr. Bui went through painstaking lengths to resolve this dispute, but their efforts were routinely frustrated by Curated and Mr. Tibollo, as outlined in the Overview. TSCC 2820 and Mr. Bui were repeatedly met refusals to respond to communications, irrational challenges and spurious suggestions raised at the eleventh hour, about-face changes and unreasonable positions; and
- (d) 57.01 (1) (g): On a plain reading of Section 75 of the Act, Curated ought to have admitted it was responsible for the Deficit at the outset. This Arbitration should have been avoided.

51. TSCC 2820 submits that its costs are fair and reasonable. Though they may appear significant relative to the Deficit, its costs were necessarily incurred to respond of Curated's conduct.

PART IV - ORDER REQUESTED

52. TSCC 2820 requests an Order:

- (a) Declaring Curated in breach of Sections 75 and/or 133 of the Act;
- (b) Requiring Curated pay \$41,137.60 (representing the Deficit) to TSCC 2820 within 30 days; and

- (c) Requiring Curated pay TSCC 2820's costs, fees and expenses to obtain Curated's compliance with Sections 75 and/or 133 of the Act;²⁵ and
- (d) Interest on all amounts awarded.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of April, 2024.

²⁵ See para 49 re: quantification.



INDEX TO DISCLOSURE STATEMENT
CABIN

The following documentation is being provided by CURATED CABIN INC. (the “**Declarant**”) with respect to the proposed standard residential condominium to be known as “**CABIN**” (the “**Condominium**” or the “**Corporation**”) prepared in accordance with the *Condominium Act, 1998*, S.O. 1998, C.19, and the regulations thereunder as amended (the “**Act**”):

1. Disclosure Statement (including Table of Contents).
2. Budget Statement for the one (1) year period immediately following the registration of the proposed Declaration and Description.
3. The proposed Declaration.
4. The proposed By-laws.
5. The proposed Rules.
6. The preliminary draft condominium plan.

The disclosure statement contains important information about the proposed condominium project as required by Section 72 of the Act. As the type and amount of disclosure required by the Act is objective, some Purchasers may have special circumstances such that certain provisions contained in the documents have significant importance to them on an individual basis, but have not been summarized as not being significant to the average Purchaser. Purchasers are therefore advised to read all of the documents enclosed (and not simply the disclosure statement itself) in their entirety and to review same with their legal and financial advisors.

Issued: November 18, 2015

DISCLOSURE STATEMENT
TABLE OF CONTENTS
(under subsection 72(4) of the *Condominium Act* 1998)

Declarant's name: Curated Cabin Inc.

Declarant's municipal address: 850 Richmond Street West, Suite 9, Toronto, Ontario M6J 1C9

Brief legal description of the property/proposed property: Lot 13 and part of Lot 14 East Side of Dovercourt Road, Registered Plan M-67, being PINs 21298-0009 (LT), 21298-0010 (LT) and 21298-0011 (LT).

Mailing address of the property/proposed property: The mailing address of the proposed property is anticipated to be 45 Dovercourt Road, Toronto, Ontario, M6J 3C2

Municipal address of the property/proposed property: The municipal address of the proposed property is anticipated to be 45 Dovercourt Road, Toronto, Ontario, M6J 3C2

Condominium Corporation: Toronto Standard Condominium Corporation No. _____

The Table of Contents is a guide to where the disclosure statement deals with some of the more common areas of concern to purchasers. Purchasers should be aware that the disclosure statement, which includes a copy of the existing or proposed declaration, by-laws and rules, contains provisions that are of significance to them, only some of which are referred to in this Table of Contents.

Purchasers should review all documentation.

In this Table of Contents,

“unit” or “units” include proposed unit or units;
“common elements” includes proposed common elements;
“common interest” includes a proposed common interest; and
“property” includes proposed property.

This disclosure statement deals with significant matters, including the following:

	MATTER		Specify the article, paragraph (and/or clause) and page number where the matter is dealt with in the existing or proposed declaration, by-laws, rules or other material in the disclosure statement
1.	The Corporation is a freehold condominium corporation that is a standard condominium corporation.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Refer to: Disclosure Statement: Article II on page 1 Declaration: Paragraph 1.3 on page 3
2.	The property or part of the property is or may be subject to the <i>Ontario New Home Warranties Plan Act</i> (“ONHSPA”).	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Refer to: Disclosure Statement: Article VI on page 9
3.	The common elements and the residential units are enrolled or are intended to be enrolled in the Plan within the meaning of the ONHSPA in accordance with the regulations made under that Act.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Refer to: Disclosure Statement: Article VI on page 9

4.	A building on the property or a unit has been converted from a previous use.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Refer to: Disclosure Statement: Article V on page 8
5.	One or more units or a part of the common elements may be used for commercial or other purposes not ancillary to residential purposes.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Refer to: Disclosure Statement: Article VIII on page 9
6.	A provision exists with respect to pets on the property.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Refer to: Declaration: Article III, Paragraph 3.7 on page 6 and Article IV, Paragraph, 4.1(g) on page 7
7.	There exist restrictions or standards with respect to the use of common elements or the occupancy or use of units that are based on the nature or design of the facilities and services on the property or on other aspects of the buildings located on the property.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Refer to: Declaration: Article III on page 4 and Article IV on page 6 Rules
8.	The declarant intends to lease a portion of the units.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Refer to: Disclosure Statement: Article X on page 10
9.	The common interest appurtenant to one or more units differs in an amount of 10 percent or more from that appurtenant to any other unit of the same type, size and design.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Refer to: Schedule "D" to the Declaration and the Budget
10.	The amount that the owner of one or more units is required to contribute to the common expenses differs in an amount of 10 percent or more from that required of the owner of any other unit of the same type, size and design.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Refer to: Schedule "D" to the Declaration and the Budget
11.	One or more units are exempt from a cost attributable to the rest of the units.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Refer to: Schedule "D" to the Declaration and the Budget
12.	There is an existing or proposed by-law establishing what constitutes a standard unit. Under clause 43(5)(h) of the <i>Condominium Act, 1998</i> the declarant is required to deliver to the board a schedule setting out what constitutes a standard unit.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Accompanying the Disclosure Statement is the Schedule contemplated under clause 43(5) (h) of the <i>Condominium Act, 1998</i> .
13.	Part or the whole of the common elements are subject to a lease or a licence.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Refer to: N/A

14.	Parking for owners is allowed: (a) in or on a unit; (b) on the common elements; (c) on a part of the common elements of which an owner has exclusive use. There are restrictions on parking.	Yes No <input checked="" type="checkbox"/> <input type="checkbox"/> Yes No <input type="checkbox"/> <input checked="" type="checkbox"/> Yes No <input type="checkbox"/> <input checked="" type="checkbox"/> Yes No <input checked="" type="checkbox"/> <input type="checkbox"/>	Refer to: Declaration: Article III, Paragraph 4.3 on page 10, Disclosure Statement: Article IV, Paragraph 4.3 (b), page 3
15.	Visitors must pay for parking. There is visitor parking on the property.	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/> Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	Refer to: Disclosure Statement: Article IV, Paragraph 4.8 on page 8
16.	The declarant may provide major assets and property, even though it is not required to do so.	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	Refer to: Disclosure Statement: Article XX on page 15
17.	The corporation is required: (a) to purchase units or assets; (b) to acquire services; (hydro, water, gas, landscaping, snow removal, pest control, window washing, garage sweeping and maintenance, garbage pickup and disposal, provision of supplies, cleaning services, insurance, accounting services) (c) to enter into agreements or leases with the declarant or a subsidiary body corporate, holding body corporate or affiliated body corporate of the declarant. <i>(Warranty Agreement)</i>	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/> Yes No <input checked="" type="checkbox"/> <input type="checkbox"/> Yes No <input checked="" type="checkbox"/> <input type="checkbox"/>	Refer to: Disclosure Statement: Articles XII on page 10 and XXI on page 15; Disclosure Statement: Article XII, Paragraph 12.2 (d), page 12 and the Budget Disclosure Statement: Article IV, Paragraph 4.8, page 8
18.	The declarant or a subsidiary body corporate, holding body corporate or affiliated body corporate of the declarant owns land adjacent to the land described in the description.	Yes No <input checked="" type="checkbox"/> <input type="checkbox"/>	Refer to: Disclosure Statement: Article XXII on page 15
19.	To the knowledge of the declarant, the Corporation intends to amalgamate with another corporation or the declarant intends to cause the Corporation to amalgamate with another corporation within 60 days of the date of registration of the declaration and description for the Corporation.	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	Refer to: Disclosure Statement: Article XIII on page 12
20. - 27.	N/A	N/A	N/A

The Purchaser's rights under the *Condominium Act, 1998* to rescind an agreement of purchase and sale are set out at Article XVI paragraph 16.1 on page 13, and Article XVII, paragraph 17.1 on pages 13 and 14 of the Disclosure Statement.

This disclosure statement is made effective as of November 18, 2015.

DISCLOSURE STATEMENT
(under subsection 72(3) of the *Condominium Act, 1998*)

I. DATE OF DISCLOSURE STATEMENT

1.1 Date

This disclosure statement is made effective as of the 18th day of November, 2015.

II. TYPE OF CORPORATION

2.1 Type

The condominium project being developed by the declarant is a freehold condominium corporation that is a standard condominium corporation.

III. NAME AND MUNICIPAL ADDRESS OF DECLARANT, AND MAILING AND MUNICIPAL ADDRESSES OF THE PROPOSED PROPERTY

3.1 Declarant

The name and municipal address of the Declarant are as follows:

DECLARANT: Curated Cabin Inc.
850 Richmond Street West, Suite 9
Toronto, ON M6J 1C9

Municipal Address:
45 Dovercourt Road
Toronto, Ontario, M6J 3C2

3.2 Condominium

The name, mailing address and municipal address of the Condominium or the proposed property are as follows:

TORONTO STANDARD CONDOMINIUM CORPORATION NO. _____ :

Mailing Address: 45 Dovercourt Road
Toronto, Ontario, M6J 3C2

Municipal Address:
45 Dovercourt Road
Toronto, Ontario, M6J 3C2

IV. GENERAL DESCRIPTION OF THE PROPERTY

4.1 Legal Description of the Property

The condominium to be created (herein referred to as the “Corporation” or the “Condominium”) is to be located on the stratified portion of the property legally described as Lot 13 and part of Lot 14 East Side of Dovercourt Road, Registered Plan M-67, being PINs 21298-0009 (LT), 21298-0010 (LT) and 21298-0011 (LT) (the “Property”). Please refer to Schedule “A” of the Declaration for the legal description.

4.2 Division and Composition of the Project

The Property on which the Condominium is to be constructed is bounded to the south by an existing commercial property (Dufflet bakery) on which a future 10-storey mixed-use condominium has been proposed; to the north by existing residential properties; to the west by Dovercourt Road and existing residential highrises; and to the east by a public laneway and existing residential properties, and to the northeast of the Property is the Centre for Addiction and Mental Health.

The Declarant intends to develop and construct a six (6) storey residential containing approximately twenty-five (25) residential condominium units, approximately twenty-four (24) parking units (on one level of underground parking), approximately ten (10) Locker Units and various ancillary units, together with a residential entrance lobby area and bicycle/storage area.

Vehicular access (both ingress and egress) is anticipated to be on the east side of the building off of the existing public lane leading to Sudbury Street.

Delivered to each Purchaser with this Disclosure Statement are reduced copies of the preliminary draft Condominium Plan showing the proposed location of the Condominium as well as the units in the Condominium. The draft Condominium Plan is provided to indicate approximate location only and may not be relied upon for actual location of partition walls, interior room location, room size, location of fixtures or other details which may be noted on the draft Condominium Plan. The draft Condominium Plan is intended to give Purchasers an overview of the units and their location in the Condominium. The actual location of the units, structures and improvements on the draft plan of condominium may be altered and/or revised to comply with the final site plan and other approvals from the City of Toronto and other appropriate governmental authorities.

Purchasers in the Condominium are notified that during the construction of the Condominium, the Declarant, its contractors, suppliers and trades will be entitled to use those portions of the common elements of the Condominium as may be necessary and that, during construction, a certain amount of dust, noise and heavy traffic will occur. The Declarant will take reasonable efforts to ensure that its contractors, suppliers and trades will carry out their work on behalf of the Declarant in such a manner as to reasonably reduce and minimize the degree of interference and discomfort of the occupants of the Condominium with their use and enjoyment of the Property, provided that nothing shall derogate from the right of the Declarant to complete construction of the Condominium or the associated parking areas and other related infrastructure on and within the Property.

The Declarant will be making (or has made) applications for minor variances, site plan approval and condominium draft plan approval and may also be obligated to enter into various development, collateral and encroachment agreements with the City of Toronto and other applicable governmental authorities for the Property. These agreements, if required, will enure to and be binding on the Condominium following registration.

A portion or portions of the proposed common elements of the Condominium may be subject to various rights of way or rights in the nature of easements (and also the shared use of adjacent public lanes) including but not limited to such rights, for vehicular and pedestrian access, ingress and egress, maintenance and repair of utilities and other services for loading, garbage removal, moving and parking, and rights for temporary and permanent construction, including but not limited to crane swing and hoarding. The Declarant reserves the right to establish temporary or permanent facilities for garbage removal.

Purchasers are further advised that until completion of the sales/marketing/leasing program for the units in the Condominium, the Declarant and their sales staff, agents, employees and invitees shall have the continued right of access to inspect, view and use the amenities and facilities in the Condominium, without fee or charge, as part of its marketing/sales/leasing program including use for a sales/rental/administrative office, advertising signage and displays and model suites for display purposes as they may select. In addition, the Declarant shall not be charged for the use of such areas nor for any utility supplied thereto, nor shall the Condominium (or anyone on its behalf) prevent or interfere with its right of access and use of the amenities and facilities in the manner as aforesaid, it being acknowledged and agreed that it is in the ultimate best interest of all parties that the marketing/sales/leasing programs be successfully completed for the Condominium.

Purchasers are further advised that during the construction and development of the Condominium, it may be necessary for the Declarant to close, temporarily, certain areas. In accordance therewith, the Declarant shall be entitled to a temporary easement, without fee or compensation, for such purposes. The Condominium will be under a duty to co-operate with the Declarant to facilitate such construction.

4.3 Proposed Types and Number of Buildings and Units

The following types of units are proposed to be contained within the Condominium:

- (a) Approximately twenty-five (25) residential units (the “**Residential Units**”). It is currently anticipated that each of the Residential Units will be a 2-storey unit and that portions of roof top areas of the Condominium will also be designated as exclusive use areas for certain Residential Units.

The Declarant proposes to construct Residential Units that will be offered in a choice of bedroom layouts and therefore, the Declarant cannot state with any certainty, the number of bedroom(s) per Residential Unit as these characteristics will be dependant on choices

made by individuals at the time of purchase. Certain Residential Units within the Condominium may also have the exclusive use of a balcony, patio and/or roof terrace in accordance with the respective unit plans. All such exclusive use areas will be further set out in Schedule "F" to the Declaration and as noted on the draft plan of condominium. Purchasers are advised that Residential Units are of varying square footages and may not be exactly as represented. Purchasers acknowledge that the actual usable area of each Residential Unit may vary from the stated area.

Purchasers are advised that the Declarant shall have the right to increase or reduce the number of Residential Units in the Condominium and to increase or reduce the size of any Residential Unit by increasing or decreasing the number of floors in the Condominium and/or by splitting or combining one or more proposed Residential Units and/or changing the style or configuration of Residential Units contained in the Condominium, and may also change the legal and municipal numbering of the Unit in its sole discretion; provided however that the Purchaser's Residential Unit shall not be materially altered as a result of the foregoing and provided that the Purchaser's proportionate share of common interest and common expenses as set out in the Declaration, shall not be materially altered. In the event of such changes, the Declaration and the Budget will be amended accordingly and such changes shall not be construed as material amendments to this Disclosure Statement. Please refer to the Declaration for further details and restrictions with respect to these units.

- (b) Approximately twenty-four (24) parking units (the "**Parking Units**"), intended to be located within the enclosed parking area within the building (to be designated on Level 1 of the Condominium). Each of these Parking Units are intended to be located above and below each other on four (4) stackers, each with three (3) separate levels ("**Stacker**"), and will be contained within space equipped with a hydraulic elevator that is to be accessible from ground level. As these Parking Units will be above or below each other, they will be referred to from top to bottom as the "**Upper Parking Units**", "**Middle Parking Units**" and the "**Lower Parking Units**". Purchasers of the Upper Parking Units and the Middle Parking Units will be able to lower hydraulic elevators so that the level on a hydraulic elevator allocated to such purchasers will be at ground level, thereby allowing such purchasers to drive his/her car onto the hydraulic elevator at the level allocated to such purchasers. The space that will comprise a Parking Unit on the Stacker will be the air space within the relevant level of the hydraulic elevator when the elevator is at its **highest** position. Accordingly, the Lower Parking Units will be the air space at ground level, the Middle Parking Units will be the air space immediately above the Lower Parking Unit, and the Upper Parking Units will be the air space immediately above the Middle Parking Unit. Accordingly, in order to permit access by an owner of a Parking Unit on the Stackers to his/her respective Parking Unit, each owner of a Parking Unit shall have the right and license to pass through the air space of the Parking Unit above or below his/her respective Parking Unit or the common elements (as the case may be) in order to obtain access to his/her Parking Unit.

Additionally, the hydraulic elevators themselves and the equipment and machinery used to operate same shall be common elements. Purchasers are further advised that debris may fall on his or her vehicle from the grate, directly above, containing the vehicle located in (or driving over) the Upper Parking Unit and Middle Parking Unit. It is anticipated that the parking garage and related Parking Units will be accessed (both ingress and egress) from the east side of the building off of the existing public lane leading to Sudbury Street.

All maintenance and repair work undertaken in connection with the hydraulic elevators servicing the Parking Units shall be arranged by the Corporation, and shall be carried out exclusively by the Corporation's authorized contractors, agents and/or representatives and shall form a common expense of the Condominium. Accordingly, the owners of Parking Units shall be obliged to notify the Corporation or the Condominium's property manager regarding any needed maintenance and/or repair work to the aforementioned hydraulic elevator (and all equipment appurtenant thereto), and shall allow the Corporation's authorized contractors, agents and/or representatives access thereto at all reasonable times in order to carry out said work.

Costs incurred by the Condominium with respect to the maintenance, inspection, licensing, repair and replacement of the hydraulic elevators servicing the Stackers will be borne by all owners of Parking Units, the proportion of common expenses allocated to the owners of Parking Units has been fixed so that the owners of Parking Units collectively will contribute common expenses to the Condominium equal to the

approximate annual costs to the Condominium of inspecting, licensing, repairing and replacing of the hydraulic elevators.

Purchasers of Parking Units should note that the Stackers, as currently envisioned, are designed to permit motor vehicles that are no wider than 2.4 metres, no higher than 1.75 metres, no longer than 5.0 metres and no heavier than 2,000 kilograms. Accordingly, any vehicles that exceed these limits will not fit within the confines of the hydraulic elevator and accordingly cannot be parked in a Parking Unit.

Only the Declarant or Purchasers of Residential Units in the Condominium may purchase or own Parking Units on terms and conditions to be determined by the Declarant. Notwithstanding this, the Declarant or a related party shall retain the right to sell, lease or otherwise convey any of its Parking Units to any third party, in its sole and absolute discretion. A certain number of the Parking Units may be designated for use by owners who are disabled in the Condominium if required by the applicable governmental authorities. Purchasers in the Condominium may purchase, subject to availability, Parking Unit(s) on terms and conditions to be determined by the Declarant. The Declarant may, in its sole discretion, increase or decrease the number of Parking Units in the Condominium, provided that the number of Parking Units will not be less than that required by the applicable municipal requirements. The Declarant also reserves the right to change the location of the Parking Units and to include some or all of the Parking Units as exclusive use common elements appurtenant to one or more residential Units.

The Declarant may retain ownership of any unsold Parking Units and may dispose of its interest in any Parking Units retained by it in accordance with the terms of the Declaration, including designating any Parking Units for alternate uses, provided that any such variation in use is in accordance with the by-laws or other requirements of the City of Toronto. Furthermore, the Declarant, in its sole discretion, may convey any such unsold Parking Units to the Corporation and if the Declarant decides to do so, it will be the duty and obligation of the Corporation to accept within thirty (30) days of being requested, a conveyance of such Parking Units. Each Parking Unit is designated to accommodate a single motor vehicle.

- (c) Approximately, ten (10) locker units (the “**Locker Units**”) are currently intended to be located within the underground parking garage on Levels B and C. Locker Units will be available to be used only for the storage of non-combustible materials which materials shall not constitute a danger or nuisance to the residents of the Condominium. Please refer to the Declaration for further details and restrictions with respect to the sale and lease of the Locker Units. The Declarant may, in its sole discretion, increase or decrease the number of Locker Units in the Condominium. The Declarant also reserves the right to change the location of the Locker Units. In the event of such changes, the Declaration and the Budget will be amended accordingly and such changes shall not be construed as material amendments to the Disclosure Statement. The Locker Units may only be owned by owners of Residential Units and owners and tenants of Residential Units will only be permitted to lease Locker Units. Furthermore, the Declarant, in its sole discretion, may convey any unsold Locker Units to the Corporation and if the Declarant decides to do so, it will be the duty and obligation of the Corporation to accept, within thirty (30) days of being requested, a conveyance of such Locker Units.
- (d) All rights, rights-of-way and easements through and over those portions of the Condominium necessary for the supply of all utilities and services, and for access and support.

The Declarant reserves the right to increase or decrease the final number of Residential Units, Parking Units, Locker Units and other ancillary units, if any, intended to be created within this Condominium, as well as the right to alter the design, style, size and/or configuration of the units ultimately comprised within this Condominium, all in the Declarant’s sole and unfettered discretion, on the express understanding that the final budget for the first year following registration of the Condominium will be prepared in such a manner so that any such variance in the Residential Units, Parking Units and other unit count will not affect, in any material or substantial way, the percentages of common expenses and common interests allocated and attributable to those Residential Units sold prior to the date that any such variance is implemented by the Declarant.

4.4 Utilities/Telecommunication/Telephone/Refuse Collection/Mail

(a) Hydro and Gas

It is currently anticipated that consumption within the Residential Units of (i) electricity (hydro), and (ii) gas (collectively, the “**Metered Utilities**”) will be separately metered or check metered by one or more third party company (collectively, the “**Meter Reading Company**”), in order to apportion and bill attributable costs amongst the owners and the Condominium (for common element utility consumption) based on usage.

As a result, the cost of the Metered Utilities for each Residential Unit shall not form part of the common expenses allocable to such unit, but rather, the owner or occupant of each Residential Unit shall be responsible for payment of all costs and expenses for the Metered Utilities consumed within such Residential Unit at the rates charged by the applicable utility supplier, together with administrative and other fees from the Meter Reading Company.

The Meter Reading Company may also make a capital contribution to the metering system in the Condominium by, among others things, designing, supplying and/or installing the separate meters within the Condominium. These meters shall not form part of the common elements of the Condominium and shall be owned by the Meter Reading Company at all times. The cost of the above contribution may be amortized into the monthly utility costs billed to the Unit owners.

Hydro and gas consumption for the common elements will comprise part of the common expenses of the Condominium and is included in the Budget.

In the event that separate meters or check meters are unavailable, the Declarant reserves the right, in its sole and unfettered discretion, to bulk meter the cost of one or more of the Metered Utilities, which cost shall then be divisible and apportioned amongst the owners in accordance with the Budget Statement and will comprise a component of the monthly common expenses. Any such change, including any resultant change to the Corporation’s budget, shall not be deemed to constitute a material change to this Disclosure Statement.

The Declarant currently expects to enter into an agreement with the Meter Reading Company. This agreement will require the Condominium, after its creation, to enter into a similar agreement with the Meter Reading Company (the “**Meter Reading Agreement**”). The Declarant hereby advises purchasers as follows with respect to these agreements with the Meter Reading Company:

- (i) The Meter Reading Company shall be responsible for operating the utility distribution system in accordance with the terms of the Meter Reading Agreement. In this regard, the Meter Reading Company (and employees, agents, contractors, consultants and other personnel) shall have the right in the nature of an easement to access the Condominium for the purpose of complying with its obligations pursuant to the Meter Reading Agreement, which rights may be reflected in an easement to be registered against title to the Property;
- (ii) Each owner or occupant of a Residential Unit shall enter into a separate Supply and Services Agreement with the Meter Reading Company on or before taking occupancy of their Residential Unit in accordance with the Meter Reading Company’s standard form agreement;
- (iii) Each owner or occupant of a Residential Unit may be required to pay a security deposit to the Meter Reading Company on or before taking occupancy of their Unit and the Meter Reading Company shall have the right to conduct credit checks on each owner or occupant of a Residential Unit;
- (iv) In the event that an owner or occupant fails to pay any amount owing to the Meter Reading Company when due, the Meter Reading Company shall employ normal collection practices which includes terminating the supply of utilities to the Residential Unit until all amounts owing by such owner or occupant to the Meter Reading Company have been paid in full; and
- (v) The Meter Reading Agreement will provide that if such agreement is terminated pursuant to Section 112 of the Condominium Act, 1998 or otherwise, the Meter Reading Company shall be permitted to remove its meters (or any part thereof)

from the Condominium and/or recover its capital investment in the utility distribution system and all associated termination, disconnection and removal costs.

Purchasers are advised that the heating and air conditioning units (including, but not limited to, the heat handler, tank-less hot water heater, and back-up water tank) are intended to be lease by each individual purchasers from the Equipment Lessor (as hereinafter defined). Please refer to Section 4.9 hereof for additional information.

(b) Water

This Condominium is intended to be designed so that water service supplied to each of the Units and the common element areas will be bulk metered and billed to the Corporation directly by the utility, which amount shall, save and except as provided below, then be divided amongst owners in accordance with their percentage contribution to common expenses (please consult the Budget for each Unit's percentage of monthly common expense costs). Accordingly, the cost of water consumed within each Unit and in the common element areas comprises part of the common expenses and is included in the Budget. Notwithstanding the foregoing, the Declarant reserves the right, in its sole and absolute discretion, to have one or both of these utilities separately metered or check metered, in which event such cost will not form part of the common expenses of the Corporation, but, rather, the owner/occupant of each Unit shall be responsible for payment of all costs, fees and expenses for the utilities consumed, together with any administrative charges and meter charges. Any such change, including any resultant change to the Corporation's Budget, shall not be deemed to constitute a material change to this Disclosure Statement. Furthermore, in the event one or both of these utilities are separately metered or check metered, purchasers may be required to enter into utility agreements with such the utility provider(s) in the same manner as the Meter Reading Agreement described in section 4.4(a), above.

(c) Telecommunication Services

Each Residential Unit will be pre-wired for telecommunications services. Telecommunication services will not be provided on a bulk basis and each owner of a Residential Unit will therefore have to contract independently with the supplier of telecommunications services.

The Declarant may enter into an easement agreement with one or more suppliers of telecommunications services as selected by the Declarant in its sole discretion (the "**Telecommunications Suppliers**") for the installation, maintenance and repair of telecommunications services in the Condominium. Such agreement(s) will not be subject to immediate termination pursuant to the Act. Any wiring installed in the Condominium to carry telecommunications services signals will be the property of the Telecommunications Supplier that provides it. Each Telecommunications Supplier will continue to have the right to use the inside wire provided by it without interference for the provision of telecommunications services as long as and to the extent that the subscribers serviced by any inside wire of such Telecommunications Supplier wish to subscribe for telecommunications services from such Telecommunications Supplier. Notwithstanding the foregoing, the Declarant reserves the right to grant to a Telecommunications Supplier the exclusive rights to provide telecommunications services to the Condominium, and in such case only the Telecommunications Supplier with exclusive rights shall have the right to use the wiring installed in the Condominium.

(d) Telephone

Each Residential Unit will be pre-wired for telephone service. Each Purchaser must contract independently with the service provider for telephone services.

(e) Refuse Collection and Recycling

It is currently anticipated that public refuse collection will be provided to the Condominium by the City of Toronto. All refuse must be disposed of by Owners in accordance with the rules of the Corporation and directly to the designated garbage storage areas intended to be located outdoors, at grade, at the rear of the Property. Recycling of refuse is provided by the Municipality and owners will be able to sort refuse in accordance with the recycling requirements of the Municipality. Purchasers are advised that it is currently anticipated that residents and occupants of the Condominium

will be required to bring refuse and recyclables to the outdoor designated waste area/garbage pad and to deposit/sort same as designated.

Purchasers are advised that if it is subsequently determined by the Manager of Works and Emergency Services of the City of Toronto that municipal refuse collection is not feasible from an operational standpoint upon completion of construction of the Condominium, the Condominium will have to arrange for private refuse collection at the Condominium's expense. In such event, the Condominium budget will be amended, prior to the registration of the Condominium, to add the cost of private refuse collection and such amendment shall not be deemed to be a material amendment to this Disclosure Statement. The costs of private refuse collection, if required, will comprise part of the common expenses.

(f) Mail Delivery

It is intended that owners will be required to retrieve mail from individual mailboxes anticipated to be located on the ground floor of the Condominium in the entrance lobby or otherwise in one or more locations within or adjacent to the Property to be designated by the Declarant in conjunction with Canada Post.

4.5 Recreational and Other Amenities

(a) Amenities To Be Provided

The Declarant intends to provide the following recreational and other amenities in the Condominium:

- i) Bicycle parking spaces/bicycle racks for the benefit of Owners which will comprise portions of the common elements of the Condominium are currently intended to be located in a bicycle storage are located at ground level.

(b) Restrictions for Recreational and Other Amenities

- (i) Only owners of Residential Units in this Condominium and their tenants and household and invited guests shall have the use of the bicycle storage area, subject to the Rules of the Condominium.
- (ii) The Declarant shall determine the type of equipment to be provided for the bicycle storage, in its sole discretion, and same may be provided after registration of the Condominium under the Act.
- (iii) The bicycle storage is presently conceptual.

(c) Commencement and Completion Dates for Construction of Amenities

Construction of the amenities in the Condominium as described herein is anticipated to commence in the spring 2016, and the proposed date for completion is spring 2018. Please note, however, that the foregoing anticipated dates may be delayed due to delays in construction commencement, delays due to strikes and other labour disruptions, as well as shortages of material(s) and equipment, or due to inclement weather conditions, or by other causes or events beyond the Declarant's control. Notwithstanding the foregoing, completion of the said recreational and amenity facilities may occur within twelve (12) months following registration of the Condominium.

(d) Amenities To Be Provided During the Period of Interim Occupancy

It is likely that the bicycle storage area to be contained in the Condominium will be available for use or enjoyment by any unit purchasers during their respective periods of interim occupancy.

4.6 Easements

The Condominium will be subject to those easements as disclosed by the registered title to the Property and created in Schedule "A" to the Declaration. In addition to the easements existing and noted on title to the Property as of the date of this Disclosure Statement, further easements are contemplated to be registered. The Condominium may receive and may be subject to easements as required for the purpose of providing access to servants, agents and contractors, to maintain, repair, replace or service any equipment, system or any other item provided by any utility or

service provider; and for easements in favour of the Declarant for the purpose of providing access for contractors, installation of facilities and other associated easements required for the construction of the Condominium or any other easements which may be required by the applicable approval authority. Without limiting the generality of the foregoing, the Condominium or any applicable governmental authority shall have the right to and license for access and ingress and egress over any of the Parking Units for the purposes of the installation, maintenance, repair, and/or replacement of underground storm and sanitary sewer pipes, gas pipes, water lines, sprinkler systems, hydro electric wires, cables, emergency generators and transformer vaults, underground telecommunication cables and fire alarm conduits, or for any other purpose required by the Corporation or any applicable governmental authority.

Easements will also include, but are not limited to, easements to accommodate the installation, maintenance, repair, and/or replacement of underground storm and sanitary sewer pipes, gas pipes, water lines, sprinkler systems, hydro electric wires, cables emergency generators and transformer vaults, underground telecommunication cables and fire alarm conduits, all of which are intended for the benefit of the Condominium.

The Declarant and the Corporation shall each be obliged to act in a prudent and reasonable manner, in exercising its rights to any easement granted or provided for under the Declaration, so as to minimize undue interference occasioned to the party burdened by such easement, including, but not limited to, the temporary interruption and loss of service occasioned thereby. As the exact configuration of the Condominium has not yet been determined, the location, nature and extent of easements may be modified. The Declarant therefore, reserves the right to re-locate the existing or proposed easements and to create new easements for the purpose of constructing, maintaining, operating, repairing, replacing and inspecting or gaining any required access to or from this Corporation or to any servicing systems which are to service this Corporation or any other of the components. The Condominium may be subject to various easements in favour of service providers, including but not limited to Bell Canada systems, for the installation, maintenance and repair of services.

The easements are stated in this Disclosure Statement in a general nature, as the specific locations for the easements and the reference plans have not yet been finally determined. As a result, Purchasers are advised that the location, nature and extent of easements may be modified.

4.8 Visitor Parking

It is not anticipated that there will be any visitor parking on the Property.

4.9 Residential Unit HVAC Lease

The individual heating and air-conditioning units within individual Residential Units (the “**Residential Unit Leased Equipment**”) may be furnished and owned by an equipment lessor to be determined by the Declarant, (the “**Equipment Lessor**”) and will be leased by each individual purchaser from the Equipment Lessor. The monthly lease costs for the Residential Unit Leased Equipment will be in addition to the common expenses payable by unit owners to the Condominium. Purchasers shall sign all contracts, documents and acknowledgements as may be required from time to time by the Vendor or the Equipment Lessor with respect to the foregoing. Each purchaser, will be obliged to execute a lease equipment contract with the Equipment Lessor (the “**Residential Unit Leased Equipment Contract**”) with respect to the Residential Unit Leased Equipment which will confirm, amongst other things, that the Residential Unit Leased Equipment is not to be considered fixtures appurtenant to the particular Residential Unit, but rather shall constitute chattel property owned and retained by the Equipment Lessor, and the Equipment Lessor may register a Notice of Lease of Chattels or a Notice of Security Interest or such other security documentation on title to the property and the purchaser shall execute all documentation and provide all security to the Equipment Lessor and Declarant, as may be required from time to time, in this regard.

V. NO CONVERSION OF RENTED RESIDENTIAL PREMISES

5.1

No building intended to be developed and constructed by the Declarant on the Property has been or will be converted from a previous use and the building(s) to be constructed on the Property will be new construction. The Declarant has not made application pursuant to subsection 9(4) of the Act for the approval to convert previously used or existing rented residential premises to condominium tenure.

VI. ONTARIO NEW HOME WARRANTIES PLAN ACT (“ONHWPA”)

6.1 Applicability

The Condominium is subject to the ONHWPA.

6.2 Enrolment

As at the date of this Disclosure Statement, the proposed units and common elements have not been enrolled under the ONHWPA. The Declarant intends to enrol the Residential Units and common elements in the Condominium, as may be required, pursuant to the ONHWPA in accordance with the regulations made under the ONHWPA.

6.3 Condominium Warranty Agreement

Purchasers are advised that it shall be a duty of the Corporation to enter into, abide by and comply with the terms and provisions of a warranty agreement (the “**Warranty Agreement**”) with the Declarant which shall provide that (i) the Corporation shall have no rights against the Declarant beyond those that are specifically granted to the Corporation under the Act and the Ontario New Home Warranties Plan Act or by Tarion Warranty Corporation, (ii) the Corporation’s only recourse against the Declarant for a final and binding resolution of any outstanding, incomplete or deficient construction items or any related matters in respect of the Property shall be through the process established for an administered by Tarion Warranty Corporation, (iii) the Corporation, together with the Declarant, shall appoint and constitute Tarion Warranty Corporation as the sole and final arbiter of all such matters, (iv) the Corporation shall indemnify and save the Declarant harmless from all actions, causes of action, claims and demands for damages or loss which are brought by the Corporation in contravention of the Warranty Agreement, including without limitation, any claim against any third party that has the right of contribution or indemnity against the Declarant, (v) the Corporation shall acknowledge and agree that it shall have no claim or cause of action as a result of any outstanding, incomplete or deficient construction items or any related matters in respect of the Property against any person or legal entity other than the entity named as the Declarant (and against the Declarant only insofar as such rights are limited by the Warranty Agreement), notwithstanding that the Declarant may be a nominee or agent of another person, firm, corporation or other legal entity, and that such acknowledgement and agreement may be pleaded as an estoppel and bar in any action or proceeding brought by the Corporation to assert any rights, claims or causes or action against any person, firm, corporation or legal entity other than the entity named as the Declarant, and (vi) the Warranty Agreement shall not be terminated or terminable by the Corporation following the Condominium’s turnover meeting, and it shall enure to the benefit of the successors and assignees of the Declarant.

