

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**

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

**JUNE 8, 2018**

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## **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 Fourth Report to the Court and the Receiver’s (as defined below) Second Report to the Court (the “**Fourth Report**”).
3. The business and assets of Tarn Financial include 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**”).
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 (“**OMB**”) 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 “**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 have been paid to Tarn Construction by purchasers of the pre-sold, unbuilt condominium units at the Development Project (the “**Deposit Confirmation Procedure**”); 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 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 Receivership Order and the Deposit Confirmation Procedure Order are attached as **Appendix “B”**, and **Appendix “C”**, respectively, to this Fourth 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**”) date 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 (the “**Purchased Assets**”);
  - 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 (the “**Disputed Deposits Resolution Procedure**”); 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 (the “**Endorsement**”) granting the Approval and Vesting Order, the Disputed Deposits Resolution Procedure Order, and the

Termination Entitlement Order. A copy of the Disputed Deposits Resolution Procedure Order, the Termination Entitlement Order and the Endorsement are attached as **Appendix “D”**, **Appendix “E”**, and **Appendix “F”** respectively, to this Fourth Report.

15. Capitalized terms not defined herein shall have the meanings set out in the Winding Up Order, the Deposit Confirmation Procedure Order and the Disputed Deposits Resolution Procedure Order.

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

16. The purpose of this Fourth Report is to:
- a. Update the Court with respect to the activities of the Liquidator since its Second Report and the activities of the Receiver since its appointment, including, but not limited to:
    - (i) activities relating to Tarn Financial and the Hotel operations;
    - (ii) activities relating to Tarn Construction and the Development Project;
    - (iii) activities relating to the Sale Process;
    - (iv) activities relating to the Claims Process;
    - (v) activities relating to the Deposit Confirmation Procedure; and
    - (vi) other activities in relation to the Winding Up Proceedings; and
  - b. Provide the Court with the necessary information to support the granting of an Order (the “**Deposit Return Procedure Order**”) substantially in the form contained at Tab 3 of the Motion Record dated June 7, 2018 (the “**Motion Record**”), 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**”).
17. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
18. The information contained in this Fourth 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 Fourth Report.

19. Future oriented financial information reported or relied on in preparing this Fourth Report is based on Tarn Financial management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

### **III. ACTIVITIES OF THE LIQUIDATOR SINCE THE SECOND REPORT AND THE RECEIVER SINCE ITS APPOINTMENT**

#### **General Activities**

20. The Liquidator continues to manage the operations of the Hotel and continues to preserve the assets of Tarn Financial.
21. The Liquidator has continued to:
  - a. Attend at the corporate and administrative offices of Tarn Financial and Tarn Construction located at the Hotel, as required;
  - b. Review and approve all purchase orders;
  - c. Review and approve all disbursements before they are made;
  - d. Prepare and update 13-week cash flow projections, including analysis of actual versus forecast results;
  - e. Prepare daily bank reconciliations;
  - f. Work with Richter LLP to prepare the 2016 tax returns and to review the tax consequences of the proposed Transaction with a view to optimizing the after-tax proceeds for distribution by the Liquidator;
  - g. Review what monies were transferred in or out of Tarn Financial utilizing the services of KPMG Forensics Inc.;
  - h. Coordinate receipt of the Increased Borrowing Amount under the Borrowings Charge;

- i. Have regular discussions with Tarn Financial's secured lenders regarding the Winding Up Proceedings, including, among other things, the status of the Hotel operations and the Development Project, discussions with other stakeholders, liquidity requirements, and the Sale Process;
- j. Have regular discussions with the shareholders' counsel regarding the Winding Up Proceedings and respond to inquiries regarding same;
- k. Respond to inquiries from other stakeholders regarding the Winding Up Proceedings;
- l. Post materials relating to the Winding Up Proceedings including the Claims Process and the Deposit Confirmation Procedure on its website ([www.kpmg.com/ca/tarn](http://www.kpmg.com/ca/tarn)) (the "Website"); and
- m. Maintain 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.

