



June 18, 2014

**Alberta Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Affairs Authority of Saskatchewan**

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Dear Sirs and Mesdames:

**Re: Multilateral CSA Notice of Publication and Request for Comment**

**Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions*  
Relating to the Offering Memorandum Exemption and in Alberta, New Brunswick and Saskatchewan,  
Reports of Exempt Distribution**

Open Avenue is launching Canada's first online real estate crowdfunding portal for accredited and eligible investors across the country except Ontario. Open Avenue would like to engage in equity real estate crowdfunding using the Offering Memorandum (OM) Exemption. This comment letter intends to make the case for income-producing real estate equity crowdfunding through the OM exemption in Canada. Real estate crowdfunding in Canada benefits issuers, investors, and communities alike because it:

- rehabilitates communities;
- creates jobs for small and medium-sized enterprises (**SMEs**);

- allows investors to own a tangible real estate asset; and
- provides regular cash distributions to investors in a known, accepted and easily understood asset class.

Information about Open Avenue and my real estate experience is set out in **Schedule A** attached hereto.

Our submissions on the benefits of cash-flowing real estate equity crowdfunding (including through the OM Exemption) is set out in Part I below for your consideration.

Part II discusses our issues and concerns involving the proposed Offering Memorandum Exemption amendments.

### Part I

#### 1. Crowdfunding brings investment opportunities to the masses

Both real estate development and the investment world are at the cusp of a new paradigm shift, riding on the waves of the Internet and a population capable of leveraging the power of technology. We believe that technology has the power to facilitate transparent, secure and reliable investment opportunities for all types of investors including real estate opportunities. Figure 1 below illustrates how the internet can bridge that gap and an explanation that follows.

