

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**B E T W E E N :**

**VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,  
BA&B CAPITAL INC., SERDAR KOCTURK  
and KAAH HOLDINGS INC.**

**Applicants**

– and –

**ALI AKMAN, SAMM CAPITAL HOLDINGS INC.  
and TARN FINANCIAL CORPORATION**

**Respondents**

**APPLICATION UNDER** Sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990,  
c. B.16.

**MOTION RECORD  
(RETURNABLE MARCH 13, 2020)**

**DATED: MARCH 9, 2020**

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appointed Liquidator of Tarn Financial Corporation  
and Court-appointed Receiver of Tarn Construction  
Corporation.

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# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**BETWEEN:**

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,  
BA&B CAPITAL INC., SERDAR KOCTURK  
and KAAH HOLDINGS INC.

**Applicants**

– and –

ALI AKMAN, SAMM CAPITAL HOLDINGS INC.  
and TARN FINANCIAL CORPORATION

**Respondents**

**APPLICATION UNDER** Sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990,  
c. B.16.

**NOTICE OF MOTION  
(Returnable March 13, 2020)**

**KPMG Inc.** (“**KPMG**”), in its capacity as Court-appointed liquidator (in such capacity, the “**Liquidator**”) pursuant to section 207 of the Ontario *Business Corporations Act* (“**OBCA**”) of the effects and estate of Tarn Financial Corporation (“**Tarn Financial**”) and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the “**Winding Up Order**”), which appointment was effective on September 25, 2017, and in its capacity as Court-appointed receiver and manager (in such capacities, the “**Receiver**”) of all of the assets, undertakings and properties of Tarn Construction Corporation (“**Tarn Construction**”) pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended (“**CJA**”), and appointed pursuant to the Order of Justice McEwen dated April 13, 2018 (the “**Receivership Order**”), will make a motion to a Judge presiding over the Commercial List on March 13, 2020 at 10:00 a.m. or as soon after that time as the Motion can be heard at the Court house located at 330 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario M5G 1R7.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. Directions from the Court as to the amount of SAMM's Eligible Shareholder Loan Claim (as defined in the Eighth Report) for the purposes of the proposed interim distribution being sought to Non Arm-Length Claimants;
2. An Order (the "**Fifth Distribution Order**") substantially in the form contained at Tab 3 of the Motion Record, among other things:
  - (a) declaring that the time for service of the Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable, and further service of the Notice of Motion and the Motion Record is dispensed with;
  - (b) authorizing and directing the Liquidator to make a further 5% interim distribution to the Non Arms-Length Claimants as follows:
    - (i) \$150,000 to Kaan Holdings Inc. ("**Kaan**"), representing 5% of its Eligible Shareholder Loan Claim in the amount of \$3,000,000;
    - (ii) \$300,000 to BA&B Capital Inc. ("**BA&B**"), representing 5% of its Eligible Shareholder Loan Claim (as defined in the Eighth Report) in the amount of \$6,000,000; and
    - (iii) \$128,500 to SAMM Holdings Inc. ("**SAMM**"), representing 5% of its Eligible Shareholder Loan Claim in the amount of \$2,570,000; and
  - (c) approving the Eighth Report of the Liquidator and Sixth Report of the Receiver dated March 9, 2020 (the "**Eighth Report**") and the activities and conduct of the Liquidator and the Receiver as set out therein; and
3. Such further and other relief as this Honourable Court may deem just;

**THE GROUNDS FOR THE MOTION ARE:**

Winding Up Order

4. Pursuant to the Winding Up Order, KPMG was appointed as Liquidator of the effects and estate of Tarn Financial, with such appointment effective on September 25, 2017, and with the powers and obligations set forth in Part XVI of the OBCA and the Winding Up Order;

Receivership Order

5. Pursuant to the Receivership Order, KPMG was appointed as Receiver of the properties, assets and undertakings of Tarn Construction on April 13, 2018;

Claims Procedure Order

6. On April 13, 2018, the Court granted a Claims Procedure Order (the “**Claims Procedure Order**”) approving and establishing a procedure for the solicitation, resolution and barring of certain claims (“**Claims**”) against Tarn Financial as at September 25, 2017 (the “**Tarn Financial Claims Process**”);

Deposit Return Procedure Order

7. On June 14, 2018, the Court granted a Deposit Return Procedure Order (the “**Deposit Return Procedure Order**”) establishing a procedure for the termination of APSs and the return of Proven Deposits to Purchasers of proposed condominium units at the contemplated development known as “The Kennedys” (the “**Deposit Return Procedure**”);

8. Capitalized terms used and not otherwise defined in this Notice of Motion have the meanings ascribed to them in the Winding Up Order, Claims Procedure Order and the Eighth Report;

Fifth Distribution

9. On July 26, 2018, the Court granted an Order (the “**First Distribution Order**”) which authorized and directed the Liquidator to make a distribution (a) first to Meridian Credit Union (“**Meridian**”) to repay in full the indebtedness owing by Tarn Financial to Meridian, which was



secured by first ranking security, (b) second to Kingsett Mortgage Corporation (“**Kingsett**”) to repay in full the indebtedness owed by Tarn Financial to Kingsett, which was secured by second ranking security, and (c) subject to establishing a reserve with The Guarantee Company and Tarion, third to repay in full the borrowings made by the Liquidator under the Borrowings Charge;

10. On November 6, 2018, the Court granted an Order (the “**Second Distribution Order**”), which authorized and directed the Liquidator to make distributions to Claimants with valid construction liens in the amount of their Proven Claims under the Tarn Financial Claims Process;

11. On April 15, 2019, the Court granted an Order (the “**Third Distribution Order**”), which authorized and directed the Liquidator to make a distribution to third-party unsecured Claimants up to the amount of their Proven Claims as determined under the Tarn Financial Claims Process. As set out in the Liquidator’s Notice of Motion in support of the Third Distribution Order, at the time of seeking the Third Distribution Order, the Liquidator determined it could make a distribution to unsecured Claimants with valid unsecured Claims in the amount of 85 cents on the dollar against their Proven Claims as determined under the Claims Process;

12. On April 30, 2019, the Court granted an Order (the “**Fourth Distribution Order**”), which authorized and directed the Liquidator to make interim distributions to: (a) Kaan in the amount of \$2,250,000; (b) BA&B in the amount of \$4,500,000; and (c) SAMM Capital Holdings Inc. in the amount of \$1,927,500.

13. The Liquidator has made distributions pursuant to the First Distribution Order, the Second Distribution Order, the Third Distribution Order and the Fourth Distribution Order;

14. The Liquidator has completed its obligations under the Tarn Financial Claims Process (other than waiting the time period for one Notice of Determination which has been sent) and has funds to distribute the remaining 15 cents on the dollar to the unsecured Claimants with Proven Claims and to distribute 100 cents on the dollar to the unsecured Claims resolved since the third distribution;

15. After reserving funds for the for the potential priority claims of Canada Revenue Agency, the secured claim of The Guarantee Company and the Liquidator’s Charge, and fully reserving for the payment in full of valid unsecured third party claims, the Liquidator determined that it can

make a further interim distribution to the Non Arms-Length Claimants in the amount of five percent (5%);

16. In particular, after accounting for the reserves and for full distribution to unsecured Claimants in respect of their Proven Claims, the Liquidator has approximately \$1,265,000 available for a proposed interim distribution to the Non Arms-Length Claimants;

17. Accordingly, the Liquidator is requesting that the Court grant the Fifth Distribution Order directing and authorizing the Liquidator to make a five percent (5%) interim distribution to the Non Arms-Length Claimants in respect of their Eligible Shareholder Loan Claims;

18. The Eligible Shareholder Loan Claims of Kaan and BA&B are not contested;

19. The SAMM Non Arms-Length Claims are being contested by the Applicants and are the subject of the Trial scheduled for October 2020;

20. The Applicants do not contest an Eligible Shareholder Loan Claim in the amount of \$2,570,000 for SAMM Holdings Inc., which amount was previously consented to by the parties and is based upon findings in the Liquidator's Sources and Uses Report;

21. The Liquidator prepared a distribution analysis and circulated it to the parties showing a five percent (5%) distribution based on the Eligible Shareholder Loan Claims of the Non Arms-Length Claimants that would be paid and a reserve of five percent (5%) being established for the remaining disputed SAMM Non Arms-Length Claims as follows:

- (a) \$150,000 to Kaan, representing 5% of its Eligible Shareholder Loan Claim in the amount of \$3,000,000;
- (b) \$300,000 to BA&B, representing 5% of its Eligible Shareholder Loan Claim in the amount of \$6,000,000;
- (c) \$128,500 to SAMM, representing 5% of its Eligible Shareholder Loan Claim in the amount of \$2,570,000; and

- (d) A reserve of \$686,500 in respect of the remaining disputed SAMM Non Arms-Length Claims of \$13,730,000.
22. The draft Fifth Distribution Order is drafted based on the above distribution analysis;
23. The Respondents are seeking to have amount distributed by SAMM to be based upon an Eligible Shareholder Loan Claim in the amount of \$3,152,894 based upon the PWC Report. The resulting distribution would be as follows:
- (a) \$150,000 to Kaan, representing 5% of its Eligible Shareholder Loan Claim in the amount of \$3,000,000;
  - (b) \$300,000 to BA&B, representing 5% of its Eligible Shareholder Loan Claim in the amount of \$6,000,000;
  - (c) \$157,645 to SAMM, representing 5% of its Eligible Shareholder Loan Claim in the amount of \$3,152,894;
  - (d) \$437,171 to SAMM, representing 75% of the delta between the original Eligible Shareholder Claim amount of \$2,570,000 and the proposed Eligible Shareholder Claim amount of \$3,152,894, which amount was reserved when the fourth distribution was made; and
  - (e) A reserve of \$657,355 in respect of the remaining disputed SAMM Non Arms-Length Claims of \$13,147,106.
24. The Applicants have advised that they are disputing the findings in the PwC Report at the Trial and that it should not form the basis of an interim distribution until there is a finding from the Court that the PWC findings are accurate;
25. The Liquidator has not spent time tying out all of the numbers in the PWC Report as this will be the subject matter of the Trial. Therefore, the Liquidator cannot address the accuracy of the statements or conclusions in the PWC Report at this time;

26. The Liquidator seeks direction from the Court as to the amount of SAMM's Eligible Shareholder Loan Claim for the distribution being sought;

Approval of Liquidator's and Receiver's Reports and Activities

27. The Eighth Report sets out in detail the activities of the Liquidator and the Receiver since the Seventh Report of the Liquidator and Fifth Report of the Receiver dated April , 2019;

28. The Liquidator and Receiver seek the Court's approval of its activities and conduct as set out in the Sixth and Seventh Report;

General

29. Rules 3 and 37 of the *Ontario Rules of Civil Procedure*, R.R.O. 1990, Reg.194, as amended;

30. Part XVI of the OBCA; and

31. Such further and other grounds as the lawyers may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

32. The Eighth Report; and

33. Such further evidence as the lawyers may advise and this Honourable Court may permit.

March 9, 2020

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Lawyers for KPMG Inc., in its capacity as  
Liquidator of Tarn Financial Corporation and  
Receiver of Tarn Construction Corporation.

**TO: The Service List Attached hereto as Schedule "A"**

# SCHEDULE "A"

## EMAIL SERVICE LIST (as at March 9, 2020)

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<b>AND TO:</b>	<b>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE</b> Legal Services Branch 33 King Street West, 6th Floor Oshawa, ON L1H 8H5  <b>Kevin O'Hara</b> Tel: 905.433.6934 Email: kevin.ohara@ontario.ca Fax: 905.436.4510
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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(Returnable March 13, 2020)**

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Lawyers for KPMG Inc., in its capacity as  
Liquidator of Tarn Financial Corporation and  
Receiver of Tarn Construction Corporation.

## TAB 2

**Court File No. CV-17-11697-00CL**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE WINDING UP OF  
TARN FINANCIAL CORPORATION**

**APPLICATION UNDER SECTIONS 207 AND 248 OF THE  
*BUSINESS CORPORATIONS ACT*, R.S.O. 1990, c. B.16**

**EIGHTH REPORT OF KPMG INC. in its capacity as  
LIQUIDATOR OF TARN FINANCIAL CORPORATION  
and  
SIXTH REPORT OF KPMG INC. in its capacity as  
RECEIVER OF TARN CONSTRUCTION CORPORATION**

**MARCH 9, 2020**

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Appendix I – Letter from Respondents’ Counsel on January 28, 2020

Appendix J – Email from Respondents’ Counsel on March 5, 2020

Appendix K – Email from Applicants’ Counsel on March 5, 2020

Appendix L – Alternative Distribution Analysis

## **I. INTRODUCTION AND SUMMARY OF PROCEEDINGS**

1. On February 13, 2017, Volkan Basegmez, Cem Bleda Basegmez, Anil Rukan Basegmez, BA&B Capital Inc. (“**BA&B**”), Serdar Kocturk and Kaan Holdings Inc. (“**Kaan**”) (collectively, the “**Applicants**”) commenced an application (the “**Application**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 seeking an Order winding up Tarn Financial Corporation (“**Tarn Financial**”) and appointing KPMG Inc. (“**KPMG**”) as liquidator for that purpose. The Applicants are shareholders of Tarn Financial and collectively hold 60% of the common shares of Tarn Financial. The remaining 40% of the common shares of Tarn Financial are held by the Respondent, SAMM Capital Holdings Inc. (“**SAMM**”), a company owned by the Respondent, Ali Akman (“**Akman**”).
2. The Application was heard by Justice Lederman on August 11, 2017 and on September 15, 2017, His Honour ordered the winding up of Tarn Financial pursuant to the Winding Up Order dated September 15, 2017 (the “**Winding Up Order**”), and the appointment of KPMG as liquidator for that purpose (in such capacity, the “**Liquidator**”) effective as of September 25, 2017 (the “**Winding Up Proceedings**”). A copy of the Winding Up Order is attached as **Appendix “A”** to this report, which is the Liquidator’s Eighth Report to the Court and the Receiver’s (as defined below) Sixth Report to the Court (the “**Eighth Report**”).
3. The business and assets of Tarn Financial included the Delta Toronto East Hotel (the “**Hotel**”) and adjoining development lands that were being developed by Tarn Financial, through its wholly-owned subsidiary, Tarn Construction Corporation (“**Tarn Construction**”), as a development known as “The Kennedys” (the “**Development Project**”) located at 2035 Kennedy Rd., Scarborough, Ontario (the “**Real Property**”). The assets of Tarn Financial were sold pursuant to the Transaction (as defined below) that closed on June 29, 2018 (the “**Closing Date**”).
4. On October 6, 2017, Akman and SAMM filed a Notice of Appeal with the Divisional Court of the Ontario Superior Court of Justice (the “**Divisional Court**”) appealing the Winding Up Order (the “**Appeal**”). The Appeal was heard on January 30, 2018 by the Divisional Court and on February 6, 2018, the Divisional Court dismissed the Appeal.

5. The Liquidator issued its first report to the Court on November 13, 2017 (the “**First Report**”). On November 16, 2017, the Liquidator issued a first supplemental report to the Court (the “**First Supplemental Report**”) and on November 28, 2017, the Liquidator issued a second supplemental report to the First Report (the “**Second Supplemental Report**”).
6. As detailed in the First Report, the First Supplemental Report and the Second Supplemental Report, the Liquidator brought a motion (the “**Sale Process Motion**”) seeking an Order (the “**Sale Process Order**”), among other things: (a) authorizing the Liquidator to enter into and approving a marketing and listing agreement between the Liquidator and CBRE Limited (“**CBRE**”) dated November 10, 2017; (b) approving the sale process (the “**Sale Process**”); and (c) authorizing, but not obligating, the Liquidator to file a consent to sever the Real Property.
7. The Sale Process Motion was scheduled to be heard before the Court on November 17, 2017. The Sale Process Motion was adjourned on an unopposed basis to November 24, 2017 to allow the Applicants, SAMM and Akman time to formalize a settlement that the parties advised the Liquidator had been reached between them in principle.
8. The settlement was not finalized by November 24, 2017 and the Sale Process Motion was heard on that day and was unopposed except for the Order seeking the approval of a marketing and listing agreement between the Liquidator and CBRE. This aspect of the relief sought was opposed by SAMM and Akman. On November 24, 2017, Justice McEwen declined to grant the Order approving the marketing and listing agreement between the Liquidator and CBRE.
9. Justice McEwen directed the Liquidator to retain another marketing and listing agent and adjourned the Sale Process Motion to allow the Liquidator to do so. Thereafter, on November 29, 2017, Justice McEwen granted the Sale Process Order which, among other things: (a) approved the retention by the Liquidator of Colliers Macaulay Nicolls Inc. to be the marketing and listing agent; and (b) approved the Sale Process including revisions thereto, in order to address the change in the marketing and listing agent.
10. On December 6, 2017, the Liquidator brought a motion seeking an order (the “**OMB Appeals Order**”) authorizing, but not obligating, the Liquidator to file two Notices of



Appeal with the Ontario Municipal Board in respect of the Real Property. Justice McEwen granted the OMB Appeals Order on the same date.

11. The Liquidator issued its second report to the Court on April 9, 2018 (the “**Second Report**”). As detailed in the Second Report, the Liquidator brought a motion returnable on April 13, 2018 seeking:
  - a. An Order (the “**Claims Procedure Order**”) approving and establishing a procedure for the solicitation, resolution and barring of certain claims against Tarn Financial (the “**Tarn Financial Claims Process**”);
  - b. An Order (the “**Receivership Order**”) authorizing the appointment of KPMG as receiver and manager over the properties, assets and undertakings of Tarn Construction (in such capacities, the “**Receiver**”) pursuant to section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43;
  - c. An Order (the “**Deposit Confirmation Procedure Order**”) approving and establishing a procedure for confirming the Deposits (as defined in the Deposit Confirmation Procedure Order) that were paid to Tarn Construction by purchasers of the pre-sold, unbuilt condominium units at the Development Project; and
  - d. An Order (the “**April 2018 Ancillary Order**”) (i) authorizing an increase in the maximum principal amount of the Borrowings Charge (as defined in the Winding Up Order) by \$1,000,000 (the “**Increased Borrowing Amount**”) from \$2,000,000 to \$3,000,000 and addressing the priority of the Borrowings Charge in respect of the Increased Borrowing Amount; (ii) approving the fees of the Liquidator and the Liquidator’s legal counsel, Miller Thomson LLP (“**Miller Thomson**”) and Bennett Jones LLP (“**Bennett Jones**”), from the date of the Winding Up Order to December 31, 2017; and (iii) approving the First Supplemental Report, the Second Supplemental Report and the Second Report and the activities and conduct of the Liquidator as set out therein.
12. On April 13, 2018, the Court granted the Claims Procedure Order, the Receivership Order, the Deposit Confirmation Procedure Order and the April 2018 Ancillary Order. A copy of the Claims Procedure Order is attached as **Appendix “B”** to this Eighth Report.

13. The Liquidator issued its third report to the Court and the Receiver issued its first report to the Court on April 24, 2018 (collectively, the “**Third Report**”). As detailed in the Third Report, the Liquidator and Receiver brought a motion returnable on May 1, 2018 seeking:
  - a. Advice and directions from the Court regarding the Receiver’s ability to terminate the Agreements of Purchase and Sale (the “**APSs**”) entered into by Tarn Construction with purchasers of proposed condominium units in the contemplated Development Project (the “**Purchasers**”) in accordance with the terms of the APSs and, in particular, the condition contained at Appendix A of Schedule E to the APSs entitled “Tarion Warranty Corporation Statement of Critical Dates and Addendum” which states: “Receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged by October 9, 2018” (the “**Construction Financing Early Termination Condition**”);
  - b. An Approval and Vesting Order (the “**Approval and Vesting Order**”), among other things, approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement between Tarn Financial and Sunray Group of Hotels Inc. (“**Sunray**”) dated April 20, 2018 (the “**Asset Purchase Agreement**”) and vesting in Sunray Tarn Financial’s right, title and interest in and to the assets described in the Asset Purchase Agreement;
  - c. An Order (the “**Disputed Deposits Resolution Procedure Order**”), establishing a procedure for the resolution of disputed deposits asserted by Purchasers of proposed condominium units in the contemplated Development Project; and
  - d. An Order (the “**Termination Entitlement Order**”), ordering and declaring, among other things, that the Receiver is entitled to rely upon the Construction Financing Early Termination Condition to terminate the APSs on behalf of Tarn Construction and that the Receiver is authorized to give notice of termination to terminate the APSs at any time after the granting of the Termination Entitlement Order without damages claims arising thereunder.
14. On May 9, 2018, the Court rendered its endorsement granting the Approval and Vesting Order, the Disputed Deposits Resolution Procedure Order, and the Termination Entitlement Order.

15. The Liquidator issued its fourth report to the Court and the Receiver issued its second report to the Court on June 8, 2018 (collectively, the “**Fourth Report**”). As detailed in the Fourth Report, the Liquidator and Receiver brought a motion returnable on June 14, 2018 seeking an Order (the “**Deposit Return Procedure Order**”) establishing a procedure for the termination of Purchasers’ APSs and the return of Proven Deposits (as defined in the Disputed Deposits Resolution Procedure Order) to Purchasers of proposed condominium units in the contemplated Development Project (the “**Deposit Return Procedure**”). The Deposit Return Procedure Order:
  - a. Enabled the Receiver to commence the Deposit Return Procedure in order to return Proven Deposits to Purchasers;
  - b. Enabled the Receiver to terminate Purchasers’ APSs in accordance with their terms, as set out in the Termination Entitlement Order, upon being satisfied with (i) an executed Release Agreement, and (ii) properly completed Certificate(s) of Identity attaching copies of two pieces of valid identification from each Purchaser named on the APS;
  - c. Confirmed that interest is not payable on the Proven Deposits pursuant to the *Condominium Act* and its regulations; and
  - d. Released and discharged the Receiver, the Liquidator, Tarn Construction, Tarn Financial, Bennett Jones, in its capacity as Deposit Trustee (the “**Deposit Trustee**”), The Guarantee Company of North America (“**The Guarantee Company**”) and Tarion Warranty Corporation (“**Tarion**”) from any Claims relating to the Deposits, including interest thereon.
16. On June 14, 2018, the Court granted the Deposit Return Procedure Order.
17. The Liquidator issued its fifth report to the Court and the Receiver issued its third report to the Court on July 20, 2018 (collectively, the “**Fifth Report**”). As detailed in the Fifth Report, the Liquidator and Receiver brought a motion returnable on July 26, 2018 seeking:
  - a. An Order (the “**First Distribution Order**”), subject to the Liquidator either entering into satisfactory reimbursement terms with the following secured creditors relating to potential priority claims or establishing a sufficient reserve to account for potential priority claims, authorizing and directing the Liquidator to make a distribution:

- (i) First to Meridian Credit Union (“**Meridian**”) to repay in full the indebtedness owed by Tarn Financial to Meridian, which was secured by first ranking security;
  - (ii) Second to Kingsett Mortgage Corporation (“**Kingsett**”) to repay in full the indebtedness owed by Tarn Financial to Kingsett, which was secured by second ranking security; and
  - (iii) Subject to establishing a reserve with The Guarantee Company and Tarion in accordance with the terms of the Deposit Return Procedure Order, third to repay in full the borrowings made by the Liquidator under the Borrowings Charge; and
- b. An Order (the “**Fees and Conduct Approval Order**”) approving:
- (i) The fees of the Liquidator and the Receiver and the Liquidator’s and the Receiver’s legal counsel from January 1, 2018 to April 30, 2018; and
  - (ii) The Third Report, the Fourth Report and the Fifth Report and the activities and conduct of the Liquidator and the Receiver as set out therein.
18. On July 26, 2018, the Court granted the First Distribution Order. A copy of the First Distribution Order is attached as **Appendix “C”** to this Eighth Report.
19. The Respondents, SAMM and Akman, requested that the Liquidator and the Receiver adjourn the motion seeking the Fees and Conduct Approval Order in order to provide SAMM and Akman additional time to review the fees and dockets of the Liquidator, the Receiver and their counsel. The motion was adjourned on consent.
20. On September 14, 2018, counsel for SAMM and Akman advised counsel for the Liquidator and the Receiver that they were not opposing the Fees and Conduct Approval Order. On October 1, 2018, the Court granted the Fees and Conduct Approval Order.
21. The Liquidator issued its sixth report to the Court and the Receiver issued its fourth report to the Court on October 31, 2018 (collectively, the “**Sixth Report**”). As detailed in the Sixth Report, the Liquidator brought a motion returnable on November 6, 2018 seeking an Order (the “**Second Distribution Order**”) authorizing and directing the Liquidator to

make a distribution to construction lien Claimants with valid construction liens in the amount of their Proven Claims as determined under the Tarn Financial Claims Process.