#### **Activities Relating to Tarn Financial and the Hotel Operations**

22. In addition to the activities described above, the Liquidator has continued to do the following specifically in respect of the Hotel operations:
  - a. Had regular update meetings with Hotel management and staff;
  - b. Coordinated all filings and payments of source deductions, HST, workplace safety insurance and withholding taxes;;
  - c. Had regular discussions with representatives of Marriott regarding the status of the Hotel operations and the Sale Process;
  - d. Continued to work with a third-party accounting firm that is providing bookkeeping assistance in order to input financial entries for Tarn Financial's 2017 fiscal year and prepare its year-end financial statements as at December 31, 2017 given the lack of general ledger for 2017 at the time of the Liquidator's appointment;
  - e. Undertaken certain critical maintenance items required at the Hotel and implemented items required to comply with Marriott brand standards; and

- f. Implemented cost reduction options, where possible, in order to reduce the Hotel operating costs and preserve cash, in a fair and efficient manner.

**Activities Relating to Tarn Construction and the Development Project**

- 23. The Liquidator has continued to do and the Receiver has done the following in respect of the Development Project:
  - a. Responded to inquiries from consultants as to the status of the Winding Up Proceedings, the Development Project and the Sale Process and the Claims Process;
  - b. Responded to inquiries from Purchasers of the proposed condominium units regarding, among other things, the status of their APSs, deposit monies, the Deposit Confirmation Procedure, and the Sale Process;
  - c. Had regular discussions with Bennett Jones LLP, which is the Deposit Trustee in connection with the deposits made by the Purchasers pursuant to their APSs (in such capacity, the “**Deposit Trustee**”), regarding, among other things, the status of deposit monies being held in trust, change of addresses of Purchasers, and inquiries regarding APSs;
  - d. Updated the books and records of Tarn Construction as further invoices are received;
  - e. Responded to inquiries from brokers regarding, among other things, the status of the Winding Up Proceedings, their commissions and the Claims Process; and
  - f. Had discussions with The Guarantee Company of North America (“**The Guarantee Company**”) and Tarion Warranty Corporation (“**Tarion**”) regarding the Deposit Confirmation Procedure, the Disputed Deposit Resolution Procedure and the proposed Deposit Return Procedure.

**Activities Relating to the Sale Process**

- 24. In accordance with and in relation to the Sale Process Order, the Liquidator:
  - a. Determined that Sunray is the Successful Bidder and that Pinnacle International One Lands Inc. is the Back-Up Bidder;
  - b. Sought and obtained the Approval and Vesting Order approving the Transaction contemplated by the Asset Purchase Agreement; and;

- c. Attended meetings and teleconferences with Sunray regarding the critical dates under the Asset Purchase Agreement and all issues to prepare for the closing of the Transaction including, without limitation, review of contracts and liabilities that would be assumed by Sunray, review of employee contracts and benefit plans, and the process surrounding the transfer of the Purchased Assets to Sunray.

#### **Activities Relating to the Claims Process**

25. In accordance with and in relation to the Claims Procedure Order, the Liquidator:
  - a. Posted the Claims Procedure Order and the Claims Process Notice to the Liquidator's website on April 17, 2018;
  - b. Published the Claims Process Notice in the Globe and Mail (National Edition) and the Toronto Star on April 18, 2018 and May 2, 2018;
  - d. Mailed the Claims Process Notice and the Proof of Claim (collectively, the "**Claims Package**") on April 17, 2018 to 1,446 parties to the addresses listed in the books and Records of Tarn Financial and/or Tarn Construction;
  - e. Received, as of the date of this Fourth Report, 115 Claims Packages as returned undeliverable mail, of which 56 were re-mailed to new addresses and 59 remain undeliverable, as new addresses have not been identified;
  - f. Prepared and posted to the Website 'Frequently Asked Questions' in respect of the Claims Process to assist parties in preparing the necessary documentation for the Claims Process; and
  - g. Received and responded to approximately 200 email and telephone inquiries regarding the Claims Process from potential claimants.