VII. CONVERSION FROM PREVIOUS USE

7.1 No building on the Condominium property, nor any proposed units, have been converted from a previous use. All buildings to be constructed on the Property and comprising the Condominium (in whole or in part) will constitute new construction.

VIII. NON-RESIDENTIAL USE

8.1 None of the units or parts of the common elements may be used for commercial or other purposes that are not ancillary to residential purposes.

IX. BLOCKS OF UNITS MARKETED TO INVESTORS

9.1 The Declarant reserves the right to market Units in blocks to investors, but has no present intention of doing so. No restriction has been placed on the number of Units that may be purchased by an individual or a corporation. The Declarant may also impose conditions on leasing of units or may prohibit leasing of units during the period of time such units are ready for occupancy but prior to title being transferred to purchasers.

X. PORTION OF UNITS DECLARANT INTENDS TO LEASE

- 10.1 While the Declarant intends to market and sell all of the Units in this Condominium to individual unit Purchasers, the Declarant reserves the right to lease any Units in the Condominium to one or more third party tenants, particularly if the prevailing market makes it economically viable to do so and accordingly, the portion of Units (to the nearest anticipated 25 percent) that the Declarant intends or anticipates to lease is presently 0 percent.

XI. DECLARATION, BY-LAWS AND RULES

- 11.1 Accompanying this Disclosure Statement is a copy of the proposed Declaration, By-laws and Rules.

XII. BRIEF DESCRIPTION OF SIGNIFICANT FEATURES OF VARIOUS AGREEMENTS SUBJECT TO TERMINATION

- 12.1 Proposed Management Agreement (Section 111 of the Act)

It is proposed that the Condominium will be self-managed and accordingly, no management agreement will be entered into by the Corporation.

- 12.2 Other Agreements

Each of the following agreements may be terminated by the Corporation pursuant to the provisions of Section 112 of the Act:

- (a) Reserve Fund Study

The Condominium is obliged to establish and maintain one or more reserve funds to cover the costs of the major repair and replacement of the common elements and assets of the Condominium. In turn, the Condominium is obliged to retain an independent and qualified consultant to conduct a reserve fund study, for and on behalf of the Condominium, within the first year following registration, in accordance with the provisions of section 94(4) of the Act. The reserve fund study will confirm, amongst other things, the adequacy of the reserve fund, and the annual appropriation necessary to cover the anticipated repair and replacement costs of the common elements and other assets of the Condominium, based on their respective life expectancy. The reserve fund study must be updated on a periodic basis, at the times and in the manner prescribed by the Act. Pending the Condominium's receipt of the first reserve fund study and its implementation of a proposed funding plan with respect thereto (if same is necessary), the total amount of the contributions to the reserve fund shall in no case be less than 10% of the budgeted amount required for contributions to the common expenses, exclusive of the reserve fund.

The proposed first year budget statement makes specific reference to the estimated cost of retaining a qualified consultant to conduct the reserve fund study, for and on behalf of the Condominium. This estimate has been based on a price figure negotiated by the Declarant with a duly qualified and independent third party consultant, to undertake the reserve fund study on behalf of the Condominium immediately. After the Condominium has been created and it is intended that the Reserve Fund Study will be provided at the turnover meeting. In the event that the non-declarant board of directors terminates the contract entered into and chooses to retain an alternate consultant to undertake the reserve fund study, or to prepare a second reserve fund study at a cost or figure higher than the negotiated price or additional cost in the case of a second study, then with respect to the Declarant's accountability for any deficiency in the first year budget arising pursuant to section 75 of the Act, it is the Declarant's stated position that it shall only be responsible for the amount of the negotiated price, insofar as the cost of the reserve fund study is concerned, and that any expenditure in excess of said amount shall be the sole responsibility of the Condominium. Purchasers are hereby advised to carefully review the first year budget statement enclosed herewith for further details.

- (b) Performance Audit

The Condominium will be obliged to engage or retain a consultant [who holds a certificate of authorization within the meaning of the Professional Engineers Act, or alternatively a certificate of practice within the meaning of the Architects Act] to conduct a performance audit of the common elements on behalf of the Condominium, no earlier than 6 months and no later than 10 months following registration, in accordance

with the provisions of section 44 of the Act, and to inspect and report on the condition or state of repair of all major components of the building(s) comprising part of the common elements as specified by the Act. Before the end of the 11th month following the registration of the declaration, the person who conducts the performance audit is obliged to submit his or her report on the state of the deficiencies (if any) with respect to the common elements of the Condominium, to the board of directors, and to file such report with the Tarion Warranty Corporation. Once such report has been filed with the Tarion Warranty Corporation, it shall be deemed to constitute a notice of claim under the *Ontario New Home Warranties Plan Act*, R.S.O. 1990 as amended, for the deficiencies disclosed therein.

Pursuant to the provisions of the Declaration, the Condominium is obliged to permit the Declarant and its authorized employees, agents and representatives to accompany (and confer with) the consultant(s) retained to carry out the performance audit while same is being conducted, and to provide the Declarant with at least fifteen (15) days written notice prior to the commencement of the performance audit, and to also permit the Declarant and its authorized employees, agents and representatives to carry out any repair or remedial work identified or recommended by the performance auditor in connection with the performance audit (if the Declarant chooses to do so) for the purposes of facilitating and expediting the rectification and audit process (and bringing all matters requiring rectification to the immediate attention of the Declarant, so that same may be promptly dealt with), and affording the Declarant the opportunity to verify, clarify and/or explain any potential matters of dispute to the performance auditor, prior to the end of the 11th month following the registration of the Condominium and the corresponding submission of the performance auditor's report to the board and the Tarion Warranty Corporation.

If the Declarant board of directors enters into an agreement with a qualified consultant to conduct a performance audit, such agreement may be terminated by the Corporation pursuant to Section 112 of the *Act*. In the event that the board of directors chooses to retain an alternate consulting engineer or architect to undertake the performance audit, at a cost or figure higher than the estimated price, then with respect to the Declarant's accountability for any deficiency in the first year budget arising pursuant to section 75 of the Act, it is the Declarant's stated position that it shall only be responsible for the amount of the estimated price, insofar as the cost of the performance audit is concerned, and that any expenditure in excess of said amount shall be the sole responsibility of the Condominium. Purchasers are hereby advised to carefully review the first year budget statement enclosed herewith for further details.

(c) Financial Audit

The Condominium is obliged to retain the services of a qualified and independent chartered accountant or auditor, in order to have audited financial statements prepared as of the last day of the month in which the turnover meeting is scheduled to be held. These financial statements are obliged to be delivered by the Declarant to the board within 60 days after the turnover meeting, in accordance with section 43(7) of the Act, but all such financial statements are to be prepared at the expense of the Condominium. In addition, the Condominium's auditor must prepare a set of annual audited financial statements in respect of the Condominium and the auditor must present said financial statements before the annual general meeting of the owners, and submit a formal report on such statements to the Condominium (on behalf of the owners) in accordance with the provisions of sections 66 to 71 of the Act.

If the Declarant board of directors enters into an agreement with a qualified accountant to prepare and conduct all requisite financial statement and audits required or prescribed by the Act, such agreement may be terminated by the Corporation pursuant to Section 112 of the *Act*. In the event that the board of directors chooses to retain an alternate accountant or auditor to prepare and conduct all requisite financial statements and audits during the first year, at a cost or figure higher than the estimated price, then with respect to the Declarant's accountability for any deficiency in the first year budget arising pursuant to section 75 of the Act, it is the Declarant's stated position that it shall only be responsible for the amount of the estimated price, insofar as the cost of the financial statements and audits are concerned, and that any expenditure in excess of said amount shall be the sole responsibility of the Condominium. Purchasers are hereby advised to carefully review the first year budget statement enclosed herewith for further details.

(d) Miscellaneous Contracts

The Declarant Board will enter into such contracts as may be necessary or required for the provision of services to the Condominium including, without limitation, hydro, water, gas, landscaping, snow removal, snow storage, pest control, window cleaning, parking area sweeping and maintenance, garbage pick up and disposal, provision of supplies, cleaning services, insurance, accounting services, and other such matters as may be required for the orderly operation of the business of the Corporation.

12.3 Mutual Use Agreements (Section 113 of the Act)

The Declarant does not intend on entering into agreements for the mutual use, provision or maintenance or cost-sharing of facilities or services.

XIII. AMALGAMATION13.1 Statement regarding amalgamation

- (a) The Declarant does not intend to cause the Corporation to amalgamate with any other existing or proposed condominium corporation within sixty (60) days of the date of registration of the Corporation's declaration and description nor does the Declarant have any knowledge that the Corporation intends to amalgamate with another corporation.
- (b) No amalgamation is intended or proposed between this Condominium and any other existing or proposed condominium corporation. Accordingly, no amalgamation documentation is available or enclosed herewith.

XIV. BUDGET STATEMENT

- 14.1 A Budget Statement for the one year period immediately following registration of the Declaration and the Description is included with this Disclosure Statement. Purchasers are advised that the Budget which accompanies this Disclosure Statement shall be increased at the rate of 5% per annum after January 1, 2018. After such date, the total operating costs reflected in the Budget shall be increased by 5% per annum with respect to all costs save and except for utility costs which may, in the sole and absolute discretion of the Declarant, be adjusted for the greater of the actual increase in such costs from the date of this Disclosure to the interim occupancy closing date for the first Residential Unit in the Condominium and 5% per annum, which increase for each utility shall be determined by the Declarant in its sole and absolute discretion. Purchasers are advised that reference to the date January 1, 2018 shall not be construed or interpreted as a representation or warranty by the Declarant that registration of the Condominium shall take place on or before such date.
- 14.2 A Budget Statement for the one year period immediately following registration of the Declaration and the Description is included with this Disclosure Statement. One of the largest components of the Budget is the cost attributed to utilities. The cost of each utility has been determined based on the current rates of the utility and increased by an annual percentage until the expected registration of the Declaration and the Description. The Budget will be revised to reflect the percentage change in the actual cost of the commodity and the distribution of the utility based on the present cost of the commodity and the distribution of the utility. The amount in the Budget for any utility will be increased proportionately by the increase in the distribution and commodity cost above that provided for in the Budget. It is the intention of the Declarant and Purchasers acknowledge and agree that the cost of utilities will be borne by the owners of the units and not subsidized by the Declarant as part of the Declarant's obligations pursuant to section 75 of the Act.

XV. FEES OR CHARGES TO BE PAID TO THE DECLARANT OR OTHERS

- 15.1 There are no fees or charges that the Condominium is required or intended to pay to the Declarant or a subsidiary body corporate, holding body corporate or affiliated body corporate of the Declarant. There are no fees or charges that the Condominium is required or intended to pay to any other person or persons, except as expressly provided or contemplated in the proposed first year budget statement of the Condominium. Please therefore refer to the first year budget statement for all projected or anticipated expenses of the Condominium, and the corresponding services being provided.

XVI. RESCISSON RIGHTS (Section 73 of the Act)

16.1 The following is a copy of Section 73 of the Act which sets out the rescission rights available to a Purchaser of a unit in the Condominium:

- “(1) A purchaser who receives a disclosure statement under subsection 72(1) may, in accordance with this section, rescind the agreement of purchase and sale before accepting a deed to the unit being purchased that is in registerable form.
- (2) To rescind an agreement of purchase and sale under this section, a purchaser or the purchaser’s solicitor shall give a written notice of rescission to the declarant or to the declarant’s solicitor who must receive the notice within 10 days of the later of,
 - (a) the date that the purchaser receives the disclosure statement; and
 - (b) the date that the purchaser receives a copy of the agreement of purchase and sale executed by the declarant and the purchaser.
- (3) If a declarant or the declarant’s solicitor receives a notice of rescission from a purchaser under this section, the declarant shall promptly refund, without penalty or charge, to the purchaser, all money received from the purchaser under the agreement and credited towards the purchase price, together with interest on the money calculated at the prescribed rate from the date that the declarant received the money until the date the declarant refunds it.”

XVII. RESCISSON RIGHTS UPON MATERIAL CHANGE (Section 74 of the Act)

17.1 The following is a copy of Section 74 of the Act which sets out what constitutes a “material change” and the rescission rights available to a purchaser of a unit in the Condominium in the event of a material change:

“(1) Whenever there is a material change in the information contained or required to be contained in a disclosure statement delivered to a purchaser under subsection 72(1) or a revised disclosure statement or a notice delivered to a purchaser under this section, the declarant shall deliver a revised disclosure statement or a notice to the purchaser.

(2) In this section,

“material change” means a change or a series of changes that a reasonable purchaser, on an objective basis, would have regarded collectively as sufficiently important to the decision to purchase a unit or proposed unit in the corporation that it is likely that the purchaser would not have entered into an agreement of purchase and sale for the unit or the proposed unit or would have exercised the right to rescind such an agreement of purchase and sale under section 73, if the disclosure statement had contained the change or series of changes, but does not include,

- (a) a change in the contents of the budget of the corporation for the current fiscal year if more than one year has passed since the registration of the declaration and description for the corporation;
- (b) a substantial addition, alteration or improvement within the meaning of subsection 97(6) that the corporation makes to the common elements after a turnover meeting has been held under section 43;
- (c) a change in the portion of units or proposed units that the declarant intends to lease;
- (d) a change in the schedule of the proposed commencement and completion dates for the amenities of which construction had not been completed as of the date on which the disclosure statement was made; or
- (e) a change in the information contained in the statement described in subsection 161(1) of the services provided by the municipality or the Minister of Municipal Affairs and Housing, as the case may be, as described in that subsection, if the unit or the proposed unit is in a vacant land condominium corporation.

- (3) The revised disclosure statement or notice required under subsection (1) shall clearly identify all changes that in the reasonable belief of the declarant may be material changes and summarize the particulars of them.
- (4) The declarant shall deliver the revised disclosure statement or notice to the purchaser within a reasonable time after the material change mentioned in subsection (1) occurs and, in any event, no later than 10 days before delivering to the purchaser a deed to the unit being purchased that is in registerable form.
- (5) Within 10 days after receiving a revised disclosure statement or a notice under subsection (1), a purchaser may make an application to the Superior Court of Justice for a determination whether a change or a series of changes set out in the statement or notice is a material change.
- (6) If a change or a series of changes set out in a revised disclosure statement or a notice delivered to a purchaser constitutes a material change or if a material change occurs that the declarant does not disclose in a revised disclosure statement or notice as required by subsection (1), the purchaser may, before accepting a deed to the unit being purchased that is in registerable form, rescind the agreement of purchase and sale within 10 days of the latest of,
 - (a) the date on which the purchaser receives the revised disclosure statement or the notice, if the declarant delivered a revised disclosure statement or notice to the purchaser;
 - (b) the date on which the purchaser becomes aware of a material change, if the declarant has not delivered a revised disclosure statement or notice to the purchaser as required by subsection (1) with respect to the change; and
 - (c) the date on which the Superior Court of Justice makes a determination under subsection (5) or (8) that the change is material, if the purchaser or declarant, as the case may be, has made an application for the determination.
- (7) To rescind an agreement of purchase and sale under this section, a purchaser or the purchaser's solicitor shall give a written notice of rescission to the declarant or to the declarant's solicitor.
- (8) Within 10 days after receiving a notice of rescission, the declarant may make an application to the Superior Court of Justice for a determination whether the change or the series of changes on which the rescission is based constitutes a material change, if the purchaser has not already made an application for the determination under subsection (5).
- (9) A declarant who receives a notice of rescission from a purchaser under this section shall refund, without penalty or charge, to the purchaser, all money received from the purchaser under the agreement and credited towards the purchase price, together with interest on the money calculated at the prescribed rate from the date that the declarant received the money until the date the declarant refunds it.
- (10) The declarant shall make the refund,
 - (a) within 10 days after receiving a notice of rescission, if neither the purchaser nor the declarant has made an application for a determination described in subsection (5) or (8) respectively; or
 - (b) within 10 days after the court makes a determination that the change is material, if the purchaser has made an application under subsection (5) or the declarant has made an application under subsection (8)."

XVIII. INTEREST ON DEPOSITS

- 18.1 Pursuant to subsection 82(8) of the Act, the Declarant is entitled to retain the excess of all interest earned on money held in trust over the interest the Declarant is required to pay to the Purchaser under Section 82 of the Act.

XIX. USE OF COMMON ELEMENTS

- 19.1 The Declarant does not intend to permit the common elements to be used for commercial or other purposes not ancillary to residential purposes.

XX. MAJOR ASSETS TO BE PROVIDED BY DECLARANT

- 20.1 The Declarant does not intend to provide any major assets or property to the Corporation.

XXI. UNITS, ASSETS OR SERVICES THE CORPORATION MUST PURCHASE FROM THE DECLARANT

- 21.1 There are no units, assets or services that the Corporation is required to purchase or acquire nor are there any agreements or leases that the corporation must enter into with the Declarant or a subsidiary body corporate, holding body corporate or affiliated body corporate of the Declarant other than as provided for in this Disclosure Statement or in the Budget.

XXII. ADJOINING LANDS

- 22.1 The Declarant, subsidiary body corporate, holding body corporate or affiliated body corporate of the Declarant, does not own lands adjacent to the lands described herein.

XXIII. RULES

- 23.1 Purchasers are hereby advised that pursuant to section 58 of the Act, the board may make, amend or repeal rules respecting the use of the units and common elements, in order to promote the safety, security and/or welfare of the owners and of the property and assets of the Condominium, or to prevent unreasonable interference with the use and enjoyment of the common elements, the units and/or the assets of the Condominium. The rules shall be reasonable and consistent with the provisions of the Act, the declaration and the by-laws of the Condominium. Every rule made by the board shall be effective thirty (30) days after notice thereof has been given to each owner, unless the board is in receipt of a written requisition requiring a meeting of the owners to consider same, or unless the rule (or an amendment to a rule) that has substantially the same purpose or effect as a rule that the owners have previously amended or repealed within the preceding two years, in which case such rule or the amendment thereto is not effective until the owners approve it, with or without amendment, at a meeting duly called for that purpose. If such a meeting of owners is requisitioned or otherwise called and convened, then those rules which are the subject matter of said requisition or meeting shall become effective only upon the approval of a majority of the owners (represented in person or by proxy) at such meeting.

The rules shall be complied with and enforced in the same manner as the by-laws of the Condominium, but the owners may, at any time, and from time to time, amend or repeal a rule at a meeting of owners duly called for that purpose, and for greater certainty, each of the rules shall be observed by all owners, and by all occupants, tenants, invitees and licensees of the units.

Purchasers should pay specific attention to the proposed rules of the Condominium accompanying this Disclosure Statement, which will be adopted and approved by the board of directors of the Condominium following the registration of the declaration, in accordance with the provisions of the Act. Amongst other things, these rules restrict, regulate or otherwise deal with alterations to the common elements, the disposal of garbage, the emission of noise, the obstruction of walkways, the parking of vehicles, the planting of flowers, the utilization and installation of barbecue equipment, the storage or placement of patio furniture, the keeping of pets and the implementation of any repair work between certain designated hours.

Purchasers should also note that all costs and damages incurred by the Condominium as a result of a breach of any of the rules committed by any owner (or by such owner's tenants or guests) shall be borne by such owner and be recoverable by the Condominium against such owner in the same manner as common expenses.

XXIV. MISCELLANEOUS MATTERS

The Purchaser acknowledges the following matters which are abstracted from the Schedule marked Warning Clauses appended to the agreement of purchase and sale as between the Declarant and the Purchaser (the "Agreement of Purchase and Sale"). Any term or definition not ascribed a meaning or definition herein, shall have the meaning or definition ascribed to it pursuant to the terms of the Agreement of Purchase and Sale.

- 24.1 The Purchaser acknowledges that it is anticipated by the Vendor that in connection with the Vendor's application to the appropriate governmental authorities for draft plan of condominium approval certain requirements may be imposed upon the Vendor by various governmental authorities. These requirements (the "**Requirements**") usually relate to warning provisions to be given to Purchasers in connection with environmental or other concerns (such as warnings relating to noise levels, the proximity of the Condominium to major street, garbage storage and

pickup, school transportation, and similar matters). Accordingly, the Purchaser covenants and agrees that: (i) on either the Occupancy Date or the Title Transfer Date, the Purchaser shall execute any and all documents required by the Vendor acknowledging, inter alia, that the Purchaser is aware of the Requirements; and (ii) if the Vendor is required to incorporate the Requirements into the final Condominium Documents the Purchaser shall accept the same, without in any way affecting this transaction.

- 24.2 The units have conduit(s) for the provision of television, telephone service and internet access. The Purchaser acknowledges that these services are to be paid for directly by the owner of the Unit.
- 24.3 The Purchasers are hereby advised and acknowledge that as and when other units in the Condominium are being completed and/or moved into, excessive levels of noise, vibration, dust and/or debris are possible, and accordingly the same may temporarily cause noise and inconvenience to the residential occupants;
- 24.4 The Purchaser is hereby advised that the Vendor's builder's risk and/or comprehensive liability insurance (effective prior to the registration of the Condominium), and the Condominium's master insurance policy (effective from and after the registration of the Condominium) will only cover the common elements and the standard unit and will not cover any betterments or improvements made to the standard unit, nor any furnishings or personal belongings of the Purchaser or other residents of the Unit, and accordingly the Purchaser should arrange for his or her own insurance coverage with respect to same, effective from and after the Occupancy Date, all at the Purchaser's sole cost and expense.
- 24.5 The Purchaser hereby acknowledges and agrees that the Vendor cannot guarantee (and will not be responsible for) the arrangement of a suitable move-in time for purposes of accommodating the Purchaser's occupancy of the Unit on the Occupancy Date, (or any acceleration or extension thereof as hereinbefore provided).
- 24.6 The Purchaser acknowledges and agrees that the Vendor (and any of its authorized agents, representatives and/or contractors), as well as one or more authorized representatives of the Condominium, shall be permitted to enter a Unit after the Occupancy Date, from time to time, in order to enable the Vendor to correct outstanding deficiencies or incomplete work for which the Vendor is responsible, and to enable the Condominium to inspect the condition or state of repair of the Unit and undertake or complete any requisite repairs thereto (which the owner of the Unit has failed to do) in accordance with the Act.
- 24.7 The Purchasers are hereby advised and acknowledge that as and when the Condominium is still under construction and when other residential units in the Condominium are being completed and/or moved into, excessive levels of noise, vibration, dust and/or debris are possible, and same may accordingly temporarily cause noise and inconvenience to the residential occupants.
- 24.8 The Purchaser acknowledges being advised of the following notices:
 - (a) Despite the best efforts of the Toronto District School Board, sufficient accommodation may not be locally available for all students anticipated from the development area and that students may be accommodated in facilities outside the area, and further, the students may later be transferred; and
 - (b) Purchasers acknowledge for the purpose of transportation to school if bussing is provided by the Toronto District School Board in accordance with the Board's policy, that students will not be bussed from home to school, but will meet the bus at designated locations in or outside the area.
- 24.9 The Purchaser specifically acknowledges and agrees that the Condominium will be developed in accordance with any requirements that may be imposed, from time to time, by any of the governmental authorities. The Purchaser further acknowledges that the proximity of the Condominium to major arterial roads (namely, Dovercourt Road), as well as to public transit services (CN/GO Transit rail lines), street cars, buses and railways, may result in noise and/or vibration transmissions to the Property, and may cause noise exposure levels affecting the Property to exceed the noise criteria established by the governmental authorities, and that despite the inclusion of noise control features within the Condominium, noise levels from the aforementioned sources may continue to be of concern, occasionally interfering with some activities of the residential occupants in the Condominium. The Purchaser nevertheless agrees to complete this transaction in accordance with the terms hereof, notwithstanding the existence of such potential noise concerns, and the Purchaser further acknowledges and agrees that a noise-warning clause similar to the preceding sentence (subject to amendment by any wording or text

recommended by the Declarant's noise consultants or by any of the governmental authorities) may be registered on title to the Property on the Title Transfer Date, if, in fact, same is required by any of the governmental authorities.

- 24.10 The Purchaser specifically acknowledges and agrees that the Condominium will be developed in accordance with any requirements that may be imposed from time to time by any of the City of Toronto, the Toronto Transit Commission (the "TTC") and any other governmental authorities or agencies having jurisdiction over the development of the project, and that the proximity of the Lands to TTC operations may result in emissions including smoke and other particulate matter, noise, vibration, electromagnetic interference, and stray current transmissions (collectively referred to as "**Interferences**") to the Lands and despite the inclusion of control features within the Condominium, Interferences from TTC transit operations may continue to be of concern, occasionally interfering with some activities of the dwelling occupants in the Condominium. Notwithstanding the above, the Purchaser agrees to indemnify and save harmless the Toronto Transit Commission and the City of Toronto from all claims, losses, judgments or actions arising or resulting from any and all Interferences. Furthermore, the Purchaser acknowledges and agrees that an electromagnetic, stray current and noise-warning clause similar to the one contained herein shall be inserted into any succeeding lease, sublease, or sales agreement and that this requirement shall be binding not only on the parties hereto but also their respective successors and assigns and shall not die with the closing of this transaction.
- 24.11 Purchasers are advised and acknowledge that the Vendor reserves the right to increase or decrease the final number of, residential, parking, locker and/or other ancillary units intended to be created within the Condominium, as well as the right to alter the design, style, size and/or configuration of the units ultimately comprised within the Condominium which have not yet been sold by the Vendor to any unit Purchaser(s), all in the Vendor's sole discretion, and the Purchaser expressly acknowledges and agrees to the foregoing, provided that the final budget for the first year following registration of the Condominium is prepared in such a manner so that any such variance in the residential, parking, locker and/or other ancillary unit count will not affect, in any material or substantial way, the percentages of common expenses and common interests allocated and attributable to the residential, locker, and/or parking units sold by the Vendor to the Purchaser. Without limiting the generality of the foregoing, the Purchaser further acknowledges and agrees that two or more units situate adjacent to one another may be combined or amalgamated prior to the registration of the Condominium, in which case the common expenses and common interests attributable to such proposed former units will be incorporated into one figure or percentage in respect of the final combined unit, and the overall unit count of the Condominium will be varied and adjusted accordingly. None of the foregoing changes or revisions (if implemented) shall in any way be considered or construed as a material change to the disclosure statement prepared and delivered by the Vendor to the Purchaser in connection with this transaction.
- 24.12 Purchasers are advised that the Vendor's marketing material and site drawings and renderings ("**Marketing Material**") which they may have reviewed prior to the execution of this Agreement remains conceptual and that final building plans are subject to the final review and approval of any applicable governmental authority and the Vendor's design consultants and engineers, and accordingly such Marketing Material does not form part of this Agreement or the Vendor's obligations hereunder.
- 24.13 It is further acknowledged that one or more development agreements may require the Vendor to provide the Purchaser with certain notices, including without limitation, notices regarding such matters as land use, the maintenance of retaining walls, landscaping features and/or fencing, noise abatement features, garbage storage and pick-up, school transportation, and noise/vibration levels from adjacent roadways and/or nearby railway lines. The Purchaser agrees to be bound by the contents of any such notice(s), whether given to the Purchaser at the time that this Agreement has been entered into, or at any time thereafter up to the Title Transfer Date, and the Purchaser further covenants and agrees to execute, forthwith upon the Vendor's request, an express acknowledgment confirming the Purchaser's receipt of such notice(s) in accordance with (and in full compliance of) such provisions of the development Agreement(s), if and when required to do so by the Vendor.
- 24.14 The Purchaser acknowledges and agrees that the Vendor reserves the right to add or relocate certain mechanical equipment within the Residential Unit, including but not limited to, a heat pump system and ancillary equipment, to be located and placed along either the interior of an outside wall or an interior demising wall, in accordance with engineering and/or architectural requirements.
- 24.15 Residents of the Condominium are absolutely prohibited from altering the grading and/or drainage patterns established by the Vendor in respect of the Condominium, and subject to the

provisions of the declaration, by-laws and rules of the Condominium in force from time to time, residents shall not place any fence, shrub, bush, hedge or other landscaping treatment on any portion of the common elements.

- 24.16 The Purchaser acknowledges that the City of Toronto may require that the Condominium enter into an agreement with a private waste management company to collect and dispose of refuse and recycling, the costs of which will be included in the budget and common element fees.
- 24.17 Purchasers are advised that the Vendor's draft condominium plan sets out the location of all common areas to be utilized by residents of the Condominium and their respective invitees from time to time, including but not limited to parking facilities (the "**Facilities**"). The Purchaser acknowledges having inspecting same and satisfying itself as to the proximity of its Unit as to the Facilities.
- 24.18 Purchasers acknowledge that the Condominium may be required by the City of Toronto to clear snow from the public lane adjacent to the Condominium.
- 24.19 Purchasers are advised that the public lane used to access and egress the Condominium will be given low priority for winter maintenance by the City and that public lanes are salted only, not plowed.
- 24.20 Purchasers acknowledge that there is an application for a proposed mid-rise development directly to the south of the Property.
- 24.21 The owner, as vendor/builder of this project, warrants that it is enrolled as a registered builder with the Tarion Warranty Corporation under the Ontario New Home Warranties Plan Act which is administered by Tarion Warranty Corporation. The purchaser is advised to become familiar with his/her rights under the warranty program, as set out in the Tarion Homeowner Information Package, and with the requirements to provide notices to Tarion with respect to any building deficiencies or the quality of workmanship items in order to make claims under the warranty program, including the following:
 - (a) As part of the administration of the New Home Warranties Program a vendor/builder is required to conduct a Pre-Delivery Inspection (PDI) of all freehold homes and condominium units which is a formal record of the home's condition before the purchaser takes possession and which will be used as a reference for future warranty service requests.
 - (b) The purchaser is also advised that Tarion requires that the purchaser must notify Tarion of outstanding warranty items by submitting a "30-day Form" to Tarion at Tarion Customer Centre, 5150 Yonge Street, Concourse Level, Toronto Ontario, M2N 6L8 or by mail, courier or fax to 1-877-664-9710 before the end of the first (30) days of possession of a home by the purchaser.
 - (c) The purchaser is advised that he/she must complete and submit a Year End Form to notify Tarion of outstanding warranty items in the final thirty (30) days of the first year of possession of a home by the purchaser.
 - (d) The purchaser is advised that he/she must complete and submit a Second-Year Form to notify Tarion of outstanding warranty items in the final thirty (30) days of the second year of possession of a home by the purchaser.
- Purchasers are advised that failure by them to submit the required notices to Tarion on a timely basis may affect their ability to make claims under the New Home Warranties Program.
- 24.22 Purchasers are advised that the Vendor's marketing material and site drawings and renderings ("**Marketing Material**") which they may have reviewed prior to the execution of this Agreement remains conceptual and that final building plans are subject to the final review and approval of any applicable governmental authority and the Vendor's design consultants and engineers (including, without limitation, with respect to any materials used for exterior cladding), and accordingly such Marketing Material does not form part of this Agreement or the Vendor's obligations hereunder.

Section 43 (5) (h) of the Condominium Act, S.O. 1998

The following is the schedule setting out what constitutes a standard unit for each class of unit that the Declarant intends to deliver to the Corporation pursuant to Section 43(5)(h) of the *Act*, for the purpose of determining the responsibility for repairing improvements after damage and insuring them, as required pursuant to Section 43 (5) (h) of the *Condominium Act*.

The standard unit shall be finalized prior to the turnover meeting and shall include all standard features to be provided by the Declarant for insurance purposes but shall not include floor coverings or countertops in kitchens and bathrooms. Purchasers should ensure that these items are insured through their respective condominium home owner policies.

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TORONTO STANDARD CONDOMINIUM CORPORATION
CURATED CABIN INC.
FIRST YEAR OPERATING BUDGET FOR COMMON EXPENSES
FOLLOWING REGISTRATION OF THE DECLARATION AND DESCRIPTION



**Current
Budget**

OPERATING COSTS

		\$
Utilities	- Schedule 'A'	25,200
Contracted Services	- Schedule 'B'	49,600
Repair & Maintenance	- Schedule 'C'	10,360
Other Operating Expenses	- Schedule 'D'	16,200
Administrative Expense	- Schedule 'E'	4,320
		<u>105,680</u>
Reserve Fund		26,420
Total Common Expenses		<u>132,100</u>

COMMON ELEMENT ASSESSMENT PER UNIT PER MONTH

SEE SCHEDULE "1" ATTACHED

SCHEDULES

SCHEDULE 'A'

UTILITIES

	\$
Gas	1,800
Hydro	14,400
Water & Sewage	9,000
	<u>25,200</u>

SCHEDULE 'B'

CONTRACTED SERVICES

	\$
Elevator	See Note
Landscaping & Snow Removal	3,000
Pest Control	400
Cleaning Contract	20,800
Monitoring	3,600
HVAC-Building	1,500
HVAC- Heat Pumps	1,800
Fire Safety	2,400
Window Cleaning	5,000
Garage Cleaning	1,200
Catch Basins & Sump Pits	See Note
Stackers Repairs & Maintenance	9,900
	<u>49,600</u>

TORONTO STANDARD CONDOMINIUM CORPORATION
CURATED CABIN INC.
FIRST YEAR OPERATING BUDGET FOR COMMON EXPENSES
FOLLOWING REGISTRATION OF THE DECLARATION AND DESCRIPTION

	<u>Current Budget</u>
<u>SCHEDULE 'C'</u>	
<u>REPAIRS & MAINTENANCE</u>	\$
Electrical	150
Elevator	150
Exterior Building	360
Fire Protection	300
Landscapeing	900
Snow removal	1,000
Housekeeping	1,500
- Carpet & Floors	150
- Cleaning Supplies & Repairs	600
- Decorating Interior Common Areas	150
- Hardware & Doors	150
- Waste Disposal	3,600
- Non Contract Windows	150
H.V.A.C	150
Plumbing	150
	<u>750</u>
	<u>10,360</u>
<u>SCHEDULE 'D'</u>	
<u>OTHER OPERATING EXPENSES</u>	\$
Insurance	10,500
Consulting Fees	-
A) Performance Audit	9,000
B) Reserve Fund Study	3,500
C) Insurance Appraisal	1,500
	<u>14,000</u>
Less: Declarant Contribution	-
General Expenses	300
Telephone	5,400
	<u>5,400</u>
	<u>16,200</u>
<u>SCHEDULE 'E'</u>	
<u>ADMINISTRATIVE EXPENSES</u>	\$
Audit Fees	2,400
Legal Fees	600
Office Expenses	300
AGM Expense	300
Bank Charges	720
Management Fees	See Note
	<u>4,320</u>

TORONTO STANDARD CONDOMINIUM CORPORATION
CURATED CABIN INC.
BUDGET NOTES FOR THE FIRST YEAR OPERATING BUDGET FOR COMMON EXPENSES
FOLLOWING REGISTRATION OF THE DECLARATION AND DESCRIPTION

Common Expenses	The total common expenses of this proposed Condominium Corporation including the provision to the Reserve Fund is \$132,100.00 as shown on the Budget Statement.
Individual Unit Assessment	The monthly Common Element Assessment for each unit is determined by dividing the total budgeted Common Element Assessment in the Budget by twelve (12) to determine the monthly assessment. The monthly amount is multiplied by the Unit percentage contribution to Common Expenses, as shown in Schedule "D" of the proposed Declaration to determine the monthly individual Common Element Assessment as shown on Schedule "I" attached.

UTILITIES - SCHEDULE 'A'

Gas	Represents the cost of heating the common areas.
Electricity	Represents the cost of all hydro used for common areas of the building only, suites will be individually metered or sub-metered.
Water	Represents the cost of water for normal commercial office requirements, cleaning of common areas, suite consumption and watering of the grounds.

Note:

A) The utility figures used in the budget are based on engineering estimates at today's cost (2015). **See Note 2 Inflation.**
 B) Hydro and gas will be separately metered and the estimated recovery is included in the budget.