22. Returnable on the same date, the Applicants also brought a motion seeking an Order:
  - a. Declaring void and invalid and setting aside *ab initio*, the creation of certain Class B voting shares (the “**Class B Shares**”) and the issuance of the Class B Shares to Akman, and rectifying Tarn Financial’s Articles of Incorporation accordingly; and
  - b. Declaring void and setting aside certain guarantee, security and related agreements Akman caused Tarn Financial to enter into for the benefit of SAMM, which was at the time being relied upon by Akman and SAMM to support a secured claim against Tarn Financial.
23. On November 6, 2018, the Court granted the Second Distribution Order. A copy of the Second Distribution Order is attached as **Appendix “D”** to this Eighth Report. The Applicants’ motion was adjourned to November 26, 2018.
24. The Applicants and the Respondents resolved the Applicants’ motion and on November 23, 2018, the Court granted a Consent Order:
  - a. Declaring that, on consent, any and all charge/mortgages of land and security interests granted by Tarn Financial in favour of SAMM (the “**SAMM Security**”) are postponed and fully subordinated to the claims of the third-party unrelated creditors of Tarn Financial such that the Liquidator may effect a distribution to all such creditors without regards to, and free and clear of, the SAMM Security;
  - b. Ordering that the above declaratory relief is without prejudice to the position of the parties and in this regard, the validity of the SAMM Security as against the Applicants and the relative priority of the claims of the Applicants which will be determined at the same time as any dispute(s) with respect to the quantum of the claims being asserted against Tarn Financial by SAMM and the Applicants; and
  - c. Declaring that, on consent, the Class B Shares be and are hereby void *ab initio*, and accordingly, the Articles of Incorporation of Tarn Financial be and are hereby amended to remove the Class B Shares.

25. The Liquidator issued its seventh report to the Court and the Receiver issued its fifth report to the Court on April 9, 2019 (collectively, the “**Seventh Report**”). A copy of the Seventh Report, without exhibits, is attached as **Appendix “E”** to this Eighth Report. As detailed in the Seventh Report, the Liquidator brought a motion returnable on April 15, 2019 seeking:
- a. Advice and directions from the Court in accordance with paragraphs 27 and 35 of the Claims Procedure Order. The Liquidator sought directions from the Court regarding finally disallowing the Claims filed in the Tarn Financial Claims Process by condominium brokers (the “**Brokers**”) pursuant to Agreements to Cooperate between a Cooperating Brokerage and Tarn Construction in respect of sale commissions for unbuilt condominium units sold by Tarn Construction at the Development Project where such Claimants have objected to the Liquidator’s determination of their Claims and submitted a Notice of Objection in accordance with the Claims Procedure Order;
  - b. An Order (the “**Third Distribution Order**”) authorizing and directing the Liquidator to make a distribution to third-party unsecured Claimants up to the amount of their Proven Claims as determined under the Tarn Financial Claims Process;
  - c. An Order (the “**Tarion Cash Collateral Procedure Order**”) among other things:
    - (i) Directing the Liquidator to pay, within five business days of the granting of the Tarion Cash Collateral Procedure Order, the amount of \$600,000 to Tarion (the “**Tarion Cash Collateral**”), against which amount Tarion may make, and process payments in respect of, Tarion Cash Collateral Claims (as defined in the Tarion Cash Collateral Procedure Order);
    - (ii) Upon Tarion’s receipt of the Tarion Cash Collateral, directing the delivery to The Guarantee Company of the Tarion Bonds (as defined in the Tarion Cash Collateral Procedure Order) for immediate cancellation;
    - (iii) Declaring that the Receiver shall no longer be required to comply with the requirement under the Deposit Return Procedure Order to deliver a Statutory Declaration to Tarion and The Guarantee Company every two weeks;

- (iv) Authorizing the process through which Tarion is to report on and use the Tarion Cash Collateral to pay any Tarion Cash Collateral Claims; and
  - (v) Directing the Liquidator to make a distribution to The Guarantee Company in full and final satisfaction of all amounts owing by Tarn Financial to The Guarantee Company in accordance with the Claims Procedure Order; and
- d. An Order (the “**April 2019 Ancillary Order**”) among other relief;
- (i) Declaring that the Claims of the Brokers which have filed Notices of Objection in the Tarn Financial Claims Process are forever extinguished, barred, discharged and released as against Tarn Financial and the Liquidator;
  - (ii) Approving the fees of the Liquidator and the Receiver and the Liquidator’s and the Receiver’s legal counsel from May 1, 2018 to December 31, 2018; and
  - (iii) Approving the Sixth Report and the Seventh Report and the activities and conduct of the Liquidator and the Receiver as set out therein.
26. On April 15, 2019, the Court granted the Third Distribution Order, the Tarion Cash Collateral Procedure Order and the April 2019 Ancillary Order. A copy of the Third Distribution Order is attached as **Appendix “F”** to this Eighth Report.
27. On April 23, 2019, the Applicants served a motion returnable April 30, 2019 for an Order authorizing and directing the Liquidator to make an interim distribution to the Applicants in an amount equal to 85 percent of the amount of the Applicants’ claim as set out in the Sources and Uses Report (as defined below). The Applicants’ motion was initially opposed by the Respondents.
28. Thereafter, the Applicants and the Respondents agreed to an interim distribution in an amount equal to 75 percent of the shareholder loan claims in the amount of \$3,000,000 and \$6,000,000, for Kaan and BA&B, respectively, submitted by the Applicants in the Tarn Financial Claims Process and 75 percent of \$2,570,000 to SAMM (being the amount the parties agreed to base the distribution on and not the amount of the shareholder loan claim filed by SAMM).

29. Accordingly, on April 30, 2019, the Court granted an Order (the “**Fourth Distribution Order**”), authorizing and directing the Liquidator to make interim distributions to: (a) Kaan in the amount of \$2,250,000; (b) BA&B in the amount of \$4,500,000; and (c) SAMM in the amount of \$1,927,500. A copy of the Fourth Distribution Order is attached as **Appendix “G”** to this Eighth Report.
30. A trial to determine the disputed Non Arms-Length Claims (as defined in the Claims Procedure Order) was originally scheduled to be heard on June 3, 4 and 7, 2019. On April 30, 2019, those dates were vacated and the trial was scheduled for September 16, 17 and 18, 2019. Those dates were subsequently vacated at an attendance before Justice McEwen on July 12, 2019.
31. On January 29, 2020, a new trial date was set by Justice McEwen for October 5, 6 and 7, 2020 to determine the disputed Non Arms-Length Claims, which will be heard by His Honour (the “**Trial**”). A pre-trial conference before Justice Hainey is scheduled for August 25, 2020 and a trial management meeting before Justice McEwen is scheduled for September 15, 2020.
32. Capitalized terms not defined herein shall have the meanings set out in the Winding Up Order, the Claims Procedure Order, and the Deposit Return Procedure Order.

## **II. PURPOSE OF THIS EIGHTH REPORT**

33. The purpose of this Eighth Report is to update the Court with respect to:
  - a. The activities of the Liquidator and the Receiver since the Seventh Report, including, but not limited to:
    - (i) Activities relating to Tarn Financial;
    - (ii) Activities relating to Tarn Construction; and
    - (iii) Other activities in relation to the Winding Up Proceedings;
  - b. The Tarn Financial Claims Process;
  - c. The distributions made pursuant to the Third Distribution Order and the Fourth Distribution Order;



- d. The Liquidator's statement of receipts and disbursements since the date of its appointment up to and including March 6, 2020;
  - e. The Receiver's statement of receipts and disbursements since the date of the Receivership Order up to and including March 6, 2020; and
  - f. To provide the Court with the necessary information to support the granting of an Order (the "**Fifth Distribution Order**") substantially in the form contained at Tab 3 of the Motion Record dated March 9, 2020 (the "**Motion Record**"):
    - (i) Authorizing and directing the Liquidator to make a further five percent (5%) interim distribution to the Applicants and Respondents in respect of their Non Arms-Length Claims; and
    - (ii) Approving the Eighth Report and the activities and conduct of the Liquidator and the Receiver as set out therein.
34. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
35. The information contained in this Eighth Report has been obtained from the books and records and other information of Tarn Financial or Tarn Construction. The accuracy and completeness of the financial information contained herein has not been audited or otherwise verified by the Liquidator or the Receiver, and the Liquidator and the Receiver do not express an opinion or provide any other form of assurance with respect to the information presented herein or relied upon by the Liquidator or the Receiver in preparing this Eighth Report.
36. Future oriented financial information reported or relied on in preparing this Eighth Report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.

### **III. ACTIVITIES OF THE LIQUIDATOR AND THE RECEIVER SINCE THE SEVENTH REPORT**

#### **Activities Relating to Tarn Financial**

37. The Liquidator has:

- a. Continued to prepare bank reconciliations;
- b. Continued to coordinate all filings and payments of harmonized sales tax (“**HST**”) and other required statutory remittances, as required;
- c. Continued to administer the Tarn Financial Claims Process, the details of which are described below, including reviewing the Claims with the assistance of its counsel, Miller Thomson;
- d. With the assistance of Richter LLP (“**Richter**”), finalized the 2017 financial statements and corporate tax return;
- e. Coordinated the preparation of the 2018 financial statements required in conjunction with filing the 2018 corporate tax return and continued to work with Richter in respect of its review engagement of the 2018 financial statements, as described below;
- f. Made payment to the Canada Revenue Agency (“**CRA**”) of non-resident withholding tax payable as at February 28, 2019. The amount paid by the Liquidator relates to penalties and interest on non-resident withholding taxes that had not been paid by Tarn Financial at the time of the Liquidator’s appointment and were subsequently paid by the Liquidator;
- g. Made payment to Tarion in accordance with the Tarion Cash Collateral Procedure Order;
- h. Made certain payments to The Guarantee Company in accordance with the Tarion Cash Collateral Procedure Order;
- i. Held numerous discussions with the Applicants’ counsel and the Respondents’ counsel regarding the Liquidator’s review of what monies were transferred in or out of Tarn Financial, as described below;
- j. Had discussions with Claimants regarding their Claims and settled Disputed Claims; and
- k. Made the distributions pursuant to the Third Distribution Order and the Fourth Distribution Order.

*Financials Statements and Corporate Tax Returns*

38. Since the date of the Seventh Report, Richter has completed its review engagement of the 2017 financial statements and prepared and filed the 2017 corporate tax return for Tarn Financial on the Liquidator's behalf on February 13, 2020. The Liquidator is awaiting the Notice of Assessment from the CRA in respect of the 2017 corporate tax return.
39. As set out in the Seventh Report, the Liquidator has continued to work with Richter on considering tax minimization strategies. In that regard, at the Liquidator's request, Richter performed an analysis with respect to the deductibility of certain professional fees for tax purposes, which has had favourable results. The filed 2017 corporate tax return took into account these applicable deductions.
40. Richter has prepared a draft of Tarn Financial's 2018 corporate tax return. The tax return will be finalized once the 2018 financial statements are in final form, as those financial statements will have to be filed with CRA in support of the tax return.
41. As discussed in the Seventh Report, the Liquidator has retained the services of the former controller of Tarn Financial on a part-time contract basis in order to complete the 2018 financial statements. As of the date of the Eighth Report, the 2018 internal financial statements for the full fiscal year have been prepared. Richter has almost completed its review engagement in respect of those financial statements. The review engagement has taken longer than anticipated as the former controller's full-time position has taken up more of his time than initially anticipated. The Liquidator anticipates that Richter will complete work on the 2018 review engagement within the next 30 days and at that point will be able to finalize the 2018 corporate tax return.
42. The 2018 corporate tax return will also reflect the professional fee deductions determined favourably as set out above and include the calculation of capital gains tax payable on the Transaction, which was discussed in the Seventh Report.

*Report on Tarn Financial's Sources and Uses of Monies*

43. As discussed in the Seventh Report, the Liquidator prepared a Draft Report of the Liquidator dated August 31, 2018 re: Analysis of Sources and Uses of Monies during the period July 7, 2014 to September 30, 2017 (the "**Draft Sources and Uses Report**") and

provided a copy of the Draft Sources and Uses Report to the Applicants and Respondents on August 31, 2018 to allow the Applicants and Respondents the opportunity to review the Draft Sources and Uses Report and provide any additional information that any of them believe pertinent to the analysis.

44. As discussed in the Seventh Report, the Liquidator received additional information from both the Applicants' counsel and the Respondents' counsel and made certain amendments to the Draft Sources and Uses Report before issuing its final report.
45. On February 19, 2019, the Liquidator issued its final report dated February 19, 2019 re: Analysis of Sources and Uses of Monies during the period July 7, 2014 to September 30, 2017 (the "**Sources and Uses Report**") to the Applicants and the Respondents.
46. The Sources and Uses Report identified approximately \$900,000 of disbursements as being made to unknown persons or entities (the "**Unknown Disbursements**"). As described in the Sources and Uses Report, the Unknown Disbursements were classified as such because either: (a) the disbursements were under the \$15,000 threshold established within the scope of the report or (b) the Liquidator was unable to identify a corroborating piece of evidence in Tarn Financial's general ledger and/or did not have sufficient details to identify the payee to whom the disbursement was made.
47. Since finalizing the Sources and Uses Report, the Liquidator has had numerous discussions with the Applicants' counsel and the Respondents' counsel and has provided assistance to both parties in their review of the Sources and Uses Report.
48. The Respondents retained PricewaterhouseCoopers LLP ("**PWC**") as their expert to prepare a responding report (the "**PWC Report**") to the Sources and Uses Report. The Liquidator received various questions from the Respondents' counsel and PWC relating to the Sources and Uses Report, and provided excerpts of the Sources and Uses Report and/or additional context as necessary to respond to these questions. As part of completing the PWC Report, the Respondents' counsel requested access to the hard copy accounting records that were sold to Sunray as part of the Transaction that closed on June 29, 2018. On October 24, 2019, the Liquidator attended the Hotel premises with PWC in order to review accounting records located at the Hotel and to determine if that would assist in identifying the Unknown Disbursements.

49. On January 17, 2020, PWC delivered the PWC Report. The Liquidator reviewed the PWC Report and determined that the Liquidator did not need to file a reply report.

#### **Activities in Relation to Tarn Construction**

50. The Liquidator and the Receiver have continued to do the following in respect of Tarn Construction:
- a. Undertake the Deposit Return Procedure, the details of which are described below, including reviewing the Certificates of Identity and Release Agreements provided by Purchasers in respect of their Proven Deposits and following up with Purchasers who have not yet provided the required documentation and/or have not yet cashed their cheque in respect of their Proven Deposit; and,
  - b. Respond to inquiries from creditors of Tarn Construction regarding the Tarn Financial Claims Process.

#### **Other Activities in Relation to the Winding Up Proceedings**

51. The Liquidator and the Receiver, with the assistance of their counsel, have also undertaken the following in relation to the Winding Up Proceedings:
- a. Had regular discussions with the shareholders' counsel regarding the Winding Up Proceedings and responded to inquiries from the shareholders regarding same;
  - b. Responded to inquiries from other stakeholders regarding the Winding Up Proceedings;
  - c. Posted materials relating to the Winding Up Proceedings on its website ([www.kpmg.com/ca/tarn](http://www.kpmg.com/ca/tarn));
  - d. Maintained a telephone hotline at (416) 649-7623 or (1-855) 222-8083 and email address at [tarn@kpmg.ca](mailto:tarn@kpmg.ca) for inquiries regarding the Winding Up Proceedings;
  - e. Attended Court on April 5, 2019, April 30, 2019 and June 3, 2019, July 12, 2019, August 26, 2019, January 7, 2020 and January 29, 2020; and
  - f. Prepared and delivered the Eighth Report.

#### **IV. THE CLAMS PROCESS**

##### **Late Claims**

52. As set out in the Seventh Report, the Liquidator received two late filed Claims in the amounts of \$13,427.01 and \$248.50, respectively (the “**Late Claims**”). Since the date of the Seventh Report, the Liquidator has reviewed and made a determination in respect of the Late Claims.
53. After requesting additional information from the Claimants without satisfactory response, the Liquidator issued a Notice of Determination of Claim in respect of both Late Claims (one on February 13, 2020 (“**Late Claim 1**”) and the other on March 5, 2020 (“**Late Claim 2**”)), thereby disallowing each of the Late Claims on the basis that that the Claimant’s Proof of Claim filed does not contain any supporting documentation that identifies Tarn Financial as being the entity liable for the amount claimed.
54. In respect of the Notice of Disallowance issued on account of Late Claim 1, the Liquidator did not receive a Notice of Objection from this Claimant within the 14-day time period prescribed by the Claims Procedure Order. Accordingly, pursuant to section 26 of the Claims Procedure Order, this Claimant is deemed to have agreed with the Liquidator’s disallowance under the Notice of Determination of Claim, and the Claim is forever extinguished, barred, discharged and released as against Tarn Financial and the Liquidator.
55. In respect of the Notice of Disallowance issued on account of Late Claim 2, the 14-day time period prescribed by the Claims Procedure Order expires on March 19, 2020. To date, the Liquidator has not received a Notice of Objection from this Claimant.

##### **Unsecured Claims**

56. As set out in the Seventh Report, as at the date of the Seventh Report, the Liquidator had completed its review and determination of the unsecured Claims and has issued Notices of Determination of Claim to all Claimants, except in respect of the Late Claims, as follows:

<b>Unsecured Claims</b>	<b>Determination</b>
Allowed	2,521,086.26
Late filed	13,675.51
In dispute	1,003,956.69
Disallowed	6,451,529.06
Withdrawn	9,176.00
<b>Total</b>	<b>9,999,423.52</b>

57. The Claims in dispute were comprised of 22 Notices of Objection (relating to 20 Broker Claims and 2 non-Broker Claims) from Claimants in response to the Notices of Determination of Claim.
58. The Liquidator in its Seventh Report set out its view that it was appropriate to disallow the 20 Broker Claims as the amounts owing were an obligation of Tarn Construction, and not Tarn Financial.
59. As a result, the Court ordered in the April 2019 Ancillary Order that “the Claims of Brokers, which have filed Notices of Objections in the Tarn Financial Claims Process, are forever extinguished, bared, discharged and released as against Tarn Financial and the Liquidator.”
60. Since the date of the Seventh Report, in accordance with section 27 of the Claims Procedure Order, the Liquidator has settled the disputes in respect of the 2 remaining Notices of Objection. The Liquidator issued Revised Notices of Determination of Claim to each of these Claimants, which memorialize the terms of settlement.
61. With the exception of Late Claim 2, the Liquidator has fully completed the Tarn Financial Claims Process.

#### **Non Arms-Length Claims**

62. The Non Arms-Length Claimants filed the following claims in the Tarn Financial Claims Process:
  - a. Kaan filed one claim in the amount of \$3,000,000 for shareholder loans;
  - b. BA&B filed one claim in the amount of \$6,000,000 for shareholder loans; and
  - c. SAMM filed four claims in the following amounts:
    - (i) \$4,332,118.90 for shareholder loans (the “**SAMM Shareholder Loan Claim**”);

- (ii) \$708,870.50 for an operational cash flow advance;
- (iii) \$1,010,974.95 for management fee receivables; and
- (iv) \$6,910,000.00 for development charge receivables (collectively, the “**SAMM Non Arms-Length Claims**”).

63. Since filing the SAMM Non Arms-Length Claims, the Respondents’ counsel has advised that the claims being asserted by SAMM total \$16.3 million in aggregate; however, revised Proofs of Claim have not been submitted. The distributions and reserves for SAMM’s claims have been determined by the Liquidator based on the \$16.3 million amount now being asserted.
64. Pursuant to paragraphs 29 and 30 of the Claims Procedure Order, the Non Arms-Length Claims will not be determined by the Liquidator. The Applicants claims have not been disputed by the Respondents. The SAMM Non Arms-Length Claims have been disputed by the Applicants and the Trial has been scheduled for October 2020 to determine the SAMM Non Arms-Length Claims.

## **V. THE DEPOSIT RETURN PROCEDURE**

65. As set out in the Seventh Report, the Receiver terminated 626 APSs. To date the Receiver has returned, either in person or via regular mail, 625 Proven Deposits totaling \$29,711,044 pursuant to Deposit Return Procedure Order.
66. As of the date of this Eighth Report, the Receiver only has one Proven Deposit remaining to be distributed in the total amount of \$40,500. The Liquidator has recently been in contact with the party to whom the Proven Deposit belongs and expects to receive the necessary documentation to return the Proven Deposit in the next few weeks.

## **VI. DISTRIBUTIONS TO DATE**

### **First Distribution Order and Second Distribution Order**

67. As set out in the Seventh Report, pursuant to the First Distribution Order and the Second Distribution Order the Liquidator has distributed funds to settle: (a) the secured Claims of Meridian, Kingsett, and the lenders under the Borrowings Charge; and (b) the Claims of



Claimants with validly registered and perfected construction liens against the Real Property, in the aggregate amounts of \$23,588,884.57 and \$2,549,680.89, respectively.

### **Third Distribution Order**

68. On April 15, 2019, the Court granted the Third Distribution Order which authorized and directed the Liquidator to make distributions to unsecured Claimants with Proven Claims up to the full amount of their Proven Claims as determined by the Liquidator under the Tarn Financial Claims Process.
69. As set out in the Seventh Report, after reserving certain amounts in respect of potential priority claims of CRA, the secured Claim of The Guarantee Company and the then amount of the Tarion Bonds, and the Liquidator's Charge, and after fully reserving for disputed Claims and the Non-Arm's Length Claims, the Liquidator determined that it was able to make an initial distribution to unsecured Claimants with valid unsecured Claims in the amount of 85 cents on the dollar against their Proven Claims as determined under the Tarn Financial Claims Process.
70. Following the granting of the Third Distribution Order, the Liquidator made distributions to unsecured Claimants in the amount of 85 cents on the dollar as against their Proven Claims, in the total amount of \$2,142,923.
71. At the time when distributions were made pursuant to the Third Distribution Order, the Liquidator reserved the remaining 15% of the amount of valid unsecured third-party Claims received by the Liquidator in the Tarn Financial Claims Process. The Liquidator also fully reserved for the two non-Broker Disputed Claims and the Late Claims. The Liquidator has now settled the two non-Broker Disputed Claims and disallowed the Late Claims for the reasons set out above.
72. Having completed the Tarn Financial Claims Process, the Liquidator intends to make a final distribution to valid unsecured third-party Claimants, which will be the remaining 15% of the amount of their Proven Claims for all except the two non-Broker Disputed Claims that have since been settled, which will receive 100% of the settled Proven Claims.
73. The Liquidator continues to reserve funds for the potential priority claims of CRA, the secured claim of The Guarantee Company, the Liquidator's Charge and the disputed Non

Arms-Length Claims (in the amount of 75% being the amount distributed under the Fourth Distribution Order). Based on the amounts currently being held by the Liquidator, the Liquidator has determined that it can make a final distribution to third-party unsecured Claimants with valid unsecured Claims.

#### **Fourth Distribution Order**

74. The Fourth Distribution Order authorized distributions to the Non Arms-Length Claimants. As set out above, the Fourth Distribution Order was granted on consent.
75. Prior to the parties consenting to the Fourth Distribution Order, the Applicants filed a legal brief dated April 25, 2019 wherein they confirm that they do not take issue with the fact that SAMM made an initial advance of \$4.3 million to Tarn Financial, however they dispute that SAMM is entitled to repayment of the entire amount based on: (a) the finding made by Justice Lederman; and (b) the information contained in the Sources and Uses Report with respect to the funds paid into and out of Tarn Financial by SAMM, Akman and his related persons and entities.
76. In particular, the Sources and Uses Report determined that the parties related to the Respondents paid \$11.74 million into Tarn Financial including SAMM's initial shareholder advance and received \$9.17 million out of Tarn Financial.
77. At the time of the Fourth Distribution Order, the Applicants and Respondents agreed that the Non Arms-Length Claims eligible to receive an initial distribution of 75% were as follows: (a) Kaan in the amount of \$3,000,000; (b) BA&B in the amount of \$6,000,000; and (c) SAMM in the amount of \$2,570,000 (each an "**Eligible Shareholder Loan Claim**").
78. The Liquidator understands that the Eligible Shareholder Loan Claim amount of \$2,570,000 was an amount the parties could agree upon at the time as a basis for an interim distribution to SAMM. This amount was calculated by the Applicants as being the net advances to Tarn Financial of the Respondents and related parties based on the Applicants' review of the Sources and Uses Report (i.e. \$11,740,000 minus \$9,170,000 = \$2,570,000).
79. On April 30, 2019, the Court granted the Fourth Distribution Order, which authorized and directed the Liquidator to make interim distributions to: (a) Kaan in the amount of

\$2,250,000; (b) BA&B in the amount of \$4,500,000; and (c) SAMM in the amount of \$1,927,500 (equaling a 75% distribution of the Eligible Shareholder Loan Claims).