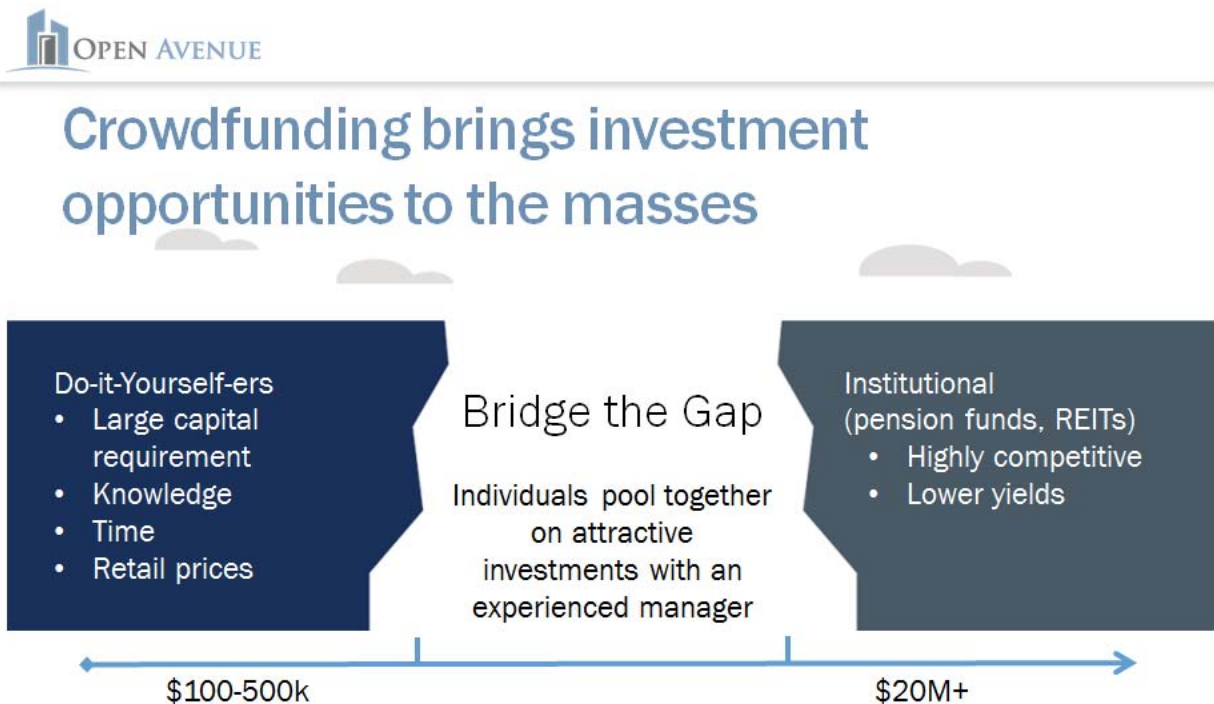


Figure 1: The real estate crowdfunding opportunity

Many Canadian investors are interested in investing in direct real estate but do not have the full capital required for an individual project, nor do they have the time or experience to manage a real estate investment on their own. Through equity crowdfunding, Open Avenue plans to bring real estate investment opportunities to the masses so that everyone can participate in real estate investment at an amount that fits into one's individual investment portfolio. There is a large opportunity for profitable real estate investments across Canada on projects that are out-of-reach of the Do-it-Yourself investment crowd but still too small for institutional investors. By pooling casual investors together, managed by an experienced real estate developer/property manager, we can invest in these projects and build our communities at the same time.

Real estate is a tangible asset that is easy for investors to understand and has a very simple and clear method of valuation. The funds required for a real estate project are well known at the initial pre-investment stage and can be accurately projected so that an investor has clear advance knowledge of where their funds are being allocated. This makes real estate an ideal candidate for equity crowdfunding.

## **2. Real estate investment has similar elements to traditional enterprises**

A cash-flowing real estate investment is very similar to a traditional business. The asset generates income through rental income. It incurs traditional real estate expenses such as property tax, insurance, maintenance and property management. The asset will usually have a mortgage associated with it that must also be paid. When all expenses are paid including the mortgage, the asset generates cash-flow that is paid direct to investors. Investors also build additional equity in their investment through the mortgage principal amortization. Figure 2 below provides a sample real estate income statement and explains how real estate investments are similar to traditional enterprises with revenues and expenses and related returns. This is not new for investors.

## Real estate investment has similar elements to traditional enterprise

Annual Revenue (Rental Income)	\$400,000
Operating Expenses	\$120,000
Net Operating Income (NOI)	\$280,000
Mortgage Interest (Year 1)	\$138,000
Mortgage Principal (Year 1)	\$83,000
Annual Cashflow	\$59,000
Cash-on-Cash Return	3.9%
Total Return (Year 1)	9.5%

Cash flow real estate investment does NOT rely on speculation or appreciation to provide reliable returns to investors.

Figure 2: Sample Real Estate Income Statement

Real estate investment is not modeled on a boom-bust scenario like many other asset classes – there are many profitable real estate investments that provide yield and cash flow to investors while not relying on speculation or market appreciation to provide returns.

Real estate also provides a built-in liquidity component which is a major benefit compared to a traditional start-up investment. Real estate investment offering documents will explicitly state the time period for the investment in detail. For example, many investments will be held for five to seven years, at which point the underlying asset will be sold on the open market and the proceeds will be returned to investors. Investors enter into the investment knowing when their investment will be returned.

### **3. Crowdfunding technology provides transparent access to investments.**

As issuers, Open Avenue embraces disclosure and seeks to provide investors with very detailed levels of both accounting and operational transparency.

We have built a platform at Open Avenue that will disclose and make readily available on-line every single project contract and operating expense for investors, as well as detailed information about each tenant lease signed and rental income collected. An annual external audit will be conducted on each project to provide confirmation to investors that management has spent funds where they've been allocated. An illustration of a sample portfolio is set out in Figure 3 below.