CONTRACTED SERVICES - SCHEDULE 'B'

Elevator	Contract - full maintenance service contract on all elevator cars. This covers most repairs other than the replacement of the cabs. NOTE: The Declarant has obtained a contract for the Elevators which includes the monthly maintenance costs for the first year from date of registration. For the second year the estimated costs will be approximately \$3,600.00 plus HST.
Landscaping & Snow Removal	Contract - Includes grass cutting, trimming and pruning of shrubs, lawn fertilization and weed spraying. Plowing to commence without call upon accumulation of 2 inches or more of snow. To the extent possible, snow should be cleared to permit use by 7:00 a.m. NOTE: The laneway in the rear of the building is City property and as such is not deemed to be a first call for snow plowing or removal.
Pest Control	Contract- For the common areas only.
Cleaning Contract	Represents the cost of a cleaning contract for buildings common areas only. A detailed work load schedule will be prepared by the Property Manager specifying the duties.
Monitoring	Represents the cost of third party monitoring of the fire system and elevators.
H.V.A.C.	Contracts -Represents the cost of servicing the cooling tower-minimum twice per year
H.V.A.C.	Heat Pump Units - Represents the cost of changing the filters in the units twice per year
Fire Safety	Testing & R & M - monthly and annual testing and inspection as required under the Ontario Fire Code.
Window Cleaning	Windows- costs of exterior window washing of only inaccessible windows once per year and general repairs.
Garage Cleaning	Represents the cost of sweeping the garage twice per year.
Catch Basins, Drains & Sump Pits	Represents the annual cost of cleaning all the catch basins, drains and sump pits in the spring. NOTE: The cost will be looked after by the Declarant for the first year from date of registration and in the second year the approximate costs will be \$1,200.00 plus HST
Stackers Repairs & Maintenance	Reresents the cost of maintaining the parking stackers as well as once a year cleaning.

TORONTO STANDARD CONDOMINIUM CORPORATION
CURATED CABIN INC.
BUDGET NOTES FOR THE FIRST YEAR OPERATING BUDGET FOR COMMON EXPENSES
FOLLOWING REGISTRATION OF THE DECLARATION AND DESCRIPTION

REPAIRS AND MAINTENANCE - SCHEDULE 'C'

Electrical	Bulbs - replacements of light bulbs and ballasts for the common area.
Electrical	Miscellaneous R & M - repairs by electricians to common areas as required, as well as required TSSA permits.
Elevator	Non-Contract - provides for inspection fees and annual licenses by the Technical Standards & Safety Authority under Ontario's Technical Standards Act, Elevating Devices Regulation and any vandalism repair which may be required.
Exterior Building	Miscellaneous R & M - general repairs.
Fire Protection	Non Contract - General repairs to system and equipment licences and inspections.
Landscaping	Non Contract - Seasonal planting and repairs to the sprinkler system (if any).
Snow Removal	Non Contract - this provides for salting for the winter months as well as repairs and maintenance to any snow removal equipment.
Housekeeping	Carpet and Floors - spot cleaning and minor repairs to common area carpets as well as cleaning of floors once per year.
Housekeeping	Cleaning Supplies & Repairs - supplies for cleaning all common areas, as well as common area washroom supplies and repairs to cleaning equipment.
Housekeeping	Decorating Interior Common Areas - touch up painting and general repairs to corridors, hallways and stairwells. Interior landscape contract (if any).
Housekeeping	Hardware & Doors - repairs and supplies for common area doors, security supplies and locks.
Housekeeping	Waste Disposal - Cost of private pick up and maintenance and repairs to compactor (if any), common area disposal.
Housekeeping	Non Contract Windows & Screens - costs of exterior window repairs and screens.
Housekeeping	Miscellaneous R & M - general repairs for items not covered above, including signage for property.
H.V.A.C.	Miscellaneous R & M - non contract miscellaneous equipment repair including servicing so the backflow preventers.
Plumbing	Miscellaneous R & M - to common areas as required.

TORONTO STANDARD CONDOMINIUM CORPORATION
CURATED CABIN INC.
BUDGET NOTES FOR THE FIRST YEAR OPERATING BUDGET FOR COMMON EXPENSES
FOLLOWING REGISTRATION OF THE DECLARATION AND DESCRIPTION

OTHER OPERATING EXPENSES-SCHEDULE 'D'

Insurance	Represents the cost of insuring building common elements as described in the Declaration of the first year with an All-Risk Insurance Policy, Boiler Insurance, Directors' Liability Policy, Employee Fidelity Insurance and General Liability. However, it does not include any deductible payable or claims nor any increase due to increased coverage.
Note:	This Policy only covers the "Standard Unit" as specified in the Disclosure Statement. Each unit Owner must ensure coverage of all portions of the unit in excess of the Standard Unit and all contents by his own household policy, preferably by a "Condominium Package" which includes Third Party Liability.
Consulting Fees	Represents the cost of a Performance Audit (Section 44 of the Act), Reserve Fund Study (Section 94(4) of the Act) and an independent Insurance Appraisal (Section 99 of the Act) for the building. The Declarant has obtained a firm price from an independent engineering firm for the Performance Audit in the amount of \$9,000.00 and Reserve Fund Study in the amount of \$3,500.00 as well as a quote from an independent insurance appraisal firm in the amount of \$1,500.00, which costs will be paid by the Declarant. However, should the Condominium Corporation's Board of Directors choose another engineering or appraisal firm at higher costs, then the Condominium Corporation will be responsible for all costs over and above the total stated costs of \$14,000.
General Expenses	Unforeseen miscellaneous items.
Telephone	The cost of Enterphones, Energy Monitoring, Fire Panel Monitoring and Elevators are included.

ADMINISTRATIVE EXPENSES - SCHEDULE 'E'

Audit Fee	Represents the cost of the independent auditors for two audits, one in accordance with Section 43(7) requiring an audit sixty(60) days as after the turnover meeting and the second in accordance with Section 67.
Legal Fee	Represents the cost of an independent Corporate Solicitor hired by the Board of Directors not to exceed \$600.00.
Office Expenses	Represents the cost of mailings, meetings, bulletins, printing, office supplies and bank charges.
AGM. Expenses	Cost of printing, postage and setting up of the Annual General Meeting.
Management Fees	Note: The Budget has been prepared on the basis that the Condominium will be Self-managed by the Owners. In the event the Owners decide at a general meeting of Owners to retain a Management Company to manage the Condominium then the Management Contract will be an additional annual cost to the costs set out in the Budget herein and will not be part of the Declarant's responsibility for the first year costs after date of registration. For the second year the estimated will be approximately \$10,800 plus HST.

TORONTO STANDARD CONDOMINIUM CORPORATION
CURATED CABIN INC.
BUDGET NOTES FOR THE FIRST YEAR OPERATING BUDGET FOR COMMON EXPENSES
FOLLOWING REGISTRATION OF THE DECLARATION AND DESCRIPTION

RESERVE FUND

The Reserve Fund is established for the major repair and/or replacement of the common elements and assets of the Corporation. The Reserve Fund figure included in the budget is the minimum requirements under the Condominium Act and may in future years, require an upward or downward adjustment.

The Reserve Fund is equal to 25% of the total budgeted first year common area costs, exclusive of the Reserve Fund. The provision is \$26,420.00 for the Condominium Corporation. There will be no further adjustment or allowance to the Reserve Fund amount by the Declarant to account for any surplus or deficit in the first year common area expenses.

As at the date of the foregoing Budget November 2015, the Condominium has not been created and accordingly, there are no funds in the Reserve Fund nor is there a Reserve Fund Study which will be completed after Registration by an independent engineer, as stated in the notes above. At the end of the first year after Registration, there should be \$26,420.00 plus any interest earned, in the Reserve Fund Bank Account of the Condominium Corporation.

GENERAL NOTES TO BUDGET

1. Additional Charges

- A) Individual metering for the residential units will be done by an independent company and there will be a minimum administration monthly fee to be determined by the independent company, which will be equal to or less than the rate charged by The Local Utility Provider, added to the cost of the actual commercial unit consumption.
- B) With the exception of the above, there are no current or expected fees or charges to be paid by Unit Owners or any of them for the use of common elements or part thereof and other facilities related to the property.
- C) **With the exception of the above notes, there are no services not included in the foregoing Budget that the Declarant provides, or expenses that the Declarant pays and that might reasonably be expected to become, at a subsequent time, a Common Expense.**

2. Inflation

The Declarant has assumed an annual inflation factor of an average of 5%. However, if registration of the Declaration and Description occurs after January 1, 2018 then this budget statement shall be read thereafter as having been increased by an inflation factor of 5% per annum.

Furthermore, and in view of the significant fluctuation in gas, electricity and water utility rates in recent times over which the Declarant has no control whatsoever, in the event that the utility suppliers obtain requisite government approval for significant annual increases above the assumed inflation factor of 5%, then the Declarant reserves the right to revise the first year Budget Statement to reflect any significant increase in the cost of supplying these utilities from any of the public utility suppliers, and to provide each unit purchaser with the revised copy of this Budget Statement reflecting any significant increase in utility rates. In such event, Purchasers are informed of this possibility by virtue of this note.

TORONTO STANDARD CONDOMINIUM CORPORATION
CURATED CABIN INC.
BUDGET NOTES FOR THE FIRST YEAR OPERATING BUDGET FOR COMMON EXPENSES
FOLLOWING REGISTRATION OF THE DECLARATION AND DESCRIPTION

- 3. Judgements** At the time of preparation of this revised budget statement November 2015, there are no judgements, with respect to the property, against the Corporation, nor is the Corporation a party to any lawsuit material to the within property.
- 4. Management Fees**
- | | |
|------------------|---|
| Financial | -Preparation of the annual operating budget for approval by the Board of Directors
-Accounting of common expense monies including collection and disbursement. |
|------------------|---|
- | | |
|-----------------------|--|
| Administrative | -Maintain Register of unit Owners, based on information supplied by the Board.
-Enforce terms and rules of the Declaration and By Laws and make recommendations for modifications.
-Participation at Board of Directors meetings where required. |
|-----------------------|--|
- | | |
|--------------------|--|
| Operational | -Hiring and/or supervision of on-site staff.
-Repair of cause to be repaired all common elements and to do work load schedule for on-site personnel.
-Establish a preventative maintenance program for common elements and a work load schedule
-Building inspection with reports and follow up to ensure outstanding matters are attended to.

-Furnish all homeowners with a procedure to follow and resource people to call in cases of emergency. |
|--------------------|--|
- 5. Building Maintenance** Included in the repairs and maintenance is the provision for anticipated maintenance of the common areas only, as set out in the budget. The budget does not make provision for items of a capital nature as this is taken into account in the reserves fund contribution.
- 6. Telecommunication Services** Purchasers should be aware that, although the units will have been wired for cable television/internet service outlets, such telecommunication services shall be provided directly by the telecommunications service supplier to the unit owner, according to the individual user's requirements and the number of outlets connected. Accordingly, all monthly cable television/internet and telephone service charges do not form part of the common expenses of this Condominium, but will be borne and paid for by each residential unit owner in accordance with their requirements.
- 7. Costs** The costs are included in the attached budget and the cost type, level and frequency of services are detailed in the notes above and Budget Statement.
- 8. H.S.T** The Goods and Services Tax HST is included in all applicable expense items on the Budget Statement.

EXHIBIT

C



Ministry of Government and
Consumer Services

Profile Report

CURATED CABIN INC. as of September 22, 2022

Act

Business Corporations Act

Type

Ontario Business Corporation

Name

CURATED CABIN INC.

Ontario Corporation Number (OCN)

2478795

Governing Jurisdiction

Canada - Ontario

Status

Active

Date of Incorporation

August 12, 2015

Registered or Head Office Address

32 Sudbury Street, Toronto, Ontario, Canada, M6J 0G5

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Director(s)

Minimum Number of Directors
Maximum Number of Directors

1
10

Name

Gary EISEN

Address for Service

32 Sudbury Street, Toronto, Ontario, Canada, M6J 0G5

Resident Canadian

Yes

Date Began

August 12, 2015

Name

Adam OCHSHORN

Address for Service

32 Sudbury Street, Toronto, Ontario, Canada, M6J 0G5

Resident Canadian

Yes

Date Began

August 12, 2015

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Active Officer(s)

Name Gary EISEN
Position Secretary
Address for Service 32 Sudbury Street, Toronto, Ontario, Canada, M6J 0G5
Date Began August 12, 2015

Name Gary EISEN
Position Treasurer
Address for Service 32 Sudbury Street, Toronto, Ontario, Canada, M6J 0G5
Date Began August 12, 2015

Name Adam OCHSHORN
Position President
Address for Service 32 Sudbury Street, Toronto, Ontario, Canada, M6J 0G5
Date Began August 12, 2015

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Corporate Name History

Name CURATED CABIN INC.
Effective Date August 12, 2015

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Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

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Director/Registrar

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Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

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Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: Gary EISEN	August 17, 2022
Annual Return - 2018 PAF: GARY EISEN - DIRECTOR	November 03, 2019
Annual Return - 2017 PAF: GARY EISEN - DIRECTOR	November 18, 2018
Annual Return - 2016 PAF: GARY EISEN - DIRECTOR	November 05, 2017
Annual Return - 2015 PAF: ADAM OCHSHORN - DIRECTOR	May 28, 2017
CIA - Notice of Change PAF: ADAM OCHSHORN - DIRECTOR	April 07, 2016
CIA - Initial Return PAF: MICHAEL J. BAUM - OTHER	September 08, 2015
BCA - Articles of Incorporation	August 12, 2015

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

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V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

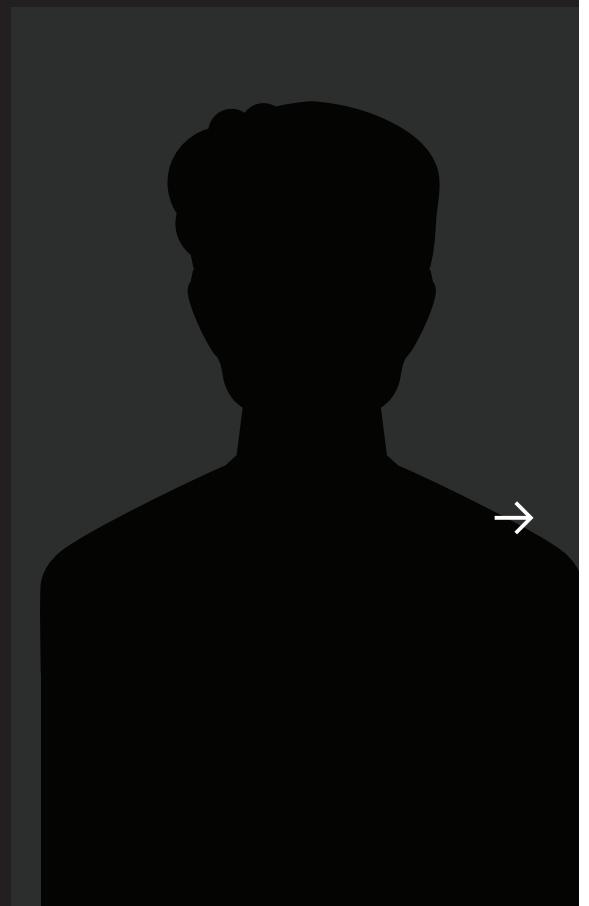
CURATED
CURATED. EST 1987.[About](#)[Projects](#)[Contact](#)

**At Curated, we believe
everyone should live well. Our
homes strike the perfect
balance of luxury, design, and
healthy living. Welcome to the
Curated life.**

Watch Team Video 

**Lucas Eisen**

Vice President
Development Management

**Peter Kurfurst**

Development Manager

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820

RESOLUTION of the Board of Directors of TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820 held at 4100 Yonge Street, Suite 610, Toronto, Ontario, M2P 2B5 on December 5, 2020.

The following resolutions are hereby adopted by the Board of Directors.

ELECTION AND APPOINTMENT OF OFFICERS

BE IT RESOLVED THAT the following persons be and they are hereby elected or appointed Officers of the Corporation:

Gary Eisen	-	President
Lucas Eisen	-	Treasurer
Adam Ochshorn	-	Secretary

BY-LAW NUMBER 1

BE IT RESOLVED THAT By-law Number 1 be made a By-law of the Corporation and the President and the Secretary of the Corporation be authorized to sign same and seal same with the seal of the Corporation, and the President and the Secretary were further authorized and directed to do, sign and execute all things, deeds and documents necessary or desirable for the purpose of affecting registration of the said By-law Number 1 under the *Condominium Act 1998* after the By-law has been confirmed by the Owners. The Chairman directed that the said By-law Number 1 when so confirmed and registered be inserted in the records of the Corporation.

BY-LAW NUMBER 2

BE IT RESOLVED THAT By-law Number 2 be made a By-law of the Corporation and the President and the Secretary of the Corporation be authorized to sign same and seal same with the seal of the Corporation, and the President and the Secretary were further authorized and directed to do, sign and execute all things, deeds and documents necessary or desirable for the purpose of affecting registration of the said By-law Number 2 under the *Condominium Act 1998* after the By-law has been confirmed by the Owners. The Chairman directed that the said By-law Number 2 when so confirmed and registered be inserted in the records of the Corporation.

MAINTENANCE CONTRACTS

BE IT RESOLVED THAT various Service and Maintenance Agreements be approved and adopted and that the President and the Secretary of the Corporation be and are hereby authorized to sign same on behalf of the Corporation and affix thereto the corporate seal of the Corporation.

ANNUAL OPERATING BUDGET

BE IT RESOLVED THAT the proposed Operating Budget contained in the Disclosure Statement be adopted and approved.

MANAGEMENT AGREEMENT

BE IT RESOLVED THAT the Corporation enter into a Condominium Management Agreement for the period commencing on the date of registration of the Declaration and terminating on the terms and conditions more particularly set out in the said draft agreement, a copy of which was directed to be inserted in the Minute Book of the Corporation.

SUBMETERING AGREEMENTS

BE IT RESOLVED THAT the Corporation enter into Sub-metering Services Agreements (if applicable) in respect of the provision of sub-metering services for water and for electricity, and that same be approved and adopted, copies of which are directed to be inserted in the Minute Book of the Corporation.

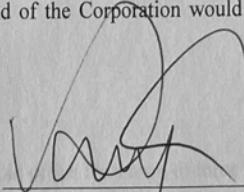
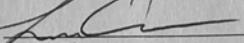
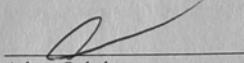
RESERVE FUND STUDY

BE IT RESOLVED THAT _____ be retained to prepare a Reserve Fund Study as provided for in the Disclosure Statement.

FISCAL YEAR END

BE IT RESOLVED THAT pursuant to the authority of the Board granted in Article IX of the By-law Number 1 the financial year-end of the Corporation would end on the last day of October in each year.

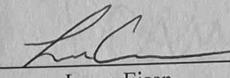
Dated the 5th day of December, 2020.


Gary Eisen

Lucas Eisen

Adam Ochshorn

RESIGNATION

THE UNDERSIGNED hereby resigns as a Director and Officer of Toronto Standard
Condominium Corporation No. 2820 effective immediately.

DATED this 25 day of February , 2021


Lucas Eisen

RESIGNATION

THE UNDERSIGNED hereby resigns as a Director and Officer of Toronto Standard
Condominium Corporation No. 2820 effective immediately.

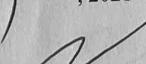
DATED this 25th day of February, 2021

Gary Eisen

RESIGNATION

THE UNDERSIGNED hereby resigns as a Director and Officer of Toronto Standard
Condominium Corporation No. 2820 effective immediately.

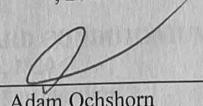
DATED this 24 day of February , 2021


Adam Ochshorn

RESIGNATION

THE UNDERSIGNED hereby resigns as a Director and Officer of Toronto Standard Condominium Corporation No. 2820 effective immediately.

DATED this 25th day of February, 2021



Adam Ochshorn

The undersigned hereby resigns as a Director and Officer of the Toronto Standard Condominium Corporation No. 2820 effective immediately. The undersigned resigns his/her position as a Director and Officer of the Corporation and no longer wishes to be involved in the affairs of the Corporation. The undersigned further states that he/she has no financial interest in the Corporation and has no financial obligations to the Corporation. The undersigned further states that he/she has no personal or financial interests in the affairs of the Corporation and has no personal or financial obligations to the Corporation.

2. The undersigned further agrees to return to the Corporation all copies of all documents, files, records, reports, correspondence, and other materials in his/her possession relating to the business of the Corporation, and to turn over to the Corporation all funds held by him/her in connection with his/her position as a Director and Officer of the Corporation.

The undersigned agrees and agrees to waive the right to sue the Corporation for any damages or expenses arising from his/her resignation as a Director and Officer of the Corporation, and also waives the right to sue the Corporation for any damages or expenses arising from his/her resignation as a Director and Officer of the Corporation, and also waives the right to sue the Corporation for any damages or expenses arising from his/her resignation as a Director and Officer of the Corporation.

The undersigned hereby agrees to provide such further documents and information as may be required by the Corporation to effectuate the foregoing resignation. The undersigned further agrees to provide such further documents and information as may be required by the Corporation to effectuate the foregoing resignation.

I, the undersigned, have read the foregoing resignation letter of the undersigned and I agree to the terms and conditions set forth therein. I further agree to the fact that the undersigned has no financial interest in the Corporation and has no financial obligations to the Corporation.

TORONTO STANDARD CONDOMINIUM CORPORATION No. 2820**TURNOVER MEETING**

MINUTES OF THE TURNOVER MEETING from Declarant to Toronto Standard Condominium Corporation No. 2820 held via Zoom videoconference/webinar on Thursday, February 25, 2021 at 7:00 p.m.

Head Table:	Roger Vinayagalingam	-	Solicitor, Harris, Sheaffer LLP
	Ryan Stone	-	President/CEO, Summa Property Management
	Matt Lamson	-	Accountant, Summa Property Management
	Vafa Keykhosrovani	-	Property Manager, Summa Property Management
	Chris Hunt	-	Property Manager, Summa Property Management
	Nicole Guy	-	Recording Secretary, MinuteTakers Inc.

1. OPENING OF MEETING

Roger Vinayagalingam, solicitor for Harris, Sheaffer LLP, welcomed all those in attendance and with the consent of all present was accordingly appointed as Chair of the meeting. Nicole Guy of MinuteTakers Inc. was appointed Recording Secretary for taking Minutes of tonight's meeting.

2. NOTICE OF MEETING

Notice of this Meeting of Owners was delivered to all registered owners by pre-paid mail and/or electronic means where authorized on February 10, 2021 in accordance with the By-Laws of the Corporation and the *Condominium Act, 1998* as evidenced by the "Affidavit of Service" as to such mailing, a copy of which is available for inspection if required.

3. CALL TO ORDER

The Chair reported that there were 11 voting owners represented in person via the webinar, constituting a quorum of at least 25% as required under the *Condominium Act, 1998* for the transaction of business. The meeting was duly called to order at 7:14 p.m.

4. PURPOSE OF A TURNOVER MEETING

Owners were advised that a Turnover Meeting is called when the Developer (Declarant) ceases to own 51% of the units, at which point a new Board of Directors is elected. In addition, at this meeting, all documents, blueprints, warranties, contracts, etc. pertaining to Toronto Standard Condominium Corporation No. 2820 will be turned over by the Developer to the new Board of Directors.

- (a) *Board of Directors* – The new Board of Directors will have regular monthly Board meetings to discuss the affairs of the Condominium. The Board will appoint Officer positions at the first Board meeting.



5. **APPOINTMENT OF SCRUTINEERS**

Management will act as scrutineer for the meeting.

6. **ELECTION OF DIRECTORS**

6.1 **Directors Required** – The Chair advised that under the provisions of the By-Laws of T.S.C.C. #2820, three (3) Directors are to be elected. By-Law No. 1 provides for rotating or staggering terms of office, so that they overlap and the Corporation will never be faced with having to elect an entire new Board at any one time.

(a) ***Owner-Occupied Position*** – The *Condominium Act, 1998* states that there must be an Owner/Occupied position on the Board of Directors, which may only be voted on by owners who occupy their suites. This position is for a one (1) year term.

(b) ***Positions*** – The director positions to be filled this evening are as follows:

- Owner Occupied Position – The person selected for the 'owner-occupied' position will be elected for a term of **1 year**.
- General Director Positions – One candidate will be elected for a term of **3 years** and one candidate will be elected for a term of **2 years**, based on the highest number of votes received, in descending order.

(c) ***Voting*** – Owners were advised that each dwelling unit is entitled to one vote.

6.2 **Nominations** – The individuals who had put themselves forward to stand as candidates for election to the Board of Directors in any position had been published in advance as follows:

- Jadranka (Jad) Erceg
- Craig Shaw
- Neeraj Seth

The floor was then opened for further and other nominations in any position.

As it was apparent that no nominations would be given from the floor, the Chair requested a Motion to close nominations. On a Motion by Sylvia Adamcik of Suite 106 it was,

"Resolved that nominations be closed". Motion carried.

It was noted that biographies for each of the nominees had been distributed to all owners for review in advance of the meeting.



- 6.3 **Candidate Disclosures** – Under the new amendments to the Condominium Act, all candidates seeking a Director position on the Board are required to complete a Candidate Disclosure Obligation Form. A copy of the completed forms can be found in the meeting package and all candidates responded appropriately.
- 6.4 **Election Results** – The balloting procedure was explained, which was followed by the vote. After the ballots were cast and tallied, it was declared that the following candidates had been elected as Directors of the Corporation by majority vote, each to hold office for the period as noted below or until their successors are duly elected or appointed:
- Neeraj Seth
 - Jadranka (Jad) Erceg
 - Craig Shaw as the 'Owner-Occupied' Director (for a term of 1 year)

It was noted that there had been a tie in the number of votes for Neeraj Seth and Jad Erceg. The Board will decide at their first meeting which of these persons will receive the two-year term and which will receive the three-year term.

- 6.5 **Destroy Ballots** – It was advised that proxies would be kept for a period of 90 days following the date of the meeting in accordance with *Section 52(7)* of the *Condominium Act, 1998*. On a Motion by Carlo Rodriguez of Suite 311 it was:

"Resolved that the ballots be destroyed". Motion carried.

7. PRESENTATION OF DOCUMENTS

The Chair advised that pursuant to the requirements of the *Condominium Act, 1998*, certain documents will now be turned over by the Declarant to the newly formed Board of Directors for T.S.C.C. #2820. These will include the Corporate Seal and Minute Book, Declaration, Agreements, building drawings, etc. The date of the official first meeting of the new Board will also be established after the close of today's Turnover meeting.

- (a) *Receipt of Minute Book* – Management will provide a signed receipt to the Declarant that the Minute Book has been received by the new Board.

8. OTHER BUSINESS

The Chair noted that as there is no representative from the Declarant present at this meeting, any questions the owners may have regarding their units should be forwarded to them in writing through Management.

The floor was then opened for any other business; however, no comments or items of concern were brought forward.



9. ADJOURNMENT OF MEETING

There being no further business brought before the meeting, the Chair requested a Motion to conclude the meeting. On a Motion by Neeraj Seth of Suite 506 it was:

"Resolved that the Turnover Meeting of Toronto Standard Condominium Corporation No. 2820 be concluded." Motion carried.

The meeting was concluded at 7:48 p.m.



NEERAJ SETH



Court File No. CV-22-00691022-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820

Applicant

-and-

CURATED CABIN INC.

Respondent

APPLICATION UNDER sections 75 (1) and 133 of the *Condominium Act, 1998*, S.O. 1998, s.19

AFFIDAVIT OF NEERAJ SETH

I, Neeraj Seth, of the City of Toronto, in the Province of Ontario, AFFIRM:

1. I am the President of Toronto Standard Condominium Corporation No. 2820 (“TSCC 2820” or the “Corporation”) and, as such, have knowledge of the matters contained in this Affidavit. Unless I indicate to the contrary, the facts stated below are within my personal knowledge. Where I indicate that I have obtained information from other sources, I verily believe those facts to be true.

Overview

2. The Applicant, TSCC 2820, is a 25-unit residential condominium corporation in the City of Toronto created by registration of its declaration and description on November 26, 2020. TSCC 2820 is municipally located at 45 Dovercourt Road;
3. The Respondent, Curated Cabin Inc. (“Curated”), is the declarant and developer of TSCC 2820. Curated controlled, managed and administered TSCC 2820’s property

and assets until the Corporation was transferred to the owners of TSCC 2820 pursuant to a turnover meeting under section 43 of the *Condominium Act, 1998* (the “Act”).

4. Prior to turnover, Adam Ochshorn, Lucas Eisen and Gary Eisen and served on TSCC 2820’s board of directors (collectively, the “Declarant Board”). This is confirmed in the Corporation’s board meeting minutes of December 5, 2020, a copy of which is attached as **Exhibit “A”**.

5. Adam Oschorn, Lucas Eisen and Gary Eisen are all officers or principals of Curated. Copies of Curated’s corporate profile report and a snapshot of their company website are attached as **Exhibit “B”**.

Turnover Meeting Held on February 25, 2021

6. On January 19, 2021, the Declarant Board delivered notice that a turnover meeting under section 43 of the Act would take place on February 25, 2021. A copy of the Preliminary Notice of Meeting is attached as **Exhibit “C”**.

7. At the turnover meeting on February 25, 2021, I was elected to the Corporation’s board of directors, along with Jadranka Erceg and Craig Shaw. The minutes from the turnover meeting are attached as **Exhibit “D”**.

8. The Declarant Board all tendered their resignations from the Corporation’s board of directors before the turnover meeting; the Declarant Board’s signed resignations are attached as **Exhibit “E”**. As indicated at Item 8 of the minutes from the turnover meeting, the Declarant Board refused to attend the turnover meeting, thereby preventing TSCC

2820's owners from asking the Declarant Board's questions about its operation and management of the Corporation.

Issues with First-Year Budget and Management Agreement

9. On November 18, 2015, Curated issued a disclosure statement (the "Disclosure Statement") pertaining to the Corporation. The preamble to the Disclosure Statement indicated it contained "*important information about [the Corporation] as required by section 72 of the Act*". A copy of the Disclosure Statement is attached as **Exhibit "F"**.

10. The Disclosure Statement included the proposed budget for the Corporation's first operating year (the "First-Year Budget"), as determined by Curated. The First-Year Budget is attached as **Exhibit "G"**.

11. On May 19, 2022, the Corporation received its audited financial statements for its first operating year. TSCC 2820's first operating year commenced on November 26, 2020 and ended on November 30, 2021. A copy of the audited financial statements and the auditor's report (the "Audit Report") are attached as **Exhibit "H"**.

12. Page 9 of the Audit Report indicated a deficit in the Corporation's first-year operating budget (the "Deficit"). The Deficit amounted to approximately \$36,858.00, recoverable from the Corporation's developer, Curated.

13. After reviewing the Audit Report, the Corporation's current board of directors (the "Current Board") discovered the Deficit was primarily attributable to a property management agreement (the "Management Agreement") the Corporation entered into

with Summa Property Management (“Summa”). A copy of the Management Agreement is attached as **Exhibit “I”**.

14. Upon further review, the Current Board discovered Curated and the Declarant Board made contradictory and conflicting statements/representations regarding the Management Agreement. Notably, the First-Year Budget did not allocate any funds towards property management and indicated that the Corporation would be self-managed by its owners. The First-Year Budget included the following note at page 5:

Management Fees	Note: The Budget has been prepared on the basis that the Condominium will be Self-managed by the Owners. In the event the Owners decide at a general meeting of Owners to retain a Management Company to manage the Condominium then the Management Contract will be in addition to the costs set out in the Budget herein and will not be part of the Declarant's responsibility for the first year costs after date of registration. For the second year the estimated will be approximately \$10,800 plus HST.
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15. Additionally, in 2019, Curated prepared a “Homeowner Manual” which was provided to owners who purchased units at TSCC 2820 from Curated. The “Homeowner Manual” contained the following note:

For the first 8 months of your occupancy the property (common areas & suites) is managed by Curated Properties. After this 8-month period management will be transferred over to a designated property management company.

The Homeowner Manual is attached as **Exhibit “J”**.

16. Despite the above:

- (a) The Declarant Board held a board meeting on December 5, 2020 and determined that the Corporation would “enter into the Management Agreement”. The minutes from that meeting are at Exhibit “A”;

- (b) On January 5, 2021, Adam Ochshorn and Gary Eisen signed the Management Agreement on behalf of the Corporation.

The initial term of this agreement was for a one-year period commencing on November 28, 2020. This term is entirely within the Corporation's first operating year; and

- (c) A separate management agreement between Curated (not the Corporation) and Summa was entered into on or around June 22, 2020. Though Curated was the signatory to this agreement, it pertained to management services to be provided at the Corporation's premises on 45 Dovercourt Road.

The initial term of this agreement was for a one year and five-day period commencing on June 26, 2021. This term overlaps with the Corporation's first operating year.

A copy of the June 22, 2020 Management Agreement is attached as **Exhibit "K"**.

17. Given the above-noted circumstances (as well as the rapid turnaround between the Declarant Board resolving to enter into the Management Agreement, executing the Management Agreement and then turning over the Corporation to the Current Board), the Current Board verily believes that at all material times, the Declarant Board and Curated intended to retain a property manager for the Corporation and bind the Corporation to the Management Agreement accordingly.

Curated Fails to Reimburse the Corporation for the Deficit

18. I am aware that Sections 75 (1), (5) and (6) of the Act state the following:

Accountability for budget statement

75 (1) The declarant is accountable to the corporation under this section for the budget statement that covers the one-year period immediately following the registration of the declaration and description.

Notice of payment

(5) After receiving the audited financial statements for the period covered by the budget statement, the board shall compare the actual amount of common expenses and revenue described in subsections (2) and (3) for the period covered by the budget statement with the budgeted amounts and shall, within 30 days of receiving the audited financial statements, give written notice to the declarant of the amount that the declarant is required to pay to the corporation under this section.

Time for payment

(6) Within 30 days of receiving the notice, the declarant shall pay the corporation the amount that it is required to pay under this section.

19. As such, on May 20, 2022 – the day following when TSCC 2820 received the Audit Report – the Corporation emailed Curated advising of the Deficit and demanding payment of \$34,287.69 (the “Written Notice”). TSCC 2820 stressed that since its “*cash flow is quite poor, we respectfully request expedited payment of this amount*”. A copy of the Written Notice and subsequent communications pertaining to it are attached as **Exhibit “L”**.

20. Despite repeated follow-ups, Curated did not provide any meaningful response nor payment within the 30 days outlined in Section 75 of the Act:

- (a) On June 10, 2022, TSCC 2820 followed-up with Curated regarding the Written Notice but received no response;
- (b) On July 7, 2022, TSCC 2820 once again followed-up with Curated regarding the Written Notice. On July 11, 2022, Curated simply noted it was reviewing the matter with its lawyers.

(c) TSCC 2820 did not hear back from Curated and on July 26, 2022, it once again followed-up.

21. It was only on July 27, 2022 that the Corporation received a meaningful response to the Written Notice. Curated refused to pay the Deficit and Matthew Eisen (Vice President of Construction and Project Management at Curated) stated:

We have had the statement reviewed by our lawyer and there is a management fee of \$26 466 shown. In the condo docs the project is listed as self managed and there is no line item in the budget for a management fee. Curated is not responsible for the additional charge and is only liable for the overages on the first year operating expenses. Curated is willing to pay a total of \$7821.89 for the overages and will not be covering a 3rd party management charge. Please let me know if you have any questions and we can determine how to proceed. Thank you

22. The Corporation was forced to refer this issue to its legal counsel, Gardiner Miller Arnold LLP (“GMA”). On September 19, 2022, Tony Bui of GMA wrote to Curated advising of the Deficit and the circumstances surrounding the execution of the Management Agreement while the Corporation was under the control of the Declarant Board.

Mr. Bui’s letter also noted an additional \$6,580 payable under the Deficit due to Curated’s failure to tend to a roof anchoring/window washing project despite budgeting for it. Mr. Bui’s letter is attached as **Exhibit “M”**.

23. The letter also stated that Curated made “false, deceptive and misleading statements” in the Disclosure Statement in breach of Section 133 of the Act, warning that the Corporation would bring this Application and seek full indemnity costs if full payment was not received by October 6, 2022. Section 133 of the Act states:

Right to damages

(2) A corporation or an owner may make an application to the Superior Court of Justice to recover damages from a declarant for any loss sustained as a result of relying on a statement or on information that the declarant is required to provide under this Act if the statement or information,

(a) contains a material statement or material information that is false, deceptive or misleading; or

(b) does not contain a material statement or material information that the declarant is required to provide

24. On October 5, 2022, counsel for Curated, Nicholas Tibollo, responded to Mr. Bui's letter. Mr. Tibollo advised that Curated "did not agree with the version of events set out in [Mr. Bui's] letter" and that this dispute appeared to be "more of a matter that should be addressed in the small claims court". Mr. Tibollo's email provided no clarification on the basis for Curated's disagreement. Mr. Tibollo's email is attached as **Exhibit "N"**.