80. In accordance with the Fourth Distribution Order, the Liquidator made an interim distribution to the Non Arms-Length Claimants in the total amount of \$8,677,500, representing 75% of the Eligible Shareholder Loan Claims of the Non Arms-Length Claimants.

## **VII. FIFTH DISTRIBUTION ORDER SOUGHT**

81. As noted above, the Liquidator has now completed its review and determination of all of the Claims filed in the Tarn Financial Claims Process other than the Non Arms-Length Claims that are the subject of the Trial in October 2020. The Liquidator has made distributions pursuant to the First Distribution Order, the Second Distribution Order, the Third Distribution Order and the Fourth Distribution Order.

### **Distribution to the Non Arms-Length Claimants**

82. Pursuant to the Tarn Financial Claims Process, the Liquidator received Claims from the Non Arms-Length Claimants.
83. As noted above, at the time of the Fourth Distribution Order, the parties agreed on the amounts of the Eligible Shareholder Loan Claims of the Non Arms-Length Claimants that would be subject to a distribution.
84. At the time of making the distributions pursuant to the Fourth Distribution Order, the Liquidator reserved amounts in respect of the remaining balance of the Non Arms-Length Claims after accounting for the interim distribution to the Applicants and the Respondents. Included in the reserved amounts was 100% of a \$4 million secured claim being asserted by SAMM at the time.
85. In the summer of 2019, the Respondents' counsel advised that SAMM was no longer pursuing a \$4 million secured claim as part of its Non Arms-Length Claims. As a result of this change, the Liquidator had available funds for a further distribution in respect of the Non Arms-Length Claims.
86. After reserving funds for the potential priority claims of CRA, the secured claim of The Guarantee Company and the Liquidator's Charge, and fully reserving for the payment in

full of valid unsecured third-party claims, the Liquidator determined that it can make a further interim distribution to the Non Arms-Length Claimants in the amount of five percent (5%). As a result, the Liquidator circulated to the Applicants and Respondents a Distribution Analysis as of August 31, 2019 showing the potential additional distribution (the “**August 2019 Distribution Analysis**”).

87. In particular, after accounting for the reserves and for full distribution to unsecured third-party Claimants, the Liquidator has approximately \$1,265,000 available for the proposed distribution to the Non Arms-Length Claimants. The August 2019 Distribution Analysis showed a five percent (5%) distribution based on the Eligible Shareholder Loan Claims of the Non Arms-Length Claimants that would be paid and a reserve of five percent (5%) being established for the remaining disputed SAMM Non Arms-Length Claims as follows:
- a. \$150,000 to Kaan, representing 5% of its Eligible Shareholder Loan Claim in the amount of \$3,000,000;
  - b. \$300,000 to BA&B, representing 5% of its Eligible Shareholder Loan Claim in the amount of \$6,000,000;
  - c. \$128,500 to SAMM, representing 5% of its Eligible Shareholder Loan Claim in the amount of \$2,570,000; and
  - d. A reserve of \$686,500 in respect of the remaining disputed SAMM Non Arms-Length Claims of \$13,730,000.

A copy of the August 2019 Distribution Analysis along with a breakdown of the payments of the Non Arms-Length Claims is attached as **Appendix “H”** to this Eighth Report.

88. Subsequent to circulating the August 2019 Distribution Analysis, the Liquidator answered a number of questions and provided further information to the Respondents to assist in their understanding of how releasing a \$4 million secured claim allowed for further funds to be available for distribution to the Non Arms-Length Claimants.
89. Notwithstanding the information being provided, the Respondents would not agree to a further interim distribution for a several months. After being asked by the Applicants what their position was in respect of the proposed interim distribution on a number of occasions, on January 28, 2020, counsel for the Respondents advised that his clients were agreeable

to an interim distribution based on paragraph 17 of the PWC Report, which would in their view result in a distribution to SAMM based on \$3,152,894 for its Eligible Shareholder Loan Claim rather than the previously agreed amount of \$2,570,000. A copy of the letter from the Respondents' counsel on January 28, 2020 is attached as **Appendix "I"** to this Eighth Report.

90. The Liquidator initially could not determine how the proposed new amount for the Eligible Shareholder Loan Claim of SAMM was calculated based on the information set out in the PWC Report and requested clarity from the Respondents' counsel. Attached as **Appendix "J"** to this Eighth Report is an email from the Respondents' counsel on March 5, 2020 providing an explanation to the calculation.
91. The Liquidator notes that it has not spent time tying out all of the numbers in the PWC Report as this will be the subject matter of the Trial. Therefore, the Liquidator cannot address the accuracy of the statements or conclusions in the PWC Report at this time. Immediately upon receiving the email attached as Appendix "J", the Applicants' counsel responded and advised that the findings in the PWC Report are being disputed and providing its view that until there is a finding that the findings in the PWC Report are accurate, the Sources and Uses Report should form the basis for any interim distribution. Attached as **Appendix "K"** to this Eighth Report is the email from the Applicants' counsel on March 5, 2020 setting out its position.
92. As a result of the position asserted by the Respondents, and to assist the Court in understanding the differences between the two proposed interim distributions, the Liquidator prepared an alternative distribution analysis, making no changes other than updating the amount of the Eligible Shareholder Loan Claim for SAMM from \$2,570,000 to \$3,152,894 (the "**Alternative Distribution Analysis**"). The resulting distribution would be as follows:
  - a. \$150,000 to Kaan, representing 5% of its Eligible Shareholder Loan Claim in the amount of \$3,000,000;
  - b. \$300,000 to BA&B, representing 5% of its Eligible Shareholder Loan Claim in the amount of \$6,000,000;

- c. \$157,645 to SAMM, representing 5% of its Eligible Shareholder Loan Claim in the amount of \$3,152,894;
- d. \$437,171 to SAMM, representing 75% of the delta between the original Eligible Shareholder Claim amount of \$2,570,000 and the proposed Eligible Shareholder Claim amount of \$3,152,894, which amount was reserved when the fourth distribution was made; and
- e. A reserve of \$657,355 in respect of the remaining disputed SAMM Non Arms-Length Claims of \$13,147,106.

A copy of the Alternative Distribution Analysis along with a breakdown of the payments of the Non Arms-Length Claims is attached as **Appendix “L”** to this Eighth Report.

93. For ease of reference, a Chart summarizing the proposed and prior distributions is set out below:

Claimant	Status	Claim	Additional Distribution / Reserve %	Proposed Distribution and/or Reserve (5%)	Already Distributed and/or Reserved (75%)	Remaining Claim	Total
<b>Proposed Distribution</b>							
BA&B Capital Inc.		6,000,000	5.0%	300,000	4,500,000	1,200,000	6,000,000
KAAN Holdings Inc.		3,000,000	5.0%	150,000	2,250,000	600,000	3,000,000
SAMM Capital Holdings Inc.		2,570,000	5.0%	128,500	1,927,500	514,000	2,570,000
Sub-total		11,570,000		578,500	8,677,500	2,314,000	<b>11,570,000</b>
<b>Reserves</b>							
BA&B Capital Inc.		-	5.0%	-	-	-	-
KAAN Holdings Inc.		-	5.0%	-	-	-	-
SAMM Capital Holdings Inc.	Disputed	1,762,119	5.0%	88,106	1,321,589	352,424	1,762,119
SAMM Capital Holdings Inc.	Disputed	11,967,881	5.0%	598,394	8,975,911	2,393,576	11,967,881
Sub-total		13,730,000		686,500	10,297,500	2,746,000	<b>13,730,000</b>
<b>Total</b>		<b>25,300,000</b>		<b>1,265,000</b>	<b>18,975,000</b>	<b>5,060,000</b>	<b>25,300,000</b>
<b>Alternative Distribution</b>							
BA&B Capital Inc.		6,000,000	5.0%	300,000	4,500,000	1,200,000	6,000,000
KAAN Holdings Inc.		3,000,000	5.0%	150,000	2,250,000	600,000	3,000,000
SAMM Capital Holdings Inc.		2,570,000	5.0%	128,500	1,927,500	514,000	2,570,000
SAMM Capital Holdings Inc.	Currently reserved	582,894	5.0%	29,145	437,171	116,579	582,894
Sub-total		12,152,894		607,645	9,114,671	2,430,579	<b>12,152,894</b>
<b>Reserves</b>							
BA&B Capital Inc.		-	5.0%	-	-	-	-
KAAN Holdings Inc.		-	5.0%	-	-	-	-
SAMM Capital Holdings Inc.	Disputed	1,179,225	5.0%	58,961	884,419	235,845	1,179,225
SAMM Capital Holdings Inc.	Disputed	11,967,881	5.0%	598,394	8,975,911	2,393,576	11,967,881
Sub-total		13,147,106		657,355	9,860,330	2,629,421	<b>13,147,106</b>
<b>Total</b>		<b>25,300,000</b>		<b>1,265,000</b>	<b>18,975,000</b>	<b>5,060,000</b>	<b>25,300,000</b>

94. The Liquidator is of the view that an interim distribution should be made to the Non Arms-Length Claimants. The Claims of the Applicants are not in dispute and the proposed distribution is the same in both distribution scenarios. There is no reason not to allow a distribution to be made to the Applicants as long as proper reserves are established for the Respondents' disputed claims.
95. The only issue in dispute between the parties is what the amount of SAMM's Eligible Shareholder Claim should be for an interim distribution prior to the determination of SAMM's disputed Non Arms-Length Claims at the Trial. The Liquidator has not "scrubbed" the numbers set out in the PWC Report and given that the Applicants are disputing the numbers, the Liquidator does not believe it is a good use of resources to do so at this time.

#### **VIII. LIQUIDATOR'S STATEMENT OF RECEIPTS AND DISBURSEMENTS**

96. The Liquidator reported on the total receipts and disbursements from the date of the Liquidator's appointment to April 9, 2019 in the Seventh Report.
97. The following table provides a summary of the total receipts and disbursements from the date of the Liquidator's appointment to March 6, 2020 (the "**R&D Period**"):

<b>Statement of Receipts and Disbursements</b>			
<b>For the period September 25, 2017 to March 06, 2020</b>			
<b>(in CAD)</b>			
	<b>Sep 25, 2017 to Apr 9, 2019</b>	<b>Apr 10, 2019 to Mar 6, 2020</b>	<b>Sep 25, 2017 to Mar 6, 2020</b>
<b>Receipts</b>			
Operating receipts	18,292,949	405,584	18,698,533
Liquidator's Borrowings	2,977,805	-	2,977,805
Collected on behalf of Sunray Hotels Inc.	203,249	-	203,249
Net sale proceeds	59,303,653	-	59,303,653
<b>Total receipts</b>	<b>80,777,655</b>	<b>405,584</b>	<b>81,183,239</b>
<b>Disbursements</b>			
Operating disbursements	3,922,342	158,898	4,081,240
Salaries and wages	6,269,111	-	6,269,111
Taxes	4,964,091	12,722	4,976,814
Accounting and tax costs	254,970	-	254,970
Insurance	260,709	-	260,709
Utilities	1,050,494	-	1,050,494
Marriott fee	1,481,145	-	1,481,145
Critical Maintenance	368,046	-	368,046
Collected on behalf of Sunray Hotels Inc.	203,249	-	203,249
<b>Total operating disbursements</b>	<b>18,774,158</b>	<b>171,621</b>	<b>18,945,779</b>
<b>Operating cash flow</b>	<b>62,003,497</b>	<b>233,963</b>	<b>62,237,460</b>
<b>Loan Facilities and Professional Fees</b>			
Secured lenders - Principal and Interest	1,957,768	-	1,957,768
Sales Commission	847,500	-	847,500
Professional fees	4,564,763	174,054	4,738,817
<b>Non-operating disbursements</b>	<b>7,370,032</b>	<b>174,054</b>	<b>7,544,085</b>
<b>Distributions</b>			
Meridian Credit Union	17,494,362	-	17,494,362
Kingsett Mortgage Corporation	6,094,523	-	6,094,523
Liquidator's Borrowing Charge	3,179,364	-	3,179,364
Lien Claimants	2,549,681	-	2,549,681
Tarion Warranty Corporation	-	600,000	600,000
Unsecured Creditors	-	2,142,923	2,142,923
Shareholders in respect of loans	-	8,677,500	8,677,500
<b>Total distributions</b>	<b>29,317,929</b>	<b>11,420,423</b>	<b>40,738,353</b>
Opening book balance	(70,185)	25,245,351	(70,185)
<b>Net cash flow</b>	<b>25,315,536</b>	<b>(11,360,514)</b>	<b>13,955,022</b>
<b>Closing book balance</b>	<b>25,245,351</b>	<b>13,884,837</b>	<b>13,884,837</b>

98. Receipts during the R&D Period were \$81,183,239 and consist of: (a) guest room, food and beverage, parking-related revenues and interest earned on invested funds of \$13,468,963; (b) funding of \$2,977,805 under the Borrowings Charge; (c) net sale proceeds of \$59,303,653; and (d) amounts collected on behalf of Sunray after the Closing Date of \$203,249.
99. Disbursements during the R&D Period were \$67,228,217 and include: (a) salaries and wages in the amount of \$6,269,111; (b) operating expenses of \$4,081,240; (c) HST and other tax payments, including the capital gains taxes payable on the Transaction, in the amount of \$4,976,814; (d) principal and interest payments to secured creditors of \$1,957,768; (e) professional fees and disbursements inclusive of HST of \$4,738,817 which consists of the professional fees of the Liquidator and the Receiver, their independent legal counsel, Miller Thomson, and Bennett Jones; (f) distributions pursuant to the First Distribution Order in the amount of \$26,768,248; (g) distributions pursuant to the Second Distribution Order in the amount of \$2,549,681; (h) distributions pursuant to the Third



Distribution Order in the amount of \$2,142,923; (i) distributions pursuant to the Taron Cash Collateral Procedure Order in the amount of \$600,000; and (j) distributions pursuant to the Fourth Distribution Order in the amount of \$8,677,500.

**IX. RECEIVER’S STATEMENT OF RECEIPTS AND DISBURSEMENTS**

100. The Receiver reported on the total receipts and disbursements from the date of the Receivership Order to April 9, 2019 in the Seventh Report.

101. The following table provides a summary of the total receipts and disbursements from the date of the appointment of the Receiver on April 13, 2018 to March 6, 2020 in the Receiver’s trust account (the “Receiver’s R&D Period”).

<b>Statement of Receipts and Disbursements</b>			
<b>For the period April 13, 2018 to March 06, 2020</b>			
<b>(in CAD)</b>			
	<b>Sep 25, 2017 to Apr 9, 2019</b>	<b>Apr 10, 2019 to Mar 6, 2020</b>	<b>Sep 25, 2017 to Mar 6, 2020</b>
<b>Receipts</b>			
Deposit funds received and held in trust	30,094,631	-	30,094,631
Interest	58,649	1,345	59,994
<b>Total receipts</b>	<b>30,153,280</b>	<b>1,345</b>	<b>30,154,625</b>
<b>Disbursements</b>			
Proven Deposits returned to Purchasers	29,706,044	5,000	29,711,044
Professional fees	395,000	-	395,000
Bank charges	625	3	628
<b>Total disbursements</b>	<b>30,101,669</b>	<b>5,003</b>	<b>30,106,672</b>
Opening book balance	-	51,611	-
<b>Net cash flow</b>	<b>51,611</b>	<b>(3,658)</b>	<b>47,953</b>
<b>Ending book balance</b>	<b>51,611</b>	<b>47,953</b>	<b>47,953</b>

102. Receipts during the Receiver’s R&D Period were \$30,154,625 and consist of (a) Deposit Funds of \$30,094,631 from the Deposit Trustee and (b) interest of \$59,994 earned since the Deposit Funds were deposited into the Receiver’s trust account on June 18, 2018.

103. Disbursements during the Receiver’s R&D Period were \$30,106,672 and consist of (a) payments to Purchasers of their Proven Deposits pursuant to the Deposit Return Procedure of \$29,711,044, (b) professional fees and disbursements inclusive of HST of \$395,000, which consists of the professional fees of the Receiver and their independent legal counsel, Miller Thomson, and (c) bank charges of \$628.

**X. CONCLUSION**

104. The Liquidator and the Receiver submit this Eighth Report to the Court in support of the Liquidator’s and the Receiver’s Motion and recommends that the Court grant an Order:

- a. Authorizing and directing the Liquidator to make a further five percent (5%) interim distribution to the Applicants and Respondents in respect of their Eligible Shareholder Loan Claims and reserving for the disputed Non Arms-Length Claims; and
- b. Approving the Eighth Report and the activities and conduct of the Liquidator and the Receiver as set out therein.

105. The Liquidator seeks direction from the Court as to the amount of SAMM's Eligible Shareholder Loan Claim for the distribution being sought.

All of which is respectfully submitted at Toronto, Ontario this 9<sup>th</sup> day of March, 2020.

**KPMG Inc., in its capacity as Court Appointed Liquidator of  
Tarn Financial Corporation and in its capacity as Court Appointed  
Receiver of Tarn Construction Corporation and not in its personal capacity**



Per:

\_\_\_\_\_  
Anamika Gadia  
Senior Vice President

# **APPENDIX “A”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**



**THE HONOURABLE MR  
JUSTICE LEDERMAN**

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)

**FRIDAY, THE 15<sup>th</sup> DAY  
OF SEPTEMBER 2017**

**BETWEEN:**

**VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ, BA&B  
CAPITAL INC., SERDAR KOCTURK and KAAH HOLDINGS INC.**

**Applicants**

- and -

**ALI AKMAN, SAMM CAPITAL HOLDINGS INC. and TARN FINANCIAL CORPORATION**

**Respondents**

**APPLICATION UNDER** sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16.

**ORDER  
(Winding-up Tarn Financial Corporation)**

**THIS MOTION** made by the Applicants for an Order pursuant to section 207 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "OBICA") winding-up Tarn Financial Corporation ("Tarn") appointing KPMG Inc. ("KPMG") as liquidator of Tarn was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavits of Anil Rukan Basegmez sworn 16 March 2017, Serdar Kocturk sworn 19 April 2017, Oliver Fitzgerald sworn 24 April 2017, Ali Akman sworn 27 July 2017, Julian Emmanuel sworn 18 April 2017 and Ted Evangelidis sworn 19 April 2017, the Reports of MNP LLP dated 6 July 2017 and Kanish & Partners LLP dated 27 July 2017, the Mediator's Report dated 27 June 2017 and the transcripts from the shareholders' meeting held on 9 June 2017 and the cross-examinations of Anil Rukan Basegmez, Serdar Kocturk, Ali Akman Julian Emmanuel and Edward Asare-Quansah, and on hearing the submissions of counsel for the

Applicants and the Respondents Ali Akman and SAMM Capital Holdings Inc., no one appearing for Tarn Financial,

### **WINDING-UP OF TARN FINANCIAL**

1. **THIS COURT ORDERS** that Tarn Financial be wound-up and for that purpose KPMG be and is hereby appointed as liquidator of the effects and estate of Tarn Financial effective from 25 September 2017 with the powers obligations set forth in Part XVI of the OBCA and this Order. Where there is any inconsistency between the powers provided to KPMG under the OBCA and this Order, the terms of this Order shall govern to the extent that they restrict or limit the powers of KPMG.

### **KPMG'S POWERS**

2. **THIS COURT ORDERS** that KPMG is hereby empowered and authorized, but not obligated, to act at once in respect of the assets property and undertaking of Tarn Financial (the "**Property**") and, without in any way limiting the generality of the foregoing, KPMG is hereby expressly empowered and authorized to do any of the following where KPMG considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
  - (c) to manage, operate, and carry on the business of Tarn Financial, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of Tarn Financial;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, forensic experts, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of KPMG's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of Tarn Financial or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to Tarn Financial and to exercise all remedies of Tarn Financial in collecting such monies, including, without limitation, to enforce any security held by Tarn Financial;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in KPMG's name or in the name and on behalf of Tarn Financial, for any purpose pursuant to this Order;
- (h) conduct a review of what monies were transferred in or out of Tarn Financial;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to Tarn Financial, the Property or KPMG and the authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding and subject to consent of the shareholders of Tarn Financial or an Order of the Court to settle or compromise any such proceeding;
- (j) to market the Property for sale and, subject to approval of the Court, negotiate such terms and conditions of sale as KPMG in its discretion may deem appropriate;

- (k) to apply to the Court for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (l) to report to, meet with and discuss with such affected Persons (as defined below) as KPMG deems appropriate on all matters relating to the Property and to share information, subject to such terms as to confidentiality as KPMG deems advisable;
- (m) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and in the name of Tarn Financial;
- (n) to exercise any shareholder, partnership, joint venture or other rights which Tarn Financial may have; and
- (o) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where KPMG takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including Tarn Financial, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO KPMG**

3. **THIS COURT ORDERS** that (i) Tarn Financial, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise KPMG of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to KPMG, and shall deliver all such Property to KPMG upon KPMG's request.

4. **THIS COURT ORDERS** that all Persons shall forthwith advise KPMG of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of Tarn Financial, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to KPMG or permit KPMG to make, retain and take away copies thereof and grant to KPMG unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to KPMG due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.
  
5. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to KPMG for the purpose of allowing KPMG to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as KPMG in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of KPMG. Further, for the purposes of this paragraph, all Persons shall provide KPMG with all such assistance in gaining immediate access to the information in the Records as KPMG may in its discretion require including providing KPMG with instructions on the use of any computer or other system and providing KPMG with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST KPMG**

6. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against KPMG except with the written consent of KPMG or with leave of this Court.



## **NO PROCEEDINGS AGAINST TARN FINANCIAL OR THE PROPERTY**

7. **THIS COURT ORDERS** that no Proceeding against or in respect of Tarn Financial or the Property shall be commenced or continued except with the written consent of KPMG or with leave of this Court and any and all Proceedings currently under way against or in respect of Tarn Financial or the Property are hereby stayed and suspended pending further Order of this Court.

## **NO INTERFERENCE WITH KPMG**

8. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by Tarn Financial, without written consent of KPMG or leave of this Court.

## **CONTINUATION OF SERVICES**

9. **THIS COURT ORDERS** that all Persons having oral or written agreements with Tarn Financial or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to Tarn Financial are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by KPMG, and that KPMG shall be entitled to the continued use of Tarn Financial's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by KPMG in accordance with normal payment practices of Tarn Financial or such other practices as may be agreed upon by the supplier or service provider and KPMG, or as may be ordered by this Court.

## **KPMG TO HOLD FUNDS**

10. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by KPMG from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by KPMG (the "**Liquidator's Accounts**") as required by section 227 of the OBCA and the monies standing to the credit of the Liquidator's Accounts from time to time, net of any disbursements provided for herein, shall be held by KPMG to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

11. **THIS COURT ORDERS** that all employees of Tarn Financial shall remain the employees of Tarn Financial until such time as KPMG, on Tarn Financial's behalf, may terminate the employment of such employees. KPMG shall not be liable for any employee-related liabilities, including any successor employer liabilities other than such amounts as KPMG may specifically agree in writing to pay. Tarn Financial shall make all employee-related remittance from an after the date of this Order.

## **PIPEDA**

12. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, KPMG shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to KPMG, or in the alternative destroy all such information. The purchaser of any

Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by Tarn Financial, and shall return all other personal information to KPMG, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

13. **THIS COURT ORDERS** that nothing herein contained shall require KPMG to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt KPMG from any duty to report or make disclosure imposed by applicable Environmental Legislation. KPMG shall not, as a result of this Order or anything done in pursuance of KPMG's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE KPMG'S LIABILITY**

14. **THIS COURT ORDERS** that KPMG shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on the part of KPMG.

## **LIQUIDATOR'S ACCOUNTS**

15. **THIS COURT ORDERS** that KPMG and counsel to KPMG shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that KPMG and counsel to KPMG shall be entitled to and are hereby granted a charge (the "**Liquidator's Charge**") on the Property as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Liquidator's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to any valid and enforceable security interests registered against the Property in favour of Persons not related to, or not dealing at arm's length with, Tarn Financial as of the date of this Order.
16. **THIS COURT ORDERS** that KPMG and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of KPMG and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.
17. **THIS COURT ORDERS** that prior to the passing of its accounts KPMG shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of KPMG or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## **FUNDING OF KPMG**

18. **THIS COURT ORDERS** that KPMG be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the

powers and duties conferred upon KPMG by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the " Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to: (i) any valid and enforceable security interests registered against the Property in favour of Persons not related to, or not dealing at arm's length with, Tarn Financial as of the date of this Order; and (ii) the Liquidator's Charge.

19. **THIS COURT ORDERS** that neither the Borrowings Charge nor any other security granted by KPMG in connection with its borrowings under this Order shall be enforced without leave of this Court.