#### **Activities Relating to the Deposit Confirmation Procedure**

26. In accordance with and in relation to the Deposit Confirmation Procedure, the Receiver:
  - a. Posted the Deposit Confirmation Procedure Order to the Website on April 17, 2018;
  - b. Prepared and issued by email on April 17, 2018 and by mail on April 18, 2018 a third letter to the Purchasers (the "**Third Communication to Purchasers**"), which, among

other things, provided notice of the Motion being brought by the Liquidator and the Receiver returnable on May 1, 2018 and set out the relief that would be sought as it related to the APSs.

- c. Mailed all Purchasers a Deposit Statement on April 18, 2018 to the address listed in the books and records of Tarn Construction and/or the Deposit Trustee;
- d. Prepared and posted to the Website 'Frequently Asked Questions' in respect of the Deposit Confirmation Procedure to assist Purchasers in understanding the Deposit Confirmation Procedure including what steps are necessary if they disagree with the amounts set out in the Deposit Statement and/or Amended and Restated Deposit Statement;
- e. Received eight Deposit Statements as returned undeliverable mail and located new addresses or email addresses for the eight Purchasers whose Deposit Statements were returned and re-sent these Deposit Statements;
- f. Sent Amended and Restated Deposit Statements to 24 Purchasers who remitted an Additional Deposit to the Deposit Trustee as of May 31, 2018;
- g. Prepared and issued by email a fourth letter to the Purchasers on May 11, 2018 (the "**Fourth Communication to Purchasers**"), a copy of which is attached as **Appendix "G"**, which among other things explained the outcome of the May 1, 2018 motion; and
- h. Received and responded to approximately 450 email and telephone inquiries from Purchasers with respect to the Deposit Confirmation Procedure and the Disputed Deposit Resolution Procedure.

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

27. The Liquidator and the Receiver, with the assistance of its counsel, has also done the following in relation to the Winding Up Proceedings:
  - a. Prepared and delivered the Third Report of the Liquidator and the First Report of the Receiver; and
  - b. Attended Court appearances on April 13, 2017 and May 1, 2018.

#### **IV. DEPOSIT CONFIRMATION PROCEDURE**

28. On April 13, 2018, the Court issued the Deposit Confirmation Procedure Order, which approved the Deposit Confirmation Procedure. Capitalized terms used in this section of the Fourth Report are as defined in the Deposit Confirmation Procedure Order.
29. The Deposit Confirmation Procedure contemplates confirmation and assertion of Deposits in two stages given that Deposits are continuing to be made by Purchasers pursuant to the terms of their APSs. The first stage relates to Known Deposits remitted by Purchasers up to and including March 31, 2018 pursuant to their APSs. The second stage relates to Additional Deposits, if any, made by Purchasers after March 31, 2018 pursuant to their APSs.
30. Purchasers that agreed with the amounts of the Known Deposit contained on the Deposit Statement and/or the Additional Deposit contained on the Amended and Restated Deposit Statement they received were not required to take any further action and the Deposit of the Purchaser shall be deemed a Known Deposit and/or Known Additional Deposit, as applicable.
31. Any Purchaser that wished to dispute the Known Deposit amount contained on the Deposit Statement was required to deliver a Notice of Dispute of Deposit Statement to the Receiver by no later than the Deposit Confirmation Bar Date, being 5:00 PM Eastern Standard Time on May 15, 2018.
32. Any Purchaser that wishes to dispute the Known Additional Deposit amount contained on the Notice of Amended and Restated Deposit Statement is required to deliver a Notice of Dispute of Amended and Restated Deposit Statement to the Receiver by no later than the Deposit Confirmation Bar Date, being thirty (30) calendar days after the date set out on the Amended and Restated Deposit Statement it received.
33. In total, the Receiver received 17 Notices of Dispute of Deposit Statement and has not received any Notices of Dispute of Amended and Restated Deposit Statement.
34. The Receiver has been able to resolve 10 Notices of Dispute of Deposit Statement and anticipates to resolve an additional two shortly. The Purchasers that filed these Notices of Dispute of Deposit Statement do not disagree with the amount of Known Deposits being

held by the Deposit Trustee, rather they either make a request for interest (which is not payable pursuant to the terms of the *Condominium Act*) or make a request for their condominium to be built.