25. The October 6, 2022 payment deadline passed without any payment from Curated.

26. On November 4, 2022, Mr. Bui responded to Mr. Tibollo's email citing the procedures outlined in the Act. His letter included a copy of the Homeowner's Manual. Mr. Bui indicated that this Application would proceed unless full payment of the Deficit was received by November 10, 2022. Mr. Bui asked Mr. Tibollo if he would accept service on behalf of Curated; Mr. Bui received no response. Mr. Bui's letter is attached as **Exhibit "O"**.

27. As Curated failed to forward full payment of the Deficit by November 10, 2022, this Application was issued on November 18, 2022. To-date, Curated has not made any

payments against the Deficit. As I noted at para 22, there are further amounts that will need to be added to the Deficit due to Curated's failure to tend to a roof anchoring/window washing project despite budgeting for it; at this time, the total amount of this addition is unknown as the Corporation is in the process of conducting this work out-of-pocket on the understanding that it will advise of the final amount and seek recovery from Curated pursuant to the Act.

Procedural Overlap between Mediation/Arbitration under the Act and this Application

28. When TSCC 2820 commenced this Application, it sought relief under both Sections 75 and 133 of the Act given the factual overlap involving the Deficit and the Disclosure Statement, First-Year Budget and Homeowner's Manual.

29. TSCC 2820 realized that despite this factual overlap, Section 75 disputes must be addressed by way of mediation/arbitration per Section 132 (3) of the Act.

30. On March 24, 2023, Mr. Bui asked Mr. Tibollo whether Curated would agree to deal with this entire dispute via mediation/arbitration in the interest of efficiency; in other words, the Corporation wanted to deal with Section 75 and Section 133 of the Act in mediation/arbitration. Mr. Tibollo advised he would seek instructions.

31. Between March 24, 2023 to April 26, 2023, Mr. Bui followed up with Mr. Tibollo on three separate occasions but received no response on Curated's position:

- (a) It was only on May 1, 2023, the day before a scheduled Civil Practice Court attendance on this Application (which I understand Mr. Tibollo refused to respond to until it was confirmed by the Court) that Mr. Tibollo indicated

Curated would “proceed by way of mediation/arbitration on a mutually agreed upon schedule”.

- (b) On May 2, 2023, I understand and verily believe that Mr. Bui and Mr. Tibollo spoke about the scope of the proposed mediation/arbitration and that during these conversations, Mr. Bui reiterated TSCC 2820’s desire to deal with all matters in this Application via mediation/arbitration. Mr. Tibollo and Curated did not agree to do so; instead, Mr. Tibollo suggested the Corporation “abandon section 133 and proceed under section 75” despite acknowledging that the “damages’ were the same”.

The emails between Mr. Bui and Mr. Tibollo are attached as **Exhibit “P”**.

32. As such, on May 30, 2023, TSCC 2820 served Curated (vis-à-vis the parties’ respective lawyers) with a Notice of Mediation pursuant to Sections 75 and 132 (3) of the Act. A copy of the Notice of Mediation is attached as **Exhibit “Q”**.

33. The Notice of Mediation requires Curated select a mediator by June 29, 2023. In the event a mediator is not selected or a settlement is not reached, mediation will be deemed to have failed.

34. Upon the failure of mediation, the dispute under Section 75 of the Act must proceed to arbitration. I am advised and verily believe that:

- (a) For the arbitration to be binding upon Curated, it must agree to the appointment of an arbitrator; and
- (b) If Curated does not agree to the appointment of an arbitrator, the Corporation will need to bring an application for a court-ordered arbitrator.

35. Given Curated and their counsel's collective failure and refusal to meaningfully respond to the Corporation's communications and follow-ups, I do not believe Curated will participate in the mediation/arbitration process in a timely manner and that Curated may force TSCC 2820 to go through the rigmarole of obtaining a court-appointed arbitrator.

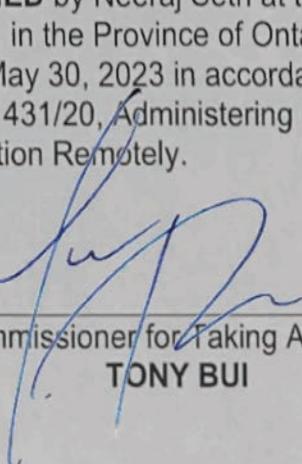
36. The Corporation has no choice but to pursue mediation/arbitration under Section 75 of the Act and this Application per Section 133 of the Act. It recognizes the factual overlap between the two processes but will not prejudice itself by forfeiting either process unless it has adequate assurance that it can ultimately seek relief for both the Deficit and Curated's misrepresentations.

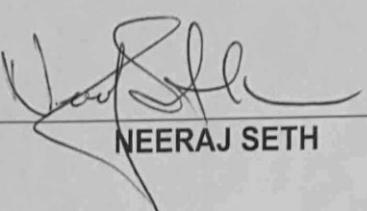
37. The Corporation's intention is to promptly resolve this dispute and it verily believes mediation and arbitration on all issues would be the quickest and most cost-effective process. But in the absence of Curated's express agreement to deal with this entire dispute via mediation/arbitration, this is not an option.

38. For clarity, the Corporation does not intend to "double dip" its recovery if it is successful in whichever process concludes first; however, it takes this position without prejudice to its right to continue in the remaining process if it is unsuccessful in the first process.

39. I affirm this Affidavit in support of the Corporation's Application, and for no improper purpose.

AFFIRMED by Neeraj Seth at the City of
Toronto, in the Province of Ontario, before
me on May 30, 2023 in accordance with
O. Reg. 431/20, Administering Oath or
Declaration Remotely.


Commissioner for Taking Affidavits
TONY BUI


NEERAJ SETH



**TORONTO STANDARD CONDOMINIUM
CORPORATION NO. 2820**

FINANCIAL STATEMENTS

NOVEMBER 30, 2021

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820

November 30, 2021

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INDEPENDENT AUDITOR'S REPORT

To the Unit Owners of **Toronto Standard Condominium Corporation No. 2820**

Opinion

I have audited the financial statements of Toronto Standard Condominium Corporation No. 2820 (the "Corporation"), which comprise the statement of financial position as at November 30, 2021 and the statements of operations and changes in fund balances of the general fund, reserve fund, and the statement of cash flows from the commencement of operations on November 26, 2020 to November 30, 2021, and notes to the financial statements, including a summary of significant accounting policies.

In my opinion, the accompanying financial statements present fairly, in all material respects, the financial position of Toronto Standard Condominium Corporation No. 2820 as at November 30, 2021, and the results of its operations and its cash flows for the period then ended in accordance with Canadian Accounting Standards for Not-For-Profit Organizations.

Basis for Opinion

I conducted an audit in accordance with Canadian generally accepted auditing standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Corporation in accordance with the ethical requirements that are relevant to my audit of the financial statements in Canada, and I have fulfilled my other ethical responsibilities in accordance with these requirements. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Report on the Condominium Act of Ontario Requirements

As required by Section 67(4) of the Condominium Act, I report that the Corporation has not deposited all monies received from owners to be allocated to the reserve fund into a reserve fund bank account or reserve investments and, as a consequence, the Corporation has \$19,981 in its reserve bank which is less than the amount necessary to fund the reserve fund of \$26,787. This is not in accordance with the requirements of Section 115(4) of the Act.

As required by Section 67(5) of the Condominium Act, I report that these financial statements are not prepared in accordance with the requirements of Section 94 of the Act and Regulation 48/01, Section 31 related thereto as the Corporation has not conducted its first reserve fund study within one year after registration, and has not issued a notice of future funding of the reserve for major repairs and replacements within the prescribed times.

Responsibilities of Management and Those Charged with Governance for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with Canadian Accounting Standards for Not-For-Profit Organizations and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Corporation's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Corporation or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Corporation's financial reporting process.

(continued)

INDEPENDENT AUDITOR'S REPORT (continued)

Auditor's Responsibilities for the Audit of the Financial Statements

My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements. As part of an audit in accordance with Canadian generally accepted auditing standards, I exercise professional judgment and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatements of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Corporation's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether material uncertainty exists related to events or conditions that may cast significant doubt on the Corporation's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Corporation to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.



Chartered Professional Accountant

Authorized to practise public accounting by the Chartered Professional Accountants of Ontario

Toronto, Ontario
May 19, 2022

Toronto Standard Condominium Corporation No. 2820

Statement of Financial Position

As at November 30, 2021

2021

ASSETS

Current

General fund cash	\$ 5,071
Common element fees receivable	582
Sundry receivables	1,543
Prepaid expenses	3,408
	<hr/> 10,604
Reserve fund cash (Note 3)	19,981
	<hr/> \$ 30,585

LIABILITIES

Current

Accounts payable and accrued liabilities	\$ 38,085
Due to Developer	2,571
	<hr/> 40,656

FUND BALANCES

General (Note 2.a)	(36,858)
Reserve (Note 2.a, 4)	26,787
	<hr/> (10,071)
	<hr/> \$ 30,585

Approved on Behalf of the Board:

Director

Director

The accompanying notes are an integral part of these financial statements.

Toronto Standard Condominium Corporation No. 2820
Statement of General Operations and Changes in Fund Balance
From the commencement of operations on November 26, 2020 to November 30, 2021

	Budget 2021 <i>(Note 6)</i>	2021
REVENUE		
Common element fees	\$ 162,862	\$ 165,123
Declarant subsidy for performance audit, reserve fund study and insurance appraisal	14,000	14,000
Allocation to reserve fund	(26,420)	(26,787)
Sundry income	-	50
	150,442	152,386
EXPENDITURES, Pages 11 to 12		
Utilities	40,200	50,557
Contract services	51,762	60,093
General and administrative	36,020	47,086
Repairs and maintenance	22,460	31,508
	150,442	189,244
Excess of Expenditures over Revenue Balance, End of Period (Note 5)	\$ -	\$ (36,858)

The accompanying notes are an integral part of these financial statements.

Toronto Standard Condominium Corporation No. 2820
Statement of Reserve Operations and Changes in Fund Balance
From the commencement of operations on November 26, 2020 to November 30, 2021

2021

REVENUE

Allocation from common element fees	\$ 26,787
Excess of Revenue over Expenditures Balance, End of Period	\$ 26,787

The accompanying notes are an integral part of these financial statements.

Toronto Standard Condominium Corporation No. 2820

Statement of Cash Flows

From the commencement of operations on November 26, 2020 to November 30, 2021

2021

Cash provided by (used in) operating activities

Excess (deficiency) of revenue over expenses	
Operating fund	\$ (36,858)
Reserve fund	26,787
Changes in	
Common element fees receivable	(582)
Sundry receivables	(1,543)
Prepaid expenses	(3,408)
Accounts payable and accrued liabilities	38,085
Due to Developer	2,571

Net Increase in Cash 25,052

Cash, Beginning of the Period -

Cash, End of the Period \$ 25,052

Cash consists of:

Cash, General fund	\$ 5,071
Cash, Reserve fund	19,981
	\$ 25,052

The accompanying notes are an integral part of these financial statements.

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820

Notes to the Financial Statements

November 30, 2021

1. OPERATIONS

Toronto Standard Condominium Corporation No. 2820 (the "Corporation") was registered in Ontario without share capital on November 26, 2020 under The Condominium Act, 1998 and is a not-for-profit organization that is exempt from taxes under the Income Tax Act.

The purpose of the Corporation is to manage and maintain the common elements (as defined in the Corporation's declaration and by-laws) and to provide common services for the benefit of the owners of the 25 units of the complex.

2. SIGNIFICANT ACCOUNTING POLICIES

These financial statements have been prepared in accordance with Canadian accounting standards for not-for-profit organizations and are in accordance with Canadian generally accepted accounting principles, which are applicable to Ontario Condominium Corporations and Shared Facilities. The significant policies are as follows:

a) Fund Accounting

The general fund is an unrestricted fund which reports common element fees from owners, budgeted allocations of those fees to other funds and expenses related to the operations and administration of the common elements.

The reserve fund is an externally restricted fund which was established as a requirement by the Condominium Act, 1998 to be used solely for the purpose of major repair and replacement of common elements and assets of the Corporation. The basis for determining the reserve fund's requirements is explained in Note 4. The Corporation segregates amounts accumulated for the purpose of financing future charges to the reserve fund in bank and investment accounts that must be used to solely finance such charges.

b) Common Elements

The common elements of the Corporation are owned proportionately by the unit owners and consequently are not reflected as assets in these financial statements.

c) Transfers

Transfers between funds that are not included in the annual budget, or which are in excess of budgeted amounts, are not recorded in the operating section of the fund, rather they are included in the related fund statement as additions or deductions, as applicable.

d) Financial Instruments

All assets and liabilities, with the exception of prepaid expenses, are financial instruments, and are initially recorded at fair market value and are subsequently recorded at amortized cost.

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820

Notes to the Financial Statements

November 30, 2021

2. SIGNIFICANT ACCOUNTING POLICIES (continued)

e) Use of Estimates

The preparation of financial statements in accordance with Canadian accounting standards for not-for-profit organizations requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Significant estimates include those used when accounting for accounts payable, accrued liabilities and due to developer and the determination of the adequacy of the reserve fund and the current addition to the fund. Actual results could differ from management's best estimates as additional information becomes available in the future.

f) Revenue Recognition

Common element fees are recognized as revenue monthly in the statement of general operations based on the budget distributed to owners each year.

Interest and other revenue are recognized as revenue of the related fund when earned.

g) Contributed Services

Directors, committee members and owners volunteer their time to assist in the Corporation's activities. While their services benefit the Corporation considerably, a reasonable estimate of their amount and fair value cannot be made and, accordingly, these contributed services are not recognized in these financial statements.

3. RESERVE FUND CASH

The amount is held in an interest bearing bank account with a Canadian chartered bank.

4. RESERVE FUND

The Corporation, as required by the Condominium Act, 1998 (the "Act"), has established a reserve fund for financing future major repairs and replacements of the common elements and assets. The Act also stipulates that an initial reserve fund study be prepared and an approved funding plan be in place within the first year after registration. The Corporation has not completed its initial reserve fund study nor its approved funding plan.

The Board of Directors has engaged Cion|Coulter to prepare a comprehensive reserve fund study to assist them in assessing the adequacy of the reserve fund.

Any evaluation of the adequacy of the reserve fund is based upon assumptions as to the future interest and inflation rates and estimates of the life expectancy of the building components and their replacement costs. These factors are subject to change over time and the changes may be material; accordingly, the Act requires that reserve fund studies be updated every three years.

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820

Notes to the Financial Statements

November 30, 2021

5. FIRST YEAR'S OPERATING DEFICIT

Pursuant to the Condominium Act, the first year's operating deficit, which amounted to approximately \$36,858, is recoverable from the Developer. These financial statements do not reflect the amount recoverable from the Developer, as there are uncertainties as to the measurement of the ultimate recovery. The ultimate amount recoverable will be reflected in the financial statements upon final settlement with the Developer.

6. BUDGET

The budgeted figures, which are presented for comparison purposes only, are unaudited and are those provided by the Declarant which cover the first year of operation of the Corporation after registration.

7. CONTRACTUAL OBLIGATIONS

The Corporation has entered into contracts with various third parties to provide certain services to manage and maintain the common elements.

8. RELATED PARTY TRANSACTIONS

During the period, the Board of Directors did not receive remuneration nor have an interest in any transactions of the Corporation.

Management is reimbursed for certain administrative costs and paid a monthly management fee by the Corporation, and collects fees from owners, purchasers and others for issuing lien notices and status certificates. These transactions were in the normal course of operations and were measured at the exchange amount.

9. FINANCIAL INSTRUMENTS - RISK MANAGEMENT

Credit risk

Credit risk is the risk of financial loss should a counter-party in a transaction fail to meet its obligations. The Corporation places its operating and reserve cash with high credit quality institutions and believes its exposure to this risk is not significant.

The Corporation is also exposed to credit risk on common element fees receivable and membership service fees receivable from the unit owners. In order to reduce its credit risk, the Corporation regularly reviews overdue fees and registers liens on any amounts that are outstanding greater than 90 days. In addition, there is limited financial exposure due to the large number of unit owners.

Liquidity risk

Liquidity risk is the risk that the Corporation will not be able to meet its obligations as they become due. The Corporation manages this risk by setting common element fees at a level which ensures that the Corporation has sufficient cash available to pay the day to day operating costs, to fund the reserve fund in accordance with the Corporation's funding plan, and to fund all other funds, as required.

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820

Notes to the Financial Statements

November 30, 2021

10. UNCERTAINTY REGARDING COVID-19

The economy of the Province of Ontario has been significantly impacted by the world-wide coronavirus (COVID-19) pandemic. The duration of this pandemic and the related financial effect on the Corporation's future operations and cash flows cannot be reasonably estimated at this time. The Board of Directors will continue to monitor the situation and reflect the impact in the financial statements as appropriate.

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820

Schedule of General Fund Expenditures

From the commencement of operations on November 26, 2020 to November 30, 2021

	Budget 2021 (Note 6)	2021
Utilities		
Hydro	\$ 14,400	\$ 27,407
Water	12,000	11,520
Gas	13,800	11,630
	<hr/>	<hr/>
	\$ 40,200	\$ 50,557
Contract services		
Stackers	\$ 9,900	\$ 2,517
Heating, ventilation and air conditioning	11,198	11,347
Elevators	3,164	4,592
Garage cleaning	1,200	-
Landscaping and snow removal	5,500	3,693
Management fees	-	26,466
Cleaners	20,800	11,478
	<hr/>	<hr/>
	\$ 51,762	\$ 60,093
General and administrative		
Telephone	\$ 5,400	\$ 2,451
Insurance	13,500	23,535
Office and general	600	230
Legal fees	600	123
Audit fees	2,400	3,616
Bank charges	720	1,437
Meeting costs	300	475
Condominium Authority of Ontario fees	-	303
Performance audit and Reserve fund study	12,500	14,916
	<hr/>	<hr/>
	\$ 36,020	\$ 47,086

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820**Schedule of General Fund Expenditures****From the commencement of operations on November 26, 2020 to November 30, 2021**

	Budget 2021	2021
	(Note 6)	
Repairs and maintenance		
Electrical	\$ 300	\$ 1,745
Elevator, non-contract	360	1,203
Fire safety, non-contract	3,300	7,358
General	2,250	6,844
Heating, ventilation and air conditioning, non-contract	300	5,296
Life safety systems	3,600	4,226
Party room	2,600	-
Pest control	400	147
Plumbing	750	1,402
Waste disposal	3,600	3,287
Window cleaning	5,000	-
	\$ 22,460	\$ 31,508

CONDOMINIUM MANAGEMENT AGREEMENT

THIS AGREEMENT made this 28th day of November 2020

BETWEEN:

Toronto Standard Condominium Corporation No. 2820
 (hereinafter called "Corporation")

OF THE FIRST PART

-and-

Summa Property Management Inc.
 (hereinafter called the "Manager")

OF THE SECOND PART

WHEREAS the Corporation has been created pursuant to the *Condominium Act, 1998*, S.O. 1998, c.19 and regulations made thereunder (collectively referred to as "Act") and is located at 850 Richmond St. W. (the "Property").

AND WHEREAS the Corporation desires the Manager to manage the Property and assets of the Corporation, and the Manager desires to do so in accordance with the terms and conditions of this agreement (the "Agreement").

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the promises and the mutual covenants and agreements herein contained and other valuable consideration, the Corporation appoints the Manager and the Manager hereby accepts such appointment to be the exclusive Manager of the Property and the assets of the Corporation on the terms and conditions hereinafter set forth.

ARTICLE 1 NOMENCLATURE

1.1 Unless a contrary intent is expressed in this Agreement, the terms used herein shall have ascribed to them the meanings contained in the Act. Any reference to the Declaration, the By-laws, the Rules or the Reciprocal Agreement (if any) is a reference to the applicable document of the Corporation and any reference to any such document or to the Act shall be deemed to include, at any given time, reference to all amendments thereto and substitutions thereof up to that time. Headings are for convenience only and shall not affect the interpretation of this Agreement.

ARTICLE 2 TERM

2.1 The Corporation hereby appoints the Manager to be its sole and exclusive representative and managing agent (subject to the overall control of the Corporation and to the specific provisions hereof) to manage the Property for a period of one (1) year commencing on November 28, 2020 the "**Commencement Date**", unless terminated in accordance with Article 15 herein, and for the purpose thereof, to act in the name of the Corporation in the carrying out of the duties of the Manager as herein set out. If the term of this Agreement expires, this Agreement shall be deemed to have been extended from month to month and the Corporation shall compensate the Manager upon the same terms and conditions save and except for a 3% increase or as the agreed upon updated budget states as herein contained and either party herein may terminate the monthly extension of this Agreement upon giving two (2) months' notice in writing to the other party.

ARTICLE 3 SUPERVISION BY THE BOARD

3.1 The Manager acknowledges that it is familiar with the Act, the Declaration, the By-laws and the Rules of the Corporation, as well as any agreements to which the Corporation is a party

IN WITNESS WHEREOF the parties hereto have hereunto affixed their respective corporate seals,
attested by the hands of their respective officers duly authorized in that behalf, this 5
day of May, 2020.

Summa Property Management Inc.

Per:

Name:

Title:

I/We have authority to bind the corporation.

Toronto Standard Condominium Corporation No. 2820

Per:

Name:

Title: President

Per:

Name:

Title: Secretary

I/We have authority to bind the corporation.

EXHIBIT

J

CABIN TORONTO

Homeowner Manual 2019

CUR
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PROPERTIES

www.curatedproperties.ca

Welcome to your Curated Properties built home

The team at Curated Properties would like to extend their best wishes as you move into your new home. Should you have any questions during the move, or after, please feel free to contact the Curated team using our service email

Service Email: service@curatedproperties.com

WATER & SEWER	1
TEMPORARY PARKING	1
PERMANENT PARKING	1
WATER & SEWER	1
Cards, Telephone & Internet	1
Local Electricity (Eversource)	1
Gas	1
Landscaping	1
Landscaping & Irrigation System	1
Appliances	1
Major Appliances	1
Garage & Parking	1
Cooling	1
Plumbing Systems	1
Windows	1
Concretes & Stone Surfaces	1
Mosaic Backsplashes	1
Cabinetry	1
Customized Cabinetry	1
Kitchen Features	1
Electrical	1
Walls	1
Windows	1

INTRODUCTION TO YOUR HOME

For the first 8 months of your occupancy the property (common areas & suites) is managed by Curated Properties. After this 8-month period management will be transferred over to a designated property management company.

The Curated Properties office phone line can be reached at 416-214-0303. Please leave a detailed message should we miss your call. Alternatively, you may contact service@curatedproperties.com with any inquiries. All service related inquiries & appointments should be communicated in writing to our email address.

Mailing Address
Your Suite # - 45 Dovercourt Road
Toronto, ON
M6J 3C2



Property Address:

45 DOVERCOURT ROAD, TORONTO, ON M6J 3C2

Move Related Inquiries:

Move-in Dates:

Move-in dates are scheduled in three week intervals. As a courtesy to other tenants please try to bring the date of your appointment this.

Any dates which overlap (e.g. you would like to, as well as, visit this property during the same day) or days

Monday - Sunday

Area - 416-214-0303 - www.curatedproperties.com

GARBAGE & RECYCLING

All garbage and recycling is to be placed in the designated room on the ground floor, please place waste in the appropriate bins.

As a courtesy to other homeowners please refrain from leaving garbage/recycling in hallways

AMENITY SPACE

At completion, the amenity space will be located on the basement level of the building. Please contact management for a tour of this space, more information, or booking.

LOCKERS

Suite owners who have purchased lockers will find them on the basement level of the building. When available, your locker number and key will be given to you by a member of the Curated team.

BICYCLE ROOM

Bicycle storage is offered in the basement level of the building. The key or access code to this room is available from a member of the Curated team.

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820

MINUTES of the Special General Meeting of the Owners of TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820 held at 4100 Yonge Street, Suite 610, Toronto, Ontario M2P 2B5 on December 5, 2020 at 10:00 a.m.

OPENING OF MEETING

The President of the Corporation acted as Chairman and the Secretary acted as Recording Secretary to the meeting. All the Owners of the Corporation being present in person or represented by proxy, and the proper Notice having been sent in accordance with the requirements of the *Condominium Act* 1998, the meeting was declared to be regularly constituted and open for the conducting of the business affairs of the Corporation.

CONFIRMATION OF BY-LAW NUMBER 1

The Chairman presented to the meeting a copy of By-law Number 1 of the Corporation that was duly approved and passed by the Board of Directors by a resolution dated December 5, 2020. ON MOTION DULY MADE, seconded and unanimously carried, it was resolved that By-law Number 1 be and it is hereby confirmed. The Chairman declared that By-law Number 1 has been confirmed pursuant to Section 56 and directed that the Secretary proceed with the registration of the By-law.

CONFIRMATION OF BY-LAW NUMBER 2

The Chairman presented to the meeting a copy of By-law Number 2 of the Corporation that was duly approved and passed by the Board of Directors by a resolution dated December 5, 2020. ON MOTION DULY MADE, seconded and unanimously carried, it was resolved that By-law Number 2 be and it is hereby confirmed. The Chairman declared that By-law Number 2 has been confirmed pursuant to Section 56 and directed that the Secretary proceed with the registration of the By-law.

APPOINTMENT OF AUDITORS

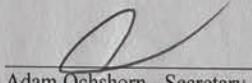
ON MOTION DULY MADE, seconded and unanimously carried, it was resolved that _____, Chartered Accountants will be and are hereby appointed Auditors of the Corporation to hold office until the next Annual General Meeting of Owners or until its successors are appointed at a remuneration to be fixed and authorized by the Directors.

EASEMENTS

ON MOTION DULY MADE, seconded and unanimously carried, it was resolved that the Corporation be and is hereby authorized along with the Owners of all Units to grant an easement or licence to any supplier of a utility service to the Corporation whether private or public for the purpose of entering onto the common elements or Units to install and service their utility system.

ADJOURNMENT

There being no further business to conduct, the meeting was adjourned.



Adam Ochshorn - Secretary

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820

RESOLUTION of the Board of Directors of TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820 held at 4100 Yonge Street, Suite 610, Toronto, Ontario, M2P 2B5 on December 5, 2020.

The following resolutions are hereby adopted by the Board of Directors.

ELECTION AND APPOINTMENT OF OFFICERS

BE IT RESOLVED THAT the following persons be and they are hereby elected or appointed Officers of the Corporation:

Gary Eisen	- President
Lucas Eisen	- Treasurer
Adam Ochshorn	- Secretary

BY-LAW NUMBER 1

BE IT RESOLVED THAT By-law Number 1 be made a By-law of the Corporation and the President and the Secretary of the Corporation be authorized to sign same and seal same with the seal of the Corporation, and the President and the Secretary were further authorized and directed to do, sign and execute all things, deeds and documents necessary or desirable for the purpose of affecting registration of the said By-law Number 1 under the *Condominium Act* 1998 after the By-law has been confirmed by the Owners. The Chairman directed that the said By-law Number 1 when so confirmed and registered be inserted in the records of the Corporation.

BY-LAW NUMBER 2

BE IT RESOLVED THAT By-law Number 2 be made a By-law of the Corporation and the President and the Secretary of the Corporation be authorized to sign same and seal same with the seal of the Corporation, and the President and the Secretary were further authorized and directed to do, sign and execute all things, deeds and documents necessary or desirable for the purpose of affecting registration of the said By-law Number 2 under the *Condominium Act* 1998 after the By-law has been confirmed by the Owners. The Chairman directed that the said By-law Number 2 when so confirmed and registered be inserted in the records of the Corporation.

MAINTENANCE CONTRACTS

BE IT RESOLVED THAT various Service and Maintenance Agreements be approved and adopted and that the President and the Secretary of the Corporation be and are hereby authorized to sign same on behalf of the Corporation and affix thereto the corporate seal of the Corporation.

ANNUAL OPERATING BUDGET

BE IT RESOLVED THAT the proposed Operating Budget contained in the Disclosure Statement be adopted and approved.

MANAGEMENT AGREEMENT

BE IT RESOLVED THAT the Corporation enter into a Condominium Management Agreement for the period commencing on the date of registration of the Declaration and terminating on the terms and conditions more particularly set out in the said draft agreement, a copy of which was directed to be inserted in the Minute Book of the Corporation.

SUBMETERING AGREEMENTS

BE IT RESOLVED THAT the Corporation enter into Sub-metering Services Agreements (if applicable) in respect of the provision of sub-metering services for water and for electricity, and that same be approved and adopted, copies of which are directed to be inserted in the Minute Book of the Corporation.

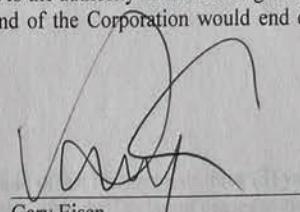
RESERVE FUND STUDY

BE IT RESOLVED THAT _____ be retained to prepare a Reserve Fund Study as provided for in the Disclosure Statement.

FISCAL YEAR END

BE IT RESOLVED THAT pursuant to the authority of the Board granted in Article IX of the By-law Number 1 the financial year-end of the Corporation would end on the last day of October in each year.

Dated the 5th day of December, 2020.


Gary Eisen


Lucas Eisen


Adam Ochshorn

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820

APPOINTMENT OF DIRECTORS

APPOINTMENT OF DIRECTORS

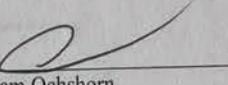
In accordance with Subsection 42(1) of the *Condominium Act 1998*, S.O. 1998, c.19 the Declarant hereby appoints:

Gary Eisen
Lucas Eisen
Adam Ochshorn

as Directors of the Corporation to each hold office for a term of three (3) years or until a meeting of the owners is held to elect new Directors after the Declarant ceases to be the registered owner of a majority of units.

Dated the 5th day of December, 2020.

CURATED CABIN INC.

Per: 
Name: Adam Ochshorn
Title: Authorized Signing Officer

I have the authority to bind the Corporation.

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820
(the "Condominium Corporation")

NOTICE OF THE DECLARANT

ANTICIPATED DATE OF TRANSFER OF MAJORITY OF UNITS

In accordance with Subsection 6.1(2) of Ontario Regulation 48/01 of the *Condominium Act, 1998*, the Declarant hereby provides written notice to the first Board of Directors of the Condominium Corporation that the date on which the Declarant anticipates it will cease to be the registered owner of the majority of units in Toronto Standard Condominium Plan No. 2820 is January 6, 2021.

DATED as of the 5th day of December, 2020.

CURATED CABIN INC.

Per: _____
Name: Adam Ochshorn
Title: Authorized Signing Officer

I have authority to bind the Corporation.

M:\20\200906\Turnover\Notice of the Declarant - Anticipated Transfer of 50% of Units.doc

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820
(the "Condominium Corporation")

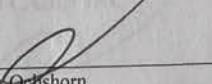
NOTICE OF THE DECLARANT

TRANSFER OF MAJORITY OF UNITS

In accordance with Subsection 6.1(1) of Ontario Regulation 48/01 of the *Condominium Act, 1998*, the Declarant hereby provides written notice to the first Board of Directors of the Condominium Corporation that the date on which the Declarant ceased to be the registered owner of the majority of units on Toronto Standard Condominium Plan No. 2820 was January 6, 2021.

DATED as of the 12th day of January, 2021.

CURATED CABIN INC.

Per: 
Name: Adam Orlishorn
Title: Authorized Signing Officer

I have authority to bind the Corporation.

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TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2820
(the "Condominium Corporation")

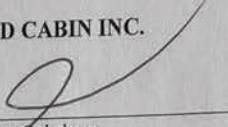
NOTICE OF THE DECLARANT

FIRST TRANSFER OF A UNIT

In accordance with Subsection 6.1(1) of Ontario Regulation 48/01 of the *Condominium Act, 1998*, the Declarant hereby provides written notice to the first Board of Directors of the Condominium Corporation that the date on which the first unit on Toronto Standard Condominium Plan No. 2820 was transferred was January 6, 2021.

DATED as of the 7th day of January, 2021.

CURATED CABIN INC.

Per: 
Name: Adam Ochshorn
Title: Authorized Signing Officer

I have authority to bind the Corporation.

M:\20\200906\Turnover\Notice of the Declarant - First Unit Transfer.doc

CONDOMINIUM MANAGEMENT AGREEMENT

THIS AGREEMENT made this 22nd day of June, 2020
BETWEEN:

CURATED PROPERTIES
(hereinafter called "Corporation or Developer")

OF THE FIRST PART

-and-

Summa Property Management Inc.
(hereinafter called the "Manager")

OF THE SECOND PART

WHEREAS the Corporation has been created pursuant to the *Condominium Act, 1998*, S.O. 1998, c.19 and regulations made thereunder (collectively referred to as "Act") and is located at 45 DOVERCOURT AVE. TORONTO, ON. (the "Property").

AND WHEREAS the Corporation desires the Manager to manage the Property and the Manager desires to do so in accordance with the terms and conditions of this agreement (the "Agreement").

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the promises and the mutual covenants and agreements herein contained and other valuable consideration, the Corporation appoints the Manager and the Manager hereby accepts such appointment to be the exclusive Manager of the Property on the terms and conditions hereinafter set forth.

ARTICLE 1 NOMENCLATURE

- 1.1 Unless a contrary intent is expressed in this Agreement, the terms used herein shall have ascribed to them the meanings contained in the Act. Any reference to the Declaration, the By-laws, the Rules or the Reciprocal Agreement (if any) is a reference to the applicable document of the Corporation and any reference to any such document or to the Act shall be deemed to include, at any given time, reference to all amendments thereto and substitutions thereof up to that time. Headings are for convenience only and shall not affect the interpretation of this Agreement.

ARTICLE 2 TERM

- 2.1 The Corporation hereby appoints the Manager to be its sole and exclusive representative and managing agent (subject to the overall control of the Corporation and to the specific provisions hereof) to manage the Property for a period of one (1) year and five (5) days commencing on June 26, 2020 the "**Commencement Date**"), unless terminated in accordance with Article 15 herein, and for the purpose thereof, to act in the name of the

Corporation in the carrying out of the duties of the Manager as herein set out. If the term of this Agreement expires, this Agreement shall be deemed to have been extended automatically for another year term in accordance with Article 15.2 herein. At an agreed upon increase but no less than 3%.

ARTICLE 3 SUPERVISION BY THE BOARD / DEVELOPER

- 3.1 The Manager acknowledges that it has been provided with the Declaration, the By-laws, and the Rules of the Corporation, as well as any agreements to which the Corporation is a party to. The Manager also acknowledges that it is familiar with the Condominium Management Services Act (the “CMSA”) and the requirements for manager licensing.
- 3.2 With respect to commitments binding upon the Corporation, the Manager is an independent contractor, except as that relationship may be changed to that of an agent pursuant to a valid resolution of the Board or under the express terms and conditions of this Agreement, but not until the Manager has received evidence in writing of any change in its legal relationship. All contracts of the Corporation shall be executed by an authorized signing officer (or officers) of the Corporation as required by the by-laws, unless there is an emergency(in accordance with Article 6.1 (c)) or unless the Manager is specifically directed by a resolution of the Developer to execute contracts on behalf of the Corporation. Without permission of the Board, the Manager shall not enter into any contract longer than the term of this Agreement.