# Crowdfunding technology provides transparent access to investments

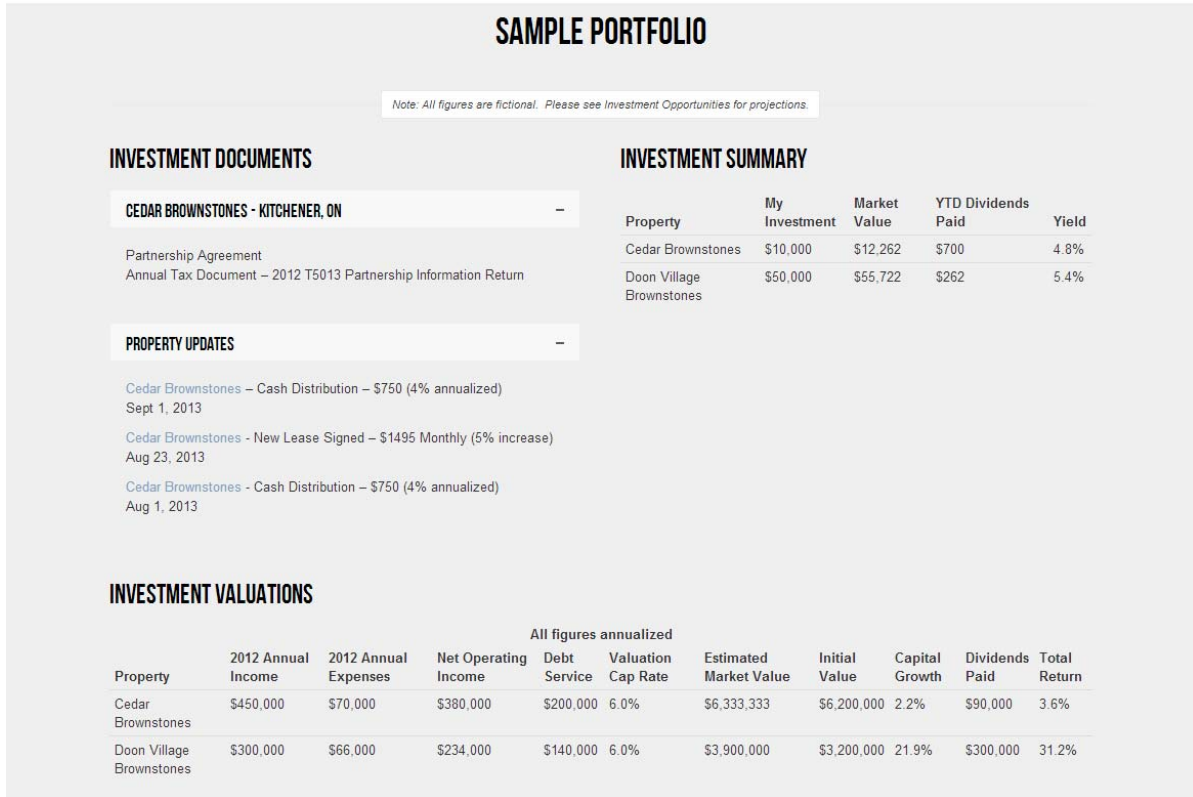


Figure 3: Open Avenue Investor Management Dashboard

Open Avenue believes in transparency and disclosure not because regulators require it but because we see it as prudent business practice that investors should and will demand. Open Avenue welcomes and embraces all disclosure requirements and would be happy to work with CSA members to develop suitable requirements that will protect investors and enable them to comfortably and securely invest in private real estate projects.

Disclosure aside, we believe even simple measures like installing a 24/7 webcam on project construction sites can provide another dimension of transparency that is difficult to replicate in alternative crowdfunded asset classes.

#### 4. Investors have protection.

Real estate is a great asset for crowdfunding because the vast majority of the investment capital is stored in a physical, secure asset. In the event of mismanagement or fraud, investors have definitive legal recourse rights to make claims against their properties in order to partially recover their investments. Liens and other recourse measures do not easily exist in other crowdfunded businesses that contain few tangible assets. Investors in crowdfunded real estate would have direct title to their

asset as unitholders in a Limited Partnership that directly owns title to the asset. See the illustration of this ownership structure in Figure 4 below.

## Investors Have Protection

- Limited Partnership Structure
  - Investors own title to the asset
- Physical asset with legal recourse rights
  - General Partner can be removed
- Audit



Figure 4: Real Estate Investment Structure

Building trust with the equity crowdfunding investment community will be vital in the early stages and we believe the security and transparency of real estate will be very beneficial in attracting early investors to prove the equity crowdfunding investment model to the wider investment community.