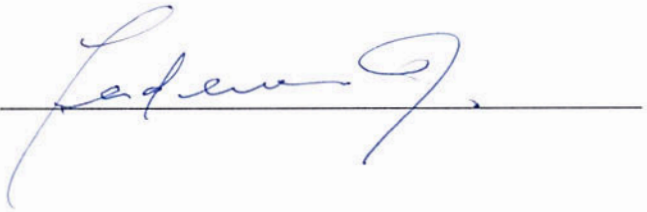
#### **SERVICE AND NOTICE**

20. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [www.kpmg.com/ca/tarn](http://www.kpmg.com/ca/tarn).
21. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, KPMG is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to interested parties and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the

next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

22. **THIS COURT ORDERS** that KPMG may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
23. **THIS COURT ORDERS** that the Applicants shall have its costs as either agreed upon by the parties or ordered by the Court.
24. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to KPMG and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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Court File No.: CV-17-11697-0000

**BETWEEN:**

**BASEGMEZ *et al***  
– Applicants –

**AND**

**AKMAN *et al***  
– Respondents –

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

(PROCEEDING COMMENCED AT TORONTO)

**ORDER**

**GOWLING WLG (CANADA) LLP**  
Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto, Ontario M5X 1G5

**E. Patrick Shea (LSUC No. 39655K)**  
**Christopher Stanek (LSUC No. 45127K)**  
Telephone: (416) 369-7399 / 862-4369  
Facsimile: (416) 862-7661

LAWYERS FOR THE APPLICANTS

# APPENDIX “B”



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**



**THE HONOURABLE**

)

**FRIDAY, THE 13<sup>th</sup> DAY**

)

**JUSTICE MCEWEN**

)

**OF APRIL, 2018**

**BETWEEN:**

**VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,  
BA&B CAPITAL INC., SERDAR KOCTURK  
and KAAH HOLDINGS INC.**

**Applicants**

– and –

**ALI AKMAN, SAMM CAPITAL HOLDINGS INC.  
and TARN FINANCIAL CORPORATION**

**Respondents**

**APPLICATION UNDER** Sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16.

**CLAIMS PROCEDURE ORDER  
(Re: Tarn Financial Corporation)**

**THIS MOTION**, made by KPMG Inc., in its capacity as court-appointed liquidator (in such capacity, the “**Liquidator**”) pursuant to section 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial Corporation (“**Tarn Financial**”), and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the “**Winding Up Order**”), which appointment was effective on September 25, 2017, for an order approving and establishing a procedure for the solicitation, resolution and barring of certain claims against Tarn Financial (the “**Claims Process**”) was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Second Report of the Liquidator dated April 9, 2018 and on hearing the submissions of counsel for the Liquidator, and such other counsel as were present as indicated on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Service sworn April 10, 2018, filed:

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion is hereby abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion is hereby dispensed with.

## **DEFINITIONS AND INTERPRETATION**

2. **THIS COURT ORDERS** that for the purposes of this Order, the following terms shall have the following meanings:

- (a) **“Business Day”** means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;
- (b) **“Claim”** means:
  - (i) any right or claim of any Person against Tarn Financial, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of Tarn Financial in existence on the Effective Date, and any accrued interest thereon and costs payable in respect thereof to and including the Effective Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is

based in whole or in part on facts which existed prior to the Effective Date, and includes any other claims that would have been claims provable in a bankruptcy had Tarn Financial become bankrupt on the Effective Date, and does not include an Excluded Claim; and

- (ii) a Wages & Benefits Claim;
- (c) “**Claimant**” means a Person who has asserted a Claim or could have asserted a Claim but for the provisions hereof concerning the Claims Bar Date;
- (d) “**Claims Bar Date**” means 5:00 PM Eastern Standard Time on June 15, 2018, or such later date as may be ordered by this Court;
- (e) “**Claims Process Notice**” means the notice of this Order to be published in accordance with paragraph 10 of this Order, substantially in the form attached as **Schedule “A”** to this Order;
- (f) “**Court**” means the Ontario Superior Court of Justice, Commercial List;
- (g) “**Effective Date**” means September 25, 2017;
- (h) “**Excluded Claim**” means, subject to further order of this Court, (a) any claims of the Liquidator or its counsel; (b) any claims for repayment of monies borrowed pursuant to the Borrowings Charge, as defined in the Winding Up Order; and, (c) any claims for amounts due for goods or services actually supplied to Tarn Financial on or after the Effective Date;
- (i) “**Non Arms-Length Claimant**” means any Person who is a shareholder of Tarn Financial as at the Effective Date, and all Persons related to such Non Arms-Length Claimant including but not limited to all companies or other legal entities that such Persons own or control in whole or in part, directly or indirectly;
- (j) “**Non-Arms-Length Claims Bar Date**” means 5:00 PM Eastern Standard Time on June 29, 2018, or such later date as may be ordered by this Court;

- (k) “**Notice of Determination of Claim**” means the notice provided by the Liquidator pursuant to paragraph 24 of this Order, substantially in the form attached as **Schedule “C”** to this Order;
- (l) “**Notice of Objection**” means the notice provided pursuant to paragraph 25 of this Order, substantially in the form attached as **Schedule “D”** to this Order;
- (m) “**OBCA**” means the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended;
- (n) “**Person**” means any individual, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, government or any agency, officer or instrumentality thereof or any other entity;
- (o) “**Proof of Claim**” means the proof of claim referred to herein to be filed by Claimants in connection with any Claim, substantially in the form attached as **Schedule “B”**, which shall include all supporting documentation in respect of such Claim;
- (p) “**Proven Claim**” means a Claim to the extent that it has been finally determined in accordance with the terms of this Order; and
- (q) “**Wages & Benefits Claim**” means any right or claim against Tarn Financial, whether or not asserted, in connection with any outstanding wages, salaries and employee benefits (including, but not limited to, employee medical, dental, disability, life insurance and similar benefit plans or arrangements, bonus plans, incentive plans, share compensation plans, share allocation plans and employee assistance programs and employee or employer contributions in respect of pension and other benefits) vacation pay, commissions, bonuses and other incentive payments, and expenses and reimbursements due as at the Effective Date, and does not include an Excluded Claim.

3. **THIS COURT ORDERS** that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. Toronto time on such Business Day unless otherwise indicated herein.

4. **THIS COURT ORDERS** that all references to the word “including” shall mean “including without limitation”, and that all references to the singular herein include the plural, the plural include the singular, and that any gender includes all genders.

5. **THIS COURT ORDERS** that for the purposes of this Order, any Claim denominated in any currency other than Canadian dollars shall be converted to and constitute obligations in Canadian dollars, such calculation to be effected by the Liquidator using the Bank of Canada noon spot rate on the Effective Date.

#### **LIQUIDATOR’S ROLE**

6. **THIS COURT ORDERS** that the Liquidator, in addition to its prescribed rights and obligations under the OBCA and the Winding-Up Order, shall administer the Claims Process, including the determination of Claims and is hereby directed and empowered to take such actions and fulfill such other roles as are contemplated by this Order.

7. **THIS COURT ORDERS** that the Liquidator is authorized to enter into settlement negotiations with a Claimant at any stage of the Claims Process and is further authorized to enter into agreements with such Claimant resolving the value of their Claim.

#### **PUBLICATION OF NOTICE**

8. **THIS COURT ORDERS** that the Claims Process Notice is hereby approved. Notwithstanding the foregoing, the Liquidator may from time to time, make minor non-substantive changes to the form of Claims Process Notice as may be necessary or desirable.

9. **THIS COURT ORDERS** that the Liquidator shall cause the Claims Process Notice and Proof of Claim to be posted on the Liquidator’s website at [www.kpmg.com/ca/tarn](http://www.kpmg.com/ca/tarn) no later than five (5) Business Days after the date of this Order.

10. **THIS COURT ORDERS** that the Liquidator shall take all reasonable steps to cause the Claims Process Notice to be published twice in each of the Globe and Mail (National Edition) and the Toronto Star.

11. **THIS COURT ORDERS** that the Liquidator shall, no later than five (5) Business Days after the date of this Order, send the Claims Process Notice and Proof of Claim by ordinary mail, electronic mail, facsimile transmission or courier to:

- (a) Each party that appears on the service list in these proceedings;
- (b) All of the known creditors of Tarn Financial as of the Effective Date as evidenced by its books and records; and
- (c) All Persons who have notified the Liquidator or Tarn Financial of a potential Claim.

12. **THIS COURT ORDERS** that the sending of the Claims Process Notice and the publication of the Claims Process Notice, in accordance with this Order, shall constitute good and sufficient service and delivery of notice of this Order and the Claims Bar Date on all Persons and no other notice or service need to be given or made.

#### **CLAIMS BAR DATE**

13. **THIS COURT ORDERS** that any Person that intends to assert a Claim shall deliver a Proof of Claim, together with all relevant supporting documentation in respect of the Claim, to the Liquidator on or before the Claims Bar Date or Non Arms-Length Claims Bar Date, as applicable.

14. **THIS COURT ORDERS** that the Claims of all Claimants who do not deliver a Proof of Claim to the Liquidator by the Claims Bar Date or Non Arms-Length Claims Bar Date, as applicable, shall be forever extinguished and barred and all such Claimants shall be deemed to have fully and finally released and discharged all such Claims as against Tarn Financial and the Liquidator.

15. **THIS COURT ORDERS** that, with respect to any Claims which are deemed to have been released and discharged in accordance with paragraph 14 of this Order, Tarn Financial and the Liquidator shall be released and discharged from any and all demands, claims, actions, causes of

action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, executions, charges and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Claimant may have been entitled to assert, including, without limitation, any and all claims in respect of potential statutory liabilities, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction or dealing or other occurrence existing or taking place prior to the Effective Date.

### **COLLECTION OF PROOFS OF CLAIM**

16. **THIS COURT ORDERS** that the Proof of Claim is hereby approved. Notwithstanding the foregoing, the Liquidator may from time to time, make minor non-substantive changes to the form of Proof of Claim as may be necessary or desirable.

17. **THIS COURT ORDERS** that strict compliance with the requirements set out in section 228 of the OBCA are hereby waived.

18. **THIS COURT ORDERS** that the Liquidator is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which Proofs of Claim are completed and executed and the time in which they are submitted and may, where it is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order, as to the completion and execution of Proofs of Claim and to request any further documentation from a Claimant that the Liquidator may require in order to enable it to determine the validity of a Claim.

19. **THIS COURT ORDERS** that the Liquidator shall maintain a list of all Proofs of Claim received by it, including the name of the Claimant, the party or parties claimed against, the amount claimed, the nature of the Claim and the status of the Claim.

20. **THIS COURT ORDERS** that any Claimant that has filed a Proof of Claim may request and examine the Proofs of Claim of other Claimants.

## **DETERMINATION OF CLAIMS**

21. **THIS COURT ORDERS** that, following the Claims Bar Date, the Liquidator shall review the Proofs of Claim filed on or before the Claims Bar Date and, with respect to all Claims, the Liquidator shall determine to either allow, partially allow, partially disallow or disallow the Claims.

22. **THIS COURT ORDERS** that the Liquidator, may attempt to consensually resolve the amount of any asserted Claim with the Claimant prior to allowing, partially allowing, partially disallowing or disallowing such Claim.

23. **THIS COURT ORDERS** that for any Claim commenced prior to the Effective Date by the issuance of an originating process (as defined in the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended), or for any Claim commenced after the Effective Date, with the consent of the Liquidator, the Liquidator may choose to have such Claim determined in the context of the proceedings commenced by such originating process and, in such case, the Liquidator shall notify such Claimant of such a decision rather than provide a Notice of Determination of Claim (as defined below). The value and status of such Claimant's Claim shall be as finally determined in such proceedings and shall be deemed to constitute such Claimant's Proven Claim (as defined below) as so finally determined.

24. **THIS COURT ORDERS** that, where a Claim is to be allowed, partially allowed, partially disallowed or disallowed pursuant to the process contained in this Order, the Liquidator shall deliver to the Claimant a written notice of such determination setting out therein the reasons for the determination (a "**Notice of Determination of Claim**") as soon as reasonably practicable.

## **RESOLUTION OF DISPUTES REGARDING CLAIMS**

25. **THIS COURT ORDERS** that in the event that a Claimant objects to the Liquidator's determination of a Claim and intends to contest the Notice of Determination of Claim, such Claimant shall deliver written notice of such party's objection and a brief description of the grounds for such objection (a "**Notice of Objection**") so that such Notice of Objection is received by the Liquidator by no later than 5:00 p.m. on the day which is fourteen (14) days after the date the Notice of Determination of Claim is deemed to be received.



26. **THIS COURT ORDERS** that any Claimant that does not provide the Liquidator with a Notice of Objection within the deadline set forth in paragraph 25 shall be deemed to have agreed with the Notice of Determination of Claim pertaining to that Claimant's Claim. Any Claim, or any portion thereof, that is disallowed pursuant to a Notice of Determination of Claim and in respect of which no Notice of Objection is received by the Liquidator by the deadline set forth in paragraph 25 hereof shall be forever extinguished, barred, discharged and released as against Tarn Financial and the Liquidator without any further act or notification.

27. **THIS COURT ORDERS** that the Liquidator may attempt to settle the dispute with respect to the Claim and, in the event that a settlement is not achieved, the Liquidator may either direct the dispute to a claims officer (as may be appointed by the Court on application of the Liquidator) or the Liquidator may seek directions from the Court concerning an appropriate process for resolving the disputed Claim.

28. **THIS COURT ORDERS** that where a Claimant who receives a Notice of Determination of Claim agrees to same or where the claim is otherwise determined in accordance with paragraph 27 of this Order, the value and status of such Claimant's Claim shall be deemed to be as set out in the Notice of Determination of Claim or as determined in accordance with paragraph 27 of this Order, as the case may be, and such value and status, if any, shall constitute such Claimant's proven Claim (a "**Proven Claim**").

#### **CLAIMS OF NON ARMS-LENGTH CLAIMANTS**

29. **THIS COURT ORDERS** that, if any Proof of Claim is received by the Liquidator from a Non Arms-Length Claimant prior to the Non-Arms-Length Claims Bar Date, such Claim will not be determined by the Liquidator. Upon receipt of any Proof of Claim by a Non Arms-Length Claimant, the Liquidator shall deliver the Proof of Claim to the Applicants and the Respondents, and shall coordinate with the Applicants, the Respondents, and the Non Arms-Length Claimant, regarding establishing a process for determination of such Claims, if disputed.

30. **THIS COURT ORDERS** that, for greater certainty, the Liquidator shall not be required to issue a Notice of Determination of Claim in respect of any Proof of Claim filed by a Non Arms-

Length Claimant. Any references in this Order to the issuing of such notices by the Liquidator shall be deemed to exclude reference to Proof of Claims filed by the Non Arms-Length Claimants.

## **NOTICES AND COMMUNICATIONS**

31. **THIS COURT ORDERS** that, except as set out in this Order, any notice or communication (including Notices of Determination of Claims) to be given under this Order by the Liquidator to a Claimant shall be in writing and may be delivered by prepaid ordinary mail, by courier, by delivery, by facsimile transmission or electronic mail to the Claimant to such address, facsimile number or e-mail address, as applicable, for such Claimant as shown on the books of Tarn Financial or as set out in such Claimant's Proof of Claim. Any such service and delivery shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario) and the tenth Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

32. **THIS COURT ORDERS** that any document, notice or other communication (including, without limitation, Proofs of Claim) required to be delivered to the Liquidator under this Order shall be in writing and, where applicable, substantially in the form provided for in this Order, and will be sufficiently delivered only if delivered to:

KPMG Inc.,  
in its capacity as court-appointed Liquidator  
of Tarn Financial Corporation  
333 Bay Street, Suite 4600  
Toronto, Ontario, M5H 2S5

Attention: Marcel Réthoré  
Phone: 1-855-222-8083  
Fax: 416-777-3364  
E-mail: [tarn@kpmg.ca](mailto:tarn@kpmg.ca)

33. **THIS COURT ORDERS** that in the event that the day on which any notice or communication required to be delivered pursuant to the Claims Process is not a Business Day then such notice or communication shall be required to be delivered on the next Business Day.

34. **THIS COURT ORDERS** that if, during any period during which notices or other communications are being given pursuant to this Order a postal strike or postal work stoppage of general application should occur, such notices or other communications then not received or deemed received shall not, absent further Order of this Court, be effective. Notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, delivery, facsimile transmission or electronic mail in accordance with this Order.

#### **GENERAL PROVISIONS**

35. **THIS COURT ORDERS** that the Liquidator may from time to time apply to this Court for advice and directions in connection with the discharge or variation of its powers and duties under this Order.

36. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Liquidator and its respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Liquidator in any foreign proceeding, or to assist the Liquidator and its respective agents in carrying out the terms of this Order.

37. **THIS COURT ORDERS** that the Liquidator be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Liquidator is authorized and empowered to act as a representative in respect of the within

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

  
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**SCHEDULE A  
CLAIMS PROCESS NOTICE**

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**IN RESPECT OF CLAIMS AGAINST TARN FINANCIAL CORPORATION**

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**IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, R.S.O. 1990, c. B.16., AS  
AMENDED**

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***PLEASE TAKE NOTICE*** that this notice is being published pursuant to an Order of Justice McEwen of the Ontario Superior Court of Justice (Commercial List) dated April 13, 2018 (the “**Claims Procedure Order**”). All capitalized terms in this Notice are defined in the Claims Procedure Order, a copy of which can be found on the website of the Liquidator, KPMG Inc., at [www.kpmg.com/ca/tarn](http://www.kpmg.com/ca/tarn).

Any Person who believes that it has a Claim against Tarn Financial Corporation should send a Proof of Claim to the Liquidator to be received **by the Liquidator by 5:00 p.m. local Toronto time on June 15, 2018 or such other date as ordered by the Court (the “Claims Bar Date”)**.

**CLAIMS WHICH ARE NOT RECEIVED BY THE CLAIMS BAR DATE WILL BE FOREVER BARRED AND EXTINGUISHED.**

A copy of the Claims Procedure Order providing a full definition of Claims being called for can be found on the Liquidator’s website at: [www.kpmg.com/ca/tarn](http://www.kpmg.com/ca/tarn).

Claimants who require a Proof of Claim form may access the form at the Liquidator’s website at [www.kpmg.com/ca/tarn](http://www.kpmg.com/ca/tarn) or they may contact the Liquidator (**Attention:** Marcel Réthoré, **email:** [tarn@kpmg.ca](mailto:tarn@kpmg.ca)) to obtain a hard copy of the Proof of Claim and/or the Claims Procedure Order.

Claimants should file their Proof of Claim with the Liquidator by mail, facsimile, email, courier or hand delivery, so that the Proof of Claim is actually received by the Liquidator by the Claims Bar Date at the address below.

**Address of the Liquidator**

KPMG Inc.,  
in its capacity as court-appointed Liquidator  
of Tarn Financial Corporation  
333 Bay Street, Suite 4600  
Toronto, Ontario, M5H 2S5

Attention: Marcel Réthoré  
Phone: 1-855-222-8083  
Fax: 416-777-3364  
E-mail: [tarn@kpmg.ca](mailto:tarn@kpmg.ca)

**SCHEDULE B**

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**PROOF OF CLAIM IN RESPECT OF CLAIMS AGAINST  
TARN FINANCIAL CORPORATION**

---

**1. PARTICULARS OF CLAIMANT**

Full Legal Name of Claimant: \_\_\_\_\_ (the "Claimant")

*(Full legal or corporate name should be the name of the original Claimant.)*

Full Mailing Address of the Claimant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number of Claimant: \_\_\_\_\_

Facsimile Number of Claimant: \_\_\_\_\_

Attention (Contact Person): \_\_\_\_\_

Email Address: \_\_\_\_\_

Has the Claim been sold or assigned  
by Claimant to another party?

Yes \_\_\_\_\_ No \_\_\_\_\_ (If yes please complete section D)

**2. PROOF OF CLAIM:**

I, \_\_\_\_\_ [Name of Claimant or Representative of the Claimant], do

hereby certify :

that I am (please check one):

\_\_\_\_\_ the Claimant; or

\_\_\_\_\_ hold the following position of \_\_\_\_\_ the Claimant and have

personal knowledge of all the circumstances connected with the Claim described herein.

3. PARTICULARS OF CLAIM:

Amount	Currency	Claim Specification
\$ _____		<input type="checkbox"/> Wages & Benefits Claim
\$ _____		<input type="checkbox"/> Secured Claim
\$ _____		<input type="checkbox"/> Unsecured Claim
<b>Total:</b> \$ _____		

Description of transaction, agreement or event giving rise or relating to the Claim:

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If the Claim includes an amount for any accrued interest thereon and costs payable in respect thereof, state the basis for such interest and/or cost claim, the rate of interest, and provide evidence upon which the claim for interest and/or costs is being made.

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If the Claim is contingent or unliquidated, state the basis and provide evidence upon which the Claim has been valued:

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**IF CLAIMANTS REQUIRE ADDITIONAL SPACE, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS SHOULD PROVIDE PARTICULARS OF THE CLAIM AND COPIES OF ALL SUPPORTING DOCUMENTATION, INCLUDING AMOUNT AND DESCRIPTION OF TRANSACTION(S), AGREEMENT(S) OR LEGAL BREACH(ES) GIVING RISE TO THE CLAIM.**

**4. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

Full Legal Name of Assignee(s) of the Claim *(if all or a portion of the Claim has been sold)*. If there is more than one assignee, please attach separate sheets with the following information (the "Assignee(s)")

---

Amount of Total Claim Assigned	\$	_____
Amount of Total Claim Not Assigned	\$	_____
Total Amount of Claim	\$	_____

(should equal "Total Claim" as entered on Section 2)

Full Mailing Address of the Assignee(s)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone Number of Assignee: \_\_\_\_\_

Facsimile Number of Assignee: \_\_\_\_\_

Email Address: \_\_\_\_\_

Attention (Contact Person): \_\_\_\_\_

**FILING OF CLAIMS:**

The duly completed Proof of Claim together with supporting documentation must be returned and received by the Liquidator, no later than 5:00 p.m. local Toronto time **on June 15, 2018**, to the email address or address listed below.

**FAILURE TO FILE YOUR PROOF OF CLAIM BY SUCH DATE WILL RESULT IN YOUR CLAIM BEING FOREVER EXTINGUISHED AND BARRED AND YOU WILL BE PROHIBITED FROM MAKING OR ENFORCING A CLAIM AGAINST TARN FINANCIAL CORPORATION.**



This Proof of Claim must be delivered by email, facsimile, personal delivery, courier or prepaid mail at the following address:

**Address of the Liquidator:**

KPMG Inc.,  
in its capacity as Court-appointed Liquidator  
of Tarn Financial Corporation  
333 Bay Street, Suite 4600  
Toronto, Ontario, M5H 2S5

Attention: Marcel Réthoré  
Phone 1-855-222-8083  
Fax: 416-777-3364  
E-mail: tarn@kpmg.ca

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Signature of individual completing this form)

SCHEDULE C

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NOTICE OF DETERMINATION OF CLAIM

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To: \_\_\_\_\_ (the "Claimant")

Date: \_\_\_\_\_

**IN THE MATTER OF THE WINDING-UP PROCEEDING OF TARN FINANCIAL CORPORATION ("TARN FINANCIAL")**

Take notice that KPMG Inc., in its capacity as court-appointed liquidator (in such capacity, the "Liquidator") pursuant to section 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017, with such appointment effective September 25, 2017, has reviewed the Claim in respect of the above-noted Claimant and has assessed the Claim in accordance with the Claims Procedure Order of the Ontario Superior Court of Justice (Commercial List) dated April 13, 2018 (the "Claims Procedure Order").

All capitalized terms not defined herein have the meaning given to such terms in the Claim Procedure Order.

The Liquidator has reviewed your Claim in accordance with the Claims Procedure Order, and has made the following determination:

**Claim Determination**

- Claim Allowed
- Claim Partially Allowed/ Claim Partially Disallowed
- Claim Disallowed

The Liquidator has made the above-noted determination in respect of your Claim for the following reason(s):

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Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be allowed as follows:

Name of Claimant	Claim Amount per Proof of Claim	Amount of Claim Allowed (if any)
	\$	\$

**IF YOU WISH TO DISPUTE THIS NOTICE OF DETERMINATION OF CLAIM AS SET FORTH HEREIN, YOU MUST TAKE THE STEPS OUTLINED BELOW.**

The Claims Procedure Order provides that if you disagree with the determination of your Claim herein, you must deliver to the Liquidator a completed Notice of Objection **before 5:00 p.m. on the day which is fourteen (14) days after the date the Notice of Determination of Claim is deemed to be received.**

If you do not dispute the determination of your Claim herein in accordance with the above instructions and the Claim Procedure Order, the amount of your Claim will be deemed to be accepted and the Claim shall be a Proven Claim in the amount set forth herein.

If you have any questions or concerns regarding the Claims Procedure Order, please contact the Liquidator directly.