ARTICLE 4 MANAGEMENT ASSISTANCE AND DUTIES

- 4.1 The Manager represents it has and shall utilize its experience and knowledge to carry out the management, supervisions, control, and administration of the Property. In this regard, the Manager accepts the relationship of trust and confidence established between itself, the Officers, and the Owners by entering into this Agreement. The Manager covenants to furnish its best skill and judgment and to co-operate in furthering the interests of the Corporation. The Manager agrees to furnish efficient business administration and supervision and to perform its responsibilities, both, administrative, financial and advisory, in the best manner, consistent with effective management techniques and in the most expeditious and economical manner consistent with the best interests of the Corporation. The Manager shall conduct its duties in accordance with the requirements of the Act, the Declaration, By-laws and the Rules of the Corporation specifically, and, in general, consistent with Federal, Provincial and Municipal laws and regulations as they pertain to the operation of the Corporation and of the Property.
- 4.2 Without limiting the generality of subparagraph 4.1 herein, the Manager shall perform the following specific duties, subject to the direction of the Officers.
 - (i) General Maintenance and Repairs

To repair and maintain or cause to be repaired and maintained, those parts of the Property which require repair and maintenance by the Corporation in accordance with the provisions of the Act, the Declaration and the By-laws, and, without limiting the generality of the foregoing to arrange for the supply

18.1 This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto, provided always that this contract may only be assigned with the express written consent of the Corporation.

For the purposes of this paragraph, a sale or disposition of the shares, business, or assets of the Manager to another person, resulting in a change of control of the Manager shall be deemed to be an assignment of this Agreement requiring the express written consent of the Corporation.

The Manager shall be allowed to post a sign in a location that is approved by the board of directors promoting the management company managing the said Corporation. The size and exact location of the sign shall be mutually agreed to by the Board of directors and the property management company. If the sign cannot be agreed to acting reasonably by each party, then the Manager shall not place a sign at the property.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their respective corporate seals, attested by the hands of their respective officers duly authorized in that behalf, this _____ day of _____, 2020.

Summa Property Management Inc.

Per:

Name:

Title:

I/We have authority to bind the corporation.

Curated Properties

Per:

Name: ADAM OCHSHORN

Title: PRINCIPAL

Per:

Name: GARY EISEN

Title: PRINCIPAL

I/We have authority to bind the corporation.

From: Matt Lamson <mlamson@summapm.com>
Date: Fri, May 20, 2022 at 1:21 PM
Subject: TSCC 2820 Audited Financial Statements 2021
To: Neeraj Seth <neeraj.seth@upaknee.com>, Jad <jerceg@rogers.com>
Cc: Ryan Stone <propman@summapm.com>, Joseph <joseph@summapm.com>, Julia Scutella <admin@summapm.com>, Adam Ochshorn <adam@curatedproperties.com>, Kathy Benner <kathy@curatedproperties.com>, Donna Liu <dliu@donnaliucpa.ca>

Hi All,

Please find attached the audit for the fiscal year ending Nov 30, 2021; the first year of the new corporation.

I have reviewed and it looks good.

- Note that this audit is not 100% final, as we are still waiting on possible bills from the City of Toronto for wastewater (due to the meter issue), and also the water bill for the fire pump.
- As noted in the auditor's letter, the reserve fund is technically short funded, as discussed with the Board this is due to recoding of some expenses and cash flow issues.
- Also the reserve fund study had not been completed at the time the audit was done, as the Board is aware it is nearly done, as we have been reviewing drafts and should be finalized soon.

The first year deficit due from the developer at this time per these statements is \$36,858.76, minus the amount due to them (for prepaid expenses) of \$2,571.07 = \$34,287.69. Could Curated please review the statements and advise if you have any questions. We can provide a detailed list of expenses. And as the corporation's cash flow is quite poor, we respectfully request expedited payment of this amount.

Please let me know if you have any questions.

Thanks, Matt.

M Matt Lamson
Can Curated please advise when we might receive a cheque? Thu, Jun 23, 2022, 9:04 AM

M Matt Lamson <m.lamson@summapm.com>
to Matt, me, Jad, Ryan, Joseph, Julia, Adam, Kathy, Donna Fri, Jun 10, 2022, 1:03 PM

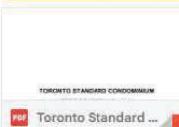
Can Curated please advise if they have reviewed the 1st year audit and when we might expect a cheque for the deficit?

Thanks, Matt.

...

One attachment • Scanned by Gmail ⓘ

⚠ Encrypted attachment warning Be careful with this attachment. This message contains 1 encrypted attachment that can't be scanned for malicious content. Avoid downloading it unless you know the sender and are confident that this email is legitimate.



M Matt Lamson <m.lamson@summapm.com>
to me, Jad, Ryan, Joseph, Julia, Adam, Kathy, Donna Fri, May 20, 2022, 1:21PM

Hi All,

Please find attached the audit for the fiscal year ending Nov 30, 2021; the first year of the new corporation.
I have reviewed and it looks good.

- Note that this audit is not 100% final, as we are still waiting on possible bills from the City of Toronto for wastewater (due to the meter issue), and also the water bill for the fire pump.
- As noted in the auditor's letter, the reserve fund is technically short funded, as discussed with the Board this is due to recoding of some expenses and cash flow issues.
- Also the reserve fund study had not been completed at the time the audit was done, as the Board is aware it is nearly done, as we have been reviewing drafts and should be finalized soon.

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Please let me know if you have any questions.

M Matt Lamson
Hi Adam, Any questions so far?

Jul 26, 2022, 3:08 PM

a Adam Ochshorn <adam@curatedproperties.com>
to Matt, Donna, Jad, Joseph, Julia, Kathy, Matt, me, Ryan ▾
Mon, Jul 11, 2022, 10:27 AM

Thanks Matt, are reviewing and will be back to you

—
Adam Ochshorn | Curated Properties
Toronto Life Real Estate Issue 2018 | Top 10 Condos Where To Live Now | CABIN and The Plant | BILD Awards 2018 High Rise Condo of the Year - The Plant

**CUR
ATED**

IMPROVING WELLNESS THROUGH BETTER DESIGN

M Matt Lamson <m.lamson@summapm.com>
to Julia, Adam, Kathy, Matt, me, Jad, Ryan, Joseph, Donna ▾
Hi Adam,

Jul 7, 2022, 4:36 PM

Can you please advise if you have any questions regarding the first year audit of TSCC 2020, if you do perhaps we should arrange a meeting to discuss? Otherwise please arrange to make a cheque payable to TSCC 2020 in the amount of \$34,287.69 as we are now more than 30 days since you have been notified of the deficit amount.

Matt.

From: Matt Lamson
Sent: Thursday, June 23, 2022 9:05 AM

 Matt Eisen <matthew@curatedproperties.com>

to Matt, Adam, Donna, Jad, Joseph, Julia, Kathy, me, Ryan ▾

Jul 27, 2022, 12:47 PM



We have had the statement reviewed by our lawyer and there is a management fee of \$26,466 shown. In the condo docs the project is listed as self managed and there is no fine item in the budget for a management fee. Curated is not responsible for the additional charge and is only liable for the overages on the first year operating expenses. Curated is willing to pay a total of \$7821.89 for the overages and will not be covering a 3rd party management charge. Please let me know if you have any questions and we can determine how to proceed. Thank you

OVERVIEW OF CURATED'S DELAYS AND UNREASONABLE CONDUCT

This document contains excerpts of email communications related to this matter; each excerpt confirms the sender, recipient and date/time the email was sent. TSCC 2820 adduces these excerpts as true copies of the communications and confirms it has not edited any the excerpts, save and except for formatting purposes; for further clarity, the content/discussions in the excerpts have not been changed.

TSCC 2820 further submits that this document be accepted as one document under the Expedited Arbitration Rules. This document encompasses “a series of connected documents” as contemplated by Rule 8 (a) (ii). The defined terms in this document are as defined in TSCC 2820’s Written Memorandum.

Written Notice re: Deficit

- **May 20, 2022:** TSCC 2820 delivers the Written Notice. Per Section 75 (6) of the Act, Curated must pay the Deficit within 30 days (i.e. June 20, 2022).
- **June 10, 2022:** Curated does not respond; TSCC 2820 follows up.

Matt Lamson <mlamson@summapm.com>
to Matt, me, Jad, Ryan, Joseph, Julia, Adam, Kathy, Donna
Fri, Jun 10, 2022, 1:03 PM

Can Curated please advise if they have reviewed the 1st year audit and when we might expect a cheque for the deficit?
Thanks, Matt.

- **June 20, 2022:** Curated does not respond.
- **July 7, 2022:** TSCC 2820 follows up; **July 11, 2022:** Curated advised it is reviewing the matter with its lawyers.

a Adam Ochshorn <adam@curatedproperties.com>
to Matt, Donna, Jad, Joseph, Julia, Kathy, Matt, me, Ryan
Mon, Jul 11, 2022, 10:27 AM

Thanks Matt, are reviewing and will be back to you

Adam Ochshorn Curated Properties
Toronto Life Real Estate Issue 2018 | Top 10 Condos Where To Live Now | CABIN and The Plant | BILD Awards 2018 High Rise Condo of the Year - The Plant

CUR
ATED

IMPROVING WiFi IN FNESS THROUGH BETTER DESIGN

M Matt Lamson <mlamson@summapm.com>
to Julia, Adam, Kathy, Matt, me, Jad, Ryan, Joseph, Donna
Hi Adam,
Can you please advise if you have any questions regarding the first year audit of TSCC 2820. If you do perhaps we should arrange a meeting to discuss? Otherwise please arrange to make a cheque payable to TSCC 2820 in the amount of \$34,287.69 as we are now more than 30 days since you have been notified of the deficit amount.
Matt.

Mon, Jul 11, 2022, 10:27 AM

Jul 7, 2022, 4:36 PM

- **July 26, 2022:** Curated does not respond; TSCC 2820 follows up.

Matt Lamson Jul 26, 2022, 3:08 PM Hi Adam, Any questions so far?

- **July 27, 2022:** Curated responds; see Exhibit O.

Demands for Payment Before Application Is Issued

- **September 19, 2022:** Mr. Bui wrote to Curated demanding payment of Deficit by October 6, 2022; see Exhibit P.
- **October 5, 2022:** Mr. Tibollo responded to Mr. Bui disputing Mr. Bui's version of events re: Management Agreement. Mr. Tibollo suggests that the issue be addressed in Small Claims Court, without any explanation for these positions; see Exhibit Q.
- **October 6, 2022:** Curated does not pay.
- **November 4, 2022:** Mr. Bui wrote to Mr. Tibollo to provide a final November 10, 2022 deadline for Curated to pay Deficit, failing which TSCC 2820 would commence its Application. Mr. Tibollo was asked to confirm if he would accept service on behalf of Curated; see Exhibit R.
- **November 10, 2022:** Curated does not pay nor has Mr. Tibollo responded re: service.
- **November 18, 2022:** TSCC 2820's Application is issued.
- **December 7, 2022:** Curated is served with Application; **December 16, 2022:** Mr. Tibollo serves Notice of Appearance.

Mr. Bui Attempts to Confirm Procedure via Mediation/Arbitration

Mr. Tibollo Unresponsive to Requests to Confirm/Clarify Procedure

- **March 24, 2023:** Mr. Bui wrote to Mr. Tibollo to confirm if Curated would deal with Sections 75 and 133 via Mediation/Arbitration out of efficiency.

TB Tony Bui To ntibollo@tibollolaw.com Fri 3/24/23 9:16 AM

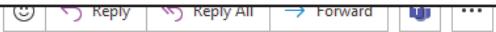
Hi Nicholas,

I tried calling you just now but could not reach you. Rather than play phone tag, I figure I would give you a sense of what I wanted to discuss.

If you recall, our client's application seeks relief under ss. 75 and 133 of the Condo Act for the same facts/issues. S. 75 matters are dealt with via mediation/arbitration under the Condo Act whereas s. 133 proceeds via application. Since the facts of this dispute encompass both ss. 75 and 133, our client commenced the application.

It occurred to us that it would be more efficient/economical for our respective clients if this entire dispute is dealt with in mediation/arbitration instead of bifurcating the two heads of relief. Would your client be agreeable?

- **March 24, 2023:** Mr. Tibollo advised he would get instructions; **April 3, 2023:** Mr. Bui received no response and follows up; Mr. Tibollo advised he is waiting for a response; **April 5, 2023:** Mr. Bui received no response and follows up; Mr. Tibollo advises he is off to Ottawa for a 7 day trial and will deal with matter on return.


 Nicholas C. Tibollo <ntibollo@tibollolaw.com>
 To: Tony Bui
 You replied to this message on 4/18/23 9:25 AM.
 Tony,
 I'm off to Ottawa for a 7 day trial.
 will deal with this upon my return.

- **April 18, 2023:** Mr. Bui received no response and followed up advising that TSCC 2820 will proceed with Application. Mr. Bui requests Mr. Tibollo's availability for a CPC attendance, requiring a response by April 21, 2023.
- **April 21, 2023:** Mr. Tibollo did not respond.
- **April 26, 2023:** Mr. Bui submitted requisition for CPC attendance for May 2, 3 or 9. Mr. Tibollo responded to advise he is only available on May 2. Court confirmed CPC attendance for May 2, 2023.


 Nicholas C. Tibollo <ntibollo@tibollolaw.com>
 To: Tony Bui
 You replied to this message on 4/27/23 2:21 PM.
 Sorry, I am available May 2 only.

- **May 1, 2023:** The day before the CPC attendance, Mr. Tibollo advised Curated would proceed with Mediation/Arbitration on a mutually agreed upon schedule; Mr. Bui asked Mr. Tibollo to clarify if Curated would mediate/arbitrate “all issues on the Application”.

On May 1, 2023, at 4:15 PM, Tony Bui <Tony.Bui@gmalaw.ca> wrote:
 Hi Nicholas,
 Sorry for missing your call. Unfortunately I'm tied up on an urgent item and won't be able to chat before tomorrow morning.
 On that note, can you clarify if your client agrees to mediate/arbitrate all issues in our client's application? If so, we can vacate tomorrow's CPC attendance provided we get an undertaking to proceed to mediation by June 21, 2023. We can work out the rest of the schedule/particulars around that date.
 Thanks,
 Tony

- **May 2, 2023:** Mr. Tibollo suggested TSCC 2820 abandon its Section 133 claims and proceed under Section 75 via Mediation. A timetable for Application obtained at CPC attendance; TSCC 2820 to serve Application Record by May 30, 2023.

 Nicholas Tibollo <ntibollo@tibollolaw.com>
 To Tony Bui
 I'm waiting as well.
 I've looked at your NOA. Why not abandon s. 133 and proceed under s. 75. We will mediate. The "damages" are the same.

Tue 5/02/23 9:17 AM

- **May 30, 2023:** Mr. Bui served Application Record on Mr. Tibollo; a Notice of Mediation under Section 75 of the Act is also served.
- **June 7, 2023:** Mr. Tibollo confirmed “instructions to merge the Mediation issue with the Application”; **June 8, 2023:** Mr. Bui asked Mr. Tibollo to clarify this position.

 To Tony Bui
 You replied to this message on 6/08/23 11:28 AM.
 Tony,
 We had an exchange on this previously.
 I have instructions to merge the Mediation issue with the Application.
 Are we in agreement?
 Kindly let me know.

Wed 6/07/23 12:49 PM

 Tony Bui
 To ntibollo@tibollolaw.com
 Nicholas,
 I asked for clarification on whether your client was prepared to deal with all issues in the application in mediation/arbitration. Your response was that our client should abandon its claims under s. 133 and we could proceed with s. 75 in mediation/arbitration. You maintained this position at the CPC attendance on May 2, 2023. As such, we advised that our client would not prejudice itself if your client would not deal with all issues at mediation/arbitration: we are proceeding with both mediation/arbitration and this application.
 Given the above, it is not clear what you mean when you say “*I have instructions to merge the Mediation issue with the Application*”. If you confirm your client will deal with the entirety of our client’s application via mediation/arbitration, I will confirm our client’s position but I am confident they remain agreeable.
 Regards,
 Tony

Thu 6/08/23 11:29 AM

- **June 12, 2023:** Mr. Tibollo confirmed all issues will be addressed via Mediation/Arbitration.

 Nicholas C. Tibollo <ntibollo@tibollolaw.com>
 To Tony Bui
 You replied to this message on 6/14/23 1:24 PM.
 Good morning Tony,
 We can have both issues proceed via mediation/arbitration.
 You will have to discontinue the Application.
 After you obtain instructions from your client, we should have a quick call to discuss and agree on what needs to happen.

Mon 6/12/23 8:55 AM

- **June 14, 2023:** Mr. Bui confirmed TSCC 2820 would agree in principle to discontinue Application upon the earlier of (a) full and final settlement and (b) a binding Arbitration agreement, and that it would suspend the Application timetable given Curated's agreement to mediate/arbitrate. Mr. Bui asked Mr. Tibollo to confirm if Curated was agreeable with these conditions.

To ntibollo@tibollolaw.com Wed 6/14/23 1:24 PM

Hi Nicholas,

We are prepared to deal with both issues via mediation/arbitration.

Our client is agreeable to discontinuing the Application, in principle: it will discontinue the Application upon the earlier of the parties (a) reaching a full and final settlement and (b) entering into a binding arbitration agreement on these issues. With respect to the court-ordered timetable, we can mutually agree to suspend the timetable until December 31, 2023 in light of the aforementioned events. As the application hearing is scheduled for August 2024, we will have ample time to agree on a revised timetable; failing which we can return to CPC.

If your client is agreeable, I am happy to chat.

Thanks,
Tony

Mediation Takes Place

- **June 20, 2023:** Mr. Tibollo and Mr. Bui scheduled a phone conversation; **June 21, 2023:** further to conversation, Mr. Bui served Amended Notice of Mediation to include Section 133 as an issue; the notice required Curated select a mediator by July 21, 2023.

To ntibollo@tibollolaw.com Wed 6/21/23 12:14 PM

 230621 Amended Mediation Notice.pdf 954 KB

Hi Nicholas,

Thanks for the call this morning. As discussed, here is our client's Amended Notice of Mediation adding the s. 133 issues.

With respect to the ongoing application, our client will agree to suspend any upcoming timetable deadlines until December 31, 2023. Provided that this matter is fully settled or a binding arbitration agreement is in place before December 31, 2023, it will also discontinue the application.

We look forward to your client's selection of a mediator by July 21, 2023.

Regards,
Tony

- **July 20, 2023:** The day before the July 21, 2023 deadline, Mr. Tibollo confirmed Curated selects Jeannette Bicknell as the mediator.

From: Nicholas C. Tibollo <ntibollo@tibollolaw.com>
Sent: Thursday, July 20, 2023 10:16 AM
To: Tony Bui <Tony.Bui@gmalaw.ca>
Subject: Re: Application Record - CV-22-00691022-0000 - TSCC #2820 v. Curated Cabin Inc

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Tony,

We will go with Jeanette Bicknell.

Let's have a call to discuss timing and next steps.

- **July 25, 2023:** Ms. Bicknell provided her availability.
- **July 27, 2023:** Mr. Bui called Mr. Tibollo at 10:30 AM to discuss Mediation logistics but could not reach him. Mr. Bui followed up via email to propose logistics and requested a response from Mr. Tibollo "at the earliest".

The screenshot shows an email conversation. On the left, Tony Bui's message is shown with a blue circular profile picture containing 'TB'. The message reads: "Nicholas, I couldn't reach you at 10:30 so I left a message. I just tried calling again but still can't get a hold of you. Rather than play phone tag, I propose we schedule a half-day Zoom mediation anywhere between the last week of August and the first week of September (except for any Mondays/Fridays). The costs will be split 50/50 between our clients as is customary. And unless the mediator has a preference for exchange of briefs, I suggest we exchange them a week before the mediation. Please let me hear from you at your earliest. Regards, Tony". On the right, Nicholas' response is shown with a green circular profile picture containing 'NT'. The message reads: "Hi Nicholas, That works. Let's do Thursday at 10:30 AM. I will give you a call." At the top of the email interface, there are standard Microsoft Office ribbon icons for file, home, insert, page layout, and more, along with a date indicator '7/27/23'.

From: Tony Bui
Sent: Monday, July 24, 2023 3:10 PM
To: ntibollo@tibollolaw.com
Subject: RE: Application Record - CV-22-00691022-0000 - TSCC #2820 v. Curated Cabin Inc

Hi Nicholas,

That works. Let's do Thursday at 10:30 AM. I will give you a call.

- **July 31, 2023:** Mr. Tibollo does not respond. Mr. Bui follows up with Mr. Tibollo.
- **August 1, 2023:** Mr. Tibollo confirmed a half-day Mediation via Zoom for August 22, 2023.
- **August 22, 2023:** Mediation occurs, but matter is not resolved.

Mr. Tibollo Unreasonably Delays Appointment of Arbitrator

- **September 27, 2023:** Mr. Bui served the Notice of Arbitration on Mr. Tibollo, requiring Curated's selection of arbitrator by October 11, 2023.
- **September 28, 2023:** Mr. Tibollo asked Mr. Bui to clarify involvement with proposed arbitrators and their rates; **September 29, 2023:** Mr. Bui responds to Mr. Tibollo.



Tony Bui
To 'ntibollo@tibollolaw.com'

Reply | Reply All | Forward | | ...
Fri 9/29/23 12:04 PM

WITHOUT PREJUDICE

Hi Nicholas,

We proposed those three arbitrators as all have experience with condominium law matters. The condo bar is small so we regularly see each other at industry conferences/events but I do not regularly communicate with any of them nor have I retained them for mediations, arbitrations or any other professional/personal matters; similarly, I have not accepted any referrals from them or referred any matters to them. And to the best of my knowledge, the same is true for the other lawyers at our firm.

In the interest of transparency, I also note that:

- I articled at Shibley Righton in 2018 but did not return. Armand Conant is a partner at Shibley Righton. I have acted opposite him on a few files but have no ongoing matters with him;
- Similarly, James Minns was a partner at Shibley Righton during my articling term. Around the conclusion of my articling term, James announced he was retiring from practice to become a mediator/arbitrator. I have not acted on any matters involving him; and
- Michael Clifton is the Vice-Chair of the Condominium Authority Tribunal. I have appeared before him on two occasions and he has both ruled in favour of and against my clients. He is also a practicing lawyer but I have not acted on any matters involving him, save for the above.

I do not have their rates off-hand but I can look into it.

Given the above, I do not believe there should be any concern that the proposed arbitrators are not qualified to arbitrate the matter or that they will do so unfairly. Let me know if you have any questions.

- October 3, 2023:** Mr. Tibollo requested Mr. Bui confirm proposed arbitrators' rates; Mr. Bui contacted arbitrators and receives response from all three but only receives rates from one arbitrator (James Minns).

A Armand.Conant <aconan@tibollolaw.com>
To Tony Bui
Cc Jennifer.Allison
 10/03/23

(i) You replied to this message on 10/11/23 12:46 PM.

Hi Tony.

Thanks for the email, and it was great to see you too.

Yes, I am taking appointments for both mediations and arbitrations and greatly appreciate you contacting me. I will send you my bio/resume and an overview of my rates.

All the best.

Armand

MC Michael Clifton <mclifton@ckleg.com>
To Tony Bui
 10/03/23

(i) You replied to this message on 10/11/23 12:45 PM.

Hi Tony,

No, no conflict based on the inquiry, and yes, I can still do private mediations and arbitrations.

I haven't got an up-to-date bio and rate card to send immediately (this year has seen a variety of changes at our firm and I have been distracted with other things), but I will put that together for you and send it soon.

Thanks for thinking of me. I'll be in touch again soon.

Regards,

Michael

JM James Minns <james@minnspc.ca>
To Tony Bui
 10/03/23

Hi Tony

Thank you for your email. It is nice to hear from you. I am continuing to work as a mediator/arbitrator, and I continue to do work in the condo and property sector. I have attached a copy of my CV and my current fee schedules for both mediation and arbitration work. Please let me know if I can be of service.

Congratulations on the move to Gardiner Miller Arnold LLP.

Best regards,

James Minns FCIArb., Q. Med., Q. Arb.

- October 12, 2023:** Mr. Tibollo followed up with Mr. Bui. Mr. Bui advised he was awaiting a response from other arbitrators (Michael Clifton and Armand Conant) but provided Mr. Minns' rates. Mr. Bui advised TSCC 2820 will not commence an Application to appoint the arbitrator given the circumstances. Mr. Tibollo was also asked to confirm if Curated will proceed via expedited/written Arbitration.

TB Tony Bui
To 'ntibollo@tibollolaw.com'
Thu 10/12/23 10:33 AM

Hi Nicholas,

My apologies for the delayed response. I reached out to the arbitrators and while they have gotten back to me, I am still waiting to get their updated rates. Only James Minns was able to confirm; see attached. In light of the above, we will not commence an application to appoint an arbitrator at this time. I anticipate we both want to avoid this and once we hear back from the other proposed arbitrators; in any event, I will provide notice if we need to take any steps in this regard.

On that note, can you confirm whether your client is prepared to proceed with an expedite/written arbitration?

I hope to get back to you shortly.

- **October 20, 2023:** Mr. Bui and Mr. Tibollo exchanged emails:

- Mr. Bui confirmed Mr. Clifton's rates but noted that Mr. Conant had not responded. Mr. Bui (a) continued to propose the three arbitrators and (b) asked Curated to confirm if it would agree to expedited written Arbitration. Mr. Bui required a response by October 31, 2023.
- Mr. Tibollo stated "we are entitled to know what their respective fee is before we select. Please renew your request".
- Mr. Bui repeated that he had not heard from Mr. Conant and would advise if he received a response, but that this should not delay selection of an arbitrator. Mr. Bui again asked Mr. Tibollo to confirm if Curated would agree to expedited written Arbitration.

TB Tony Bui
To 'Nicholas Tibollo'
Fri 10/20/23 9:33 AM

(i) You replied to this message on 11/01/23 10:39 AM.

Hi Nicholas,

I have not heard back from Armand Conant's office. If we hear back from him, we will certainly update you but this should not further delay your client's selection of an arbitrator. If Armand's fee is an issue, your client can reasonably select another arbitrator.

We still require your client's position regarding an expedited written arbitration.

Please let us hear from you.

- **October 31, 2023:** Mr. Tibollo does not respond.

- **November 1, 2023:** Mr. Bui and Mr. Tibollo exchanged emails:

- Mr. Bui followed up and insisted upon selection of arbitrator by November 3, 2023. Given the delays, Mr. Bui advised that he was seeking instructions to proceed with Application to appoint arbitrator and would rely on communications to seek costs.
- Mr. Tibollo stated he was waiting for Mr. Bui's response re: arbitrators' rates.
- Mr. Bui stated he provided James Minns and Mr. Clifton's rates, and was no longer proposing Mr. Conant.
- Mr. Tibollo advised he will "get back by the end of this week" (being November 3, 2023).

 Nicholas Tibollo <ntibollo@tibollolaw.com>
To Tony Bui

Smile Reply Reply All Forward Attachment More

Wed 11/01/23 10:56 AM

I'll get back to you by the end of this week.

- **November 3, 2023:** Mr. Tibollo asked for a copy of communications between Mr. Bui and Mr. Clifton, which Mr. Bui provided. Mr. Tibollo suggested Jeanette Bicknell as the arbitrator; Mr. Bui declined.

 Tony Bui
To 'ntibollo@tibollolaw.com'

Smile Reply Reply All Forward Attachment More

Fri 11/03/23 10:52 AM

We are not agreeable. She was privy to our discussions/negotiations and I cannot risk this affecting how either of our clients' positions are considered on arbitration.

Curated did not select an arbitrator by end of day.

- **November 8, 2023:** Mr. Bui and Mr. Tibollo exchanged emails:

- Mr. Tibollo proposed Richard Elia as arbitrator, providing a screenshot of Mr. Elia's profile from an email Mr. Tibollo sent to himself on November 3, 2023.

 Nicholas C. Tibollo <ntibollo@tibollolaw.com>
To Tony Bui

Wed 11/08/23 9:23 AM

(i) You replied to this message on 11/08/23 9:55 AM.

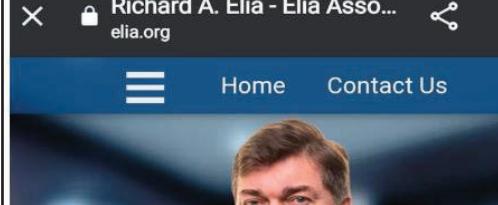
How about this gentleman?

Begin forwarded message:

From: Nicholas Tibollo <ntibollo@tibollolaw.com>
Date: November 3, 2023 at 9:42:33 PM EDT
To: Nicholas Tibollo <ntibollo@tibollolaw.com>

NICHOLAS C. TIBOLLO PROFESSIONAL CORPORATION
BARRISTERS
Tibollolaw.com
T:416.975.0002 Ext:100

These communications are protected by solicitor and client privilege. If you are not the intended recipient, please do not read them or retaining a copy.



- Mr. Bui refused, noting Mr. Tibollo had TSCC 2820's Notice of Arbitration since September 27, 2023, but was only now proposing Mr. Elia (despite being aware of Mr. Elia since November 3, 2023). Mr. Bui continued to insist upon a response to whether Curated would proceed with Mr. Minns or Mr. Clifton via an expedited written Arbitration as soon as possible.

To 'ntibollo@tibollolaw.com'
Wed 11/08/23 9:56 AM

Nicholas,

We will not agree to Richard Elia. With respect, you had our client's Notice of Arbitration since September 27 but provided no meaningful response since. It is also unclear why you are only proposing Richard now when your email confirms you were aware of him as early as November 3.

Your client continues to delay a resolution of this matter. It routinely fails to respond in a meaningful and timely manner: your client has not selected an arbitrator and you continue to ignore our suggestion that this proceed as an expedited written arbitration. We maintain that arbitration is the preferred avenue to deal with this straightforward issue but we will not tolerate any further delays from your end: we are seeking instructions from our client to resume the court application and request a case conference to revise the timetable. Regardless of the mode of proceeding, our communications will be relied upon in seeking costs. If your client genuinely intends to deal with this matter in arbitration, kindly confirm it will proceed with James Minns or Michael Clifton via an expedited in-writing arbitration as soon as possible.

We require your response at the earliest.

- Mr. Tibollo advised that he was away from his office since November 3. He also alleged that Mr. Bui proposed arbitrators it "had connections to...without advising [him] in advance". Both of these items were raised for the first time in this email.

NC Nicholas C. Tibollo ntibollo@tibollolaw.com
To Tony Bui
Wed 11/08/23 10:40 AM

You replied to this message on 11/08/23 11:14 AM.

I have been absent from my Office since Nov 3rd and returned today.

Please do not allege there has been delay on my part. Firstly, it is false and secondly it is offensive.

I have done much to accommodate your requests, despite your unilaterally imposed deadlines. Further, please look at the emails that you failed to respond to in a timely manner, emails that you eventually apologized for the delay.

You proposed arbitrators that you have had connections to. You did this without advising me in advance. I was the one that got you to disclose this. Respectfully, you should have disclosed this without the need of me asking.

What is your objection to Mr. Elia? You have not provided any reason.

- Mr. Bui (a) noted that it immediately responded to Mr. Tibollo's request for disclosure re: Mr. Bui's involvement with the proposed arbitrators, (b) provided their basis to reject Mr. Elia as the arbitrator and (c) noted Mr. Tibollo continued to ignore its suggestions re: expedited written Arbitration.

To 'ntibollo@tibollolaw.com'
Wed 11/08/23 11:15 AM

Nicholas,

We will not debate how this has unfolded. That is clear from the communications.

To your point that I did not disclose the arbitrators you allege I had "connections" to, I readily responded to your email the following day and was entirely transparent of the extent of my involvement with them. Across all three individuals, I confirmed that I (a) do not regularly communicate with them, (b) have never retained them for any mediation/arbitrations, (c) have not referred nor accepted any work for them and that (d) to the best of my knowledge, the same was true for the other lawyers in our office. If you are suggesting there has been any impropriety on my part, I invite you to elaborate.

With respect to Mr. Elia, I have used his office for arbitrations in the past and will not agree to use them for this arbitration. I presume that is sufficient for your client to reject Mr. Elia as an arbitrator.

Our position remains as noted in my earlier email; I also note that you continue to ignore our client's suggestion to proceed via an expedited written arbitration.

- Mr. Tibollo suggested Mr. Bui propose arbitrators it did not have connections to – only once the arbitrator was agreed on would he discuss the practicality of an expedited written Arbitration.

 Nicholas C. Tibollo <ntibollo@tibollolaw.com>
To Tony Bui
(i) You replied to this message on 11/08/23 11:43 AM.

Wed 11/08/23 11:33 AM

I am happy to reply on the exchanges for the truth.

In any event, why don't you put forth names of arbitrators that you have no connection to, which you ought to have done in the first instant, and we will select from there.

Once we agree on the arbitrator we can discuss whether an expedited arbitration is practical or not.

- Mr. Bui (a) repeated that Mr. Tibollo had Mr. Bui's disclosure re: involvement with the proposed arbitrators since September 29, 2023 (merely two days after serving the Notice of Arbitration) and (b) could not Mr. Tibollo's position that an expedited written Arbitration depends on the arbitrator.

 Tony Bui
To 'ntibollo@tibollolaw.com'
Wed 11/08/23 11:43 AM

Nicholas,

You had our full disclosure on September 29 and we are only now hearing that you take issue with the proposed arbitrators. This is beyond unreasonable and disingenuous, especially after you insisted we confirm their rates and we did so.

I also fail to see why an expedited in-writing arbitration should be conditional on the arbitrator.

I will not debate this issue further. You have our position and we are proceeding accordingly.

- Mr. Tibollo confusingly (a) suggested Mr. Bui "only recently" disclosed his potential involvement with the proposed arbitrators and (b) questioned why this was not voluntarily disclosed on September 29.

 Nicholas C. Tibollo <ntibollo@tibollolaw.com>
To Tony Bui
Wed 11/08/23 12:07 PM

Tony,

Only recently did you disclose the connection to the arbitrators that you proposed. Why did you not voluntarily disclose it on September 29?

If you want to continue running up costs and delay, that is your client's prerogative.

If you want to move this matter along to an arbitration on all issues, then send me names of proposed arbitrators that you have no connection with. There are many to chose from and at lesser rates. I have suggested two and you summarily dismissed them.

- **November 20, 2023:** Mr. Bui and Mr. Tibollo exchange emails:
 - Mr. Tibollo advised that Curated selected Mr. Clifton as the arbitrator.
 - Mr. Bui again asked Mr. Tibollo to confirm whether Curated agreed to an expedited written Arbitration.

- Mr. Tibollo advised that Curated agreed to an expedited Arbitration but would not agree to a written Arbitration as “there are some material issues that may require oral evidence”.

From: Nicholas C. Tibollo <ntibollo@tibollolaw.com>
Sent: Monday, November 20, 2023 10:06 AM
To: Tony Bui <Tony.Bui@gmalaw.ca>
Subject: Re:

No issue with expedited, subject to scheduling issues, but I'm not prepared at this point to agree to "in writing". There are some material issues that may require oral evidence.

- Mr. Bui asked Mr. Tibollo to clarify which issues may require oral evidence. Mr. Tibollo does not respond.

TB Tony Bui
To 'ntibollo@tibollolaw.com'
(i) You replied to this message on 11/22/23 12:08 PM.

Mon 11/20/23 10:26 AM

Can you clarify what issues may require oral evidence? Our view is that this dispute is largely documentary in nature and that the parties can – and should – avoid the added fees of an oral hearing. I would not ask you to divulge your case but would appreciate any clarity.

In the interim, I will seek instructions on an expedited arbitration.

- **November 22, 2023:** Mr. Bui contacted Mr. Clifton and confirmed his availability to act as arbitrator. Mr. Tibollo advised he is available in February and March 2024 and content to “proceed virtually”.

NC Nicholas C. Tibollo <ntibollo@tibollolaw.com>
To Michael Clifton
Cc Tony Bui
(i) You replied to this message on 11/28/23 10:33 AM.

Wed 11/22/23 2:27 PM

Good afternoon Mr. Clifton,

Thank you for the prompt reply.

I am in the middle of preparing for a trial that I will be attending in Ottawa shortly. My availability is in February and March, 2024. I am content in proceeding virtually.

Mr. Bui subsequently asked Mr. Tibollo to clarify whether “virtual” meant Curated did not agree to a written Arbitration.

TB Tony Bui
To 'ntibollo@tibollolaw.com'
(i) You replied to this message on 11/28/23 9:59 AM.

Wed 11/22/23 2:48 PM

Nicholas,

As you indicated you are content to proceed virtually, can you clarify if this means your client does not agree to a written arbitration? I require your response so I can advise my client accordingly.

- **November 28, 2023:** Mr. Bui and Mr. Tibollo exchanged emails:

- Mr. Bui followed up with Mr. Tibollo, again, seeking confirmation of a written Arbitration. Mr. Bui required a response by the end of day, failing which he would confirm the Arbitration as a virtual *hearing*, without prejudice to TSCC 2820's position that Arbitration ought to proceed in writing.