### 5. Crowdfunding empowers the investor to build their community

Real estate crowdfunding enables local investors to participate in projects that have a direct impact on their community. No longer will local development decisions be made exclusively by financiers who have no direct connection to their investments. Local investors can invest small amounts into projects that they believe will make a positive impact on their community, while at the same time providing an investment return to local investors. This 'loca-investing' is very important for communities and businesses.

For example, Figure 6 illustrates the refurbishment undertaken by a developer involving the Lang Tanning Company in Kitchener, ON. The Lang Tannery was established in the 1860s and grew to become the largest leather producer in the British Empire in the mid-twentieth century. With the manufacturing decline in the late-twentieth century, the tannery went out of business. In 2007, the building was

bought by a real estate developer and transformed into an information and technology center, home to companies such as Google, Communitech, and Desire2Learn.



## Crowdfunding empowers the investor to build their community



Figure 6: Community Building Opportunities in Kitchener-Waterloo

### 6. Crowdfunding creates opportunities and jobs for SMEs

Open Avenue firmly believes that equity real estate crowdfunding has the potential to provide a major lift to the Canadian economy. For example, if we raised \$1.5 Million in equity crowdfunding, that would enable us to finance a real estate project worth \$5.0 Million through the use of traditional leverage. In a typical \$5.0 Million new development project, roughly \$1.5 Million would account toward direct labour, benefiting many local SMEs. Through this single project, over 30 full-time jobs would be created at an annual salary of \$60,000. Another \$600-800 thousand dollars would be paid as development fees to the local municipality, as well as \$200-300 thousand dollars in servicing fees to the local utilities. A sample budget for a new development is set out in Figure 7 below.

## Many local jobs and contracts for SMEs are created through a single project

Project Value	\$5,000,000
Construction Labour Costs	\$1,500,000
Professional Contracts	\$500,000
Development Fees to Municipal Gov't	\$600,000
Servicing Fees to Local Utilities	\$200,000
Land, Materials, Contingency, Soft Costs	\$2,200,000



A single crowdfunded real estate project can create 30+ local jobs at \$60,000 annually, plus contribute \$800,000 to the local municipality.

Figure 7: New Development Budget Sample

### 7. Potential Equity Crowdfunding Real Estate Opportunities

Through pre-launching Open Avenue and discussing the concept with many real estate developers across Canada, it has become apparent that there are a vast number of very lucrative development opportunities in our growing and intensifying cities but a lack of access to private capital to fund these projects.

Open Avenue believes that permitting real estate equity crowdfunding will not only offer a rewarding and profitable investment to the crowd, but it will release the capital required to help our cities meet their unique planning challenges as densities increase, affordable housing requirements grow and government budgets tighten, at no expense to the taxpayer.

## Part II

### Issues and Concerns with the OM exemption

Open Avenue is interested in raising funds for real estate investments from the public and understand that doing so through the Internet would place us in the “business of trading securities” which would



require us to register as a dealer under applicable securities legislation. Accordingly, we have opted to register as an exempt market dealer (**EMD**) in certain jurisdictions in Canada.

However, when we are registered as an EMD, there is concern that the proposed OM exemption would prohibit funds from being raised by a related issuer. This puts us in a catch-22 scenario – we have to register since we are in the business of selling securities over the internet, however, by registering as a dealer, we are now prevented from executing our original idea of raising funds over the Internet for real estate investments.

As experienced real estate developers and young technology-minded entrepreneurs, we saw the natural opportunity between the equity crowdfunding movement and real estate development to come up with the concept for Open Avenue. It is only natural that we would be offering related investments through the Open Avenue platform. ***It would be difficult for someone with no real estate affiliations to create a real estate crowdfunding portal and be able to adequately perform the necessary due diligence on the business case behind real estate investment opportunities.***

We do not plan to hide behind detailed disclosure documents to obfuscate the fact that Open Avenue will have related issuer investment opportunities. In fact, we wish to promote the fact that Open Avenue has a history of investments with other development firms in order to build trust with investors that experienced real estate professionals with a strong track record of success are managing the portal and performing the necessary due diligence on all offerings.