35. As at the date of this Fourth Report, there are five Notices of Dispute of Deposit Statement that are still being reviewed and considered, in consultation with the Guarantee Company and Tarion. Four of these are from sales agents that sold the proposed condominium units on behalf of Tarn Construction and rather than get paid certain of their commissions they requested that Tarn Construction fund Deposits on units that they purchased. The Deposit Trustee does not hold any money with respect to these four Purchasers. The Fifth Notice of Dispute of Deposit Statement relates to a condominium that was purchased by a Purchaser from Akman, which the Receiver understands Akman purchased from the original purchaser. The Notice of Dispute of Deposit Statement claims Deposits in the amount of \$119,205 and advises that \$79,305 of the \$119,205 was paid to SAMM. The Deposit Trustee is holding Deposits in the amount of \$39,900 from this Purchaser.
36. The Receiver has provided the five Notices of Dispute of Deposit Statement to The Guarantee Company and Tarion for their review in accordance with the Disputed Deposits Resolution Procedure Order.

#### **V. DEPOSIT RETURN PROCEDURE ORDER**

37. On May 9, 2018, the Court granted the Termination Entitlement Order, which, among other things, ordered and declared that the Receiver is entitled to rely upon the Construction Financing Early Termination Condition to terminate the APSs on behalf of Tarn Construction without damages and that the Receiver may give notice of termination to terminate the APSs at any time from the date of the Termination Entitlement Order, subject to further Order of the Court being granted to address the return of Deposits to the Purchasers prior to doing so.
38. The Receiver has sought input from Tarion and The Guarantee Company regarding the proposed form of Deposit Return Procedure Order given the Tarion warranty bonds and the security held by The Guarantee Company over the Real Property.

39. The Receiver seeks the Court's approval to allow the Receiver to implement the Deposit Return Procedure set out in the proposed Deposit Return Procedure Order.
40. Capitalized terms used in this section of the Fourth Report are as defined in draft Deposit Return Procedure Order contained at Tab 3 of the Motion Record.
41. Given that the Receiver will be terminating the APSs, the proposed Deposit Return Procedure Order provides that Purchasers are hereby no longer required to make Additional Deposits under their APSs. To the extent a payment of an Additional Deposit is received by the Deposit Trustee or the Receiver from and after the date of the Deposit Return Procedure Order, the payment will be returned to the Purchaser as soon as practicable.
42. The proposed Deposit Return Procedure Order confirms that interest is not payable on the Proven Deposits pursuant to the Condominium Act and its regulations. Section 82 of the Condominium Act provides that if a Purchaser is entitled to a return of money paid under an APS upon termination and the APS is terminated, then Tarn Construction shall pay interest at the prescribed rate to the Purchaser on the money returned. However, the prescribed rate of interest under the regulations is calculated at two per cent per annum below the bank rate and the bank rate has been below two per cent during the period the Deposit Trustee has held the Deposits such that no interest is payable on the Proven Deposits.
43. The Deposit Return Procedure contemplates that the Deposit Trustee will deliver the Deposit Funds and the Trust Records to the Receiver within 5 Business Days of the date of the Deposit Return Procedure Order along with a Statutory Declaration confirming same in the form attached as Schedule "A" to the Deposit Return Procedure Order. Upon doing so, the Deposit Trustee will be released and forever discharged from any claims arising in respect of the Deposit Funds, other than in respect of any claims arising from gross negligence or willful misconduct.
44. The Deposit Return Procedure contemplates that the Receiver will provide a Statutory Declaration to Tarion in the form attached as Schedule "B" to the Deposit Return Procedure Order within 5 Business Days of the date of the Deposit Return Procedure Order.