**DATED** the \_\_\_\_\_ day of \_\_\_\_\_ 2018.

**KPMG Inc., solely in its capacity as  
Court-appointed Liquidator of  
Tarn Financial Corporation**

Per: \_\_\_\_\_  
*Anamika Gadia*  
Senior Vice President

**SCHEDULE D**

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**NOTICE OF OBJECTION**

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**IN THE MATTER OF THE WINDING-UP PROCEEDING OF TARN FINANCIAL CORPORATION (“TARN FINANCIAL”)**

**To:** KPMG Inc., in its capacity as Court-appointed Liquidator of Tarn Financial (the “**Liquidator**”)

**Date:** \_\_\_\_\_

**Claimant:** \_\_\_\_\_ (the “**Claimant**”)

Pursuant to the Claims Procedure Order dated April 13, 2018, the Claimant hereby gives notice that it disputes the Notice of Determination of Claim dated \_\_\_\_\_, 2018, issued by the Liquidator.

The Claimant disputes the Claim as partially allowed, partially disallowed or disallowed in the said Notice of Determination of Claim as follows:

<b>Amount of Claim determined by the Liquidator as set out in the Notice of Determination of Claim</b>	<b>Amount of Claim per Claimant</b>
\$ _____	\$ _____
\$ _____	\$ _____

Reason for the dispute (*attach copies of any supporting documentation*)

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Address for service of this Notice of Objection:

KPMG Inc.,  
in its capacity as court-appointed Liquidator  
of Tarn Financial Corporation  
333 Bay Street, Suite 4600  
Toronto, Ontario, M5H 2S5

Attention: Marcel Réthoré  
Fax: 416-777-3364  
E-mail: [tarn@kpmg.ca](mailto:tarn@kpmg.ca)

**THIS FORM AND ANY REQUIRED SUPPORTING DOCUMENTATION MUST BE RETURNED TO THE LIQUIDATOR BY REGISTERED MAIL, PERSONAL SERVICE, EMAIL (IN PDF FORMAT), FACSIMILE OR COURIER TO THE ABOVE-NOTED ADDRESS AND MUST BE RECEIVED BY THE LIQUIDATOR BEFORE 5:00 P.M. ON THE FOURTEENTH (14) CALENDAR DAY AFTER THE DATE THE NOTICE OF DETERMINATION OF CLAIM IS DEEMED TO BE RECEIVED.**

DATED the \_\_\_\_\_ day of \_\_\_\_\_ 2018.

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Signature of Claimant)

If the Claimant is not an individual, print name of Claimant, and name and title of authorized signatory:

Per:

\_\_\_\_\_  
(Signature of authorized signatory)

Name:

Title:

I have the authority to bind the corporation

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**CLAIM PROCEDURE ORDER  
(DATED APRIL 13, 2018)**

**MILLER THOMSON LLP**

Scotia Plaza  
40 King Street West, Suite 5800  
Toronto Ontario M5H 3S1

**Kyla Mahar LSO#: 44182G**

Tel: 416.597.4303 / Fax: 416.595.8695

**Stephanie De Caria LSO#: 68055L**

Tel: 416.597.2652 / Fax: 416.595.8695

Lawyers for KPMG Inc., in its capacity as court-appointed Liquidator of Tarn Financial Corporation

# APPENDIX “C”

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THURSDAY

THE HONOURABLE  
JUSTICE MCEWEN

)  
)  
)

~~WEDNESDAY~~, THE 26<sup>TH</sup>  
DAY OF JULY, 2018

**BETWEEN:**

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,  
BA&B CAPITAL INC., SERDAR KOCTURK  
and KAAH HOLDINGS INC.



**Applicants**

- and -

ALI AKMAN, SAMM CAPITAL HOLDINGS INC.  
and TARN FINANCIAL CORPORATION

**Respondents**

**APPLICATION UNDER** Sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990,  
c. B.16.

**FIRST DISTRIBUTION ORDER**

**THIS MOTION**, made by KPMG Inc. (“KPMG”), in its capacity as Court-appointed Liquidator (in such capacity, the “**Liquidator**”) pursuant to section 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial Corporation (“**Tarn Financial**”), and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the “**Winding Up Order**”) which appointment was effective on September 25, 2017, for an order, authorizing and directing the Liquidator to make a distribution: (a) first to Meridian Credit Union Limited (“**Meridian**”) in an amount sufficient to repay in full the indebtedness owed by Tarn Financial to Meridian, which is secured by first ranking security; (b) second to Kingsett Mortgage



Corporation (“**Kingsett**”) in an amount sufficient to repay in full the indebtedness owed by Tarn Financial to Kingsett, which is secured by second ranking security; and (c) subject to establishing a reserve with The Guarantee Company of North America (“**The Guarantee Company**”) and Tarion Warranty Corporation (“**Tarion**”) in accordance with the terms of the Deposit Return Procedure Order dated June 14, 2018 (the “**Deposit Return Procedure Order**”), third to repay in full the borrowings made by the Liquidator under the Borrowings Charge granted pursuant to paragraph 18 of the Winding Up Order as increased by the Order of Justice McEwen dated April 13, 2018 (the “**April Ancillary Order**”) and as evidenced by the Liquidator’s Certificates dated December 17, 2017, February 5, 2018, and May 17, 2018 (the “**Liquidator’s Borrowings Certificates**”) was heard July 26, 2018 at 330 University Avenue, Toronto, Ontario.

**ON READING** the Fifth Report of the Liquidator and the Third Report of the Receiver dated July 19, 2018 (the “**Fifth Report**”), and on hearing the submissions of counsel for the Liquidator, and any such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Alina Stoica sworn July 23, 2018 filed:

#### **SERVICE AND GENERAL**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.
2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Winding Up Order.

#### **DISTRIBUTIONS TO SECURED CREDITORS**

3. **THIS COURT ORDERS** that, subject to the Liquidator either entering into satisfactory reimbursement terms relating to potential priority claims with the following secured creditors or establishing a sufficient reserve to account for potential priority claims, the Liquidator is hereby authorized and directed to make a distribution:

- (a) first to Meridian in an amount sufficient to repay in full the indebtedness owed by Tarn Financial to Meridian, which is secured by first ranking security;

- (b) second to Kingsett in an amount sufficient to repay in full the indebtedness owed by Tarn Financial to Kingsett, which is secured by second ranking security; and
- (c) subject to establishing a reserve with The Guarantee Company and Tarion in accordance with the terms of the Deposit Return Procedure Order, third to repay in full the borrowings made by the Liquidator under the Borrowings Charge granted pursuant to paragraph 18 of the Winding Up Order as amended by the April Ancillary Order and as evidenced by the Liquidator's Borrowings Certificates.

**GENERAL PROVISION**

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Liquidator and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Liquidator and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JUL 26 2018

PER / PAR: *RW*

Volkan Basegmez et al v. Ali Akman, SAMM Capital Holdings Inc. and Tarn Financial Corporation

Court File No.: CV-17-11697-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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**FIRST DISTRIBUTION ORDER  
DATED JULY 26, 2018**

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**MILLER THOMSON LLP**  
40 King Street West, Suite 5800  
Toronto Ontario M5H 3S1

**Kyla Mahar LSO#: 44182G**  
Tel: 416.597.4303 / Fax: 416.595.8695

**Stephanie De Caria LSO#: 68055L**  
Tel: 416.597.2652 / Fax: 416.595.8695

Lawyers for KPMG Inc., in its capacity as Court-appointed Liquidator of Tarn Financial Corporation and Court-appointed Receiver of Tarn Construction Corporation.

# APPENDIX “D”

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**



THE HONOURABLE )

TUESDAY, THE 6<sup>TH</sup>

JUSTICE MCEWEN )

DAY OF NOVEMBER, 2018

**BETWEEN:**

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,  
BA&B CAPITAL INC., SERDAR KOCTURK  
and KAAH HOLDINGS INC.

**Applicants**

- and -

ALI AKMAN, SAMM CAPITAL HOLDINGS INC.  
and TARN FINANCIAL CORPORATION

**Respondents**

**APPLICATION UNDER** Sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990,  
c. B.16.

**SECOND DISTRIBUTION ORDER**

**THIS MOTION**, made by KPMG Inc. ("**KPMG**"), in its capacity as Court-appointed Liquidator (in such capacity, the "**Liquidator**") pursuant to section 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial Corporation ("**Tarn Financial**"), and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the "**Winding Up Order**") which appointment was effective on September 25, 2017, for an order authorizing and directing the Liquidator to make a distribution to Claimants that submitted valid Proofs of Claim in respect of construction liens claims in the amount of their Proven Claims as determined by the Liquidator in the Claims Process established and approved by the Court

pursuant to the Claims Procedure Order of Justice McEwen dated April 13, 2018 (the “**Claims Procedure Order**”) was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Sixth Report of the Liquidator and the Fourth Report of the Receiver dated October 31, 2018 and on hearing the submissions of counsel for the Liquidator, and such other counsel as were present as indicated on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Service, sworn October 31, 2018, filed:

### **SERVICE AND GENERAL**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.
2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Claims Procedure Order.

### **SECOND DISTRIBUTIONS**

3. **THIS COURT ORDERS** that the Liquidator is hereby authorized and directed to make a distribution to Claimants with valid construction liens in the amount of their Proven Claims as determined by the Liquidator under the Claims Process.

**GENERAL PROVISION**

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Liquidator and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Liquidator and its agents in carrying out the terms of this Order.



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ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

NOV 06 2018

PER / PAR:



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**SECOND DISTRIBUTION ORDER  
DATED NOVEMBER 6, 2018**

**MILLER THOMSON LLP**  
40 King Street West, Suite 5800  
Toronto Ontario M5H 3S1

**Kyla Mahar LSO#: 44182G**  
Tel: 416.597.4303 / Fax: 416.595.8695

**Stephanie De Caria LSO#: 68055L**  
Tel: 416.597.2652 / Fax: 416.595.8695

Lawyers for KPMG Inc., in its capacity as Court-appointed Liquidator of Tarn Financial Corporation and Court-appointed Receiver of Tarn Construction Corporation.



# APPENDIX “E”

**Court File No. CV-17-11697-00CL**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE WINDING UP OF  
TARN FINANCIAL CORPORATION**

**APPLICATION UNDER SECTIONS 207 AND 248 OF THE  
*BUSINESS CORPORATIONS ACT*, R.S.O. 1990, c. B.16**

**SEVENTH REPORT OF KPMG INC. in its capacity as  
LIQUIDATOR OF TARN FINANCIAL CORPORATION  
and  
FIFTH REPORT OF KPMG INC. in its capacity as  
RECEIVER OF TARN CONSTRUCTION CORPORATION**

**APRIL 9, 2019**

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Appendix H – Frequently Asked Questions – Notice of Determination of Claims Prepared for Condominium Brokers

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Appendix J – Fee Affidavit of Anamika Gadia of KPMG sworn April 9, 2019

Appendix K – Fee Affidavit of Stephanie De Caria of Miller Thomson sworn April 8, 2019

Appendix L – Fee Affidavit of Andrew Jeanrie of Bennett Jones sworn April 9, 2019

## **I. INTRODUCTION AND SUMMARY OF PROCEEDINGS**

1. On February 13, 2017, Volkan Basegmez, Cem Bleda Basegmez, Anil Rukan Basegmez, BA&B Capital Inc., Serdar Kocturk and Kaan Holdings Inc. (collectively, the “**Applicants**”) commenced an application (the “**Application**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 seeking an Order winding up Tarn Financial Corporation (“**Tarn Financial**”) and appointing KPMG Inc. (“**KPMG**”) as liquidator for that purpose. The Applicants are shareholders of Tarn Financial and collectively hold 60% of the common shares of Tarn Financial. The remaining 40% of the common shares of Tarn Financial are held by the Respondent, SAMM Capital Holdings Inc. (“**SAMM**”), a company owned by the Respondent, Ali Akman (“**Akman**”).
2. The Application was heard by Justice Lederman on August 11, 2017 and on September 15, 2017, His Honour ordered the winding up of Tarn Financial pursuant to the Winding Up Order dated September 15, 2017 (the “**Winding Up Order**”), and the appointment of KPMG as liquidator for that purpose (in such capacity, the “**Liquidator**”) effective as of September 25, 2017 (the “**Winding Up Proceedings**”). A copy of the Winding Up Order is attached as **Appendix “A”** to this report, which is the Liquidator’s Seventh Report to the Court and the Receiver’s (as defined below) Fifth Report to the Court (the “**Seventh Report**”).
3. The business and assets of Tarn Financial included the Delta Toronto East Hotel (the “**Hotel**”) and adjoining development lands that were being developed by Tarn Financial, through its wholly-owned subsidiary, Tarn Construction Corporation (“**Tarn Construction**”), as a development known as “The Kennedys” (the “**Development Project**”) located at 2035 Kennedy Rd., Scarborough, Ontario (the “**Real Property**”). The assets of Tarn Financial were sold pursuant to the Transaction (as defined below) that closed on June 29, 2018 (the “**Closing Date**”).
4. On October 6, 2017, Akman and SAMM filed a Notice of Appeal with the Divisional Court of the Ontario Superior Court of Justice (the “**Divisional Court**”) appealing the Winding Up Order (the “**Appeal**”). The Appeal was heard on January 30, 2018 by the Divisional Court and on February 6, 2018, the Divisional Court dismissed the Appeal.

5. The Liquidator issued its first report to the Court on November 13, 2017 (the “**First Report**”). On November 16, 2017, the Liquidator issued a first supplemental report to the Court (the “**First Supplemental Report**”) and on November 28, 2017, the Liquidator issued a second supplemental report to the First Report (the “**Second Supplemental Report**”).
6. As detailed in the First Report, the First Supplemental Report and the Second Supplemental Report, the Liquidator brought a motion (the “**Sale Process Motion**”) seeking an Order (the “**Sale Process Order**”), among other things: (a) authorizing the Liquidator to enter into and approving a marketing and listing agreement between the Liquidator and CBRE Limited (“**CBRE**”) dated November 10, 2017; (b) approving the sale process (the “**Sale Process**”); and (c) authorizing, but not obligating, the Liquidator to file a consent to sever the Real Property.
7. The Sale Process Motion was scheduled to be heard before the Court on November 17, 2017. The Sale Process Motion was adjourned on an unopposed basis to November 24, 2017 to allow the Applicants, SAMM and Akman time to formalize a settlement that the parties advised the Liquidator had been reached between them in principle.
8. The settlement was not finalized by November 24, 2017 and the Sale Process Motion was heard on that day and was unopposed except for the Order seeking the approval of a marketing and listing agreement between the Liquidator and CBRE. This aspect of the relief sought was opposed by SAMM and Akman. On November 24, 2017, Justice McEwen declined to grant the Order approving the marketing and listing agreement between the Liquidator and CBRE.
9. Justice McEwen directed the Liquidator to retain another marketing and listing agent and adjourned the Sale Process Motion to allow the Liquidator to do so. Thereafter, on November 29, 2017, Justice McEwen granted the Sale Process Order which, among other things: (a) approved the retention by the Liquidator of Colliers Macaulay Nicolls Inc. to be the marketing and listing agent; and (b) approved the Sale Process including revisions thereto, in order to address the change in the marketing and listing agent.
10. On December 6, 2017, the Liquidator brought a motion seeking an order (the “**OMB Appeals Order**”) authorizing, but not obligating, the Liquidator to file two Notices of

Appeal with the Ontario Municipal Board in respect of the Real Property. Justice McEwen granted the OMB Appeals Order on the same date.

11. The Liquidator issued its second report to the Court on April 9, 2018 (the “**Second Report**”). As detailed in the Second Report, the Liquidator brought a motion returnable on April 13, 2018 seeking:
  - a. An Order (the “**Claims Procedure Order**”) approving and establishing a procedure for the solicitation, resolution and barring of certain claims against Tarn Financial (the “**Tarn Financial Claims Process**”);
  - b. An Order (the “**Receivership Order**”) authorizing the appointment of KPMG as receiver and manager over the properties, assets and undertakings of Tarn Construction (in such capacities, the “**Receiver**”) pursuant to section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43;
  - c. An Order (the “**Deposit Confirmation Procedure Order**”) approving and establishing a procedure for confirming the Deposits (as defined in the Deposit Confirmation Procedure Order) that were paid to Tarn Construction by purchasers of the pre-sold, unbuilt condominium units at the Development Project; and
  - d. An Order (the “**April Ancillary Order**”) (i) authorizing an increase in the maximum principal amount of the Borrowings Charge (as defined in the Winding Up Order) by \$1,000,000 (the “**Increased Borrowing Amount**”) from \$2,000,000 to \$3,000,000 and addressing the priority of the Borrowings Charge in respect of the Increased Borrowing Amount; (ii) approving the fees of the Liquidator and the Liquidator’s legal counsel, Miller Thomson LLP (“**Miller Thomson**”) and Bennett Jones LLP (“**Bennett Jones**”), from the date of the Winding Up Order to December 31, 2017; and (iii) approving the First Supplemental Report, the Second Supplemental Report and the Second Report and the activities and conduct of the Liquidator as set out therein.
12. On April 13, 2018, the Court granted the Claims Procedure Order, the Receivership Order, the Deposit Confirmation Procedure Order and the April Ancillary Order. A copy of the Claims Procedure Order is attached as **Appendix “B”** to this Seventh Report.

13. The Liquidator issued its third report to the Court and the Receiver issued its first report to the Court on April 24, 2018 (collectively, the “**Third Report**”). As detailed in the Third Report, the Liquidator and Receiver brought a motion returnable on May 1, 2018 seeking:
  - a. Advice and directions from the Court regarding the Receiver’s ability to terminate the Agreements of Purchase and Sale (the “**APSs**”) entered into by Tarn Construction with purchasers of proposed condominium units in the contemplated Development Project (the “**Purchasers**”) in accordance with the terms of the APSs and, in particular, the condition contained at Appendix A of Schedule E to the APSs entitled “Tarion Warranty Corporation Statement of Critical Dates and Addendum” which states: “Receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged by October 9, 2018” (the “**Construction Financing Early Termination Condition**”);
  - b. An Approval and Vesting Order (the “**Approval and Vesting Order**”), among other things, approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement between Tarn Financial and Sunray Group of Hotels Inc. (“**Sunray**”) dated April 20, 2018 (the “**Asset Purchase Agreement**”) and vesting in Sunray Tarn Financial’s right, title and interest in and to the assets described in the Asset Purchase Agreement;
  - c. An Order (the “**Disputed Deposits Resolution Procedure Order**”), establishing a procedure for the resolution of disputed deposits asserted by Purchasers of proposed condominium units in the contemplated Development Project; and
  - d. An Order (the “**Termination Entitlement Order**”), ordering and declaring, among other things, that the Receiver is entitled to rely upon the Construction Financing Early Termination Condition to terminate the APSs on behalf of Tarn Construction and that the Receiver is authorized to give notice of termination to terminate the APSs at any time after the granting of the Termination Entitlement Order without damages claims arising thereunder.
14. On May 9, 2018, the Court rendered its endorsement granting the Approval and Vesting Order, the Disputed Deposits Resolution Procedure Order, and the Termination Entitlement Order.



15. The Liquidator issued its fourth report to the Court and the Receiver issued its second report to the Court on June 8, 2018 (collectively, the “**Fourth Report**”). As detailed in the Fourth Report, the Liquidator and Receiver brought a motion returnable on June 14, 2018 seeking an Order (the “**Deposit Return Procedure Order**”) establishing a procedure for the termination of Purchasers’ APSs and the return of Proven Deposits (as defined in the Disputed Deposits Resolution Procedure Order) to Purchasers of proposed condominium, units in the contemplated Development Project (the “**Deposit Return Procedure**”). The Deposit Return Procedure Order:
  - a. Enabled the Receiver to commence the Deposit Return Procedure in order to return Proven Deposits to Purchasers;
  - b. Enabled the Receiver to terminate Purchasers’ APSs in accordance with their terms, as set out in the Termination Entitlement Order, upon being satisfied with (i) an executed Release Agreement, and (ii) properly completed Certificate(s) of Identity attaching copies of two pieces of valid identification from each Purchaser named on the APS;
  - c. Confirmed that interest is not payable on the Proven Deposits pursuant to the *Condominium Act* and its regulations; and
  - d. Released and discharged the Receiver, the Liquidator, Tarn Construction, Tarn Financial, Bennett Jones, in its capacity as Deposit Trustee (the “**Deposit Trustee**”), The Guarantee Company of North America (“**The Guarantee Company**”) and Tarion Warranty Corporation (“**Tarion**”) from any Claims relating to the Deposits, including interest thereon.
16. On June 14, 2018, the Court granted the Deposit Return Procedure Order. A copy of the Deposit Return Procedure Order is attached as **Appendix “C”** to this Seventh Report.
17. The Liquidator issued its fifth report to the Court and the Receiver issued its third report to the Court on July 20, 2018 (collectively, the “**Fifth Report**”). As detailed in the Fifth Report, the Liquidator and Receiver brought a motion returnable on July 26, 2018 seeking:
  - a. An Order (the “**First Distribution Order**”), subject to the Liquidator either entering into satisfactory reimbursement terms with the following secured creditors relating to

potential priority claims or establishing a sufficient reserve to account for potential priority claims, authorizing and directing the Liquidator to make a distribution:

- (i) First to Meridian Credit Union (“**Meridian**”) to repay in full the indebtedness owed by Tarn Financial to Meridian, which was secured by first ranking security;
- (ii) Second to Kingsett Mortgage Corporation (“**Kingsett**”) to repay in full the indebtedness owed by Tarn Financial to Kingsett, which was secured by second ranking security; and
- (iii) Subject to establishing a reserve with The Guarantee Company and Tarion in accordance with the terms of the Deposit Return Procedure Order, third to repay in full the borrowings made by the Liquidator under the Borrowings Charge;

b. An Order approving:

- (i) The fees of the Liquidator and the Receiver and the Liquidator’s and the Receiver’s legal counsel from January 1, 2018 to April 30, 2018; and
- (ii) The Third Report, the Fourth Report and the Fifth Report and the activities and conduct of the Liquidator and the Receiver as set out therein.

18. The Respondents, SAMM and Akman, requested that the Liquidator and the Receiver adjourn the motion seeking approval of the fees, activities and conduct of the Liquidator and the Receiver and their counsel in order to provide SAMM and Akman additional time to review the fees and dockets of the Liquidator, the Receiver and their counsel. The motion was adjourned on consent.

19. On July 26, 2018, the Court granted the First Distribution Order.

20. On September 14, 2018, counsel for SAMM and Akman advised counsel for the Liquidator and the Receiver that they were not opposing the approval of the fees, activities and conduct of the Liquidator and the Receiver and their counsel. On October 1, 2018, the Court granted the Order approving: (a) the fees of the Liquidator and the Receiver and the Liquidator’s and the Receiver’s legal counsel from January 1, 2018 to April 30, 2018; and

- (b) the Third Report, the Fourth Report and the Fifth Report and the activities and conduct of the Liquidator and the Receiver as set out therein.
21. The Liquidator issued its sixth report to the Court and the Receiver issued its fourth report to the Court on October 31, 2018 (collectively, the “**Sixth Report**”). As detailed in the Sixth Report, the Liquidator brought a motion returnable on November 6, 2018 seeking an Order (the “**Second Distribution Order**”) authorizing and directing the Liquidator to make a distribution to construction lien Claimants with valid construction liens in the amount of their Proven Claims as determined under the Tarn Financial Claims Process. A copy of the Sixth Report, without appendices, is attached as **Appendix “D”** to this Seventh Report.
  22. The Applicants also brought a motion returnable on November 6, 2018 seeking an Order:
    - a. Declaring void and invalid and setting aside *ab initio*, the creation of certain Class B voting shares (the “**Class B Shares**”) and the issuance of the Class B Shares to Akman, and rectifying Tarn Financial’s Articles of Incorporation accordingly; and
    - b. Declaring void and setting aside certain guarantee, security and related agreements Akman caused Tarn Financial to enter into for the benefit of SAMM, which is being relied upon by Akman and SAMM to support a secured claim against Tarn Financial.
  23. On November 6, 2018, the Court granted the Second Distribution Order. A copy of the Second Distribution Order is attached as **Appendix “E”** to this Seventh Report. The Applicants motion was adjourned to November 26, 2018.
  24. On November 23, 2018, the Court granted a Consent Order:
    - a. Declaring that, on consent, any and all charge/mortgages of land and security interests granted by Tarn Financial in favour of SAMM (the “**SAMM Security**”) are postponed and fully subordinated to the claims of the third-party unrelated creditors of Tarn Financial such that the Liquidator may effect a distribution all such creditors without regards to, and free and clear of, the SAMM Security;
    - b. Ordering that the above is without prejudice to the position of the parties and in this regard, the validity of the SAMM Security as against the Applicants and the relative priority of the claims of the Applicants which will be determined at the same time as

any dispute(s) with respect to the quantum of the claims being asserted against Tarn Financial by SAMM and the Applicants; and

- c. Declaring that, on consent, the Class B Shares be and are hereby void *ab initio*, and accordingly, the Articles of Incorporation of Tarn Financial be and are hereby amended to remove the Class B Shares.
25. On March 21, 2019, counsel for the Applicants, the Respondents and the Liquidator attended a chambers attendance before the Court to establish a process and timeline for resolving the Non Arms-Length Claims. Attached as **Appendix “F”** to this Seventh Report is the Endorsement of Justice McEwen dated March 21, 2019 which sets out the schedule for addressing the Non Arms-Length Claims.
  26. Capitalized terms not defined herein shall have the meanings set out in the Winding Up Order, the Claims Procedure Order, and the Deposit Return Procedure Order.