Many potential investors have expressed interest in investing in local community projects, and we see a strong opportunity to formalize the investments in a very public and transparent security offering under the OM exemption as an EMD through Open Avenue. We prefer this method instead of relying on the traditional private exemptions where disclosure and investor communication is potentially limited.

The business model around Open Avenue offering related investments to the crowd is no different than a Ford dealership wishing to sell Ford cars. We have built Open Avenue not to collect fees off a crowdfunding raise, but because we believe that we can provide secure and profitable real estate investments opportunities to the crowd that provide attractive returns and improve our cities. While our development activities are primarily in the Kitchener-Waterloo region of Ontario, we believe the opportunity exists to partner with local developers throughout Canada wishing to leverage the Open Avenue portal to raise funds from local investors in their communities. We know we can do this under the accredited investor exemption, but firmly believe this is best suited under the OM exemption.

Open Avenue would like to address some of the specific questions posed by the CSA relating to the OM exemption:

**2) Are there circumstances where it would be suitable for an individual eligible investor who is not an accredited investor and not eligible to invest under the FFBA exemption to invest more than \$30,000 per year under the OM Exemption? If so, please describe them.**

Placing an annual investment limit for eligible investors is very impractical for many investors. The main problem we have with this proposal is that many investors will invest in a given investment for a long period of time – perhaps five to ten years. Upon liquidation of an investment and distribution of initial capital and profits, they likely will look to reinvest their capital into new projects in a single year, after having spent many years not investing in private securities at all. However, with an annual investment limit, they won't be able to reinvest their capital appropriately.

The other problem is that an annual investment limit will create an incentive for dealers to sign up new investors as soon as their 12-month window expires to access the available capital within their limit before another dealer does first. This can create a distorted marketplace where dealers are aggressively selling investments that aren't in the best interest of the investor.

Open Avenue believes that exempt market dealers' obligations to conduct proper suitability and KYC reviews are an appropriate tool to determine whether an investment is appropriate for each investor. We realize that investment limits may be appropriate if there is no suitability review taking place, but if an exempt market dealer is conducting proper suitability reviews then investment limits are not appropriate and hinder capital raising for issuers and appropriate allocation of investment capital for investors.

The current limits of \$10,000 for non-eligible investors and \$30,000 are extremely limiting in a wide variety of circumstances and are not necessary when an exempt market dealer is conducting suitability reviews for each individual investment.

Consistency across all jurisdictions is important as well. Additional compliance obligations to determine how much investment room an individual has available to invest increases the cost of raising capital.

**9) How do issuers relying on the OM Exemption typically communicate with their security holders? Do they maintain websites?**

Open Avenue has built an online portal so that issuers can securely communicate electronically with all investors the details of their investments including annual financial statements.

**11) Should non-individual investors (e.g., companies or trusts) be required to sign a risk acknowledgment form? Please explain.**

This is a reasonable requirement.

**12) Should "permitted clients", as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Obligations be required to sign a risk acknowledgement form? Please explain.**

This is a reasonable requirement.

**13) Should non-redeemable investment funds continue to be permitted to use the OM Exemption?**

Yes. Open Avenue has a strong opinion that Investment Funds should be able to use the OM exemption. In the real estate industry, an issuer may wish to raise capital to set up a fund to invest in multiple properties of similar nature as they become available in the marketplace (perhaps also segmented by asset class and/or geographic region). The offering documents would make clear to the investor the asset attributes and specific investment metrics that assets will be evaluated against for investment. Due to the nature of real estate transactions and tight transaction closing timelines, the equity funds must sometimes be raised before determining which specific asset or group of assets is being purchased.

**15) Should issuers that are related to registrants that are involved in the sale of the issuer's securities under the OM Exemption be permitted to continue using the OM Exemption?**

Please see our opening remarks regarding the related-issuer prohibition in Part II of this comment letter above. Open Avenue is strongly against this proposal.