To 'ntibollo@tibollolaw.com' Tue 11/28/23 10:03 AM

WITH PREJUDICE

Nicholas,

You still have not responded to whether your client is agreeable to an expedited written arbitration. This is despite repeated follow-ups requiring your response for two months now. I trust you are aware of your obligation under 7.2-5 of the Rules of Professional Conduct:

7.2-5 A lawyer shall answer with reasonable promptness all professional letters and communications from other legal practitioners that require an answer, and a lawyer shall be punctual in fulfilling all commitments.

I will not debate this further: I simply require your response on an expedited written arbitration by the end of today so we can confirm the method of arbitration with the arbitration. If I do not hear back, I will confirm the arbitration as an expedited virtual hearing. This is without prejudice to our position that the arbitration ought to proceed in-writing; we will rely on our communications in seeking costs against your client for acting unreasonably and delaying this matter.

- Mr. Tibollo alleged Mr. Bui went "silent on the file for months" but agreed a virtual *hearing*.

Tony,

Please do not threaten me. You seem to unilaterally apply rules, set deadlines and not read my emails. You further go silent on the file for months and then accuse me of delay.

I replied to your email and advised that it will be a virtual hearing.

- Mr. Bui confirmed with Mr. Clifton and asked to hold February 6 and 7 for the Arbitration, pending Mr. Tibollo's confirmation.

Tony Bui To 'Michael Clifton'; ntibollo@tibollolaw.com Tue 11/28/23 12:27 PM

(i) You replied to this message on 12/04/23 11:54 AM.

Hi Michael,

We are available on February 6 and 7. We will wait for Nicholas to confirm on his end.

- **December 4, 2023:** Emails between Mr. Bui, Mr. Tibollo and Mr. Clifton are exchanged:

- Mr. Bui requested Mr. Clifton's Arbitration agreement while waiting for Mr. Tibollo to confirm his availability for the hearing. Mr. Bui emphasized that the Arbitration agreement needed to be finalized by the end of the year.

TB

Tony Bui

To 'Michael Clifton'; 'ntibollo@tibollolaw.com'

Mon 12/04/23 11:55 AM

Hi Michael,

While we wait for Nicholas to confirm his client's availability, could we get a copy of the arbitration agreement so I can review with my client? I note that for procedural reasons, we need to have this agreement finalized by the end of the year.

- Mr. Tibollo confirmed his availability for March 6 and 7, 2024.

NC

Nicholas C. Tibollo <ntibollo@tib

To Michael Clifton

Cc Tony Bui

Mon 12/04/23 12:11 PM

(i) You replied to this message on 12/11/23 10:42 AM.

Good Afternoon Mr. Clifton,

March 6 or 7, 2024 works for my client and me.

Would you please confirm your arbitration rates.

- Mr. Bui referred to Mr. Tibollo's November 22, 2023 email where he indicated he was available for February 2024. Given the timing requirements under the expedited procedure, Mr. Bui asked Mr. Tibollo to confirm his availability for February 2024.

TB

To 'ntibollo@tibollolaw.com'; Michael Clifton

Mon 12/04/23 12:23 PM



Bio and Rates.pdf 546 KB

Nicholas,

Per your November 22 email, you indicated you were available in February 2024. The Expedited Rules require an Initial Meeting with the arbitrator be held within 5 days of their appointment with the hearing to be conducted within 60 days thereof. As it stands, that takes us to end of February 2024. Can you kindly confirm your availability for February 2024?

To assist, I am attaching another copy of Mr. Clifton's bio and rates but defer to him if there are any changes.

- **December 7, 2023:** Mr. Tibollo responded noting, "frankly, a week does not make much difference".

NT

Nicholas Tibollo <ntibollo@tib

To Tony Bui

Cc Michael Clifton

Thu 12/07/23 1:54 PM



image001.jpg

8 KB

Hello Tony

My confirmation is based upon my client, witnesses and my availability. Frankly, a week does not make much difference.

- **December 11, 2023:** Mr. Clifton disclosed a potential conflict to Mr. Bui and Mr. Tibollo. Mr. Clifton indicated he was recently engaged by TSCC 2820 to prepare corporate documents staggering the directors' terms; Mr. Bui was unaware of Mr. Clifton's involvement on this matter.

 Michael Clifton <mclifton@cklegal.ca>    Mon 12/11/23 4:13 PM

 This is the most recent version, but you made changes to another copy. Click here to see the other versions.
You forwarded this message on 12/12/23 10:02 AM.

We sent you safe versions of your files Outlook item  ARBITRATION AGREEMENT BUI TIBOLLO.pdf 4 MB

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Good afternoon,

Attached is a form of agreement.

I apologize for my delays. Somehow the end of year has become unusually busy.

In the process of preparing this I note two things:

First, the parties have been seeking to schedule a virtual hearing. The original notice called for an arbitration in writing. This agreement is set up as if a hearing shall take place (virtually). If a written is again preferred by both parties, please let me know. (The standard fee would be less.)

Second, I also became aware of a potential concern relating to conflict of interest that had not come to my immediate attention before now. I have recently (literally, within the past month) been engaged to prepare a by-law for the condominium that staggers the terms of the director. I also received and answered an initial inquiry in July 2022 from the condominium manager (as counsel for the manager at the time) that may relate to the matters in dispute. See Article IX on page 3 of this agreement. I am confident that these present no actual cause for concern regarding bias or an actual conflict of interest. However, as they may contribute to an apprehension of bias or other concern for the parties, I wish to ensure they come to your attention.

I am particularly sorry that these potential conflicts did not come to my attention immediately.

Regards,

- **December 12, 2023:** Mr. Bui advised he would seek instructions and requested Mr. Tibollo's position on the issue by December 15, 2023.

 Tony Bui
To 'Michael Clifton'; ntibollo@tibollolaw.com    Tue 12/12/23 9:45 AM

Hi Mr. Clifton,

We were not aware of the potential conflict but will discuss with our client and get back to you shortly. I also note that our office represents TSCC 2820 and Mr. Tibollo represents Curated; the arbitration agreement has this the other way around.

In the interim, [@Nicholas](#), can you confirm if the potential conflict will be an issue for your client? If so, we prefer to address the matter as soon as possible.

 To 'Michael Clifton'; ntibollo@tibollolaw.com    Tue 12/12/23 11:18 AM
 You replied to this message on 12/19/23 10:08 AM.

Hi Michael,

Yes, the @ symbol does work for tagging ala social media. I recently discovered this feature but I'm not sure if it is a feature of my email app. or emails generally. I find it quite useful and if it works for you, I highly recommend it.

Thank you for clarifying the mix-up. I am seeking instructions from my client and will respond shortly. [@Nicholas](#), can we get your client's position by this Friday please?

- **December 15, 2023:** Mr. Tibollo does not respond.
- **December 19, 2023:** Mr. Bui followed up and Mr. Tibollo advises another arbitrator will need to be selected, alleging that Mr. Bui should have disclosed the potential conflict despite being unaware of it.

 Tony Bui
To 'Michael Clifton'; ntibollo@tibollolaw.com    Tue 12/19/23 10:09 AM

Nicholas,

We are prepared to proceed with Mr. Clifton as arbitrator. We have not received a response from you, as requested.

Please confirm whether your client objects to Mr. Clifton as the arbitrator. The arbitrator agreement needs to be finalized ASAP.

NT Nicholas Tibollo <ntibollo@tibollo.com>
To Michael Clifton
Cc Tony Bui
Good morning Mr. Clifton,

Tue 12/19/23 11:33 AM

Firstly, I appreciate you advising that you were previously consulted by Tony's client. Tony's client should have disclosed this to us. Respectfully, we will need to select another arbitrator for this matter.

- **December 19, 2023:** Mr. Bui proposed two more arbitrators and confirmed he had no prior contact or involvement with them. Mr. Bui also invited Mr. Tibollo to propose arbitrators if he wished. A response was required by December 22, 2023.

TB Tony Bui
To Nicholas Tibollo

Nicholas,

In light of your client's concerns, we propose alternative arbitrators:

- Larry Banack (<https://www.arbitrationplace.com/arbitrator/larry-banack>)
- David Alderson (<https://www.gilbertsondavis.com/lawyers/david-alderston/>)

The arbitration is still to be conducted virtually via the expedited procedure. For clarity, I have had no prior contact or involvement with either of these arbitrators and to the best of my knowledge, the same is true of our office.

We require your response to this email at your earliest; we also invite you to propose arbitrators if you wish. If we do not hear from you by December 22, 2023 we will confirm our instructions to return to CPC and establish a timetable on the application.

- **December 22, 2023:** Mr. Tibollo does not respond.
- **December 28, 2023:** Mr. Tibollo advised that Mr. Bui's proposed arbitrators were "over kill for a \$30k dispute". Mr. Tibollo proposed Brian Somer, noting that he was put forth on another matter.

NC Nicholas C. Tibollo <ntibollo@tibollo.com>
To Tony Bui

(i) You forwarded this message on 12/28/23 11:28 AM.

Thu 12/28/23 9:58 AM

Both these individuals are over kill for a \$30K dispute.

How about Brian Somer from Preston Mediation and Arbitration?

He was put forth on a mediation on another matter by opposing counsel and the matter did not settle. At the time he charged Roster rates.

- **January 11, 2023:** Mr. Bui rejected Mr. Somer given Mr. Tibollo's prior involvement. In a final effort, Mr. Bui proposed a framework for the parties to appoint an arbitrator. Mr. Tibollo was asked to confirm by January 19, 2024 whether he agreed to Mr. Bui's proposal.

TB

Tony Bui
To 'ntibollo@tibollolaw.com'

Thu 1/11/24 10:42 AM

Hi Nicholas,

Happy New Year. I hope the holidays were kind to you and your family.

My client will not agree to Brian Somer given your prior involvement with him. In a final effort to appoint a mutually-agreeable arbitrator, we propose the following:

- Each party will propose three (3) potential arbitrators from the ADR Chambers roster (see <http://adrchambers.com/arbitrators/>). Our client proposes recommend Jonathan Flanders, Ronald Dash and Daniela Corapi
- The parties must confirm they have no prior relationship, agreement or business dealings with any proposed arbitrators. I confirm this is the case with the above-noted arbitrators.
- The parties will attempt to appoint an arbitrator from the proposed pool of candidates. If the parties cannot come to an agreement by **January 25, 2024**, ADR Chambers will select the first available arbitrator from the proposed pool of candidates.

Please confirm whether your client will agree to this proposal. If your client is not agreeable or we do not hear back from you, we are instructed to attend CPC to obtain a revised timetable on the court application. We intend to seek the first available date and require you advise of your earliest availability. We require your response by **January 10, 2024**.

- **January 12, 2024:** Mr. Tibollo indicated he would proceed with Daniela Corapi as the arbitrator pending confirmation of any involvement Curated may have had with Ms. Corapi. For the first time, Mr. Tibollo suggested the Arbitration was a “1 to 1.5 day Arbitration”.

From: Nicholas C. Tibollo <ntibollo@tibollolaw.com>

Sent: Friday, January 12, 2024 10:48 AM

To: Tony Bui <Tony.Bui@gmalaw.ca>

Subject: Re: Inquiry for Arbitration

Tony,

Again, this is a \$25-30K dispute. Keeping that in mind, it would be irresponsible to go with someone charging \$7500.00 per day. If you insist, then your client can be responsible for the fee regardless of the outcome.

Mr. Flanders was or is with Shibley's. You were there. I have a conflict with Mr. Dash. I have just now come to know of Ms. Corapi. I have looked up her rates on her web site which are reasonable. There is no need to go through a “brokerage” firm like ADR that takes part of the fee for “co-ordination”. We can go direct to her. Let me first confirm that my client has no prior dealings with Ms. Corapi and I will then reach out to her to confirm a fee and her available dates. This is a 1 to 1.5 day arbitration.

- **January 15, 2024:** Mr. Bui rejected Mr. Tibollo’s suggestion of a “1 to 1.5 day Arbitration” as Mr. Tibollo confirmed this would be an expedited Arbitration. Mr. Bui reiterated his demand that Mr. Tibollo *confirm* Curated would proceed with Ms. Corapi as the arbitrator by January 19, 2024.
- **January 19, 2024:** Mr. Tibollo contacted Ms. Corapi (copying Mr. Bui) to inquire about Arbitration.
- **January 22, 2024:** Ms. Corapi provided her availability and asked for confirmation whether the Arbitration is proceeding in writing or virtually. Mr. Bui advised that (a) Ms. Corapi’s availability should work and (b) TSCC 2820 preferred a written hearing but would proceed virtually if required; **January 23, 2024:** Mr. Tibollo is asked to confirm his availability by January 26, 2024.
- **January 26, 2024:** Mr. Tibollo does not respond.

- **January 30, 2024:** Emails between Mr. Bui, Mr. Tibollo and Ms. Corapi are exchanged:
 - Mr. Bui insisted Mr. Tibollo provide his availability as soon as possible as TSCC 2820 would not be prejudiced by Curated/Mr. Tibollo's delays.

 To Nicholas C. Tibollo Tue 1/30/24 11:29 AM

Nicholas,

You have not provided your availability for arbitration as requested on several occasions. Our client remains agreeable to resolving this through arbitration but will not be prejudiced by your client's repeated delays and refusals to respond to basic procedural items, be it in arbitration as agreed upon or our client's application. If your client genuinely intends to participate in arbitration (i.e. execute the arbitrator's Terms of Appointment and confirm the arbitration date), we can go down that route.

In the interim, we are instructed to seek a case conference to amend the timetable on our client's application. Please provide your upcoming availability as soon as possible as we intend on filing our request tomorrow morning to obtain the earliest available date.

- Mr. Tibollo advised he is unavailable on Ms. Corapi's proposed dates.

 To Tony Bui Tue 1/30/24 12:27 PM
 ⓘ You replied to this message on 1/31/24 11:01 AM.

Tony,

Respectfully, you keep assuming I have nothing else to do but to reply to your self-imposed deadlines. You have and continue to make this a habit which is not very helpful. When you do not hear from me, you should assume that I am engaged in other matters and you should not assume that you take priority before other matters. Threatening CPC attendances, in the face of you not doing anything for weeks, from time to time, in an attempt to justify your position is discourteous.

I am not available on the dates proposed by the Arbitrator to be appointed. I am committed in Court on the Feb dates and in North Bay on the March dates. I will, by separate email to her, request additional dates. You will be copied.

With respect to the proposed TOA, like you, I am waiting for instructions. When I receive them, they will be shared.

- **February 5, 2024:** Mr. Tibollo responded to Mr. Bui's notes on the arbitral Terms of Appointment, confirming for the first time that Curated agreed to proceed with an expedited written Arbitration.
- **March 6, 2024:** the Terms of Appointment are finalized.

GARDINER MILLER ARNOLD LLP

BARRISTERS & SOLICITORS

390 BAY STREET
SUITE 1400
TORONTO, ONTARIO
M5H 2Y2

TONY BUI

TELEPHONE: (416) 363-2614 ext. 215
FAX: (416) 363-8451
EMAIL: tony.bui@gmalaw.ca
INTERNET: www.gmalaw.ca

September 19, 2022

VIA REGULAR MAIL & EMAIL (adam@curatedproperties.com)

Adam Ochshorn, Principal
Curated Cabin Inc.
850 Richmond Street West
Toronto, Ontario M6J 2C9

Dear Mr. Ochshorn:

**RE: Toronto Standard Condominium Corporation No. 2820
Arrears Owing from Developer (Curated Cabin Inc.)**

We represent Toronto Standard Condominium Corporation No. 2820 ("TSCC 2820"); we understand Curated Cabin Inc. ("Curated") was the developer/declarant of TSCC 2820 under the *Condominium Act, 1998* (the "Act"). We write to you as Curated is in significant arrears of expenses owing to TSCC 2820.

Deficit for Management Fees

We are aware that on behalf of Curated, you served on TSCC 2820's board of directors before it was turned over under section 43 of the Act (hereinafter referred to as the "Developer Board"). The Developer Board set the first-year budget and regarding management fees in the budget, it noted:

The Budget has been prepared on the basis that the Condominium will be Self-managed. by the Owners. In the event the Owners decide at a general meeting of Owners. to retain a Management Company to manage the Condominium then the Management Contract will be in a additional annual cost to the costs set out in the Budget herein and. will not be part of the Declarant's responsibility for the first year costs after date of. registration. For the second year the estimated will be approximately \$10,800 plus HST.

Despite this representation in the first-year budget, TSCC 2820's audited financial statements for its first fiscal year showed a budgetary deficit of \$34,287.69 for management fees. Section 75 (1) of the Act states:

The declarant is accountable to the corporation under this section for the budget statement that covers the one-year period immediately following the registration of the declaration and description.

TSCC 2820 received its audited financial statements on May 19, 2022 and on May 20, 2022, TSCC 2820 provided you with written notice of Curated's obligation to compensate TSCC 2820 for the budgetary deficit under Sections 75 (5) and (6) of the Act. Curated was required to pay within 30 days. TSCC 2820 has not received payment from Curated despite repeated follow-ups.

On July 27, 2022, we understand Matt Eisen of Curated responded to TSCC 2820 advising that,

We have had the statement reviewed by our lawyer and there is a management fee of \$26 466 shown. In the condo docs the project is listed as self managed and there is no line item in the budget for a management fee. Curated is not responsible for the additional charge and is only liable for the overages on the first year operating expenses.

Respectfully, this position is untenable and manifestly devoid of merit. Board meeting minutes from December 5, 2020 confirm that the Developer Board resolved to "enter into a Condominium Management Agreement". The Developer Board executed a management agreement with Summa Property Management on January 5, 2021; the management agreement was executed by yourself and Gary Eisen, both principals of Curated. Furthermore, four representatives of Summa Property Management were present at the turnover meeting on February 25, 2021; it belies comprehension to suggest that their attendance was not necessitated by their role as TSCC 2820's property manager.

Curated's failure to accurately budget management fees but subsequent execution of a management agreement falls squarely within the scope of Section 75 of the Act: Curated is liable to TSCC 2820 for this deficit. Our client also regards the disclosure regarding management fees in the first-year budget as a "false, deceptive and misleading leading statement" and an "omission of material information Curated is required to provide". We refer you to Section 133 of the Act:

False, misleading statements

133 (1) A declarant shall not, in a statement or information that the declarant is required to provide under this Act,

(a) make a material statement or provide material information that is false, deceptive or misleading; or

(b) omit a material statement or material information that the declarant is required to provide. 1998, c. 19, s. 133 (1).

Right to damages

(2) A corporation or an owner may make an application to the Superior Court of Justice to recover damages from a declarant for any loss sustained as a result of relying on a statement or on information that the declarant is required to provide under this Act if the statement or information,

(a) contains a material statement or material information that is false, deceptive or misleading; or

(b) does not contain a material statement or material information that the declarant is required to provide. 1998, c. 19, s. 133 (2); 2000, c. 26, Sched. B, s. 7 (7).

Deficit for Window Washing

In the first-year budget, Curated indicated TSCC 2820's estimated expense for window washing would total \$5,000. However, that budget was provided before Curated completed the mandatory task of certifying the roof anchors.

Curated did not complete the necessary roof anchor certification until September 9th 2022, and thus, prevented TSCC 2820 from completing the window washing during the first-year operation period.

TSCC 2820 obtained a quote for window washing, resulting in a deficit of \$6,580 from the first-year budget. TSCC 2820 attributes this budgetary deficit to Curated's failure to meet its obligations (including those under Section 133 of the Act) and will be seeking compensation from Curated accordingly.

Final Demand for Payment

The total deficit from the first-year budget is \$41,137.60.

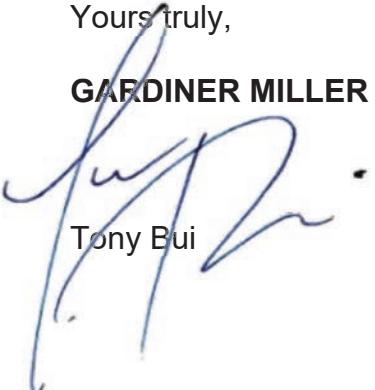
Therefore, TSCC 2820 demands Curated remit full payment of \$41,137.60 by October 6, 2022. Payment must be made via bank draft payable to "Gardiner Miller Arnold LLP, in trust" and delivered to our office.

If we do not receive payment by the above-noted deadline, we are instructed to commence an application to the Superior Court of Justice per Section 133 (2) of the Act. If we are forced to take this step, we will seek full indemnity costs against Curated. We hope that with your cooperation, this will not be necessary.

We strongly recommend you seek legal counsel to advise you of your rights and obligations.

Yours truly,

GARDINER MILLER ARNOLD LLP


Tony Bui

From: [Nicholas C. Tibollo](#)
To: [Tony Bui](#)
Subject: CURARED CABIN INC abd RE: TSCC #2820
Date: Wednesday, October 05, 2022 10:37:29 AM
Attachments: [Screen Shot 2018-03-08 at 11.09.05 AM.png](#)

WITHOUT PREJUDICE

Good morning Tony,

I am litigation counsel to Curated Cabin Inc., and have been provided with a copy of your letter addressed to my client dated September 19, 2022.

Your letter has been reviewed and I can advise you that my client does not agree with the version of events or statements as set out in your letter.

With regard to starting an Application, it is clear to me that there are material facts in dispute. This appears to be more of a matter that should be addressed in the small claims court.



Per:

Nicholas C. Tibollo

133 Milani Blvd., Suite 100
Vaughan, Ontario L4H 4M4
Tel: 416-975-0002 Ext. 100
Fax: 416-975-8002
<http://www.tibollolaw.com>

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GARDINER MILLER ARNOLD LLP

BARRISTERS & SOLICITORS

390 BAY STREET
SUITE 1400
TORONTO, ONTARIO
M5H 2Y2

TONY BUI

TELEPHONE: (416) 363-2614 ext. 215
FAX: (416) 363-8451
EMAIL: tony.bui@gmalaw.ca
INTERNET: www.gmalaw.ca

November 4, 2022

VIA EMAIL (ntibollo@tibollolaw.com)

Nicholas C. Tibollo
133 Milani Blvd., Suite 100
Vaughan, Ontario
L4H 4M4

Dear Mr. Tibollo:

**RE: Toronto Standard Condominium Corporation No. 2820
Arrears Owing from Developer (Curated Cabin Inc.)**

As you are aware, we represent Toronto Standard Condominium Corporation No. 2820 (“TSCC 2820”) with respect to a dispute involving your client, Curated Cabin Inc. (“Curated”). We further to our letter of September 19, 2022 and your response of October 5, 2022.

Our client is in process of preparing its Notice of Application with respect to this dispute. Further to your October 5, 2022 email, Small Claims Court is not the proper forum to litigate this matter: the amount in dispute exceeds the Small Claims Court’s monetary jurisdiction and in any event, Section 133 (2) of the *Condominium Act, 1998* (the “Condo Act”) is clear that our client is required to “make an application to the Superior Court of Justice to recover damages from a declarant...” as a result of its misrepresentations.

In addition to the misrepresentations we referred to in our September 19, 2022 letter, it has come to our attention that Curated made the following misrepresentation in a manual delivered to owners in 2019:

“For the first 8 months of your occupancy the property (common areas & suites) is managed by Curated Properties. After this 8-month period management will be transferred over to a designated property management company.”

A copy of manual is enclosed.

Litigation on this matter is unnecessary but for Curated’s refusal to pay TSCC 2820 what it is statutorily owed. It was apparent to your client at all materials times that TSCC 2820

was intended to be managed by a property management company, notwithstanding Curated's false representation to the contrary.

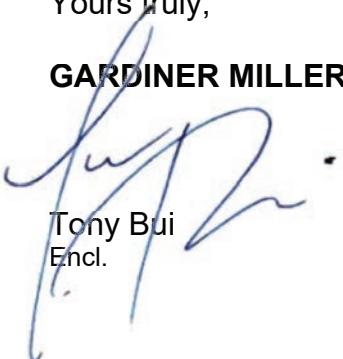
Therefore, unless Curated remits full payment of \$41,137.60 to our office by November 10, 2022, our client will be left with no choice but to proceed with its Application without further notice.

If Curated will not be remitting full payment of \$41,137.60, please confirm if you will accept service of our client's Notice of Application on behalf of your client.

We require your response to this letter.

Yours truly,

GARDINER MILLER ARNOLD LLP



Tony Bui
Encl.



Court File No.

EXHIBIT
R

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

TORONTO STANDARD CONDOMINIUM CORPORATION NO 2820

Applicant

-and-

CURATED CABIN INC.

Respondent

NOTICE OF APPLICATION

APPLICATION UNDER sections 75 (1) and 133 of the *Condominium Act, 1998*, S.O. 1998, s.19

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In writing
- In person
- By telephone conference
- By video conference

on a date a time to be set by the Registrar.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service,

- 2 -

in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date _____ Issued by _____
Local Registrar

Address of 330 University Avenue, 8th Floor
court office: Toronto, Ontario M5G 1R7

TO: Curated Cabin Inc.
850 Richmond Street West
Toronto ON M6J 2C9

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APPLICATION

1. The applicant, Toronto Standard Condominium Corporation No. 2820 (“TSCC 2820” or the “Corporation”) makes an application for an Order:

- (a) Awarding TSCC 2820 \$41,137.60 plus interest in damages;
- (b) Pre-litigation costs fixed at \$1,893.01;
- (c) Costs of this application on a full indemnity basis, plus HST; and
- (d) Such further and other relief as to this Honourable Court seems just.

2. The grounds for the application are:

The Parties

- (d) The applicant TSCC 2820 is a residential condominium corporation in the City of Toronto created by registration of its declaration on November 26, 2020;
- (e) The respondent Curated Cabin Inc. (“Curated”) is the declarant and developer of TSCC 2820;
- (f) The parties are and were at all material times subject to the *Condominium Act, 1998* (the “Act”);

Curated is Liable for First-Year Budget and Made False Representations

- (g) Curated controlled, managed and administered TSCC 2820’s property and assets until the Corporation was turned over to the owners of TSCC 2820 pursuant to section 43 of the Act on or around February 25, 2021;

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- (h) Adam Ochshorn, Lucas Eisen and Gary Eisen and served on TSCC 2820's pre-turnover board (the "Declarant Board"). They are also the President, Vice-President and a Principal of Curated, respectively;
- (i) The Declarant Board's actions bind Curated;
- (j) The Declarant Board was responsible for preparing a first-year budget for the Corporation (the "First-Year Budget"). Under section 75 of the Act, declarants are accountable to condominium corporations for first-year budget statements;
- (k) Curated's First-Year Budget and Disclosure Statement under section 73 of the Act stated that "*the Budget has been prepared on the basis that the Condominium will be self-managed by the Owners*" and "*the Condominium will be self-managed and accordingly, no management agreement will be entered into by the Corporation*".
- (l) Notwithstanding these representations and disclosures, the Declarant Board:
 - (i) Passed a resolution to "*enter into a Condominium Management Agreement*" on or around December 5, 2020;
 - (ii) Executed a property management agreement with Summa Property Management Inc. on or around January 5, 2021. The agreement was signed by Adam Ochshorn and Lucas Gary on behalf of the Corporation; and
 - (iii) Prepared and distributed a homeowner's manual to owners stating that "*for the first 8 months of your occupancy is managed by*

- 5 -

[Curated]. After this 8-month period management will be transferred over to a designated property management company";

- (m) On May 19, 2022, TSCC 2820 received audited financial statements for its first-year of operation. The audited financial statements revealed a budgetary deficit of \$41,137.60 owing to added property management and window washing fees (the "Deficit");
- (n) On May 20, 2022, TSCC 2820 provided Curated with written notice of Curated's obligations to compensate TSCC 2820 for the Deficit. Curated was obligated to pay the Deficit within 30 days after receiving written notice under section 75 (6) of the Act;
- (o) Curated has not paid the Deficit despite repeated follow-ups from the Corporation and its lawyers prior to commencing this Application;
- (p) Curated and the Declarant Board:
 - (i) Incorrectly prepared the First-Year Budget and Disclosure Statement, resulting in the Deficit;
 - (ii) Made a material statement/provided material information that is false, deceptive or misleading in the First-Year Budget and Disclosure Statement;
 - (iii) Omitted material statements information that it was required to provide; and
 - (iv) Failed to meet their statutory duty of care to TSCC 2820;
- (q) TSCC 2820 suffered losses and damages as a result of the respondent;

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Other Grounds

(r) *Condominium Act, 1998*, S.O. 1998, s.19, sections 75 and 133;

(s) Such further and other grounds as the lawyers may advise.

3. The following documentary evidence will be used at the hearing of the application:

(u) The affidavit(s) to be sworn on behalf of the applicant; and

(v) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

Date: November 18, 2022

GARDINER MILLER ARNOLD LLP
Barristers and Solicitors
390 Bay Street, Suite 1400
Toronto ON M5H 2Y2

Tony Bui (75387V)
tony.bui@gmalaw.ca
Tel: 416-363-2614

Lawyers for the applicant

**TORONTO STANDARD CONDOMINIUM
CORPORATION NO 2820**

Applicant

-and-

CURATED CABIN INC.

Respondent

Court File No.
ONTARIO SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO
NOTICE OF APPLICATION

GARDINER MILLER ARNOLD LLP
Barristers and Solicitors
390 Bay Street, Suite 1400
Toronto ON M5H 2Y2

Tony Bui (75387V)
tony.bui@gmalaw.ca
Tel: 416-363-2614 ext. 215

Lawyers for the applicant

CITATION: 90 George Street Ltd. v. Ottawa-Carleton Standard Condominium Corporation No. 815, 2015 ONSC 336
COURT FILE NO.: 13-59021
DATE: 2015/01/16

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

90 George Street Ltd.)	
)	
)	Michael S. Hebert, for the Appellant
Appellant)	
)	
- and -)	
)	
Ottawa-Carleton Standard Condominium Corporation No. 815)	Christopher Rootham, for the Respondent
)	
Respondent)	
)	
)	
)	HEARD: November 12, 2014 (in Ottawa)

REASONS FOR DECISION ON APPEAL

On appeal from the Interim Award of the Honourable James B. Chadwick, Q.C., Arbitrator, dated September 10, 2013, and from the Award as to Costs, Disbursements and Interest of the Honourable James B. Chadwick, Q.C., Arbitrator, dated October 21, 2013.

JUSTICE PATRICK SMITH

Overview and Factual Background

[1] The Appellant (90 George Street Ltd.) is the declarant of the Respondent, the Ottawa-Carleton Standard Condominium Corporation No. 815.

[2] The Respondent and its unit owners (Ottawa-Carleton Standard Condominium Corporation No. 815) are the owners of a 16-floor residential condominium containing 104 units. The Appellant owns a three-floor commercial podium, situated beneath the residential condominium.

[3] The *Condominium Act*, 1998, S.O. 1998, c.19 [*Condominium Act*], provides that declarants control condominiums until construction of the project is completed, the building is partially or fully occupied and a condominium corporation is created. At that point control and responsibility for the condominium passes to the Board of Directors of the condominium corporation.

[4] The Respondent condominium corporation was created on June 18, 2009, upon the Appellant's registration of the description and declaration.

[5] The *Condominium Act* requires a declarant to prepare "a disclosure statement" for every purchaser of a unit (s. 72). A disclosure statement must include a copy of the budget statement for the one-year period immediately following the registration of the declaration (*Condominium Act*, s. 72(3)).

[6] A budget statement is comprised of a number of elements, including a statement of the common expenses of the corporation. The statement must include the proposed amount of each expense along with the particulars of the type, frequency, and level of services to be provided (*Condominium Act*, s. 72(6)).

[7] One of the purposes of the disclosure statement is to enable individuals contemplating the purchase of a condominium unit to have a full understanding of their rights and obligations on unit purchase but more importantly, what the costs of owning it will be.

[8] The Appellant prepared several draft first-year budgets prior to the registration of the declaration on June 18, 2009. The final first-year budget showed total condominium operating expenses of \$756,912.00.

[9] The Respondent's first operational year was from June 18, 2009 to June 17, 2009.

[10] Audited financial statements, dated February 23, 2012, for the first operational year revealed a shortfall of \$125,659.00 between the actual operating expenses and the first-year budget. A \$10,000.00 insurance deductible had been included in the shortfall. At some point it was determined that the deductible was reimbursed to the Respondent. As a result the Respondent's shortfall claim was reduced to \$115,659.00.

[11] The Respondent notified the Appellant of the shortfall. The Appellant disputed the shortfall.

[12] Section 132(3) of the *Condominium Act* requires that budget statement disagreements proceed to mediation and, if unresolved, then on to arbitration.

[13] Mediation failed to resolve the dispute. Thereafter, the Respondent proceeded to arbitration.

[14] The parties mutually selected a retired Superior Court Justice – the Honourable James Chadwick Q.C. – as the arbitrator (the “Arbitrator”).

[15] The arbitration took place over four days: June 4-5, 2013, and August 14-15, 2013.

Statement of the Issues

[16] The Appellant appeals both the decision of the arbitrator and also the subsequent awards of pre-judgment interest and costs.

[17] The issues on appeal before this Court are as follows:

- What is the appropriate standard of review of the Arbitrator’s decisions?
- Did the Arbitrator make a reviewable error in his interpretation of s. 75 of the *Condominium Act*?
- Did the Arbitrator make a reviewable error in the award of the pre-judgment interest rate?
- Did the Arbitrator make a reviewable error in his award of the costs of the arbitration?

The Issue of Leave

[18] Section 45(1) of the *Arbitration Act, 1991*, S.O. 1991, c. 17 [Arbitration Act], provides that a party may only appeal an award of an Arbitrator to the Superior Court on a question of law, with leave.

[19] Leave was granted by the Order of Justice M. Labrosse, dated April 29, 2013.

The Arbitration Award

[20] On September 15, 2013, the Arbitrator released his Interim Award (dated September 10, 2013).

[21] The Arbitrator found in favour of the Respondent and awarded the Respondent damages in the amount of \$115,669.00 plus interest at the rate prescribed in the condominium corporation’s bylaw number 1 (article 11.5) calculated from April 23, 2012, including interest calculated at a rate of three percent (3%) over the prime rate compounded monthly. Bylaw 1 provides that this interest rate applies to unpaid common element costs.

[22] In arriving at his award, the Arbitrator found that he was statutorily prohibited from considering the issues raised by the Appellant by way of defence and set off. Further, he found that s. 75(1) of the *Condominium Act* made a declarant “fully liable” for any first-year shortfall,

whether the expenditures are covered in the declarant's budget or not, that he was restricted to an analysis of the total of the expenditures set out in the audited first-year statement, and that the Appellant was not entitled to an item-by-item evaluation of the expenses or to challenge them as being excessive or improper.

[23] Two of the largest expense items in dispute related to the cost of security and superintendent/concierge services.

[24] The estimates in the first-year budget were \$196,227.00 for security and \$30,867.00 for a concierge. The actual claimed first-year expenditures were \$248,684.00 for security and \$92,552.00 for a superintendent and a concierge combined.

[25] On October 24, 2013, the Arbitrator released his decision on costs and awarded:

- costs on a substantial indemnity basis in favour of the Respondent in the amount of \$90,400.00, including HST, plus disbursements fixed at \$34,534.08; and,
- interest calculated to September 10, 2013, in favour of the Respondent, in the amount of \$9,985.41, as well as further interest until the amount of the interim award, costs, disbursements and interests were paid.

What is the Standard of Review?

Position of the Parties

[26] The Appellant argued that the appropriate standard of review of an Arbitrator's decision is correctness, and that the Supreme Court's recent decision in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 [*Sattva*] is distinguishable as this appeal does not arise from a commercial arbitration.

[27] In the alternative, the Appellant argued that regardless of the applicable standard, correctness or reasonableness, the Arbitrator's decision should be set aside as neither standard was met.

[28] The position of the Respondent is that the Supreme Court's recent decision in *Sattva* is applicable, and as such the appropriate standard of review is reasonableness, a standard that the award has met.

[29] Neither party cited an Ontario appellate decision as authority establishing the appropriate standard of review of an Arbitrator's decision in the context of an arbitral award held pursuant to the *Condominium Act*.

The Supreme Court Decision in *Sattva*

[30] In *Sattva*, a decision involving a complex dispute about contractual interpretation, the Supreme Court held that the appropriate standard of review for commercial arbitration decisions is reasonableness.