## **II. PURPOSE OF THIS SEVENTH REPORT**

27. The purpose of this Seventh Report is to update the Court with respect to:
  - a. The activities of the Liquidator and the Receiver since the Sixth Report, including, but not limited to:
    - (i) activities relating to Tarn Financial;
    - (ii) activities relating to Tarn Construction; and
    - (iii) other activities in relation to the Winding Up Proceedings;
  - b. The Tarn Financial Claims Process;
  - c. The advice and directions being sought by the Liquidator from the Court in accordance with paragraphs 27 and 35 of the Claims Procedure Order. The Liquidator is seeking directions from the Court regarding finally disallowing the Claims filed in the Tarn Financial Claims Process by condominium brokers (the “**Brokers**”) pursuant to Agreements to Cooperate between a Cooperating Brokerage and Tarn Construction (the “**Broker Agreements**”) in respect of sale commissions for unbuilt condominium units sold by Tarn Construction at the Development Project where such Claimants have

objected to the Liquidator's determination of their Claims and submitted a Notice of Objection in accordance with the Claims Procedure Order;

- d. The Deposit Return Procedure;
- e. The distributions made pursuant to the Second Distribution Order;
- f. The Liquidator's statement of receipts and disbursements since the date of its appointment up to and including April 9, 2019;
- g. The Receiver's statement of receipts and disbursements since the date of the Receivership Order up to and including April 9, 2019;
- h. To provide the Court with the necessary information to support the granting of:
  - (i) an Order (the "**Third Distribution Order**") substantially in the form contained at Tab 3 of the Motion Record dated April 9, 2019 (the "**Motion Record**"), authorizing and directing the Liquidator to make a distribution to third-party unsecured Claimants in the amount of their Proven Claims as determined under the Tarn Financial Claims Process;
  - (ii) an Order (the "**Tarion Cash Collateral Procedure Order**") substantially in the form contained at Tab 4 of the Motion Record, among other things:
    - (A) directing the Liquidator to pay, within five business days of the granting of the Tarion Cash Collateral Procedure Order, the amount of \$600,000 to Tarion (the "**Tarion Cash Collateral**"), against which amount Tarion may make, and process payments in respect of, Tarion Cash Collateral Claims (as defined in the Tarion Cash Collateral Procedure Order);
    - (B) upon Tarion's receipt of the Tarion Cash Collateral, directing the delivery to The Guarantee Company of the Tarion Bonds (as defined in the Tarion Cash Collateral Procedure Order) for immediate cancellation;
    - (C) declaring that the Receiver shall no longer be required to comply with the requirement under the Deposit Return Procedure Order to

deliver a Statutory Declaration to Tarion and The Guarantee Company every two weeks;

- (D) authorizing the process through which Tarion is to report on and use the Tarion Cash Collateral to pay any Tarion Cash Collateral Claims; and
- (E) directing the Liquidator to make a distribution to The Guarantee Company in full and final satisfaction of all amounts owing by Tarn Financial to The Guarantee Company in accordance with the Claims Procedure Order.

(iii) an Order (the “**Ancillary Order**”) substantially in the form contained at Tab 5 of the Motion Record:

- (A) declaring that the Claims of the Brokers which have filed Notices of Objection in the Tarn Financial Claims Process are forever extinguished, barred, discharged and released as against Tarn Financial and the Liquidator;
- (B) approving the fees of the Liquidator and the Receiver and the Liquidator’s and the Receiver’s legal counsel from May 1, 2018 to December 31, 2018; and
- (C) approving the Sixth Report and the Seventh Report and the activities and conduct of the Liquidator and the Receiver as set out therein.

28. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

29. The information contained in this Seventh Report has been obtained from the books and records and other information of Tarn Financial or Tarn Construction. The accuracy and completeness of the financial information contained herein has not been audited or otherwise verified by the Liquidator or the Receiver, and the Liquidator and the Receiver do not express an opinion or provide any other form of assurance with respect to the information presented herein or relied upon by the Liquidator or the Receiver in preparing this Seventh Report.

30. Future oriented financial information reported or relied on in preparing this Seventh Report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.

### **III. ACTIVITIES OF THE LIQUIDATOR AND THE RECEIVER SINCE THE SIXTH REPORT**

#### **Activities Relating to Tarn Financial**

31. The Liquidator has:
- a. Continued to prepare bank reconciliations;
  - b. Continued to coordinate all filings and payments of harmonized sales tax (“**HST**”) and other required statutory remittances;
  - c. Continued to administer the Tarn Financial Claims Process, the details of which are described below, including reviewing the Claims with the assistance of its counsel, Miller Thomson;
  - d. Coordinated the preparation of the necessary financial statements to prepare the 2017 and 2018 corporate tax returns and continued to work with Richter LLP (“**Richter**”) in respect of their review engagements of the 2017 and 2018 financial statements, as described below;
  - e. Continued to work with Richter regarding the calculation of capital gains tax related to the Transaction and other tax minimization approaches;
  - f. Made payment to CRA of the income tax payable as at February 28, 2019 in respect of Tarn Financial;
  - g. Completed the review of what monies were transferred in or out of Tarn Financial, as described below;
  - h. Had discussions with construction lien Claimants and other Claimants regarding their Claims; and
  - i. Made the distributions pursuant to the Second Distribution Order.

*Financials Statements and Corporate Tax Returns*

32. As discussed in the Sixth Report, Richter's review engagement of the 2017 financial statements was expected to be completed in or around November, 2018. Draft financial statements for 2017 were completed in or around that time but were not finalized pending the Liquidator's final determination of Claims pursuant to the Tarn Financial Claims Process. Richter required the Claims to be finally determined in order to complete the finalization of the 2017 financial statements as they advised that any liabilities associated with Proven Claims that were not previously reflected in the books and records of Tarn Financial needed to be accrued. Richter is now finalizing the 2017 financial statements.
33. Richter has prepared a draft of the 2017 corporate tax return, which will be finalized once the 2017 financial statements are in final form, as those financial statements will have to be filed with CRA in support of the tax return. Since the date of the Sixth Report, the Liquidator has continued to work with Richter on considering tax minimization strategies. In that regard, at the Liquidator's request, Richter has performed an analysis with respect to the deductibility of certain professional fees for tax purposes, which has had favourable results. The final 2017 tax return will take into account these applicable deductions.
34. The Liquidator has retained the services of the former controller of Tarn Financial on a part-time contract basis in order to complete the 2018 financial statements. As of the date of the Sixth Report, the 2018 internal financial statements to the Closing Date had been prepared. The former controller is now completing the financial statements for the balance of the 2018 fiscal year, which is expected to be complete within the next 45 days. Richter has commenced the 2018 review engagement and has completed its work on the 2018 financial statements up to the Closing Date. Once the 2018 financial statements are prepared by the former controller, Richter will complete its review engagement in respect of same.
35. The Richter tax team will also prepare the 2018 T2 corporate tax return in parallel to its review engagement on the 2018 financial statements so that the 2018 corporate tax return can be filed as soon as possible. The 2018 tax return will also reflect the professional fee deductions determined favourably as set out above and include the calculation of capital gains tax payable on the Transaction, which is discussed further below.



*Capital Gains Tax Payable on the Transaction*

36. As discussed in the Sixth Report, the amount of capital gains tax payable on the Transaction by Tarn Financial is dependent on Tarn Financial's corporate status for income tax purposes (i.e. whether Tarn Financial is a Canadian Controlled Private Corporation ("CCPC") or a non-Canadian Controlled Private Corporation ("Non-CCPC")). The differential on the capital gains tax payable by Tarn Financial is approximately \$2 million, with the amount being higher if Tarn Financial is a CCPC for income tax purposes.
37. As more particularly described in the Sixth Report, absent the Class B Shares that were created and issued to Akman, Tarn Financial is a Non-CCPC for income tax purposes and accordingly, would be subject to the lower amount of capital gains tax on the Transaction. Pursuant to the Order of the Court dated November 23, 2018 the Court declared the Class B Shares void *ab initio* and accordingly, thereby allowing it to be confirmed that Tarn Financial is a Non-CCPC for income tax purposes.
38. Non-CCPCs are required to remit any income or capital gains taxes owing within two months of the taxation year end. Tarn Financial's taxation year end is December 31<sup>st</sup> and accordingly, the capital gains taxes owing on the Transaction had to be remitted on or before February 28, 2019. On February 25, 2019 the Liquidator remitted payment in the amount of \$2,950,000 to the CRA in relation to the capital gains tax payable on the Transaction. The amount paid was the estimated amount owing based on an analysis prepared by Richter and shared in advance with the Applicants and Respondents. The final amount of capital gains tax (prior to any assessment by CRA) will be reflected in the 2018 corporate tax return when filed and will take into consideration any income tax loss carry forwards from prior years as well as the tax deductibility of certain professional fees. It is expected that the final amount of capital gains tax may be lower than the amount paid to CRA; however, in order to avoid the payment of penalties and interest, which can be quite significant, the Liquidator and Richter determined that the best course of action was to be conservative in the amount paid to CRA.

*Report on Tarn Financial's Sources and Uses of Monies*

39. As discussed in the Sixth Report, the Liquidator prepared a Draft Report of the Liquidator dated August 31, 2018 re: Analysis of Sources and Uses of Monies during the period July

- 7, 2014 to September 30, 2017 (the “**Draft Sources and Uses Report**”) and provided a copy of the Draft Sources and Uses Report to the Applicants and Respondents on August 31, 2018 to allow the Applicants and Respondents the opportunity to review the Draft Sources and Uses Report and provide any additional information that any of them believe pertinent to the analysis.
40. As of the date of the Sixth Report, the Liquidator had received certain additional information from counsel to the Applicants but was awaiting comments from counsel to the Respondents on the Draft Sources and Uses Report.
41. The Liquidator received the following responses and additional information from the Applicants’ and Respondents’ counsel in respect of the Draft Sources and Uses Report. The additional information received has been included as appendices to the Sources and Uses Report (as defined below):
- a. Counsel for the Applicants provided the Liquidator with certain information relating to the Draft Sources and Uses Report on October 1, 2018;
  - b. Counsel for the Respondents:
    - (i) Had an email exchange with counsel to the Liquidator regarding additional information requests relating to certain sections of the Draft Sources and Uses Report between October 26, 2018 and November 12, 2018;
    - (ii) Provided a memo responding to certain sections of the Draft Sources and Uses Report dated November 22, 2018 to which counsel to the Liquidator responded on February 6, 2019; and
    - (iii) Provided email correspondence in response to the February 6, 2019 correspondence dated February 14, 2019.
42. After review of the additional information provided by the Applicants’ and Respondents’ counsel, the Liquidator made certain amendments to the Draft Sources and Uses Report and prepared a final report of the Liquidator dated February 19, 2019 re: Analysis of Sources and Uses of Monies during the period July 7, 2014 to September 30, 2017 (the “**Sources and Uses Report**”). All correspondence referred to in paragraph 41 above is contained in the Sources and Uses Report.

43. The Liquidator provided a copy of the Sources and Uses Report to the Applicants and the Respondents on February 19, 2019 and intends to file the report with the Court in conjunction with the motion returnable on April 15, 2019.

#### **Activities in Relation to Tarn Construction**

44. The Liquidator and the Receiver have continued to do the following in respect of Tarn Construction:
  - a. Undertake the Deposit Return Procedure, the details of which are described below, including reviewing the Certificates of Identity and Release Agreements provided by Purchasers in respect of their Proven Deposits and following up with Purchasers who have not yet provided the required documentation and/or have not yet cashed their cheque in respect of their Proven Deposit;
  - b. Have discussions with The Guarantee Company and Tarion regarding the Deposit Return Procedure, the decrease of the Tarion Bonds and the establishment of a reserve pursuant to the Deposit Return Procedure Order;
  - c. Prepare the statutory declaration reporting as required pursuant to paragraph 27 of the Deposit Return Procedure Order; and
  - d. Respond to inquiries from creditors of Tarn Construction regarding the Tarn Financial Claims Process.

#### **Other Activities in Relation to the Winding Up Proceedings**

45. The Liquidator and the Receiver, with the assistance of their counsel, have also undertaken the following in relation to the Winding Up Proceedings:
  - a. Had regular discussions with the shareholders' counsel regarding the Winding Up Proceedings and responded to inquiries from the shareholders regarding same;
  - b. Responded to inquiries from other stakeholders regarding the Winding Up Proceedings;
  - c. Posted materials relating to the Winding Up Proceedings on its website ([www.kpmg.com/ca/tarn](http://www.kpmg.com/ca/tarn));

- d. Maintained a telephone hotline at (416) 649-7623 or (1-855) 222-8083 and email address at tarn@kpmg.ca for inquiries regarding the Winding Up Proceedings;
- e. Attended Court on November 6, 2018, November 23, 2018 and March 21, 2019; and
- f. Prepared and delivered the Seventh Report.

#### **IV. THE CLAMS PROCESS**

- 46. Pursuant to the First Distribution Order and the Second Distribution Order the Liquidator has finalized and distributed funds to settle (a) the secured Claims of Meridian, Kingsett, and the lenders under the Borrowings Charge and (b) the Claims of Claimants with validly registered and perfected construction liens against the Real Property, in the aggregate amounts of \$23,588,884.57 and \$2,549,680.89, respectively.
- 47. Since the date of the Sixth Report, the Liquidator has received two additional late filed Claims in the amounts of \$13,427.01 and \$248.50, respectively (the “**Late Claims**”), which the Liquidator is reviewing.
- 48. As at the date of this Seventh Report, the Liquidator has completed its review and determination of the unsecured Claims and has issued Notices of Determination of Claim to all Claimants, except in respect of the Late Claims, as follows:

<b>Unsecured Claims</b>	<b>Determination</b>
Allowed	2,521,086.26
Late filed	13,675.51
In dispute	1,003,956.69
Disallowed	6,451,529.06
Withdrawn	9,176.00
<b>Total</b>	<b>9,999,423.52</b>

- 49. The Liquidator received 22 Notices of Objection from Claimants in response to the Notices of Determination of Claim. The remaining Notices of Determination of Claim were not objected to and, as at the date of this Seventh Report, the objection periods established under the Claims Procedure Order have now expired.

#### **Notices of Objection Received and Advice and Directions Sought by the Liquidator**

- 50. The Liquidator received two Notices of Objection in respect of non-Broker Claims and received 20 Notices of Objection in respect of Broker Claims.

51. A summary of the Notices of Objection is as follows:

Claimant	Claims as Filed		Allowed Portion (if any)		Objections	
	#	\$	#	\$	#	\$
<b>Non-Broker Objections</b>	<b>2</b>	<b>54,859.64</b>	<b>1</b>	<b>1,144.05</b>	<b>2</b>	<b>53,715.59</b>
<b>Condominium Broker Objections</b>						
Ken Yeung	1	668,586.98	-	-	1	668,586.98
Sujan Shan	12	148,488.57	-	-	12	148,488.57
Re/Max CrossRoads Realty Inc.	4	53,568.56	-	-	4	53,568.56
Century 21 Regal Realty Inc Brokerage	1	42,225.72	-	-	1	42,225.72
Royal LePage Exceptional Real Estate Services	2	37,371.27	-	-	2	37,371.27
<b>Subtotal</b>	<b>20</b>	<b>950,241.10</b>	<b>-</b>	<b>-</b>	<b>20</b>	<b>950,241.10</b>
<b>Total</b>	<b>22</b>	<b>1,005,100.74</b>	<b>1</b>	<b>1,144.05</b>	<b>22</b>	<b>1,003,956.69</b>

52. As set out in the Sixth Report, as part of the Tarn Financial Claims Process, the Liquidator received Claims where the supporting documentation filed in respect of the Claims was in the name of Tarn Construction, without any supporting documentation in the name of Tarn Financial, and the amounts claimed under the Claims were recorded in the books and records of Tarn Construction, (the “**Tarn Construction Claims**”).

53. In particular, the Tarn Construction Claims received by the Liquidator in the Tarn Financial Claims Process included Claims submitted by the Brokers pursuant to Broker Agreements in respect of unbuilt condominium units at the Development Project (each a “**Broker Claim**” and collectively, the “**Broker Claims**”). A copy of the form of Broker Agreement used by Tarn Construction in respect of the Development Project is attached hereto as **Appendix “G”**.

54. In total, the Liquidator received 188 Broker Claims in the aggregate amount of \$5,064,842.94.

55. The Liquidator reviewed the Broker Claims and determined that they were Tarn Construction Claims. It reported to the Court at paragraph 79 of the Sixth Report that the Broker Claims were claims against Tarn Construction. It further reported that Tarn Construction does not have any assets and there are no funds available in Tarn Construction for distribution and that the Claims Procedure Order calls for Claims against Tarn Financial. As a result, the Liquidator advised the Court at paragraph 81 of the Sixth Report that it intended to disallow the Tarn Construction Claims and deliver Notices of Determination of Claim in accordance with the Tarn Financial Claims Process disallowing same.

56. In accordance with the Tarn Financial Claims Process, the Liquidator delivered Notices of Determination of Claim to all Brokers that submitted Broker Claims, thereby disallowing the Broker Claims on the following basis:

“The Claims Procedure Order is in respect of Claims against Tarn Financial Corporation, and not Tarn Construction Corporation. The supporting documentation filed in respect of the Claimant’s Proof of Claim is in the name of Tarn Construction Corporation and the amounts claimed are in the books and records of Tarn Construction Corporation. The Claimant’s Proof of Claim filed does not contain any supporting documentation that identifies Tarn Financial Corporation as being liable for the amount be claimed, or any part thereof. Accordingly, the Liquidator has disallowed your Claim.”

57. In addition to delivering Notices of Determination of Claim, the Liquidator also posted a “Frequently Asked Questions – Notice of Determination of Claims Prepared for Condominium Brokers” on its website, a copy of which is attached hereto as **Appendix “H”**, which provides further information and rationale for the Liquidator’s disallowance of Broker Claims.

58. As set out above, the Liquidator received 17 Notices of Objections from Brokers in respect of 20 Broker Claims, in the aggregate amount of \$950,241.10. Copies of the Notices of Objection received from the Brokers are attached hereto as **Appendix “I”**

59. The Liquidator has reviewed the reasons for dispute set out in the Notices of Objection. No Broker provided any documentation identifying Tarn Financial as the counterparty to the Broker Agreement or showing Tarn Financial as liable for the amounts owing to the Broker.

60. After reviewing the Notices of Objection, the Liquidator remains of the view that any amounts owing under the Broker Agreement are an obligation of Tarn Construction, being the party to the Broker Agreements, and not Tarn Financial. The Liquidator is of the view that it is appropriate to disallow Claims where the supporting documentation filed in support of the Claim contains the name of an entity other than the debtor being Tarn Financial. In this case, the Broker Agreements are between Tarn Construction and the Brokers.

61. Pursuant to paragraph 27 and 35 of the Claims Procedure Order, the Liquidator is seeking the advice and directions of the Court with respect to the determination of Notices of

Objection. In particular, given the contract entered into by Brokers, the Liquidator is seeking a declaration that the Claims of the Brokers which have filed Notices of Objection filed in the Tarn Financial Claims Process are forever extinguished, barred, discharged and released as against Tarn Financial and the Liquidator.

## V. THE DEPOSIT RETURN PROCEDURE

62. As of the date of this Seventh Report, the Receiver has terminated 626 APSs and returned, either in person or via regular mail, 626 Proven Deposits totaling \$29,706,044 pursuant to Deposit Return Procedure Order.
63. As of the date of this Seventh Report, the Receiver only has two Proven Deposits remaining to be distributed totaling \$45,500. With respect to one Proven Deposit, the Purchasers are not in Canada and have now provided a power of attorney. Once the power of attorney's identity can be confirmed and the power of attorney provides the necessary documentation in accordance with the Deposit Return Procedure Order, this Proven Deposit will be paid to the power of attorney. With respect to the second Proven Deposit, the Receiver has, to date, been unsuccessful in contacting the Purchaser and has made several attempts using both the contact information contained within the books and records of Tarn Construction and the Purchaser's realtor.
64. As discussed in the Sixth Report, there were four Notices of Dispute of Deposit Statement that were being held in abeyance until the Claim filed by Milborne Real Estate Inc. ("**Milborne**") under the Tarn Financial Claims Process had been reviewed and determined. All four of the Notices of Dispute of Deposit Statement were from sales agents that worked for Milborne which had a contract in the name of Tarn Finance Inc. and filed a Claim in the Tarn Financial Claims Process, which Claim included the amounts owing to these sales agents. Rather than get paid certain of their commissions, these sales agents and Milborne had requested that the amounts due to them be used to fund Deposits on units that they purchased. The Deposit Trustee did not hold any money with respect to these four Purchasers.
65. The Milborne Claim under the Tarn Financial Claims Process has now been finally determined. The Proven Claim of Milborne includes the amounts owing in respect of these four sales agents and Milborne, among other amounts owing to Milborne. Milborne's

counsel has confirmed that these Purchasers will execute Release Agreements with respect to the APSs, which have been prepared and sent out to be executed. Once the Release Agreements have been received back by the Receiver, the Receiver will issue notices to the Purchasers terminating the APSs related to the condominium units sold to them.

## **VI. TARION CASH COLLATERAL PROCEDURE**

66. The Guarantee Company has third ranking security against Tarn Financial as it relates to the bonds issued by The Guarantee Company to Tarion in relation to the Development Project. As set out above, the first and second ranking security and the fourth ranking security and construction lien Claims have been paid in full. The Liquidator has reserved amounts in consultation with The Guarantee Company and Tarion to allow for payment of the secured amounts which have security ranking after The Guarantee Company's security against Tarn Financial.
67. Specifically, The Guarantee Company issued (a) bond no. TM5120189 dated June 7, 2016, in the original amount of \$7,120,000.00; and (b) bond no. TM5193638 dated July 13, 2016, in the original amount of \$5,400,000.00, each in favour of Tarion (the "**Tarion Bonds**").
68. Pursuant to the Deposit Return Procedure Order, Tarion has reduced the bonds over the last 10 months such that the current amount of each of the two the Tarion Bonds is \$500,000, for an aggregate amount of \$1,000,000.
69. Given the wrapping up of the Deposit Return Procedure Order and in order to cancel the Tarion Bonds and release any reserve for the security held by The Guarantee Company, the Receiver and Liquidator have worked with counsel for Tarion and The Guarantee Company to prepare a form of the Tarion Cash Collateral Procedure Order.
70. The draft Tarion Cash Collateral Procedure Order provides for the following:
  - a. the Liquidator to pay, within five business days of the granting of the Tarion Cash Collateral Procedure Order, the amount of \$600,000 to Tarion as the Tarion Cash Collateral, against which amount Tarion may make, and process payments in respect of, Tarion Cash Collateral Claims;



- b. upon Tarion's receipt of the Tarion Cash Collateral, the delivery to The Guarantee Company of the Tarion Bonds for immediate cancellation;
  - c. a process through which Tarion is to report on and use the Tarion Cash Collateral to pay any Tarion Cash Collateral Claims; and
  - d. the Liquidator to make a distribution to The Guarantee Company in full and final satisfaction of all amounts owing by Tarn Financial to The Guarantee Company in accordance with the Claims Procedure Order.
71. Tarion has advised the Receiver that it is possible for a Purchaser with an APS to make a claim against Tarion for up to one year after the final occupancy date in the APS. As a result, Tarion has set the outside date in the Tarion Cash Collateral Procedure Order as October 2, 2024.
72. The Deposit Return Procedure Order requires that the Receiver to provide Tarion and The Guarantee Company with a Statutory Declaration every two weeks in respect of the status of the Deposit Return Procedure. In light of the proposed Tarion Cash Procedure Order and given that there are only two deposits remaining in the hands of the Receiver, the Receiver is seeking to cease having to provide this Statutory Declaration.