## **Conclusion**

Open Avenue applauds the CSA for its bold initiatives relating to the OM exemption and we believe Canada is on the right path toward empowering both SMEs and investors alike in providing secure and profitable investment opportunities that will help shape and grow the Canadian economy for years to come.

As addressed in the comments above, we have a major concern about EMDs not being able to sell securities of related issuers through the OM exemption.

Lastly, we feel that the investment limits in the proposed OM exemption are not necessary when an EMD is conducting a suitability review for each investor.

We thank you for the opportunity to provide feedback and welcome any opportunity for further dialogue.

Sincerely,

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## Schedule A

### My History as a Real Estate Investor

*By Tim McKillican*



My name is Tim McKillican and I am the Founder and President of Open Avenue, a real estate crowdfunding portal based in Ontario. I am also a strategic investor in real estate, having invested in over \$30 Million worth of commercial real estate as the lead investor. I am also a founding member of the Equity Crowdfunding Alliance of Canada, whose mandate includes supporting, educating and developing the equity crowdfunding industry in Canada. As a University of Waterloo graduate in Computer Engineering, I am excited to bring real estate investing into the digital world.

The following outlines my history in the real estate investment world:

I was your typical casual investor in 2008 with a natural interest in real estate and some money to invest but no real experience as a handyman, and a full time job as a computer engineer that left me no time to dabble in real estate investment.

However, I knew that real estate was a natural complement to one's investment portfolio given its low correlation to the stock market and inflation hedge. I also knew that the [tech region in Kitchener-Waterloo was booming](#) and that demand for housing would likely be on the rise.

Looking for a place to start, I asked a close friend who was a real estate agent to find me some real estate investment opportunities. My friend connected me with another individual who looking for partners to invest in single-family home to duplex conversions.

My partner and I eventually purchased a property through an estate sale for \$120,000. We gutted the home and I invested \$30,000 to convert it into an upscale duplex. We refinanced the property at a newly appraised value of \$220,000 (a development profit of \$60,000 after financing fees) and began searching for our next opportunity.

I was hooked on real estate investment.

We continue to own 118 Weber St. today, with it positively cash flowing while also paying down the mortgage. I often think about had it not been for a chance introduction through our personal networks, I would never had the ability to invest in a great real estate investment opportunity and would be left wondering how to get in the real estate game with a full time job and no direct experience in managing properties.



First real estate investment at 118 Weber St. E. in Kitchener

### **Finding hidden development potential**

Soon afterwards we did some detective work to find an unlisted old house near Rockway Gardens in Kitchener that the owner was selling privately. It turned out that the house had been vacant for 20 years and Gerry, the executor of his family's estate, was looking for a quick sale. We purchased the property for \$223,000 and quickly went to work on the designs to turn it into a four-plex.

Given the location across the street from Rockway Gardens and close proximity to the express-way, we figured that this property was an ideal opportunity to invest in and turn into a young professional's ideal living space. Each unit was decked out with stainless steel appliances, in-suite laundry and hardwood flooring. It was a hit with renters and when all was said and done it was re-appraised for \$525,000 for a development profit of \$125,000 after all expenses were paid. We continue to own 1510 King St. E. and it cashflows over \$1,000 per month while paying down the mortgage and building equity.