[31] The Supreme Court noted that the judicial review framework developed in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 [*Dunsmuir*], was not entirely applicable to the commercial arbitration context.

[32] At para. 104 of *Sattva* the Court wrote that “appellate review of commercial arbitration awards takes place under a tightly defined regime specifically tailored to meet the objectives of commercial arbitration and is different from judicial review of a decision of a statutory tribunal.” The Court pointed to the following distinctions:

- for the most part, parties choose to engage in commercial arbitration as opposed to being statutorily bound to proceed to arbitration; and,
- in commercial arbitration, unlike statutory tribunals, the parties to arbitration select the number and identity of the arbitrators.

[33] However, the Supreme Court did not entirely disregard the *Dunsmuir* framework and post-*Dunsmuir* jurisprudence in relation to identifying the appropriate standard of review for commercial arbitration decisions. The Court wrote:

[105] Nevertheless, judicial review of administrative tribunal decisions and appeals of arbitration awards are analogous in some respects. Both involve a court reviewing the decision of a non-judicial decision-maker. Additionally, as expertise is a factor in judicial review, it is a factor in commercial arbitrations: where parties choose their own decision maker, it may be presumed that such decision-makers are chosen either based on their expertise in the area which is the subject of dispute or are otherwise qualified in a manner that is acceptable to the parties. For these reasons, aspects of the *Dunsmuir* framework are helpful in determining the appropriate standard of review to apply in the case of commercial arbitration awards.

[106] *Dunsmuir* and post-*Dunsmuir* jurisprudence confirm that it will often be possible to determine the standard of review by focusing on the nature of the question at issue (see for example *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at para. 44). In the context of commercial arbitration, where appeals are restricted to questions of law, the standard of review will be reasonableness unless the question is one that would attract the correctness, such as constitutional questions or questions of law of central importance to the legal system as a whole and outside the adjudicator's expertise (*Alberta Teachers' Association*, at para. 30).

[34] At the time of writing this decision, only one Ontario trial decision had applied *Sattva* in the arbitral context.

[35] In *Ottawa (City) v. Coliseum Inc.*, 2014 ONSC 3838, Mackinnon J., in the context of contractual interpretation and the *Arbitration Act*, followed the Supreme Court's reasoning in *Sattva*, and held that the applicable standard of review from the arbitration award was reasonableness (at para. 44). However, this case can be distinguished because it did not involve an arbitration conducted pursuant to the *Condominium Act*.

Pre-*Sattva*

[36] Prior to the Supreme Court's decision in *Sattva* the Ontario Court of Appeal had held that the appropriate standard of review on questions of law from arbitral decisions was correctness.

[37] In *Wawanesa Mutual Insurance Co. v. Axa Insurance (Canada)*, 2012 ONCA 592, 112 O.R. (3d) 354 [Wawanesa Mutual], the issue in dispute was the proper interpretation of a provision of the *Insurance Act*. Wawanesa appealed the decision of an arbitrator to the Superior Court of Justice. The Superior Court of Justice dismissed the appeal. On the question of standard of review, the Court of Appeal noted that the issue before the court raised a question of law, and that the standard of review was correctness.

[38] In *Omers Realty Corp. v. Sears Canada Inc.* (2006), 211 O.A.C. 179 (Ont. C.A.), an arbitrator ruled that a landlord could recover its shortfall from eligible tenants under the *Municipal Act*, R.S.O., c. M.45, as amended by S.O. 1998, c. 3, s. 30. The Court of Appeal held that the arbitration panel erred in determining that the landlord exercised a power of statutory decision (*ibid.*, para. 27). Instead, the issue before the arbitration board was one of statutory interpretation (*ibid.*, para. 28). As such, the function of the board was to interpret the legislation and determine whether the landlord's actions were in compliance with the legislative requirement (*ibid.*). The Court wrote that the board was required to be correct in its interpretation (*ibid.*). As a result, any appeal from the board's determination raised a question of law to be reviewed on the correctness standard (*ibid.*).

Analysis

[39] In my view, arbitration pursuant to the *Condominium Act* is distinguishable and very different from the arbitration of a commercial dispute.

[40] In a commercial arbitration, the parties are presumed to possess commercial knowledge and to have equal bargaining power. This presumption does not necessarily apply in a case where a dispute arises between the developer/owner/declarant and a condominium corporation where an imbalance of expertise and bargaining power may frequently exist.

[41] This imbalance is reflected in the statutory purpose of the *Condominium Act*. The Ontario Court of Appeal has noted that the purpose the *Condominium Act* is to provide consumer protection, as well as predictability and certainty to those purchasing a condominium, enabling them to make informed financial decisions (*Lexington on the Green Inc. v. Toronto Standard Condominium Corp.* No. 1930, 2010 ONCA 751, 102 O.R. (3d) 737 at paras. 49, 51 [*Lexington*]; *Toronto Standard Condominium Corp.* No. 2095 v. *West Harbour City (I) Residences Corp.*, 2014 ONCA 724, 46 R.P.R. (5th) 1).

[42] While a condominium corporation is a legal “corporation,” this alone is not sufficient to deem it a commercial entity with expertise in the area of commercial or condominium law.

[43] The Boards of Directors of a condominium corporation are generally comprised of unit holders who may have very little or no expertise in condominium law and commercial transactions. On the other hand, developers of condominium projects who eventually become declarants usually have expertise in commercial matters and condominium law.

[44] For the above reasons I find that the Supreme Court’s decision in *Sattva* is distinguishable from the case at bar and that the standard of review of an arbitration award rendered pursuant to the *Condominium Act* is correctness.

[45] In the case before the Court, the arbitrator was required to be correct in his interpretation of s. 75 of the *Condominium Act* and in his awards of pre-judgment interest and costs, and the awards must be reviewed on this basis.

Did the Arbitrator Make a Reviewable Error in Interpreting Section 75 of the *Condominium Act*?

The Arbitrator’s Decision

[46] The central argument of the Appellant is that the evidence before the Arbitrator demonstrated that a large portion of the claim related to items not contemplated by the first-year budget, were excessive and unreasonable and should not have been included in the condominium first-year expense budget.

[47] The Arbitrator concluded that s. 75 of the *Condominium Act* contemplated a straightforward mathematical calculation based upon the condominium corporation’s first-year deficit requiring a declarant to pay the condominium corporation the difference between the first-year budget and the actual first-year audited financial statements.

[48] Further, he held that the limited “set-offs” were specifically spelled out in s. 75 of the *Condominium Act*, that he was restricted by the wording of the legislation and that he was not permitted to conduct a line-by-line inquiry into whether any of the first-year expenditures that comprised the claim were actually provided for or contemplated in the first-year budget or were reasonable.

[49] In his Interim Award, the Arbitrator held that, in the event he had made a reviewable error in his interpretation of s. 75 of the *Condominium Act* he nevertheless rejected the Appellant's evidence and argument that the expenses were unreasonable.

[50] With respect to the argument that the security and superintendent/concierge expenses were excessive, the Arbitrator noted that the Appellant's President sat on the board of directors for over a year and failed to complain about the expenses and was "opposed to any reduction in services."

[51] The Appellant also argued that some of the expenses were for repairs that should have been covered by warranties. The Arbitrator rejected that argument, stating that the Appellant failed to lead any evidence of the warranties and its only witness supporting this theory never read the warranties and "had very little involvement with these matters."

[52] As noted above, two of the largest expense items in dispute related to security expenses and superintendent/concierge services. The estimates in the first-year budget were \$196,227.00 for security and \$30,867.00 for a concierge/doorman. The actual claimed first-year expenditures were \$248,684.00 for security and \$92,552.00 for a superintendent and a concierge combined.

[53] The Appellant led evidence of Board member Terrence Guilbault, that security costs were higher during the first few months of operation because people were moving into the building and that a request had been made to reduce both security and superintendent costs by the condominium.

[54] The Arbitrator rejected the evidence of Mr. Guilbault having made an initial determination that he could not conduct a line-by-line analysis of various expenses.

[55] The Arbitrator found that s. 75(1) made a declarant fully liable for any first-year shortfall, and that he could not consider issues raised by the declarant by way of defence and set-off, noting that, where a declarant believes that a condominium corporation has made unreasonable expenditures, it may seek a remedy by way of an oppression claim under s. 135 of the *Condominium Act*.

[56] After discussing relevant jurisprudence the Arbitrator concluded: "[e]ven if I am wrong in my interpretation of s. 75 of the *Act*, the proper determination of the short fall is the bottom line, not an item by item evaluation." (para. 37)

[57] Notwithstanding this comment it is important to note that the Arbitrator did proceed to conduct an evaluation of the Appellant's two main arguments regarding the propriety of the security and superintendent/concierge expenses contained in the shortfall amount.

Position of the Parties

[58] The Appellant argues that the Arbitrator erred and was incorrect in his interpretation of s. 75(1). The Appellant submits that, while s. 75(1) provides that a declarant is accountable for the

any deficit between its budget and a condominium corporation's first-year budget statement, when the requirements of s. 72(6) are considered, s. 75 must be interpreted to mean that the deficit must relate to items that are properly identified as common expenses. Accordingly, an analysis of the expenses and deficit is proper and appropriate.

[59] The Respondent argues that the Arbitrator did not err and was correct with respect to the interpretation of s. 75. The Respondent submits that the meaning of s. 75(1) is clear – a declarant is responsible for the difference between the first-year budget and the actual first-year financial statement.

[60] The Respondent submits that the policy behind s. 75 is to protect purchasers of condominium units by preventing a developer from producing an unreasonably low budget statement and misleading purchasers to believe that monthly expenses will be lower than actual expenses. As such, an arbitrator has no discretion under the *Condominium Act* to analyze, deduct or set off expenses in either the declarant's budget or the condominium's first-year expense statement nor is there discretion to assess the reasonableness of an expense save and except as provided for in s. 75(4).

[61] In light of the Arbitrator's factual conclusions and, in the event that he was incorrect regarding his interpretation of s. 75, the Respondent maintains that the result of the arbitration would have been the same regardless of the interpretation of s. 75 of the *Condominium Act*.

Did the Arbitrator Correctly Interpret Section 75 of the *Condominium Act*?

Principles of Interpretation

[62] The Supreme Court in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, set out, at paras. 29-30, that:

... Major J.'s statement ... is apposite: "It is only when genuine ambiguity arises between two or more plausible readings, each equally in accordance with the intentions of the statute, that courts need to resort to external interpretative aids" (emphasis added), to which I would add, "including other principles of interpretation."

For this reason, ambiguity cannot reside in the mere fact that several courts – or, for that matter, several doctrinal writers – have come to differing conclusions on the interpretation of a given provision...It is necessary, in every case, for the court charged with interpreting a provision to undertake the contextual and purposive approach set out by Driedger, and thereafter to determine if "the words are ambiguous enough to induce two people to spend good money in backing two opposing views as to their meaning."

[63] At page 87 of his text *Construction of Statutes*, 2d ed., (Toronto: Butterworths, 1983) E.A. Driedger explains:

[T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[64] The Court of Appeal, at para. 34 of *Wawanese Mutual*, sets out the following three-step purposive approach to statutory interpretation:

- a court must examine the words of the provision in their ordinary and grammatical sense;
- a court must consider the entire context that the provision is located within; and,
- a court must consider whether the proposed interpretation produces a just and reasonable result.

[65] The phrase “entire context” includes “the history of the provision at issue, its place in the overall scheme of the Act, the object of the Act itself, and the legislature’s intent in enacting the Act as a whole and the particular provision at issue” (*Wawanese Mutual*, at para. 35).

[66] A “just and reasonable result” promotes “applications of the Act that advance its purpose and avoids applications that are foolish and pointless” (*ibid.*).

Application of Principles of Interpretation to the Case at Bar

The Ordinary and Grammatical Meaning of the Words

[67] Relevant sections of the *Condominium Act* are set out below:

Accountability for budget statement

75. (1) The declarant is accountable to the corporation under this section for the budget statement that covers the one-year period immediately following the registration of the declaration and description.

Common expenses

(2) The declarant shall pay to the corporation the amount by which the total actual amount of common expenses incurred for the period covered by the budget statement, except for those attributable to the termination of an agreement under section 111 or 112, exceeds the total budgeted amount.

Revenue

(3) The declarant shall pay to the corporation the amount by which the total actual amount of fees, charges, rents and other revenue paid or to be paid to the corporation, during the period covered by the budget statement, for the use of any

part of the common elements or assets or of any other facilities related to the property, is less than the total budgeted amount.

Set-off

(4) If the total actual amount of revenue described in subsection (3) exceeds the total budgeted amount, the declarant may deduct the excess from any amount payable under subsection (2).

Notice of payment

(5) After receiving the audited financial statements for the period covered by the budget statement, the board shall compare the actual amount of common expenses and revenue described in subsections (2) and (3) for the period covered by the budget statement with the budgeted amounts and shall, within 30 days of receiving the audited financial statements, give written notice to the declarant of the amount that the declarant is required to pay to the corporation under this section.

Time for payment

(6) Within 30 days of receiving the notice, the declarant shall pay the corporation the amount that it is required to pay under this section. [Emphasis added.]

- [68] Section 72(6) requires a budget statement include a number of elements, including
- (a) a statement of the common expenses of the corporation;
 - (b) a statement of the proposed amount of each expense of the corporation, including the cost of the reserve fund study required for the year, the cost of the performance audit under section 44 and the cost of preparing audited financial statements if subsection 43 (7) requires the declarant to deliver them within one year following the registration of the declaration and description;
 - (c) particulars of the type, frequency and level of the services to be provided;
 - (d) a statement of the projected monthly common expense contribution for each type of unit;
 - (e) a statement of the portion of the common expenses to be paid into a reserve fund;
 - (f) a statement of the status of all pending lawsuits material to the property of which the declarant has actual knowledge and that may affect the property after the registration of a deed to the unit from the declarant to the purchaser;

- (g) a statement of the amounts of all current or expected fees, charges, rents or other revenue to be paid to or by the corporation or by any of the owners for the use of the common elements or other facilities related to the property, unless a turn over meeting has been held under section 43;
- (h) a statement of all services not included in the budget that the declarant provides, or expenses that the declarant pays and that might reasonably be expected to become, at any subsequent time, a common expense and the projected common expense contribution attributable to each of those services or expenses for each type of unit;
- (i) a statement of the projected amounts in all reserve funds at the end of the current fiscal year;
- (j) a summary of the most recent reserve fund study, if any; and
- (k) all other material that the regulations made under this Act require.

[69] As set out above, s. 75(1) provides that a declarant is accountable to a condominium corporation for the first-year budget statement.

[70] Section 72(6) sets out the elements that comprise a declarant's budget statement. Most of the elements directly relate to common expenses. However, s. 72(6) also includes elements that do not directly impact the "bottom line" of the budget, such as the statement of the status of all pending lawsuits, and the summary of the most recent reserve fund study.

[71] Sections 75(2), 75(3) and 74(4) proceed to set out the specifics of how a declarant is financially accountable to a condominium corporation.

[72] Section 75(4) provides a set-off for a declarant where revenues, as described in s. 75(3), are higher than the budgeted amount, and where actual common expenses, as set out in s. 75(2), are also higher than the budgeted amount.

[73] Section 75(2) establishes that a declarant must pay a condominium corporation the amount by which the corporation's total actual amount of common expenses exceeds the declarant's total budgeted amount.

[74] An ordinary and plain grammatical reading of the words of s. 75(1) – "by which the total actual amount of common expenses...exceeds the total budgeted amount" – supports the interpretation that the section requires a declarant to be accountable to the condominium corporation for all of the elements that make up the budget statement: monetary and non-monetary.

The Entire Context within which the Provision is Located

[75] As noted above, the statutory purpose of the *Condominium Act* is consumer protection – it provides predictability and certainty for those purchasing a condominium to make informed decisions (*Lexington* at paras. 49, 51).

[76] Because there is no jurisprudence on the interpretation of s. 75 as it is currently drafted, it is helpful to consider judicial interpretation of earlier versions of the predecessor provision as part of the analysis of the context in which the section is found.

[77] In *Benner et al. v. HLS York Developments Ltd.* (1985), 21 D.L.R. (4th) 652, (Ont. H. Ct. J.) [Benner], Carruthers J. considered s. 52 of the *Condominium Act*, R.S.O. 1980, c. 84.

[78] The relevant portions of s. 52 of the 1980 statute read as follows:

Disclosure statements

S. 52(6) The disclosure statement ... shall contain and fully and accurately disclose,

...

(e) a budget statement for the one year period immediately following the registration of the declaration and the description;

...

Inaccurate statement of common expenses

S. 52(8) Where the total amount incurred for the common expenses provided for in the budget statement exceeds the total of the proposed amounts set out in the statement, for the period covered by the budget statement mentioned in clause (6)(e) the declarant shall forthwith pay to the corporation the amount of the excess except in respect of increased expenses attributable to the termination of an agreement under section 39.

[79] In interpreting s. 52(8) Carruthers J. wrote at para. 30:

... what is referred to in that subsection is, “the total amount incurred for the common expenses provided for in the budget statement” and “... the total of the proposed amounts set out in the statement” (Underlining added). In my view, that section does not apply to the situation where a consideration is given to common expenses and the proposed amount thereof which are not set out in the budget statement.

[80] Carruthers J. found that s. 52(8) would not apply to hold a declarant liable where the common expenses incurred were not set out in the budget statement.

[81] For the purposes of comparison, the relevant portions of the two provisions read:

Past (*Condominium Act*, R.S.O. 1980, c. 84, at s. 52(8)): “Where the total amount incurred for the common expenses provided for in the budget statement exceeds the total of the proposed amounts”; and,

Current (*Condominium Act*, 1998, S.O. 1998, c.19, at s. 75(2)): “the amount by which the total actual amount of common expenses incurred for the period covered by the budget statement ...exceeds the total budgeted amount.”

[82] The key difference between the two provisions appears to be the removal of the phrase “where the total amount incurred for the common expenses provided for in the budget statement exceeds” from the current legislation. The removal of this phrase suggests a legislative intent to hold declarants fully liable for any budget shortfall in the first-year of operation between the actual expenses and the budgeted amount, regardless of whether the elements going to the total actual amount are contemplated in the budget, are reasonable, or are excessive.

A Just and Reasonable Result

[83] The *Condominium Act* contemplates the possibility of budget disagreements and provides procedures to address these particular disputes (s. 132(3)). In *Metropolitan Condominium Corp. No. 1143 v. Peng* (2008), 67 R.P.R. (4th) 97 (Ont. S.C.), Pattillo J. wrote that the purpose of the mandatory mediation and arbitration provisions of the *Condominium Act* “is to permit, among other things, the expeditious resolution of certain disagreements ... in a simple and inexpensive manner” (at para. 14. See also *McKinstry v. York Condominium Corp. No. 472* (2003), 68 O.R. (3d) 557 (Ont. S.C.) at para. 19).

[84] The Appellant argued that, if an arbitrator had no authority to consider the propriety and reasonableness of the budget elements included in the shortfall, that this would render the dispute mechanisms meaningless.

[85] The Respondent argues that the Arbitrator’s interpretation of an arbitrator’s authority protects purchasers by making developers fully liable for any shortfall in the actual total expenses or revenues of the condominium, thereby encouraging developers to provide an accurate and conservative budget for the first-year operations.

[86] In my view, the Respondent’s position leads to an unjust and unreasonable result as well as an improper interpretation of the provision. The legislature would not have mandated an alternative dispute resolution process for budget statement disputes, and then removed both the ability of the declarant and authority of the arbitrator to consider the propriety and reasonableness of any elements contained in the shortfall. Additionally, the principles of fairness support this interpretation – otherwise there would be no restriction on what expenses and elements a condominium corporation could include in its first-year statement.

[87] It is my finding that a declarant is fully liable to the condominium corporation for any budget shortfall in the first-year of operation; however, a declarant's liability is not absolute. Through the mandated alternative dispute resolution process a declarant may argue, and an arbitrator may consider, the propriety and reasonableness of any elements contained in the shortfall.

Conclusion Regarding Section 75 of the *Condominium Act*

[88] The standard of review is correctness and, for the reasons set out above, I find that the Arbitrator's interpretation of s. 75 of the *Condominium Act* was incorrect.

[89] Notwithstanding my finding the Arbitrator's reasons nevertheless indicate that he considered the evidence and submissions of the Appellant regarding the propriety and reasonableness of certain expenses included in the shortfall. I do not find that any of the conclusions reached were unreasonable or unsupported by the evidence.

[90] I agree with the submissions of the Respondent that the result of the arbitration would have been the same regardless of the Arbitrator's incorrect interpretation of s. 75.

[91] Accordingly, I find no reason to set aside the arbitration award and dismiss this aspect of the appeal.

Did the Arbitrator Make a Reviewable Error in Awarding Pre-judgment Interest?

[92] The Arbitrator awarded interest at the rate prescribed in the Respondent's bylaw number 1, article 11.5 from April 23, 2012, being three percent over the prime rate compounded monthly.

[93] Article 11.5 establishes the rate applicable to arrears for common expenses owed to the condominium corporation by unit owners.

[94] The Arbitrator found that amounts owing under s. 75 should be treated as common expenses in arrears and hence attracts interest at the rate provided for in the bylaws.

[95] The Appellant's position is that the declarant was not a party to the contract/bylaws and is not contractually bound by the provisions.

[96] Further, the Appellant argues that as the declarant is not a party to the contract/ bylaws an award of compound interest would need to be founded in equity and that the limited grounds of equity were inapplicable to the case at bar. As such the Arbitrator was bound by s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, which prohibits an award of compound interest except in very limited circumstances.

[97] The Respondent responded by arguing that the Appellant/declarant wrote the bylaws and is therefore bound by them.

[98] In finding that the Appellant owed interest pursuant to the bylaws, the Arbitrator cited *Metropolitan Toronto Condominium Corp. No. 1250 v. Mastercraft Group Inc.* (2007), 54 R.P.R. (4th) 260 (Ont. S.C.), rev'd on other grounds, 2009 ONCA 584, 255 O.A.C. 253 (Ont. C.A.) [*Metropolitan Toronto*].

[99] The trial judge in *Metropolitan Toronto* held that there was no “reasonable objection to the plaintiff’s position that since the debt arises from the Declarant’s failure to pay common expenses, the interest rate payable ought to be the rate specified in Bylaw No. 1” (at para 34). The issue of interest was not before the Court of Appeal.

[100] Section 57 of the *Arbitration Act* provides that ss. 127 to 130 of the *Courts of Justice Act* apply to arbitration, with necessary modifications.

[101] Section 128(4)(g) of the *Courts of Justice Act* sets out that prejudgment interest shall not be awarded under s. 128(1) “where interest is payable by a right other than under this section.”

[102] The Supreme Court in *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43, [2002] 2 S.C.R. 601, at paras 41-43, set out the following circumstances in which interest may be awarded other than as specifically stated in s. 128:

- equity, including an award of compound interest; and
- contract law

[103] The court in *Wentworth Condominium Corp. No. 10-102 v. Mazzon*, 1998 CarswellOnt 1373 (Ont. Gen. Div.) [*Wentworth*] noted that condominium bylaws fell under “interest payable by another right other than that conferred by section 128 and section 129 of the *Courts of Justice Act*.” (para. 18). In *Wentworth* the dispute was between a condominium owner and the corporation. In that instance, there was no question that the owner was a party to a contractual agreement to submit to the condominium’s bylaws.

[104] The Arbitrator’s reasoning accords with the decision of the trial judge in *Metropolitan Toronto*: “I see no reason why they should not pay interest at the rate prescribed for in bylaw number 1 which had originally been prepared and declared by 90 George Street.” (para. 42 of the *Interim Award*, dated September 10, 2013)

[105] I agree and find that the Arbitrator’s decision was correct. Interest in the case at bar was awarded pursuant to a right other than as provided for by s. 128 and, as such, the Arbitrator was correct in his decision to award interest as provided for in the Respondent’s bylaws.

[106] Therefore, the appeal with respect to the issue of interest is dismissed.

Did the Arbitrator Make a Reviewable Error in the Award of Costs?

[107] The Arbitrator awarded costs on a substantial indemnity basis and included in the award costs of the mediation as well as for the arbitration. The award of \$90,400.00 inclusive of H.S.T. was slightly more than the sum claimed which was 90 percent of actual fees of \$86,493.48 inclusive of H.S.T.

[108] The Appellant argued that the award not only exceeded the amount claimed but also that the Arbitrator erred in awarding costs completely unrelated to the arbitration, including the costs of mediation, and incorrectly applied the principle for awarding costs on a substantial indemnity basis.

[109] An Arbitrator's authority to award costs is found in s. 54 of the *Arbitration Act*, which states as follows:

- 54 (1) An arbitral tribunal may award the costs of an arbitration.
- (2) The costs of an arbitration consist of the parties' legal expenses, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration.

[110] Section 54(5) of the *Arbitration Act* provides for costs consequences arising from an offer to settle, similar to those set out in Rule 49 of the *Rules of Civil Procedure*. It states:

- 54 (5) If a party makes an offer to another party to settle the dispute or part of the dispute, the offer is not accepted and the arbitral tribunal's award is no more favourable to the second-named party than was the offer, the arbitral tribunal may take the fact into account in awarding costs in respect of the period from the making of the offer to the making of the award.

[111] It is well settled that an award of costs is highly discretionary and entitled to deference on appeal and should only be set aside by an appellate court if there has been an error in principle or if the costs order is plainly wrong (see: *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9, [2004] 1 S.C.R. 303, at para. 27).

Costs of the Mediation

[112] The Appellant argued that the case of *Greenlight Capital, Inc. v. Stronach* (2008), 91 O.R. (3d) 241 (Div. Ct.) [*Greenlight*] was an authority for the proposition that an award of costs prior to the commencement of a proceeding is a reversible error.

[113] A close reading of the decision however, indicates that the court in *Greenlight* held that an award for costs prior to the Notice of Application was an error principle (at para. 76).

[114] The *Condominium Act* requires parties to mediate budget disagreements before undertaking arbitration. As such, I find that the mediation process did not represent an exercise of discretion by the parties prior to commencing arbitration and for that reason costs encompassing the mediation are related to the arbitration process and are proper and appropriate and dismiss the appeal on this issue.

Costs Awarded on a Substantial Indemnity Basis

[115] The final issue argued was the Appellant's appeal of the decision of the Arbitrator to award costs on a substantial indemnity basis.

[116] Costs on a substantial indemnity basis are to be awarded in rare and exceptional cases (see: *Davies v. Clarington (Municipality)*, 2009 ONCA 722, 100 O.R. (3d) 66 [*Davies*]).

[117] The Ontario Court of Appeal in *Davies* held elevated costs should only be awarded in two circumstances: (i) those involving the operation of an offer to settle under Rule 49.10; and (ii) where there has been reprehensible, scandalous or outrageous conduct.

[118] In the reasons for the cost award, the Arbitrator stated that one basis for awarding costs on a substantial indemnity basis was because the declarant 'had a statutory obligation to reimburse the Condominium Corporation for the first year's shortfall, which they refused to do, and they also put forth a claim for set-off which was without merit.' (para. 8 of the *Award as to Costs, Disbursements and Interest* dated October 21, 2013)

[119] I disagree. I find that this rationale for the award of costs on a substantial indemnity basis is incorrect in view of my conclusion that the *Condominium Act* allows a declarant to challenge the propriety and reasonableness of items included in a condominium corporation's first-year audited statement.

[120] However, a secondary rationale for the Arbitrator's award of costs on a substantial indemnity scale related to the formal offers to settle made by the parties.

[121] The arbitration was held from June 4-5, 2013, and from August 14-15, 2013.

[122] The Respondent made two offers to settle that were less than what they were awarded.

[123] The Respondent's first offer was made on May 8, 2013 – prior to the commencement of the arbitration; the second was presented on July 15, 2013.

[124] Section 54(5) of the *Arbitration Act* is comparable to Rule 49.10 of the *Rules of Civil Procedure* which expressly provides for a consideration of offers to settle when deciding the appropriate scale of costs to award.

[125] The Arbitrator was correct to consider the offers to settle when deciding to award costs on a substantial indemnity basis.

[126] The award of costs on a substantial indemnity basis for the entire arbitration was correct. Both offers were for sums considerably less than awarded and the first offer pre-dated the commencement of the arbitration.

[127] The appeal is therefore dismissed with respect to this issue.

Costs of the Appeal

[128] In the event that the parties are unable to resolve the issue of costs of the appeal, they may file written submissions within 30 days. Submissions are not to exceed five pages in length.

Patrick Smith J.

Released: January 16, 2015

CITATION: 90 George Street Ltd. v. Ottawa-Carleton Standard
Condominium Corporation No. 815, 2015 ONSC 336
COURT FILE NO.: 13-59021
DATE: 2015/01/16

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

90 George Street Ltd.

Appellant

– and –

Ottawa-Carleton Standard Condominium
Corporation No. 815

Respondent

REASONS FOR DECISION ON APPEAL

P. Smith J.

Released: January 16, 2015

Re Wellington Condominium Corporation No.
61 and Marilyn Drive Holdings Limited

[Indexed as: Wellington Condominium Corp.
No. 61 v. Marilyn Drive Holdings Ltd.]

37 O.R. (3d) 1
[1998] O.J. No. 448
Docket No. C19870

Court of Appeal for Ontario
Finlayson, Osborne and Rosenberg JJ.A.
February 6, 1998

1998 CanLII 2289 (ON CA)

Real property -- Condominiums -- Common elements
-- Condominium corporation suing for a declaration that
superintendent's unit was to be part of common elements
-- Common intention that unit to form part of common elements
not proven -- Claim dismissed -- Condominium Act, R.S.O. 1990,
c. C.26, s. 52(5).

Real property -- Condominiums -- Agreement of purchase and
sale -- Budget statement in disclosure statement indicating
expense for superintendent -- Budget misleading for failure to
state cost for housing superintendent -- Corporation entitled
to damages for misleading statement under s. 52(5) of
Condominium Act -- Condominium Act, R.S.O. 1990, c. C.26, s.
52(5).

In September 1988, MDH Ltd., the declarant of a condominium
in the City of Guelph, issued a disclosure statement that
included a one-year budget statement. Under s. 52(6) of the
Condominium Act, a budget statement must state expected charges
to be paid by unit owners for use of the common elements and
also expenses paid by the declarant that might reasonably be
expected to become a common expense of the condominium.

Although MDH Ltd.'s budget statement referred to the annual cost of a superintendent at \$18,000, neither the budget nor the draft declaration for the condominium referred to the cost of providing a unit for the superintendent. It was, however, MDH Ltd.'s plan to offer to sell Unit 201 to the condominium corporation for this purpose.

In January 1991, the declaration and description of the condominium were registered and, in February 1991, title closings took place. In April 1991, MDH Ltd. wrote to the executive of a residents association, which had been formed in November 1989, inquiring if the association, which was to become the condominium corporation, was interested in acquiring Unit 201. This correspondence continued after a new board of directors assumed control of the condominium corporation. The new board indicated that they would be interested in acquiring the unit but, in July 1991, the Condominium Corporation sued MDH Ltd. for negligent misrepresentation and for damages for breach of the statutory duty with respect to a proper disclosure statement.

The Corporation's action proceeded to trial, but it was dismissed. Herold J. held that both MDH Ltd. and individual purchasers intended that there would be a resident superintendent, but the purchasers had not considered whether a unit for the superintendent was to belong to the condominium without cost to them. Herold J. held that, while there had been a material omission in the disclosure statement, the condominium corporation had failed to prove reliance or damages as a result of the material omission.

The condominium corporation appealed. It argued that it had a common law claim arising from the common intention that Unit 201 be an asset of the condominium and, alternatively, it argued that it was entitled under s. 52(5) to damages sufficient to purchase the unit.

Held, the appeal should be allowed in part.

The common law claim for damages was not available to the corporation because that claim depended upon a finding that MDH

Ltd. intended that the purchasers believe that the superintendent's unit was a common element. This claim was not available on the facts as found by the trial judge. However, the corporation was entitled to damages under s. 52(5), which provides, amongst other things, for a claim by a condominium corporation for damages when a disclosure statement contains any material statement or information that is false, deceptive or misleading or fails to contain any material statement or information.

Where the claim is by a condominium corporation for damages, there is a different test under s. 52(5) than the test to be applied when a purchaser sues for rescission of the agreement because the disclosure statement was defective in a material respect. A less rigorous test was appropriate under s. 52(5). In the context of a claim by a condominium corporation, the onus was on it to show that the degree of deficiency was such that it occasioned a loss or expense to the unit owners as a whole that could be measured in damages, and it was not necessary for a corporation to prove reliance. Reliance need only be proved where claims under s. 52(5) were made by individual purchasers. In the context of claims by a condominium corporation, to show reliance, it must demonstrate that it cannot reasonably carry out its duty to control, manage, and administer the common elements and the assets of the corporation and to manage the property without incurring the expense occasioned by the misleading statement or the expense that should have been disclosed in the disclosure statement.

In this case, the findings of fact were against a reasonable purchaser having believed that the superintendent's unit was to be an asset of the condominium corporation, and the trial judge erred in finding a material omission from MDH Ltd.'s failure to disclose the possibility that it would sell the unit. However, there was a misleading statement with respect to the budget statement. In view of the statement about the annual cost of the superintendent, expenses for housing, that person could reasonably be expected and should have been set out in the budget. The undisclosed additional expense was the cost associated with either renting a unit or paying the carrying

cost of acquiring a unit. The quantification of these damages was problematic, but the trial judge accepted that the market value of Unit 201 was approximately \$125,000. Accordingly, damages could be calculated as the one-year carrying charges on the purchase of a unit assuming that purchase price and the date of purchase to be January 21, 1991.

Cases referred to

Abdool v. Somerset Place Developments of Georgetown Ltd. (1992), 10 O.R. (3d) 120, 96 D.L.R. (4th) 449, 27 R.P.R. (2d) 157 (C.A.); Frontenac Condominium Corp. No. 1 v. Joe Macciocchi & Sons Ltd. (1975), 11 O.R. (2d) 649, 67 D.L.R. (3d) 198 (C.A.); Middlesex Condominium Corp. No. 87 v. 600 Talbot Street London Ltd. (1998), 37 O.R. (3d) 22 (C.A.); Peel Condominium Corp. No. 417 v. Tedley Homes Ltd. (1997), 35 O.R. (3d) 257 (C.A.); York Condominium Corp. No. 167 v. Newrey Holdings Ltd. (1981), 32 O.R. (2d) 458, 122 D.L.R. (3d) 280, 14 R.P.R. 62 (C.A.)

Statutes referred to

Condominium Act, R.S.O. 1990, c. C.26, ss. 3, 7, 10, 12, 13, 14, 52

Courts of Justice Act, R.S.O. 1990, c. C.43

APPEAL from a judgment of Herold J. (1994), 20 O.R. (3d) 81, 41 R.P.R. (2d) 182 (Gen. Div.), dismissing an action by a condominium corporation for damages under s. 52(5) of the Condominium Act, R.S.O. 1990, c. C.26.

Gary M. Caplan, for appellant.

Jennifer A. Greenwood, for respondent.

The judgment of the court was delivered by

ROSENBERG J.A.: -- This is one of two appeals heard by this

court that raise issues concerning remedies for allegedly improper disclosure to purchasers of condominium units. In this case, and in Middlesex Condominium Corp. No. 87 v. 600 Talbot Street London Ltd. [37 O.R. (3d) 22], the dispute concerns ownership of a superintendent's suite. The reasons in the two appeals are being released contemporaneously. The principal issue in this appeal is the interpretation of s. 52 of the Condominium Act, R.S.O. 1990, c. C. 26. For the reasons that follow I would allow the appellant's claim in part for damages under s. 52.

THE FACTS

The appellant is a condominium corporation created on January 21, 1991 as a result of the registration by 24 Marilyn Drive (Guelph) Limited, the developer and declarant, of a declaration and description under the Condominium Act. The appellant was created to control, manage and administer the common elements and the assets of the condominium located at 24 Marilyn Drive in the City of Guelph. The property consists of a 10-storey, 56-unit apartment building. The respondent is the successor to the developer/declarant.

On September 27, 1988, the declarant issued a disclosure statement as required by s. 52 of the Act. Section 52(6) requires that the disclosure statement include inter alia a general description of the property, including "units and recreational and other amenities", a brief description of the proposed declaration, by-laws and rules governing the use of common elements, and a budget statement for the one-year period immediately following the registration of the declaration and the description. Section 52(7) prescribes the contents of the budget statement. The statement must include inter alia the common expenses, "any current or expected fees or charges to be paid by unit owners or any of them for use of the common elements", and any "expenses that the declarant pays and that might reasonably be expected to become, at any subsequent time, a common expense".