## **VII. DISTRIBUTIONS PURSUANT TO THE SECOND DISTRIBUTION ORDER**

73. On November 6, 2018, the Court granted the Second Distribution Order, which authorized and directed the Liquidator to make distributions to Claimants with valid construction liens in the amount of their Proven Claims under the Tarn Financial Claims Process.
74. As described in the Sixth Report, the Liquidator received five secured Claims from Claimants who registered and perfected construction liens against the Real Property pursuant to the *Construction Lien Act*.
75. The Liquidator and its counsel, Miller Thomson, reviewed the construction lien Claims and determined that all the constructions liens were properly registered and perfected against the Real Property. The Liquidator reviewed the amounts of the construction lien Claims against the amounts outstanding per the books and records and determined that the full value of the registered construction liens are supported by the amounts outstanding as per the books and records.

76. As at the date of this Seventh Report, the Liquidator has issued Notices of Determination of Claim to all construction lien Claimants and made distributions to all construction lien Claimants as follows:

Lien Claimant	Claim as Filed	Lien as Filed	Paid
GFL Infrastructure Group Inc.	1,584,564.29	1,584,564.29	1,584,564.29
Skygrid Construction Inc.	516,667.76	317,332.08	317,332.08
Roni Excavating Limited	448,699.99	448,699.99	448,699.99
MCW Consultants Inc.	124,300.00	124,300.00	124,300.00
The Fence People Limited	74,784.53	74,784.53	74,784.53
<b>Total</b>	<b>2,749,016.57</b>	<b>2,549,680.89</b>	<b>2,549,680.89</b>

### VIII. LIQUIDATOR'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

77. The Liquidator reported on the total receipts and disbursements from the date of the Liquidator's appointment to October 26, 2018 in the Sixth Report.
78. The following table provides a summary of the total receipts and disbursements from the date of the Liquidator's appointment to April 9, 2019 (the "R&D Period"):

Statement of Receipts and Disbursements For the period October 27, 2018 to April 09, 2019 (in CAD)			
	Sep 25, 2017 to Oct 26, 2018	Oct 27, 2018 to Apr 9, 2019	Sep 25, 2017 to Apr 9, 2019
<b>Receipts</b>			
Operating receipts	18,175,572	117,377	18,292,949
Liquidator's Borrowings	2,977,805	-	2,977,805
Collected on behalf of Sunray Hotels Inc.	203,249	-	203,249
Net sale proceeds	59,303,653	-	59,303,653
Total receipts	80,660,278	117,377	80,777,655
<b>Disbursements</b>			
Operating disbursements	3,406,745	515,597	3,922,342
Salaries and wages	6,269,111	-	6,269,111
Taxes	1,892,744	3,071,347	4,964,091
Accounting and tax costs	254,970	-	254,970
Insurance	260,709	-	260,709
Utilities	1,050,494	-	1,050,494
Marriott fee	1,481,145	-	1,481,145
Critical Maintenance	368,046	-	368,046
Collected on behalf of Sunray Hotels Inc.	203,249	-	203,249
Total operating disbursements	15,187,214	3,586,944	18,774,158
Operating cash flow	65,473,064	(3,469,567)	62,003,497
Loan Facilities and Professional Fees			
Secured lenders - Principal and Interest	1,957,768	-	1,957,768
Sales Commission	847,500	-	847,500
Professional fees	3,121,622	1,443,142	4,564,763
Non-operating disbursements	5,926,890	1,443,142	7,370,032
Distributions			
Meridian Credit Union	17,494,362	-	17,494,362
Kingsett Mortgage Corporation	6,094,523	-	6,094,523
Liquidator's Borrowing Charge	3,179,364	-	3,179,364
Lien Claimants	-	2,549,681	2,549,681
Total distributions	26,768,248	2,549,681	29,317,929
Opening book balance	(70,185)	32,707,741	(70,185)
Net cash flow	32,777,926	(7,462,390)	25,315,536
<b>Closing book balance</b>	<b>32,707,741</b>	<b>25,245,351</b>	<b>25,245,351</b>

79. Receipts during the R&D Period were \$80,777,655 and consist of: (a) guest room, food and beverage, parking-related revenues and interest earned on invested funds of \$18,292,949; (b) funding of \$2,977,805 under the Borrowings Charge; (c) net sale proceeds of \$59,303,653; and (d) amounts collected on behalf of Sunray after the Closing Date of \$203,249.
80. Disbursements during the R&D Period were \$55,462,119 and include: (a) salaries and wages in the amount of \$6,269,111; (b) operating expenses of \$3,922,342; (c) HST and other tax payments, including the capital gains taxes payable on the Transaction, in the amount of \$4,964,091; (d) principal and interest payments to secured creditors of \$1,957,768; (e) professional fees and disbursements inclusive of HST of \$4,564,763, which consists of the professional fees of the Liquidator and the Receiver, their independent legal counsel, Miller Thomson, and Bennett Jones; (f) distributions pursuant to the First Distribution Order in the amount of \$26,768,248; and (g) distributions pursuant to the Second Distribution Order in the amount of \$2,549,681.

#### **IX. RECEIVER’S STATEMENT OF RECEIPTS AND DISBURSEMENTS**

81. The following table provides a summary of the total receipts and disbursements from the date of the appointment of the Receiver on April 13, 2018 to April 9, 2019 in the Receiver’s trust account (the “Receiver’s R&D Period”).

<b>Statement of Receipts and Disbursements</b>			
<b>For the period April 13, 2018 to April 09, 2019</b>			
<b>(in CAD)</b>			
	<b>Sep 25, 2017 to Oct 26, 2018</b>	<b>Oct 27, 2018 to Apr 9, 2019</b>	<b>Sep 25, 2017 to Apr 9, 2019</b>
<b>Receipts</b>			
Deposit funds received and held in trust	30,094,631	-	30,094,631
Interest	48,060	10,589	58,649
<b>Total receipts</b>	<b>30,142,691</b>	<b>10,589</b>	<b>30,153,280</b>
<b>Disbursements</b>			
Proven Deposits returned to Purchasers	29,574,093	131,951	29,706,044
Professional fees	-	395,000	395,000
Bank charges	600	25	625
<b>Total disbursements</b>	<b>29,574,693</b>	<b>526,976</b>	<b>30,101,669</b>
Opening book balance	-	567,998	-
<b>Net cash flow</b>	<b>567,998</b>	<b>(516,387)</b>	<b>51,611</b>
<b>Ending book balance</b>	<b>567,998</b>	<b>51,611</b>	<b>51,611</b>

82. Receipts during the Receiver’s R&D Period were \$30,153,280 and consist of (a) Deposit Funds of \$30,094,631 from the Deposit Trustee and (b) interest of \$58,649 earned since the Deposit Funds were deposited into the Receiver’s trust account on June 18, 2018.

83. Disbursements during the Receiver's R&D Period were \$30,101,669 and consist of (a) payments to Purchasers of their Proven Deposits pursuant to the Deposit Return Procedure of \$29,706,044, (b) professional fees and disbursements inclusive of HST of \$395,000, which consists of the professional fees of the Receiver and their independent legal counsel, Miller Thomson, and (c) bank charges of \$625.

**X. THIRD DISTRIBUTION ORDER**

84. The Liquidator has now completed its review and determination of all of the Claims filed in the Tarn Financial Claims Process, except for two small recently filed Late Claims and the Non Arms-Length Claims (which are not to be reviewed and determined by the Liquidator pursuant to the Claims Procedure Order).
85. As set out above, the Liquidator has made distributions pursuant to the First Distribution Order and Second Distribution Order in respect of secured Claims and construction lien Claims, respectively.
86. Accordingly, the Liquidator is requesting that the Court grant the Third Distribution Order authorizing the Liquidator to make distributions to Claimants with valid unsecured Claims up to the amount of their Proven Claims as determined under the Tarn Financial Claims Process.
87. Based on the amounts currently being held by the Liquidator, and after properly reserving for the potential priority claims of CRA, the secured Claim of The Guarantee Company and the current amount of the Tarion Bonds, and the Liquidator's Charge, and after fully reserving for disputed Claims and the Non-Arms Length Claims, the Liquidator has determined that it can make a distribution to unsecured Claimants with valid unsecured Claims in the amount of 85 cents on the dollar against their Proven Claims as determined under the Tarn Financial Claims Process.
88. The Liquidator is currently in discussions with the Applicants and the Respondents regarding the Liquidator making a distribution to unsecured Claimants with Proven Claims in the full amount of their Proven Claims. Given the current reserves, the Liquidator would only make this distribution with the consent of the Applicants and the Respondents as the amount of the filed Non-Arms Length Claims is approximately \$22 million.

89. In the event that a full distribution is not made based on paragraph 88, the Liquidator would make a final distribution to unsecured Claimants with valid unsecured Claims for the remainder of their Proven Claims at a later date once the Liquidator is able to address, reduce and in some cases eliminate reserves established for priority claims of the CRA, the secured claims of The Guarantee Company and the amount of the Tarion Bonds, the Liquidator's Charge, disputed claims and the outcome of the adjudication of the Claims filed by Non-Arms Length Claimants.
90. The Liquidator will only distribute 100 cents to the unsecured Claimants either with the consent of the shareholders who have the remaining Claims to be determined or once it is certain that such a distribution will be able to be made to all Claims ranking pro rata with the unsecured Proven Claims.
91. As a result, the Liquidator is seeking authorization to make distributions to Claimants with Proven Claims up to the full amount of their Proven Claims.

**XI. APPROVAL OF PROFESSIONAL FEES TO DECEMBER 31, 2018**

92. The fees and disbursements of the Liquidator and its legal counsel, Miller Thomson and Bennett Jones, for the period from the date of the Winding Up Order to December 31, 2018 were set out in the Second Report and were approved by the Court in the April Ancillary Order.
93. The fees and disbursements of the Liquidator, the Receiver and the Liquidator's and the Receiver's counsel, Miller Thomson and Bennett Jones, for the period from January 1, 2018 to April 30, 2018 were set out in the Fifth Report and were approved by the Court in the Order dated October 1, 2018.
94. The Liquidator and its counsel have maintained detailed records of their professional time and costs from May 1, 2018 to December 31, 2018 (the "**Fee Period**"), as detailed in the Fee Affidavit of Anamika Gadia of KPMG sworn April 9, 2019, the Fee Affidavit of Stephanie De Caria of Miller Thomson sworn April 8, 2019 and the Fee Affidavit of Andrew Jeanrie of Bennett Jones sworn April 9, 2019 (collectively, the "**Fee Affidavits**"). Copies of the Fee Affidavits are attached as **Appendix "J"**, **Appendix "K"** and **Appendix "L"**, respectively.

95. Pursuant to paragraphs 16 and 17 of the Winding Up Order, the Liquidator and its counsel, shall be paid their reasonable fees and disbursements and shall pass their accounts before this Court. In addition, pursuant to paragraph 15 of the Winding Up Order, the Liquidator and its counsel were granted a charge on the Property (as defined in the Winding Up Order) of Tarn Financial (the “**Liquidator’s Charge**”) as security for their fees and disbursements.
96. The total fees and disbursements (including Harmonized Sales Tax) of the Liquidator during the Fee Period amount to \$1,603,631.91. The details of the time spent and the services provided by the Liquidator are more particularly described in the Fee Affidavit of Anamika Gadia.
97. The total fees and disbursements (including Harmonized Sales Tax) of Miller Thomson during the Fee Period amount to \$382,229.44. The details of the time spent and the services provided by Miller Thomson are more particularly described in the Fee Affidavit of Stephanie De Caria.
98. The total fees and disbursements (including Harmonized Sales Tax) of Bennett Jones during the Fee Period amount to \$21,758.53. The details of the time spent and the services provided by Bennett Jones are more particularly described in the Fee Affidavit of Andrew Jeanrie.
99. The Liquidator has reviewed the accounts of its counsel and believes that the accounts of the Liquidator, Miller Thomson and Bennett Jones are reasonable in the circumstances and respectfully requests that the Court approve the Liquidator’s fees and disbursements and those of its counsel.

## **XII. CONCLUSION**

100. The Liquidator and the Receiver submit this Seventh Report to the Court in support of the Liquidator’s and the Receiver’s Motion for the relief as set out in the Motion Record and recommends that the Court grant:
  - a. the Third Distribution Order substantially in the form contained at Tab 3 of the Motion Record dated April 9, 2019;

- b. the Tarn Cash Collateral Procedure Order substantially in the form contained at Tab 4 of the Motion Record; and
- c. the Ancillary Order substantially in the form contained at Tab 5 of the Motion Record:
  - (i) declaring that the Claims of the Brokers which have filed Notices of Objection filed in the Tarn Financial Claims Procedure are forever extinguished, barred, discharged and released as against Tarn Financial and the Liquidator;
  - (ii) approving the fees of the Liquidator and the Receiver and the Liquidator's and the Receiver's legal counsel from May 1, 2018 to December 31, 2018; and
  - (iii) approving the Sixth Report and the Seventh Report and the activities and conduct of the Liquidator and the Receiver as set out therein.

All of which is respectfully submitted at Toronto, Ontario this 9<sup>th</sup> day of April, 2019.

**KPMG Inc., in its capacity as Court Appointed Liquidator of  
Tarn Financial Corporation and in its capacity as Court Appointed  
Receiver of Tarn Construction Corporation and not in its personal capacity**



Per: \_\_\_\_\_

Anamika Gadia  
Senior Vice President

Volkan Basegmez et al.  
Applicants

And Ali Akman et al.  
Respondents

Court File No.: CV-17-11697-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE - COMMERCIAL  
LIST**

Proceeding commenced at Toronto

**SIXTH REPORT OF KPMG INC. in its capacity as  
LIQUIDATOR OF TARN FINANCIAL  
CORPORATION and FOURTH REPORT OF KPMG  
INC. in its capacity as RECEIVER OF TARN  
CONSTRUCTION CORPORATION**

**MILLER THOMSON LLP**

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40 King Street West, Suite 5800  
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**Kyla Mahar LSO#: 44182G**

Tel: 416.597.4303 / Fax: 416.595.8695

**Stephanie De Caria LSO#: 68055L**

Tel: 416.595.2652 / Fax: 416.595.8695

Lawyers for KPMG Inc., in its capacity as Court-  
appointed Liquidator of Tarn Financial Corporation and  
Court-appointed Receiver of Tarn Construction  
Corporation.



# APPENDIX “F”

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE ) MONDAY, THE 15<sup>TH</sup> DAY  
MR. JUSTICE MCEWEN ) OF APRIL, 2019



**BETWEEN:**

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,  
BA&B CAPITAL INC., SERDAR KOCTURK  
and KAAAN HOLDINGS INC.

**Applicants**

- and -

ALI AKMAN, SAMM CAPITAL HOLDINGS INC.  
and TARN FINANCIAL CORPORATION

**Respondents**

**APPLICATION UNDER** Sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16.

**THIRD DISTRIBUTION ORDER**

**THIS MOTION**, made by KPMG Inc. ("**KPMG**"), in its capacity as Court-appointed Liquidator (in such capacity, the "**Liquidator**") pursuant to section 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial Corporation ("**Tarn Financial**"), and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the "**Winding Up Order**") which appointment was effective on September 25, 2017, for an order authorizing and directing the Liquidator to make distributions to unsecured Claimants up to the full amount of their Proven Claims as determined by the Liquidator in the Tarn Financial Claims Process established and approved by the Court pursuant to the Claims Procedure Order of Justice McEwen dated April 13, 2018 (the "**Claims Procedure Order**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Seventh Report of the Liquidator and the Fifth Report of the Receiver dated April 9, 2019 and on hearing the submissions of counsel for the Liquidator, and such other counsel as were present as indicated on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Service, sworn April 11, 2019, filed:

**SERVICE AND GENERAL**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.
2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Claims Procedure Order.

**THIRD DISTRIBUTION**

3. **THIS COURT ORDERS** that the Liquidator is hereby authorized and directed to make distributions to unsecured Claimants with Proven Claims up to the full amount of their Proven Claims as determined by the Liquidator under the Tarn Financial Claims Process.

**GENERAL PROVISION**

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Liquidator and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Liquidator and its agents in carrying out the terms of this Order.



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ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

APR 15 2019

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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**THIRD DISTRIBUTION ORDER  
DATED APRIL 15, 2019**

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**MILLER THOMSON LLP**  
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**Stephanie De Caria LSO#: 68055L**  
Tel: 416.597.2652 / Fax: 416.595.8695

Lawyers for KPMG Inc., in its capacity as Court-appointed Liquidator of Tarn Financial Corporation and Court-appointed Receiver of Tarn Construction Corporation.

# APPENDIX “G”

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )

TUESDAY, THE 30<sup>TH</sup> DAY

JUSTICE McEWEN )

OF APRIL, 2019

BETWEEN:

**VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,  
BA&B CAPITAL INC., SERDAR KOCTURK and KAAH HOLDINGS INC.**

Applicants

- and -

**ALIAKMAN, SAMM CAPITAL HOLDINGS INC. and TARN FINANCIAL CORPORATION**

Respondents



APPLICATION UNDER Sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B. 16

**ORDER**

**THIS MOTION**, made the Applicants, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Fiorella Sasso sworn 23 April 2019, the Affidavit of Ali Akman sworn 26 April 2019 and the Report of KPMG Inc. (the "**Liquidator**") dated 19 February 2019, and on hearing submissions of counsel to the Applicants, the Respondents and the Liquidator;

- THIS COURT ORDERS THAT** the Liquidator is authorized and directed to make interim distributions to: (a) KAAH Holdings Inc. in the amount of \$2,250,000.00; (b) B&B Capital Inc. in the amount of \$4,500,000.00; and (c) SAMM Capital Holdings Inc. in the amount of \$1,927,500.00.



**BETWEEN:**

**VOLKAN BASEGMEZ, ET AL**  
Applicants

**ALI AKMAN, SAMM CAPITAL, ET AL**  
Respondents

and

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(Commercial List)**

(PROCEEDING COMMENCED AT TORONTO)

**ORDER**

**GOWLING WLG (CANADA) LLP**  
Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto ON M5X 1G5

**E. Patrick Shea** (LSUC No.: 39655K)  
Telephone: (416) 369-7399  
Facsimile: (416) 862-7661

**SOLICITORS FOR THE APPLICANT**

# APPENDIX “H”



**Tarn Financial Corporation**  
**Distribution Analysis**  
*Draft for Discussion Purposes Only*  
Aug 31, 2019

Percentage Currently Available for Distribution assuming Pro Rata Distribution being made to all Creditors

Distribution Summary	Notes	Cash (\$)
Net proceeds, inclusive of operating cash as at August 31, 2019	1	57,861,731
<b>Distributions to date</b>		
Secured creditor claims		
Meridian Credit Union Limited		(17,494,362)
Kingsett Capital		(6,094,523)
Liquidator's Borrowing Charge		(3,179,364)
Taxes on sale		(2,950,000)
Tarion Cash Collateral		(600,000)
Distribution to third party unsecured Claimants with valid unsecured Claims	2	(2,142,923)
Distribution to construction lien claimants		(2,549,681)
Distribution to shareholders in respect of shareholder loans	3	(8,677,500)
<b>Total distributions to date</b>		<b>(43,688,353)</b>
Proceeds net of total distributions to date		14,173,378
<b>Reserves</b>		
Canada Revenue Agency		(750,000)
Liquidator's Charge		(1,000,000)
The Guarantee Company of North America	4	(400,000)
Other shareholder claims		-
Reserve for outstanding valid third party unsecured Claims	2	(378,163)
Reserve for disputed and late filed third party unsecured Claims	2	(67,391)
Reserve for pro rata interim distribution (\$) - related party unsecured Claims in dispute	5	(10,297,500)
<b>Total reserves on behalf of priority, secured, unsecured and related party creditors</b>		<b>(12,893,054)</b>
<b>Amount remaining after accounting for reserves</b>		<b>1,280,324</b>
<b>Related party unsecured claims</b>		
Shareholder loan claims	6	(3,333,030)
Other shareholder claims	6	(2,991,970)
<b>Total related party unsecured claims - remaining</b>		<b>(6,325,000)</b>
Proposed additional interim distribution to related party unsecured creditors (for a total of 80% distribution)		5.00%
Proposed additional interim distribution to related party unsecured creditors	7	(1,265,000)
<b>Amount remaining after accounting for additional interim distribution</b>		<b>15,324</b>

**Notes:**

- This represents the sale proceeds of \$60.0 million net of closing adjustments, the listing agent's commission and disbursements since the date of closing. This amount does not take into account professional fees of the Liquidator or its counsel that have been accrued since December 31, 2018.
- On April 15, 2019, the Court authorized the Liquidator to make distributions up to the full amount of third party unsecured claims. The shareholders agreed that third party claims should be paid in full. Accordingly, shortly after the order was issued, the Liquidator issued payment to third party unsecured claimants in the amount of 85% of their proven unsecured third party claim amount. The remainder, being 15% of third party unsecured claims, is being fully reserved.
- On April 30, 2019, the Court authorized the Liquidator to make distributions to the Shareholders in respect of their shareholder loan claims as follows: (a) KAAH Holdings Inc. in the amount of \$2,250,000.00; (b) BA&B Capital Inc. in the amount of \$4,500,000.00; and (c) SAMM Capital Holdings Inc. in the amount of \$1,927,500.00 representing a distribution of 75% on undisputed shareholder loan claims.
- The Liquidator has not received an updated proof of claim from the Guarantee Company of North America containing administrative fees, bond premium amounts and legal fees. Once the Liquidator receives a valid updated proof of claim it will revise the reserve amount to reflect the secured claim.
- Shareholder loan claims of SAMM Capital Holdings Inc. in the amount of \$1,762,119 and other shareholder claims filed and asserted by SAMM Capital Holdings Inc. in the amount of \$11,967,881.10 are in dispute. Accordingly, these claims have not yet received an interim distribution. The amount reserved is 75% of the total amount of the disputed related party unsecured claims based upon the 75% interim distribution made in respect of the undisputed related party unsecured claims.

**Disputed related party unsecured claims**

Shareholder loan claims	(1,762,119)
Other shareholder claims	(11,967,881)
<b>Total related party unsecured claims in dispute</b>	<b>(13,730,000)</b>
Amount reserved for pro rata interim distribution (%)	75%
Amount reserved for pro rata interim distribution (\$) to related party unsecured creditors	(10,297,500)

6. These amounts represent the remaining shareholder loan claims and other shareholder claims that remaining after the 80 cent distribution and/or reserve taken into account above.

7. Breakdown of additional amount available for interim distribution to related party unsecured claims

	Original Claim	Distribution @ 5.0%
BA&B Capital Inc.	6,000,000	300,000
KAAH Holdings Inc.	3,000,000	150,000
SAMM Capital Holdings Inc.	2,570,000	128,500
Disputed claims - to be reserved	13,730,000	686,500
<b>Total</b>	<b>25,300,000</b>	<b>1,265,000</b>



# APPENDIX “I”

Suite 200, 70 Bond Street  
Toronto, Ontario  
M5B 1X3  
Telephone: (416) 365-9320  
Facsimile: (416) 365-0695

JONATHAN KULATHUNGAM, B.A. (Hons.), LL.B.  
Direct Line: (416) 865-5318  
E-mail: [jkulathungam@teplitskycolson.com](mailto:jkulathungam@teplitskycolson.com)

January 28, 2020

Our File No. 30486

**SENT BY EMAIL:**  
[kmahar@millerthomson.com](mailto:kmahar@millerthomson.com)

Kyla Mahar  
Miller Thomson  
40 King Street West, Suite 5800  
Toronto, ON  
M5H 3S1

**SENT BY EMAIL TO:**  
[patrick.shea@gowlingwlg.com](mailto:patrick.shea@gowlingwlg.com)  
[chris.stanek@gowlingwlg.com](mailto:chris.stanek@gowlingwlg.com)

Patrick Shea & Christopher Stanek  
Gowling WLG  
100 King Street West, Suite 1600  
Toronto, Ontario  
M5X 1G5

Dear Counsel:

**Re: Shareholder Dispute: Akman, Samm Capital et al ats Basegmez et al**

With respect to tomorrow's attendance, I believe that the following issues need to be addressed:

1. The dates for the trial: Are there any dates which are not convenient. Given the number of experts who will be called, I do need to canvass the dates with our experts.

Please note that July and August of this year are definitely not available given the vacation schedules of counsel and witnesses (including expert witnesses). In any event, we do not believe that the Court will schedule any trials during the summer months.

Depending on court availability, I would suggest a trial in the last week of May or the first week of June 2020.

2. Examinations for Discovery: Mr. Shea, we have not heard back from you with respect to your position regarding examinations for discovery and having the cross-examination transcript deemed discovery transcripts (please see our letter of August 27, 2019 a copy of which is enclosed for your convenience).

3. Expert Reports: Our client has now served 3 expert reports:
  - a. As it relates to development services on July 26, 2019;
  - b. As it relates to management services on July 29, 2019;
  - c. PWC Report on January 21, 2020.