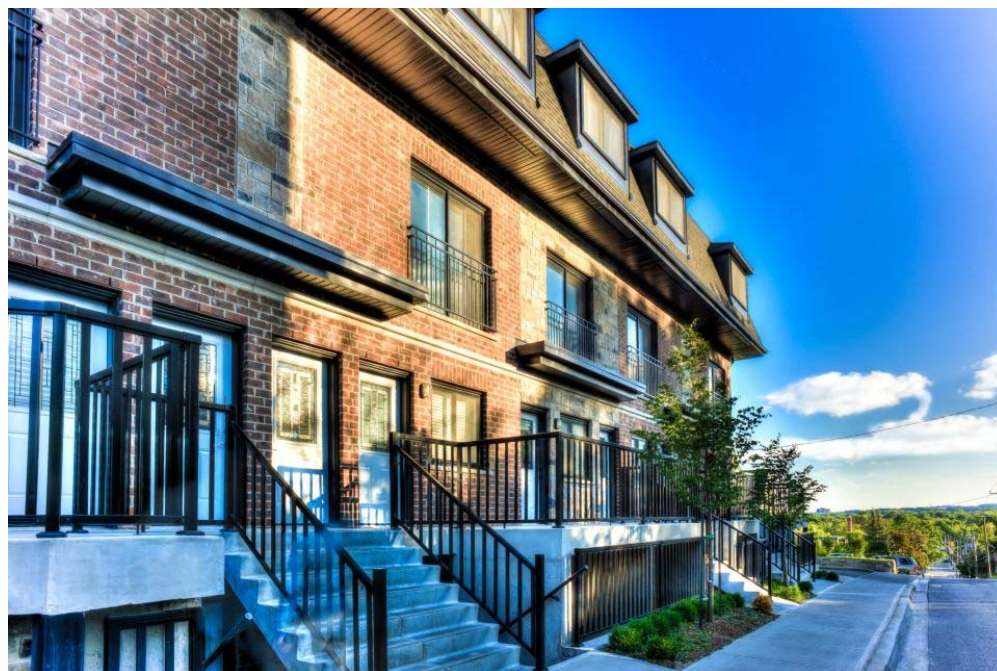
Single family home converted to four-plex at 1510 King St. E. in Kitchener

Our next project was an infill construction opportunity at 689 Doon Village Dr. near Conestoga College in Kitchener. There was an existing single family home on a very large corner lot that was ripe for a brownstone stacked-townhouse design. We purchased the property for \$240,000 and leased up the existing house to Conestoga students while we began the process of getting the approvals and permits for the 17-unit new construction.

Concurrent with the purchase at Doon Village Road, we continued our focus on developing many core properties in the Cedar Hill neighbourhood of downtown Kitchener. This location was close to all the vibrant development going on in downtown Kitchener and a stone's throw away from the proposed Light Rail Transit line currently under development throughout Kitchener-Waterloo. We purchased many distressed multi-family buildings and pursued the typical strategy of overhauling them into shiny new real estate properties.

One of our Cedar Hill properties was a five-plex located on the highest point of elevation overlooking the city. With continued growth in Kitchener and a demand for affordable rental stock in downtown Kitchener, we saw the opportunity for the brownstone stacked townhouse design if we could tie up the adjacent triplex property next door. We went to work and privately acquired the property to put our development plans into place.

After spending some time with the city to get the development approvals in place, concurrent construction began on brand new 17-unit and 36-unit townhouse designs at our Doon Village and Cedar Hill locations. Construction was completed in 2013 with appraised values of \$6.4M and \$3.6M respectively.



**Cedar Brownstones in Cedar Hill, Downtown Kitchener**

## **Connecting the crowd to real estate investment**

I had achieved tremendous success investing in real estate and it naturally begged the question of why this simple real estate investment opportunity that I was afforded early on wasn't readily available to others interested in real estate. We were achieving considerable success in turning distressed properties into vibrant living communities and realizing significant investment gains. It was clear that there was an opportunity to connect investors to the many real estate development projects that were available.

It was on the summer patios of Beertown in Waterloo Town Square that the idea for Open Avenue was born. Being a University of Waterloo engineer naturally interested in technology and innovation, it was easy to see the need for an online real estate investment platform that would enable all types of investors to participate in new real estate investment opportunities, bringing real estate investing into the digital age.

### **Own real estate. No headaches.**

Our mission with Open Avenue is to eliminate the roadblocks to investing in real estate. Everyone should have the opportunity to invest in community real estate projects without having to fund entire projects on their own or being willing to plunge toilets, take out garbage or deal with midnight phone calls. And it should be done on a very transparent basis so that each investor feels comfortable and secure in knowing what they're investing in, who they're investing with and how their investment returns are being generated. Open Avenue brings real estate investment into the digital world by providing real-time reports and insight into property income and expenses, valuations and operations.

We're super excited to unveil Open Avenue to the crowd and build our community together.