The dispute in this case concerns whether a superintendent's suite, particularly Unit 201, is part of the common elements of

the condominium and, if not, whether the appellant is entitled to damages for improper disclosure. Neither the draft declaration nor the disclosure statement, including the proposed budget, make special reference to Unit 201. Thus, the draft declaration identifies Unit 201 as having a proportionate interest in the common elements and common expenses. The budget statement does not mention any special assessment that might be necessary to acquire or rent Unit 201 from the declarant. The description of the property does not specifically refer to a superintendent's suite or to Unit 201 being part of the common elements.

The only mention of a superintendent is in the budget statement. Under the heading "Service Contracts", provision is made in the budget for the supply of a telephone in the "lobby office and for the superintendent". The following item appears under the heading "Staff":

Maintenance Man/Janitor \$18,500

It is anticipated that one full time resident maintenance man/janitor will be hired for the condominium corporation. His duties will include the repair and maintenance of all mechanical systems in the building not covered by contract. He will also be responsible for the routine maintenance of other common area and finishings in the building.

(Emphasis added)

Article 11 of the draft declaration defines "common expenses" as the expenses of the performance of the objects and duties of the Corporation and includes those expenses set out in Schedule "E". Schedule "E" is headed "Common Expenses" and provides as follows:

All sums of money required by the Corporation for the acquisition or retention of real property for the use and enjoyment of the property, or for the acquisition, repair, maintenance or replacement of personal property for the use and enjoyment of the common elements.

(Emphasis added)

The proposed budget does not make any provision for rental of a suite for the resident superintendent nor is there any provision for the carrying costs of purchasing such a suite.

The condominium in question, 24 Marilyn Drive, was built for the declarant by Ray Ferraro. Mr. Ferraro had built several apartment complexes since 1979 and, in particular, he had also built 22 Marilyn Drive for this declarant. Although not a lawyer, Mr. Ferraro drafted the various condominium disclosure documents using precedents from other projects, especially from the 22 Marilyn Drive project. It was his understanding that the declarant intended to offer Unit 201 for sale to the appellant just as the developer had previously sold a unit to the condominium corporation at 22 Marilyn Drive for use as a superintendent's suite. If the appellant decided not to purchase Unit 201, the declarant planned to market the unit to the public.

Between the fall of 1988 and the summer of 1989 the declarant marketed and sold all of the units in the building, except for Unit 201. The declarant hired a full-time superintendent who lived in Unit 201 from February 1, 1989 until his resignation in November 1990. In November 1989, an informal association of resident purchasers was formed to represent their interests and deal with the declarant. An interim board of directors or executive was elected by this association. This executive, however, had no legal status and no funding. All unit purchasers had taken possession of their units by September 28, 1990. In December 1990, the declarant published an amended disclosure statement. Its contents did not vary or amend the provisions touching upon the superintendent or Unit 201.

On January 21, 1991, the declaration and description were registered, whereupon the appellant came into existence and the declarant became the registered owner of all units in the building, including Unit 201. The first general meeting of the condominium corporation took place on February 2, 1991. The three persons present for the meeting were the declarant's proxies and were elected to be the first directors. On February

5, 1991 and shortly thereafter, title closings took place, resulting in the unit owners receiving deeds to their respective units from the declarant. On title closing, each purchaser received an estoppel certificate which provided that the current budget was accurate, the appellant had no knowledge of any circumstances that may result in an increase in the common expenses and that "the [appellant] is not presently considering any substantial addition, alteration or improvement to or renovation of the common elements or any substantial change in the assets of the corporation". At this time, of course, the appellant was still controlled by the declarant through its nominees on the board of directors.

In resolving the issue of ownership of Unit 201, the trial judge emphasized the conduct of the members of the executive. On November 19, 1990, the executive met with the condominium manager who indicated that the declarant was prepared to sell Unit 201 for \$125,000. The minutes of a further meeting of the executive in January 1991, show that there was a discussion about how the condominium corporation would accommodate a superintendent since Unit 201 was owned by the declarant. On April 8, 1991, the declarant wrote to the executive of the informal association asking if the Corporation (i.e., the appellant) would be interested in purchasing Unit 201. At this time, the executive still lacked formal legal status and, in fact, the declarant's own nominees were still in control of the appellant. The executive wrote back a week later indicating that the owners would be interested in acquiring the unit.

On May 7, 1991, the turnover meeting took place and the unit owners elected a board of directors from among their members, thus replacing the declarant's nominees. On May 16, 1991, the solicitor for the declarant wrote to the appellant asking if it wished to purchase Unit 201. The new board of directors wrote back indicating that the owners would be interested in acquiring the unit and asked for the terms the declarant would be willing to consider. On May 31, 1991, the declarant's solicitor replied indicating that the declarant was prepared to sell the unit for \$125,000 cash. It would later transpire that the declarant was prepared to negotiate the price and to consider a vendor-take-back mortgage. After the resignation of

the superintendent hired by the declarant, the appellant hired a resident in the building to take on the duties of superintendent. This resident occupied a unit owned by a relative, not Unit 201. His services were terminated in July 1991 and, thereafter, the appellant has relied upon the services of part-time superintendents and contract cleaners.

On July 15, 1991 this action was commenced and a certificate of pending litigation was registered against the title to Unit 201. In the statement of claim, the appellant sought a declaration that it was the owner of Unit 201 and damages for negligent misstatement and breach of statutory duty arising from the alleged false, deceptive and misleading contents of, and omissions contained in, material statements or information required by the declarant to be provided to a purchaser of a unit by the declarant, contrary to s. 52 of the Condominium Act.

At the trial, several unit purchasers testified about the superintendent's suite. In summary, the purchasers testified that they believed or understood that the condominium would have a full-time resident superintendent. This understanding was based on the disclosure statement, the fact that the superintendent hired by the declarant occupied Unit 201, that Unit 201 was listed at the front entrance as the superintendent's suite, and certain representations made by sales representatives. Several purchasers testified about what they would have done had they known that the declarant contemplated selling the unit to the condominium corporation with the resulting increase in common expenses. They testified that it was important that there not be any hidden costs or special assessments since they were on tight budgets. I will return to this evidence when reviewing the findings of fact made by the trial judge.

THE FINDINGS OF FACT BY THE TRIAL JUDGE

The action was dismissed with costs by Herold J. His reasons are now reported at (1994), 20 O.R. (3d) 81, 41 R.P.R. (2d) 182 (Gen. Div.). Herold J. made findings of fact that are important in the resolution of the issues raised in this

appeal. They may be summarized as follows:

- (i) Most, if not all, of the purchasers entered into the transaction on the understanding that there would be a full-time on-site resident superintendent.
- (ii) Although the association executive had no legal status until the turnover, it was representative of the unit purchasers and responsive to them and consulted from time to time with solicitors to obtain legal advice. At least by the January 9, 1991 meeting, the executive was aware that ownership of Unit 201 was an issue.
- (iii) The declarant also intended that there be a permanent live-in superintendent.
- (iv) None of the purchasers who testified stated that they intended that Unit 201 or a similar unit would belong to the appellant, at no cost to them. Rather they simply did not direct their minds to that issue.
- (v) The declarant never had the intention that Unit 201 be part of the common elements without any cost to the appellant or the unit purchasers. Further, it was doubtful that the purchasers had this intention.

THE ISSUES

The appellant raised two issues before Herold J. It argued that there was a common intention between the declarant and the unit purchasers that Unit 201 would be an asset of the appellant at no cost to the purchasers. The appellant relied upon the decisions of this court in *Frontenac Condominium Corp. No. 1 v. Joe Macciocchi & Sons Ltd.* (1975), 11 O.R. (2d) 649, 67 D.L.R. (3d) 199, and *York Condominium Corp. No. 167 v. Newrey Holdings Ltd.* (1981), 32 O.R. (2d) 458, 122 D.L.R. (3d) 280. The appellant therefore sought the remedy granted in those cases requiring the respondent to convey title in Unit 201 to the appellant.

In the alternative, the appellant sought damages pursuant to

s. 52(5) of the Condominium Act. As I understand it, the appellant seeks damages sufficient to allow it to purchase either Unit 201 or another unit for use by a resident superintendent.

For the reasons that follow, I would dismiss the claim based on the common law cause of action. I would only allow in part the appellant's claim for damages, limiting the award to the carrying costs for purchase of a unit for use by the superintendent for the first year following registration.

ANALYSIS

The Legislative Scheme

Although the resolution of this appeal revolves primarily around the interpretation of s. 52 of the Condominium Act, certain other provisions of the Act are important and I intend to briefly review some aspects of the legislative scheme. Some of the issues in this appeal concern the nature of the appellant's status as a condominium corporation and the nature of the common elements.

Section 3 of the Act sets out the mandatory and permitted contents of the declaration. Pursuant to s. 7 of the Act, the unit owners are tenants in common of the common elements and an undivided interest in the common elements is appurtenant to each unit. Under s. 10, the registration of a declaration and description of the project creates a condominium corporation without share capital "whose members are the owners from time to time". Pursuant to s. 12, the objects of the corporation are to manage the property and any assets of the corporation. The corporation has a duty to control, manage and administer the common elements and the assets of the condominium corporation. Section 13 provides that the owners share the assets of the corporation in the same proportions as the proportions of their common interests in accordance with the Act, the declaration and the by-laws.

Section 14 gives the corporation its power to sue for damages and sue with respect to the common elements. It is in the

following terms:

14(1) The corporation after giving written notice to all owners and mortgagees may, on its own behalf and on behalf of any owner, sue for and recover damages and costs in respect of any damage to common elements, the assets of the corporation or individual units . . .

(2) The corporation after giving written notice to all owners and mortgagees may sue on its own behalf and on behalf of any owner with respect to the common elements and any units, even if the corporation was not a party to the contract in respect of which the action is brought . . .

(Emphasis added)

Section 52 is the section most directly at issue in this case. For this appeal, the important provisions of that section are the following:

52(1) An agreement of purchase and sale entered into after the 1st day of June, 1979 by a declarant or proposed declarant of a unit or proposed unit for residential purposes is not binding on the purchaser until the declarant or proposed declarant has delivered to the purchaser a copy of the current disclosure statement and all material amendments thereto.

(2) The purchaser, before receiving delivery of a deed to or transfer of the unit, may rescind the agreement of purchase and sale within ten days after receiving the disclosure statement or, where there has been a material amendment thereto, within ten days after receiving the material amendment.

(3) A person may rescind an agreement of purchase and sale under subsection (2) by giving written notice of the rescission to the declarant or proposed declarant or to the solicitor of the declarant or proposed declarant.

.

(5) Where any statement or material required under this Act to be provided by a declarant or proposed declarant to a purchaser of a unit or proposed unit for residential purposes contains any material statement or information that is false, deceptive or misleading or fails to contain any material statement or information, the corporation or any unit owner who relied on such statement or material is entitled, as against the declarant or the proposed declarant to damages for any loss sustained as a result of such reliance.

(6) The disclosure statement referred to in subsection (1) shall contain and fully and accurately disclose,

.

(b) a general description of the property or proposed property including the types and number of buildings, units and recreational and other amenities together with any conditions that apply to the provision of amenities;

.

(d) a brief narrative description of the significant features of the existing or proposed declaration, by-laws and rules governing the use of common elements and units, and of any contracts or leases that may be subject to termination or expiration under section 39;

(e) a budget statement for the one year period immediately following the registration of the declaration and the description . . .

.

(7) The budget statement mentioned in clause (6)(e) shall set out,

(a) the common expenses;

- (b) the proposed amount of each expense;
- (c) particulars of the type, frequency and level of the services to be provided;
- (d) the projected monthly common expense contribution for each type of unit;

.

- (h) any current or expected fees or charges to be paid by unit owners or any of them for the use of the common elements or part thereof and other facilities related to the property;
- (i) any services not included in the budget that the declarant or proposed declarant provides, or expenses that the declarant or proposed declarant pays and that might reasonably be expected to become, at any subsequent time, a common expense and the projected common expense contribution attributable to each of those services or expenses for each type of unit;

.

(8) Where the total amount incurred for the common expenses provided for in the budget statement exceeds the total of the proposed amounts set out in the statement, for the period covered by the budget statement mentioned in clause (6)(e) the declarant shall forthwith pay to the corporation the amount of the excess except in respect of increased expenses attributable to the termination of an agreement under section 39.

Common Intention

The appellant's submissions with respect to common intention rely in part upon the decisions of this court in Frontenac Condominium Corp. No. 1 and Newrey Holdings Ltd. In my reasons for judgment in Middlesex Condominium Corp. No. 87 v. 600 Talbot Street London Ltd. I have discussed those decisions and

I need not repeat that discussion here.

In Middlesex Condominium Corp. No. 87 v. 600 Talbot Street London Ltd., I held that the common law cause of action and remedy established in Frontenac and Newrey Holdings has survived the subsequent enactment of s. 52 of the Act. However, that cause of action depends upon a finding that the declarant intended that the purchasers believe the superintendent's suite was to be a common element and that a reasonable purchaser would assume that the superintendent's suite was a common element. In this case, Herold J. found, as a matter of fact, that it was not the common intention or understanding of the parties that the superintendent's suite would be a common element. While it would have been open to a trier of fact to reach another conclusion, that finding is supported by the evidence. As Robins J.A. wrote in Peel Condominium Corp. No. 417 v. Tedley Homes Ltd. (1997), 35 O.R. (3d) 257 at p. 263 (C.A.), in each case it will be a question of fact as to whether the superintendent's suite is part of the common elements:

It is also important to recognize that the Act does not require that guest and superintendent suites be part of the common elements of a condominium. Such suites are not part of the common elements unless there is factual evidence that this was intended to be the case . . .

(Emphasis added)

The trial judge was not prepared to find such an intention and I see no basis for overturning that finding. If the appellant in this case was entitled to a remedy it would have to be found in s. 52 of the Condominium Act. I turn to that issue now.

Section 52 of the Condominium Act

The Trial Judge's Reasons

I have set out s. 52 of the Act above. The appellant relies upon s. 52(5) to provide a remedy and submits that the trial

judge erred in his interpretation of that provision. Section 52(5) provides as follows:

(5) Where any statement or material required under this Act to be provided by a declarant or proposed declarant to a purchaser of a unit or proposed unit for residential purposes contains any material statement or information that is false, deceptive or misleading or fails to contain any material statement or information, the corporation or any unit owner who relied on such statement or material is entitled, as against the declarant or the proposed declarant to damages for any loss sustained as a result of such reliance.

(Emphasis added)

The trial judge found that there had been a material omission from the disclosure statement. He held that the possibility the appellant could acquire an asset worth \$125,000 was material and should have been disclosed.

The trial judge went on to consider whether the appellant had proved that "its members, the unit purchasers, relied on this omission in any way and whether as a result of this reliance they sustained damages in a proven amount or at all". The trial judge reviewed at length the evidence called by the appellant. Much of this evidence concerned the role of the executive of the informal association and their knowledge of the issue concerning the superintendent's suite prior to closing. The trial judge did not find that the executive could in any way bind the other unit purchasers or the corporation. He did find it significant, however, that although these purchasers were aware of the dispute they had not taken any steps to resolve the issue prior to closing their own units. The trial judge concluded that the appellant had not established the necessary element of reliance [p. 102]:

In all of the circumstances, I am simply unable to conclude or infer that the plaintiff or its members relied upon the fact that a superintendent's suite, whether suite 201 or otherwise, was to be a common element of the plaintiff or otherwise an asset owned by the plaintiff corporation free of

charge.

Finally, the trial judge held that, in any event, the appellant had failed to prove either that it suffered any damages as a result of the material omission, or if it did, the amount of those damages.

The Section 52 Issues

The appellant's submissions raise three issues concerning the interpretation of s. 52(5) of the Act, namely:

- (1) What is the meaning of the term "material statement or information" in s. 52(5)?
- (2) Where the action is brought by the condominium corporation that was not a party to the agreements of purchase and sale, must it prove "reliance"?
- (3) What is the measure of damages for improper or inadequate disclosure?

Abdool v. Somerset Place Developments of Georgetown Ltd.

The leading decision on the interpretation of s. 52 of the Condominium Act is the decision of Robins J.A. in Abdool v. Somerset Place Developments of Georgetown Ltd. (1992), 10 O.R. (3d) 120, 96 D.L.R. (4th) 449 (C.A.). The issues in Abdool concerned the rescission remedy provided by s. 52(1) and (2). However, Robins J.A. also gave some consideration to s. 52(5) and the relationship between the damage remedy provided in that subsection and the rescission remedy. One of the issues in Abdool was whether a purchaser was entitled to rescind the agreement of purchase and sale after the ten-day cooling-off period provided for in s. 52(2). It had been argued that once this period had expired, and provided it was not revived by delivery of a material amendment, the purchaser's sole remedy for alleged improper disclosure was damages under s. 52(5). Robins J.A. disagreed and held that if the disclosure statement does not comply with s. 52 in a material respect, it is not a disclosure statement within the meaning of s. 52(1) and the

agreement of purchase and sale is not binding.

It was within this context that Robins J.A. considered the damage remedy provided for in s. 52(5). In particular, at p. 135 he held that by giving unit owners a cause of action in damages without regard to whether they knew of the disclosure defects before closing, s. 52(5) "eliminates any question of merger on closing and provides purchasers with protection in addition to that provided by other subsections of s. 52".

Having held that an agreement of purchase and sale was not binding if the disclosure did not comply with s. 52, Robins J.A. went on to consider the type of defects that would render the agreement non-binding. In developing the appropriate test, he took into account the rights of both parties to the agreement. He noted, at p. 136, that while the purchaser is entitled to the information called for in the Act, after the ten-day cooling-off period the declarant is entitled to assume that it has a binding agreement and to order its affairs accordingly. In that context, to allow the purchaser to rescind is a drastic remedy and should require the purchaser to meet a relatively strict test. The purchaser was required to show that the disclosure statement was "defective in a material respect". He expanded on this test at pp. 138-39 as follows:

If, as I have concluded, only material departures from these provisions warrant declaring an otherwise valid agreement non-binding, when is a defect to be considered material? To invoke a common dictionary meaning of "material", when is a defect so pertinent, germane or essential as to render a disclosure statement in contravention of the Act and entitle a purchaser to cancel a transaction?

I approach this question first by reference to the applicable burden of proof. In my opinion, when a purchaser who has had the opportunity afforded by the cooling off period to consider the disclosure statement and the accompanying documentation, and has decided to go through with the transaction, subsequently seeks to resile from his or her otherwise binding agreement of purchase and sale on the basis of the deficiency of the disclosure statement, the

onus is on the purchaser to show that the disclosure statement fails to satisfy the requirements of the Act to the degree that the agreement must be declared non-binding.

To discharge this onus and prove the materiality of the complaint, in my opinion, the purchaser is obliged to establish objectively that had the information that was not disclosed, or that was inaccurately or insufficiently disclosed, been properly disclosed in the disclosure statement at the time it was delivered to the purchaser, a reasonable purchaser would have regarded the information as sufficiently important to the decision to purchase that he or she would not likely have gone ahead with the transaction but would instead have rescinded the agreement before the expiration of the 10-day cooling off period.

(Emphasis added)

Robins J.A. also dealt with the related question of what constitutes a material amendment so as to revive the right of rescission under s. 52(2). At pp. 149-50, he adopted a similar test, having regard to the fact that the remedy is the same, namely, rescission of the agreement:

In the interests of consistency, I would determine the materiality of a change or amendment to the originally-delivered disclosure statement by reference to a test similar to that which I formulated earlier to determine the materiality of an alleged defect in a disclosure statement. Would a reasonable purchaser regard the change or amendment as sufficiently important to his or her decision to purchase that, had the disclosure statement contained the new or amended information at the time it was delivered, the purchaser would not likely have gone ahead with the transaction but would have rescinded the agreement within the 10-day period? If the answer to this question is in the affirmative, the developer is obliged to deliver an amendment to the disclosure statement and the purchaser has 10 days from the date of delivery within which to rescind.

Amendments that substantially change a purchaser's

anticipated use and enjoyment of the unit or the amenities associated therewith or that adversely affect the value of the unit, are, I would think, clearly material amendments that revive the rescission period. A reasonable purchaser could objectively assert that he or she would not have proceeded with the deal had this information been available at the time of the original disclosure statement. However, given the lifestyle aspects of condominium living, there may well be situations in which the individual circumstances of a particular purchaser may render an amendment which is not material to other purchasers, and which indeed may be acceptable to other purchasers in a given project, none the less material to this purchaser. The extent to which subjective considerations may reasonably be asserted in determining the materiality of the new or amended information is not before the court in these appeals and need not be considered. Nor is it necessary to consider the applicability of the principles of waiver or estoppel when a purchaser seeks to rescind on the basis of an undelivered material amendment of which the purchaser has had actual knowledge.

(Emphasis added)

As is apparent, Robins J.A. was dealing with materiality solely for the purposes of invoking the rescission remedy after the initial ten-day cooling-off period had expired, and thus, after the declarant could reasonably assume that it had a binding agreement. The issue presented by this appeal is whether that same test applies within the context of s. 52(5) in considering the phrase "material statement or information" in that subsection. For the reasons that follow, I would hold that it does not.

Material statement or information under s. 52(5) of the
Condominium Act

In view of the different remedies and the different wording of the subsections I would adopt a different test under s. 52(5) than the test set out in Abdool. In Abdool, Robins J.A. was concerned with a type of defect that would render an apparently binding agreement unenforceable. It is entirely

appropriate in that context that the test of materiality be commensurate with the nature of the remedy. Where, however, the plaintiff does not seek to set aside the agreement but seeks only damages for the loss occasioned by the defective disclosure, a less rigorous test is appropriate. Further, in Abdool, the court was concerned with statutory language referring to a "material amendment". The language of s. 52(5) is broader and refers to "any material statement or information" and provides a remedy not only for false, deceptive or misleading disclosure, but disclosure that "fails to contain" any material statement or information.

Another reason for adopting a different test lies in the fact that s. 52(5) gives a remedy to the condominium corporation as well as the unit owner. In my view, by providing that the corporation is entitled to damages, the legislature must have envisaged that there could be a loss to the owners as a group, as represented by the corporation. This loss, while significant to the owners as a whole, might not be sufficiently material that any individual owner would have considered rescission.

There is a related reason for giving s. 52(5) a different meaning where the condominium corporation is the plaintiff. The corporation was not a party to the original agreement of purchase and sale. Indeed, it did not exist at that time. In those circumstances, it is difficult to apply a test of materiality premised on rescission of that agreement.

My approach to the interpretation of s. 52(5) is nevertheless similar to the approach of Robins J.A. in Abdool. **The alleged false, deceptive or misleading statement or information or omission must have the quality about it that is commensurate with the remedy.** At pp. 136-37 Robins J.A. expressed the concern that agreements should not be rendered unenforceable by "technical deficiencies or immaterial omissions in a disclosure statement". He pointed out that contracting parties owe one another "a duty to act reasonably and in good faith and to perform contracts honestly made" and that the consumer protection objects of the legislation must be balanced with the commercial realities of the condominium industry. As he said: "Consumer protection legislation intended, as this Act is,

to promote fair dealing between contracting parties, ought not to be applied in a manner which produces the opposite result by allowing a party to resile from an otherwise valid agreement on grounds that are unfair, unreasonable or capricious."

In Abdool, Robins J.A. referred to the burden of proof in applying the test for materiality. He wrote that the onus was on the purchaser to show that the disclosure statement was so defective that the agreement must be declared non-binding. Taking a similar approach, but in the context of s. 52(5), the onus is on the corporation to show that the degree of deficiency in the disclosure is such that it has occasioned a loss or expense to the unit owners as a whole that can be measured in damages. Not every defect or omission will have this effect so as to warrant a remedy. Mere technical departures from the requirements of s. 52 will not suffice. On the other hand, to properly balance the "consumer protection and commercial realities of the condominium industry", to quote Robins J.A. in Abdool, *supra*, at p. 145, the approach must be a broad and flexible one, not a rigid or stringent one. Otherwise, a legitimate claim for damages would be defeated because the corporation could not demonstrate that any of the purchasers would have resorted to the drastic remedy of rescission.

In this case, the appellant's principal argument for damages related to the declarant's statements about, and omissions concerning, the superintendent's suite. Where there is a dispute about an asset such as a superintendent's suite, it seems to me that the proper approach is for the court to determine whether a reasonable purchaser would think that the asset was part of the purchase price. [See Note 1 at end of document] Further, consistent with the consumer protection aspect of this legislation, and the fact that it is the declarant who drafts the disclosure statement, it is reasonable to interpret any ambiguity in the disclosure statement against the declarant.

While Herold J. did not expressly deal with this question, it seems to me that his findings concerning the common law remedy based upon common intention are consistent only with the conclusion that a reasonable purchaser would not have

considered that a superintendent's suite was included in the purchase price or that the corporation was to have the suite at no cost. In any event, in view of his findings of fact I cannot find that a reasonable purchaser would think, based on the representations in the disclosure documents, that a superintendent's suite was to be an asset of the corporation without any cost to the purchasers.

Further, in my view, Herold J. erred in finding a material omission because the declarant did not disclose the possibility it would sell the unit to the corporation. He held as follows [at p. 95]:

In my view, the possibility that the condominium corporation could acquire from the developer an asset at its fair market value of approximately \$125,000, and the costs associated with such an acquisition are material and the possibility at least that the corporation might incur such expenses are something that a reasonable purchaser would have wanted to see in the disclosure documents. That is, they are in my view material.

(Emphasis added)

The finding that the declarant's failure to disclose the possibility that it would sell the suite for approximately \$125,000 implies that the Condominium Act mandates such disclosure. In my view, this imposes far too onerous an obligation on the declarant and is not a duty imposed by the statute. As Robins J.A. pointed out in *Tedley Homes Inc., supra*, at p. 263, as presently drafted the Condominium Act provides that the declaration must contain the items specified in s. 3(1) and may contain the items set out in "the broadly permissive provisions of s. 3(3)". Pursuant to s. 3(3)(b) the declaration may contain provisions "respecting the occupation and use of the . . . common elements". However, there is no requirement that the declaration state whether or not a superintendent's suite is intended to be a common element and s. 52(6) does not require any such statement in the disclosure statement.

In Tedley Homes Inc., Robins J.A. stated that whether certain amenities should be included in the common elements is a matter of policy for the legislature, not the judiciary. Similarly, whether or not the declarant should be required to expressly state whether a superintendent's suite is part of the common elements and, if not, whether such a suite will be made available for purchase by the corporation must also be a matter for the legislature. In the absence of a statutory requirement of that nature I fail to see why, as was held by the trial judge in this case, the declarant should have disclosed the mere "possibility" that the corporation "might incur" the expense of purchasing a superintendent's suite at a cost of approximately \$125,000, depending upon the wishes of the owners' board of directors.

However, the trial judge's findings do disclose a false, deceptive or misleading statement or information or omission of a material statement or information within the meaning of s. 52(5) with respect to the budget statement for the one-year period immediately following registration as required by s. 52(6)(e). The contents of that statement are mandated by s. 52(7). For convenience, I shall repeat cls. (d), (h) and (i) of s. 52(7):

52(7) The budget statement mentioned in clause (6)(e) shall set out,

.

(d) the projected monthly common expense contribution for each type of unit;

.

(h) any current or expected fees or charges to be paid by unit owners or any of them for the use of the common elements or part thereof and other facilities related to the property;

(i) any services not included in the budget that the declarant or proposed declarant provides, or expenses

that the declarant or proposed declarant pays and that might reasonably be expected to become, at any subsequent time, a common expense and the projected common expense contribution attributable to each of those services or expenses for each type of unit . . .

(Emphasis added)

Thus, these clauses refer to "expected" fees and expenses that the unit owners may incur. In view of the information in the budget statement provided to the purchasers that it was "anticipated that one full-time resident maintenance man/janitor" would be hired, expenses for housing that person could reasonably be expected to become a common expense. Accordingly, the first-year costs to the purchasers of providing that accommodation should have been disclosed. The failure to make this disclosure could reasonably be expected to involve the purchasers in expenses that can be quantified in damages. I reach this conclusion primarily on the basis of the finding of fact by the trial judge that "there can be no doubt that both the developer and the unit purchasers always intended that the building would have a permanent live-in superintendent".

Accordingly, just as the declarant properly showed projected expenses relating to the salary and telephone for the superintendent, it should also have set out the expenses associated with providing accommodation for the "resident" or "permanent live-in" superintendent. This additional expense could be calculated on the basis of the costs associated either with renting a unit for the year following registration or the carrying charges for the year if Unit 201 or some other unit were purchased. Since I have found that the budget statement failed to contain a material statement or information, I turn to the question of reliance.

Reliance Where the Action for Damages is Brought by the Corporation

Although he found that there had been a material omission, the trial judge held that the appellant failed to prove

reliance. The trial judge placed considerable emphasis upon the fact that none of the executive members who knew about the problem with Unit 201 elected to resolve the issue or attempted to rescind their agreements prior to closing. Accordingly, he found that the unit owners did not rely upon the material omission. In my view, the trial judge erred. His approach was more suitable to a case where an individual owner seeks rescission prior to closing or seeks damages after closing for the loss that he or she has personally suffered. It is not an approach that I find helpful where the action is brought by the corporation on behalf of the owners as a whole.

Section 52(5) includes both objective and subjective elements. Where a unit owner alleges that he or she has personally suffered damages as a result of the improper disclosure, it would seem that the owner must show actual reliance upon the improper disclosure. The issue of reliance where, as here, it is alleged that the damage has been sustained by the unit owners as a whole as represented by the corporation is more difficult. I cannot accept that the legislature intended that the corporation in an action under s. 52(5) must adduce evidence from each of the unit owners that they relied upon the omission. I also find it difficult to accept that the measure of damages would be different depending on the number of owners the corporation was able to show did rely upon the inadequate disclosure.

Such an interpretation would also be inconsistent with other parts of the legislative scheme. The primary responsibility of the corporation is to manage the assets. It also has a duty to control and administer the common elements and the assets and has the power to own and acquire real property for the use and enjoyment "of the property" (s. 13(1)). Most importantly, s. 14(2) of the Act provides that the corporation may sue on its own behalf with respect to the common elements "even if the corporation was not a party to the contract in respect of which the action is brought". These provisions manifest a legislative intention that the corporation be entitled to recover damages where the real injury is to the owners as a group rather than to any individual.

Further, in s. 52(5), the legislature has given the corporation the power to recover damages for false statements that were not made to it and upon which it therefore could not have relied. I cannot accept that the legislature nevertheless intended that the corporation prove it actually relied upon those statements. In my view, actual reliance need only be proved where the unit owner brings an action for damages.

A much more reasonable approach to reliance in the context of the condominium corporation would require the corporation merely to demonstrate that it cannot reasonably carry out its duty to control, manage and administer the common elements and the assets of the corporation (s. 12(2)) and to manage the property (s. 12(1)) without incurring the expense occasioned by the false, deceptive or misleading statement or information or the expense that should have been disclosed in the disclosure statement. Dealing particularly with the first-year budget statement, it is clear to me that the legislature has manifested an intention that purchasers know with a relatively high degree of certainty the expenses they are likely to incur within the first year. This intention is exhibited not only in the provisions of s. 52(7) set out above, but in the provisions of s. 52(8). That subsection requires, with an exception not relevant to this case, that the declarant "shall forthwith pay" the total amount incurred for the common expenses provided for in the budget statement that exceeds the total of the proposed amounts set out in the statement for the one-year period immediately following registration.

In my view, the appellant has demonstrated the requisite degree of reliance. On the evidence, all of the parties envisaged it reasonable for there to be a resident superintendent so that the corporation could properly manage the common elements, the assets of the corporation and the property. The trial judge seems to have been of the same view. As pointed out above, he found that "there can be no doubt that both the developer and the unit purchasers always intended that the building would have a permanent live-in superintendent". However, because of the inadequate disclosure by the declarant no provision was made in the budget for housing this superintendent. The remaining issue concerns the question of

damages.

Damages

Although he found that there was no reliance and therefore the appellant was not entitled to succeed in its damage claim, the trial judge did go on to consider the issue of damages. The evidence adduced by the appellant was that a resident superintendent, in a comparable building, who was given rent-free accommodation, was paid approximately \$18,000 to \$19,500. There was other evidence from the respondent's witness that a superintendent's services in a smaller building could be obtained for \$16,500, even though the superintendent had to rent his own unit in the building from a private owner. Finally, there was the evidence of the experience of the tenant/superintendent who was paid \$1,500 per month and who lived in a suite provided by a relative. Based on this evidence, the trial judge concluded as follows [at p. 103]:

. . . I am unable to conclude that the plaintiff would be paying a live-in superintendent any more than the \$18,500 provided for in the budget and it is entirely conceivable that if they were able to offer free accommodation that the appropriate salary would be substantially less. The plaintiff was not prepared to concede that if in fact the budgeted amount of \$18,500 was too high the amount by which it exceeds the actual salary paid to a live-in superintendent with free rent should be credited against the costs of carrying the acquired unit in assessing what damages if any have been sustained but I am unable to agree with its position in this regard. As stated earlier, the plaintiff must prove its damages and I must conclude that neither the fact of, nor the amount of any such damages have been proven on the balance of probabilities.

(Emphasis added)

Notwithstanding his error as to the nature of the material omission, in my view, the trial judge properly focused on the additional expense to the corporation as a result of the omission. The impediment to proof of damages, according to the

trial judge, was that it was possible the appellant could find a superintendent who would work for less than the \$18,500 projected in the budget statement, if free accommodation were provided. The difference might or might not be sufficient to carry the purchase of or rental of a unit, but it was for the appellant to prove that it had suffered damages.

Notwithstanding the deference due to findings of fact by the trial judge, in my view, the finding that the \$18,500 estimate included by the declarant in the first-year operating budget would cover anything other than salary is not supported by the evidence. The evidence of the respondent's own witness, Mr. Ferraro, who prepared the budget, was that the \$18,500 was for salary and did not include any allowance for rent. Ms. Rutch, the former condominium manager, testified that the salary paid to the superintendent at the somewhat larger sister building at 22 Marilyn Drive was \$19,500 and that he lived rent-free. In my view, there is no basis for assuming that any portion of the \$18,500 estimate in the budget would be sufficient to carry the purchase of or rental of a superintendent's unit for a year. The only evidence to the contrary concerned the salary apparently paid to the superintendent in a smaller building. That evidence was simply too vague and uncertain to undermine the weight of the evidence that was all the other way.

In my view, the appellant proved that it suffered damages within the meaning of s. 52(5) as a result of the improper disclosure. The quantification of those damages is somewhat problematic. So far as I can tell from the record, the parties did not expressly address the issue of the carrying costs or rent of a unit for the superintendent. However, the trial judge accepted that the market value of Unit 201 was approximately \$125,000. Accordingly, I would order that the respondent pay damages to the appellant calculated as the one-year carrying charges on the purchase of a unit assuming the purchase price to be \$125,000 and the date of purchase to be January 21, 1991. I expect that counsel will be able to agree on this amount. However, if counsel are unable to agree I would direct a reference to the Master at Toronto to calculate that amount.

DISPOSITION

Accordingly, I would allow the appeal, set aside the judgment at trial and grant judgment to the appellant for damages pursuant to s. 52(5) of the Condominium Act calculated in accordance with para. 58 [see preceding paragraph]. The appellant is entitled to pre-judgment interest on this amount from January 21, 1992 to the date of the trial judgment at the average rate over the relevant period as provided for in the Courts of Justice Act, R.S.O. 1990, c. C.43. Finally, notwithstanding its relatively modest success on this appeal, in my view the appellant is entitled to its costs of the appeal and of the trial before Herold J.

Order accordingly.

Notes

Note 1: The condominium corporation may be able to prove that it is entitled to an order that the superintendent's suite be conveyed to it by invoking the common law remedy as I have explained in Middlesex Condominium Corp. No. 87 v. 600 Talbot Street London Ltd. In such a case, there may be no need to rely upon s. 52(5). However, in some circumstances, even if it could meet the common law requirements, the corporation may seek damages as where, by the time the action is commenced, the superintendent's suite has been sold by the developer in a bona fide arm's length transaction.