Do the Applicants intend to file any responding reports? If so when? (KPMG has confirmed that they will not be filing any additional report)

4. Interim distribution: My client is agreeable to a further interim distribution of 5% on the condition that the distribution be based on paragraph 17 of the PWC Report. In this regard, the amount will be calculated on \$4,442,469.00 less the disputed amount of \$1,389,575.00 which equates to \$3,152,894.00. In other words, the additional 5% interim distribution will be based on \$3,152,894.00 and not the \$2.3 million dollars as previously distributed.

The previous distribution of 70% will also be increased to my client based on the \$3,152,894.00.

5. With respect to \$900,000.00 issue, do the Applicants still intend to take the position that a complete “explanation” has to be provided despite the fact:
  - a. KPMG never stated that the \$900,000.00 was paid to Mr. Akman or any of this related group of companies; and
  - b. The additional findings of PWC based on their initial analysis.

#### 6. Examining PWC

On what basis are the Applicants seeking to conduct an interview of PWC outside of court.

Based on the well-established case law and the Rules as it relates to examination of expert witnesses, unless you can advise on what basis the Applicants are seeking this examination, I do not understand or agree with your position. I would refer you to Rule 31.10. (Also see Anderson v. St. Jude Medical Inc. [2007] OJ No. 5383; 61 CPC (6<sup>th</sup>) 315 and in particular paragraphs 7, 8, 11 and 12).

However, as stated in my email of January 24, 2020:

*“.....insofar as the information is being obtained for the purposes of settlement, then please set out the questions in a letter to our office and we will get answers to them (assuming the questions are appropriate). The responses will be deemed privileged, without prejudice and unless explicitly waived, the responses cannot be used or referred to at any time in the*

*proceeding. The only reason for the last caveat is that I do not know what is being requested by your offices”*

Yours very truly,  
**TEPLITSKY, COLSON LLP**  
Per:

*Jonathan Kulathungam*

JK/kp

Jonathan Kulathungam

# APPENDIX “J”

## Stoica, Alina

---

**From:** Jonathan Kulathungam <jkulathungam@teplitskycolson.com>  
**Sent:** Thursday, March 5, 2020 3:54 PM  
**To:** Mahar, Kyla  
**Cc:** Anamika Gadia (agadia@kpmg.ca); Réthoré, Marcel  
**Subject:** RE: Tarn  
**Attachments:** 55555\_20200305\_15402514699.pdf

Kyla

I received your voicemail message.

I thought it would be best to forward to you an email explaining our clients' position which is as follows:

- 1) At the time of the initial distribution, the PWC Report had not been completed.
- 2) As set out in the PWC Report and in particular paragraph 17 on page 5 (copy attached):
  - a) Ali Akman and his related group of companies initially injected \$4,539,239.00. (I have marked this as line **item A**)
  - b) Over and above this, additional advances were made by Mr. Akman as follows:

\$4,005,969.00;

\$268,375.00;

\$2,600,000.00;

\$300,000.00,

Totalling \$7,174,334.00 (See **"B"**)
  - c) Of this amount, Mr. Akman has been reimbursed the funds except for \$3,230.00.(see **"C"**)
  - d) Mr. Akman has also been reimbursed expenses that he has incurred on behalf of Tarn Financial totalling \$226,476.00.(see **"D"**)
  - e) Mr. Akman received management and development fees totalling \$1,389,575.00. ("Disputed Amount") (see E). The issue as it relates to management and development fees is to be determined by this court at a later date.

In light of the above, of the initial contribution of \$4,539,239.00 less the Disputed Amounts is **\$3,149,664.00**. (**item A minus E**).

To this amount would be added the **\$3,230.00** (item **"C"**) which he has not been reimbursed leaving a claim of **\$3,152,894.00**. This is the amount referred to in my letter of January and is the amount owing to Mr. Akman. Mr. Akman is seeking an interim distribution based on this figure. As stated in the January letter, this figure would apply to (i) the initial distribution already made (ie. there will be an adjustment to the initial distribution); and (ii) the 2<sup>nd</sup> distribution that is being discussed.



I will call you shortly.

*Jonathan*

Jonathan Kulathungam | Partner

B.A. (Hons), LL.B.



70 Bond St, Suite 200 • Toronto, Ontario • M5B 1X3 • Canada

Phone 416.865.5318 • Fax: 416.365.7702 • [www.teplitskycolson.com](http://www.teplitskycolson.com)

---

**From:** Mahar, Kyla [mailto:[kmahar@millertomson.com](mailto:kmahar@millertomson.com)]

**Sent:** Thursday, March 5, 2020 1:34 PM

**To:** Jonathan Kulathungam <[jkulathungam@teplitskycolson.com](mailto:jkulathungam@teplitskycolson.com)>

**Cc:** Anamika Gadia ([agadia@kpmg.ca](mailto:agadia@kpmg.ca)) <[agadia@kpmg.ca](mailto:agadia@kpmg.ca)>; Réthoré, Marcel <[mrethore@kpmg.ca](mailto:mrethore@kpmg.ca)>

**Subject:** RE: Tarn

I was expecting to hear from you yesterday but should have reached out and my day just got away from me. I am available tomorrow - however, I am trying to finalize our materials tomorrow ideally so it may make sense to speak today. I can speak at 4 p.m. today if that works for you.

**KYLA MAHAR**

Partner

**Miller Thomson LLP**

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, Ontario M5H 3S1

**Direct Line:** +1 416.597.4303

**Fax:** +1 416.595.8695

**Email:** [kmahar@millertomson.com](mailto:kmahar@millertomson.com)

[millertomson.com](http://millertomson.com)



Please consider the environment before printing this email.

-----Original Message-----

**From:** Jonathan Kulathungam [mailto:[jkulathungam@teplitskycolson.com](mailto:jkulathungam@teplitskycolson.com)]

**Sent:** Thursday, March 5, 2020 1:32 PM

**To:** Mahar, Kyla <[kmahar@millertomson.com](mailto:kmahar@millertomson.com)>

**Subject:** [\*\*EXT\*\*] Tarn

Kyla

Further to our conversation of Monday, we were planning to set up a telephone conference for yesterday.

Can we speak tomorrow?

Jonathan

Sent from my iPhone

-----  
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- e. Unknown Purpose, relating to payments for which PwC was not able to obtain supporting documentation for the transaction.

17. The results of our transaction allocation for both the monies received from and reimbursed to SAMM and Related Parties is shown in Table 1 below:

**Table 1: Summary of Monies Received from and Reimbursed to SAMM and Related Parties**

	Monies Received from SAMM and Related Parties	Monies Reimbursed to SAMM and Related Parties	Net Monies Received from SAMM and Related Parties
<b>Initial Contributions</b>			
KPMG Categorizations			
Initial Contributions	\$ 4,873,806	\$ (334,567)	\$ 4,539,239
<b>Net Initial Contributions</b>			<b>\$ 4,539,239</b>
<b>Advances / Shareholder Loan</b>			
KPMG Categorizations			
Advances	4,005,959	(4,540,219)	(534,260)
Car Expenses	268,375	(30,875)	237,500
Payment/Repayment of Meridian Demand Loan	2,600,000	(2,600,010)	(10)
Additional Advances - not considered by KPMG	300,000	-	300,000
<b>Net Advances / Shareholder Loan</b>			<b>\$ 3,230</b>
<b>Entitlement to be Determined by the Court</b>			
KPMG Categorizations			
Management Fees	-	(389,575)	(389,575)
Development Costs Invoiced to Tam Construction	-	(1,000,000)	(1,000,000)
<b>Net Entitlement to be Determined by the Court</b>			<b>\$ (1,389,575)</b>
<b>Reimbursements for Business and/or Other Expenses paid by SAMM and Related Parties, on behalf of Tam Financial</b>			
<b>Business Expense</b>			
KPMG Categorizations			
Advances	-	(22,550)	(22,550)
Hotel Operations	-	(11,289)	(11,289)
Development Costs	-	(7,048)	(7,048)
Travel, Gifts and Entertainment	-	(25,882)	(25,882)
Other Payments	-	(152,933)	(152,933)
<b>Net Business Expense</b>			<b>(219,702)</b>
<b>Invoiced to Tam Financial</b>			
KPMG Categorizations			
Other Payments	-	(6,774)	(6,774)
<b>Net Invoiced to Tam Financial</b>			<b>(6,774)</b>
<b>Net Reimbursements for Business and/or Other Expenses paid by SAMM and Related Parties</b>			<b>\$ (226,476)</b>
<b>Unknown Purpose</b>			
KPMG Categorizations			
Hotel Operations	-	(729)	(729)
Travel, Gifts and Entertainment	-	(10,595)	(10,595)
Other Payments	-	(40,235)	(40,235)
<b>Net Unknown Purpose</b>			<b>\$ (51,559)</b>
<b>Total Monies Received from and Paid to SAMM and Related Parties</b>	<b>12,048,140</b>	<b>(9,173,281)</b>	
<b>Less: Net Reimbursements for Business and/or Other Expenses</b>		<b>226,476</b>	
<b>Adjusted Monies Received from and Paid to SAMM and Related Parties</b>	<b>\$ 12,048,140</b>	<b>\$ (8,946,805)</b>	

18. The total monies received of \$12,048,140 in Table 1 above is greater than the monies received as summarized in the KPMG Report of \$11,748,140<sup>5</sup> by approximately \$300,000. The difference relates to two additional advances made by SAMM and Related Parties that were not considered by KPMG in the summary of monies received in section 4.4.2 of the KPMG Report. The total monies reimbursed of \$9,173,281 in Table 1 above is less than the monies reimbursed as summarized in the KPMG Report of \$9,173,286 by \$5. We are unable to identify the reason for the \$5 variance.

19. The results of PwC's categorization of the transactions are summarized below:

<sup>5</sup> KPMG Report, Page 19, Section 4.4.2. Note that there is a \$1 variance between the KPMG figure of \$11,748,141 and the PwC figure of \$11,748,140 (\$12,048,140 less \$300,000) above due to a rounding difference.

# APPENDIX “K”

## Stoica, Alina

---

**From:** Shea, Patrick <Patrick.Shea@gowlingwlg.com>  
**Sent:** Thursday, March 5, 2020 4:33 PM  
**To:** Mahar, Kyla; Jonathan Kulathungam  
**Cc:** Anamika Gadia (agadia@kpmg.ca); Réthoré, Marcel; Stanek, Chris  
**Subject:** RE: Tarn

Thank you. The findings in the PwC Report are disputed at this time and until there is a finding that the findings in the PwC Report are accurate, the KPMG Report should form the basis for any interim distribution.

---

**From:** Mahar, Kyla [mailto:kmahar@millerthomson.com]  
**Sent:** March-05-20 4:30 PM  
**To:** Jonathan Kulathungam <jkulathungam@teplitskycolson.com>  
**Cc:** Anamika Gadia (agadia@kpmg.ca) <agadia@kpmg.ca>; Réthoré, Marcel <mrethore@kpmg.ca>; Shea, Patrick <Patrick.Shea@gowlingwlg.com>; Stanek, Chris <Christopher.Stanek@gowlingwlg.com>  
**Subject:** RE: Tarn

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---

Jonathan,

Further to our telephone call, we will include your email below in the Liquidator's Motion Record, which will be served no later than Monday. The Liquidator will be recommending a distribution to the undisputed claims of the Applicants and will set out what a distribution would be for your client under both the amount previously agreed (being \$2,570,000) and also set out what a distribution would be for your client under the number you are proposing below. The Liquidator will not be taking a position as to which number is appropriate to use as the Liquidator has not reviewed the PWC Report line by line and does not believe that it is good use of resources.

Regards,

Kyla

### **KYLA MAHAR**

Partner

#### **Miller Thomson LLP**

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, Ontario M5H 3S1

**Direct Line:** +1 416.597.4303

**Fax:** +1 416.595.8695

**Email:** [kmahar@millerthomson.com](mailto:kmahar@millerthomson.com)

[millerthomson.com](http://millerthomson.com)



---

**From:** Jonathan Kulathungam [<mailto:jkulathungam@teplitskycolson.com>]  
**Sent:** Thursday, March 5, 2020 3:54 PM  
**To:** Mahar, Kyla <[kmahar@millerthomson.com](mailto:kmahar@millerthomson.com)>  
**Cc:** Anamika Gadia ([agadia@kpmg.ca](mailto:agadia@kpmg.ca)) <[agadia@kpmg.ca](mailto:agadia@kpmg.ca)>; Réthoré, Marcel <[mrethore@kpmg.ca](mailto:mrethore@kpmg.ca)>  
**Subject:** RE: Tarn

Kyla

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I thought it would be best to forward to you an email explaining our clients' position which is as follows:

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  - a) Ali Akman and his related group of companies initially injected \$4,539,239.00. (I have marked this as line **item A**)
  - b) Over and above this, additional advances were made by Mr. Akman as follows:

\$4,005,969.00;

\$268,375.00;

\$2,600,000.00;

\$300,000.00,

Totalling \$7,174,334.00 (See "**B**")
  - c) Of this amount, Mr. Akman has been reimbursed the funds except for \$3,230.00.(see "**C**")
  - d) Mr. Akman has also been reimbursed expenses that he has incurred on behalf of Tarn Financial totalling \$226,476.00.(see "**D**")
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In light of the above, of the initial contribution of \$4,539,239.00 less the Disputed Amounts is **\$3,149,664.00**. (**item A minus E**).

To this amount would be added the **\$3,230.00** (item "**C**") which he has not been reimbursed leaving a claim of **\$3,152,894.00**. This is the amount referred to in my letter of January and is the amount owing to Mr. Akman. Mr. Akman is seeking an interim distribution based on this figure. As stated in the January letter, this figure would apply to (i) the initial distribution already made (ie. there will be an adjustment to the initial distribution); and (ii) the 2<sup>nd</sup> distribution that is being discussed.

I will call you shortly.

*Jonathan*

Jonathan Kulathungam | Partner  
B.A. (Hons), LL.B.



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Phone 416.865.5318 • Fax: 416.365.7702 • [www.teplitskycolson.com](http://www.teplitskycolson.com)

---

**From:** Mahar, Kyla [<mailto:kmahar@millertomson.com>]  
**Sent:** Thursday, March 5, 2020 1:34 PM  
**To:** Jonathan Kulathungam <[jkulathungam@teplitskycolson.com](mailto:jkulathungam@teplitskycolson.com)>  
**Cc:** Anamika Gadia ([agadia@kpmg.ca](mailto:agadia@kpmg.ca)) <[agadia@kpmg.ca](mailto:agadia@kpmg.ca)>; Réthoré, Marcel <[mrethore@kpmg.ca](mailto:mrethore@kpmg.ca)>  
**Subject:** RE: Tarn

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## **KYLA MAHAR**

Partner

### **Miller Thomson LLP**

Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, Ontario M5H 3S1  
**Direct Line:** +1 416.597.4303  
**Fax:** +1 416.595.8695  
**Email:** [kmahar@millertomson.com](mailto:kmahar@millertomson.com)  
[millertomson.com](http://millertomson.com)



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-----Original Message-----

**From:** Jonathan Kulathungam [<mailto:jkulathungam@teplitskycolson.com>]  
**Sent:** Thursday, March 5, 2020 1:32 PM  
**To:** Mahar, Kyla <[kmahar@millertomson.com](mailto:kmahar@millertomson.com)>  
**Subject:** [\*\*EXT\*\*] Tarn

Kyla

Further to our conversation of Monday, we were planning to set up a telephone conference for yesterday.

Can we speak tomorrow?

Jonathan

Sent from my iPhone

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# APPENDIX “L”

**Tarn Financial Corporation**  
**Distribution Analysis**  
*Draft for Discussion Purposes Only*  
Aug 31, 2019

Percentage Currently Available for Distribution assuming Pro Rata Distribution being made to all Creditors

Distribution Summary	Notes	Cash (\$)
Net proceeds, inclusive of operating cash as at August 31, 2019	1	57,861,731
<b>Distributions to date</b>		
Secured creditor claims		
Meridian Credit Union Limited		(17,494,362)
Kingsett Capital		(6,094,523)
Liquidator's Borrowing Charge		(3,179,364)
Taxes on sale		(2,950,000)
Tarion Cash Collateral		(600,000)
Distribution to third party unsecured Claimants with valid unsecured Claims	2	(2,142,923)
Distribution to construction lien claimants		(2,549,681)
Distribution to shareholders in respect of shareholder loans	3	(8,677,500)
<b>Total distributions to date</b>		<b>(43,688,353)</b>
Proceeds net of total distributions to date		14,173,378
<b>Reserves</b>		
Canada Revenue Agency		(750,000)
Liquidator's Charge		(1,000,000)
The Guarantee Company of North America	4	(400,000)
Other shareholder claims		-
Reserve for outstanding valid third party unsecured Claims	2	(378,163)
Reserve for disputed and late filed third party unsecured Claims	2	(67,391)
Reserve for pro rata interim distribution (\$) - related party unsecured Claims in dispute	5	(9,860,330)
<b>Total reserves on behalf of priority, secured, unsecured and related party creditors</b>		<b>(12,455,884)</b>
<b>Amount remaining after accounting for reserves</b>		<b>1,717,495</b>
<b>Related party unsecured claims</b>		
Shareholder loan claims	6	(3,333,030)
Other shareholder claims	6	(2,991,970)
<b>Total related party unsecured claims - remaining</b>		<b>(6,325,000)</b>
Proposed interim distribution to related party unsecured creditors		75.00%
Proposed interim distribution to related party unsecured creditors	7	(437,171)
Proposed additional interim distribution to related party unsecured creditors (for a total of 80% distribution)		5.00%
Proposed additional interim distribution to related party unsecured creditors	7	(1,265,000)
<b>Amount remaining after accounting for additional interim distribution</b>		<b>15,324</b>

**Notes:**

- This represents the sale proceeds of \$60.0 million net of closing adjustments, the listing agent's commission and disbursements since the date of closing. This amount does not take into account professional fees of the Liquidator or its counsel that have been accrued since December 31, 2018.
- On April 15, 2019, the Court authorized the Liquidator to make distributions up to the full amount of third party unsecured claims. The shareholders agreed that third party claims should be paid in full. Accordingly, shortly after the order was issued, the Liquidator issued payment to third party unsecured claimants in the amount of 85% of their proven unsecured third party claim amount. The remainder, being 15% of third party unsecured claims, is being fully reserved.
- On April 30, 2019, the Court authorized the Liquidator to make distributions to the Shareholders in respect of their shareholder loan claims as follows: (a) KAAH Holdings Inc. in the amount of \$2,250,000.00; (b) BA&B Capital Inc. in the amount of \$4,500,000.00; and (c) SAMM Capital Holdings Inc. in the amount of \$1,927,500.00 representing a distribution of 75% on undisputed shareholder loan claims.
- The Liquidator has not received an updated proof of claim from the Guarantee Company of North America containing administrative fees, bond premium amounts and legal fees. Once the Liquidator receives a valid updated proof of claim it will revise the reserve amount to reflect the secured claim.
- Shareholder loan claims of SAMM Capital Holdings Inc. in the amount of \$1,179,224.90 and other shareholder claims filed and asserted by SAMM Capital Holdings Inc. in the amount of \$11,967,881.10 are in dispute. Accordingly, these claims have not yet received an interim distribution. The amount reserved is 75% of the total amount of the disputed related party unsecured claims based upon the 75% interim distribution made in respect of the undisputed related party unsecured claims.

**Disputed related party unsecured claims**

Shareholder loan claims	(1,179,225)
Other shareholder claims	(11,967,881)
<b>Total related party unsecured claims in dispute</b>	<b>(13,147,106)</b>
Amount reserved for pro rata interim distribution (%)	75%
Amount reserved for pro rata interim distribution (\$) to related party unsecured creditors	(9,860,330)

- These amounts represent the remaining shareholder loan claims and other shareholder claims that remaining after the 80 cent distribution and/or reserve taken into account above.

	Additional Eligible	
	Amount	Distribution @ 75.0%
7. Breakdown of additional amount available for interim distribution to related party unsecured claims		
SAMM Capital Holdings Inc.	582,894	437,171
<b>Total</b>	<b>582,894</b>	<b>437,171</b>

SAMM Capital Holdings Inc.'s shareholder loan claim that is eligible for distribution is now \$3,152,894, previously it was \$2,570,000.

	Original Claim	Distribution @ 5.0%
BA&B Capital Inc.	6,000,000	300,000
KAAH Holdings Inc.	3,000,000	150,000
SAMM Capital Holdings Inc.	2,570,000	128,500
SAMM Capital Holdings Inc.	582,894	29,145
Disputed claims - to be reserved	13,147,106	657,355
<b>Total</b>	<b>25,300,000</b>	<b>1,265,000</b>



Volkan Basegmez et al.  
Applicants

And Ali Akman et al.  
Respondents

Court File No.: CV-17-11697-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE - COMMERCIAL  
LIST**

Proceeding commenced at Toronto

**EIGHTH REPORT OF KPMG INC. in its capacity as  
LIQUIDATOR OF TARN FINANCIAL  
CORPORATION and SIXTH REPORT OF KPMG INC.  
in its capacity as RECEIVER OF TARN  
CONSTRUCTION CORPORATION**

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appointed Liquidator of Tarn Financial Corporation and  
Court-appointed Receiver of Tarn Construction  
Corporation.

# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE ) MONDAY, THE 13<sup>TH</sup> DAY  
 )  
MR. JUSTICE MCEWEN ) OF MARCH, 2020

**BETWEEN:**

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,  
BA&B CAPITAL INC., SERDAR KOCTURK  
and KAAH HOLDINGS INC.

**Applicants**

- and -

ALI AKMAN, SAMM CAPITAL HOLDINGS INC.  
and TARN FINANCIAL CORPORATION

**Respondents**

**APPLICATION UNDER** Sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990,  
c. B.16.

**FIFTH DISTRIBUTION ORDER  
(RE: DISTRIBUTION TO NON ARMS-LENGTH CLAIMANTS AND APPROVAL OF  
LIQUIDATOR'S AND RECEIVER'S ACTIVITIES AND CONDUCT)**

**THIS MOTION**, made by KPMG Inc. (“**KPMG**”), in its capacity as Court-appointed Liquidator (in such capacity, the “**Liquidator**”) pursuant to section 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial Corporation (“**Tarn Financial**”), and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the “**Winding Up Order**”) which appointment was effective on September 25, 2017, for an order: (a) authorizing and directing the Liquidator to make distributions to unsecured Claimants up to the full amount of their Proven Claims as determined by the Liquidator in the Tarn Financial Claims Process established and approved by the Court pursuant to the Claims Procedure Order of Justice

McEwen dated April 13, 2018 (the “**Claims Procedure Order**”); (b) authorizing and directing the Liquidator to make an additional 5% distribution to the Non Arms-Length Claimants in respect of their Eligible Shareholder Loan Claims (as defined in the Eighth Report); (c) an order approving the Eighth Report of the Liquidator and the Sixth Report of the Receiver dated on March 9, 2020 (the “**Eighth Report**”) and approving the activities and conduct of the Liquidator and the Receiver described in the Eighth Report, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Eighth Report of the Liquidator and on hearing the submissions of counsel for the Liquidator, the Applicants and the Respondents and such other counsel as were present as indicated on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Service, sworn March 9, 2020, filed:

### **SERVICE AND GENERAL**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.
2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Claims Procedure Order.

### **INTERIM DISTRIBUTION TO NON ARMS-LENGTH CLAIMANTS**

3. **THIS COURT ORDERS** that the Liquidator is hereby authorized and directed to make a further 5% interim distribution to the Non Arms-Length Claimants as follows:
  - (a) \$300,000 to BA&B Capital Inc., representing 5% of its Eligible Shareholder Loan Claim (as defined in the Eighth Report) in the amount of \$6,000,000;
  - (b) \$150,000 to KAAN Holdings Inc., representing 5% of its Eligible Shareholder Loan Claim in the amount of \$3,000,000; and
  - (c) \$128,500 to SAMM Holdings Inc., representing 5% of its Eligible Shareholder Loan Claim in the amount of \$2,570,000.

**APPROVAL OF THE EIGHTH REPORT AND THE LIQUIDATOR'S AND THE RECEIVER'S ACTIVITIES**

4. **THIS COURT ORDERS** that the Eighth Report and the activities and conduct of the Liquidator and the Receiver described therein be and are hereby approved.

**GENERAL PROVISION**

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Liquidator and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Liquidator and its agents in carrying out the terms of this Order.

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Volkan Basegmez et al v. Ali Akman, SAMM Capital Holdings Inc. and Tarn Financial Corporation

Court File No.: CV-17-11697-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**FIFTH DISTRIBUTION ORDER**  
**DATED MARCH 13, 2020**

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Volkan Basegmez et al.  
Applicants

and Ali Akman et al.  
Respondents

Court File No.: CV-17-11697-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE -  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD  
(returnable MARCH 13, 2020)**

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