45. The Deposit Return Procedure contemplates that the Receiver will request from Ali Akman, the former President of Tarn Financial and Tarn Construction, a Statutory Declaration in the form attached as Schedule "C" to the Deposit Return Procedure Order as soon as reasonably practicable and in any event no later than 5 Business Days from the date of the Deposit Return Procedure Order. As soon as reasonably practicable following the receipt of such Statutory Declaration and in any event no later than 5 Business Days from the date of such receipt, the Receiver shall provide such Statutory Declaration to Tarion with a copy to The Guarantee Company. The failure of the former President of Tarn Financial and Tarn Construction to provide the aforementioned Statutory Declaration will not prevent payment of Proven Deposits to Purchasers.
46. The Deposit Return Procedure contemplates that the Receiver will issue a Deposit Return Notice to all Purchaser substantially in the form attached as Schedule "D" to the Deposit Return Procedure Order within 5 Business Days of the date of the Deposit Return Procedure Order. The Deposit Return Notice explains to Purchasers that they are required to execute a Release Agreement and complete a Certificate of Identity that includes copies of two pieces of current (and not expired) government issued identification (one which shall include a photo of the Purchaser and one which shall include the Purchaser's address as more particularly set out in the Certificate of Identity) in order to receive their Proven Deposit.
47. Purchasers will have the ability to deliver the executed Release Agreement and completed Certificate of Identity that includes copies of two pieces of government issued identification to the Receiver either:
  - a. By attending at the Hotel, at their sole expense, between the hours of 8:30 a.m. and 8:30 p.m. on Wednesday July 11, 2018 and on Saturday July 14, 2018; or
  - b. By emailing, mailing, faxing or couriering them to the Receiver at the address set out in the Deposit Return Procedure Order.
48. Upon the Receiver being satisfied with the executed Release Agreement and the completed Certificate of Identity including copies of the two government issued pieces of

identification, the Receiver shall terminate the Purchaser's APS and issue a cheque in the name of the Purchaser in the amount of the Purchaser's Proven Deposit.

49. To the extent that an APS is in the name of more than one Purchaser, each Purchaser named in the APS has to deliver a Release Agreement and Certificate of Identity attaching copies of two pieces of government issued identification both in a form satisfactory to the Receiver, prior to the Receiver terminating the Purchasers' APS and issuing a cheque in the name of the Purchasers in the amount of the Purchasers' Proven Deposits.
50. If: (a) a Purchaser does not present two pieces of current (and not expired) government issued identification (one which shall include a photo of the Purchaser and one which shall include the Purchaser's address) to the Receiver in accordance with this Deposit Return Procedure Order; (b) the Purchaser does not execute a Certificate of Identity or Release Agreement; or (c) for any reason, the Receiver or The Guarantee Company is not satisfied with the identification of a Purchaser, then the Receiver is entitled to refuse to pay a Proven Deposit to the Purchaser and such issue shall be addressed pursuant to a further Order of this Court.
51. Pursuant to the Deposit Return Procedure Order, where the Receiver makes a payment to a Purchaser of its Proven Deposit, the Purchaser (including its heirs, executors and assigns) shall be:
  - a. Deemed to absolutely and unconditionally remise, release, acquit and forever discharge the Receiver, Tarn Construction, Tarn Financial, Tarion and The Guarantee Company for any Claims for return of a Deposit, including interest thereon; and
  - b. Forever barred, estopped and enjoined from making, asserting or enforcing any such claim for a Deposit, including interest thereon, against the Receiver, Tarn Construction, Tarn Financial, Tarion and The Guarantee Company and all such claims shall be forever extinguished as against all such parties.
52. To address the Tarion Bonds and the security held by The Guarantee Company, starting on July 18, 2018 and once every two weeks thereafter, upon release of the Proven Deposits, the Receiver shall provide to Tarion and The Guarantee Company the Statutory Declaration in the form attached as Schedule "G" to the Deposit Return Procedure Order. Upon paying

the final Proven Deposit, the Receiver shall issue a final Statutory Declaration confirming same.


53. Upon Tarion being satisfied that its liability to the relevant Purchasers for Claims in respect of their Proven Deposits has been extinguished, Tarion will provide confirmation to The Guarantee Company once every two weeks that the Tarion Bonds are reduced by the amount of the Proven Deposit, as applicable, on a APS by APS basis, to a maximum of \$20,000 for each Proven Deposit; provided, however, that Tarion shall at all times be entitled to retain a sufficient portion of the Tarion Bonds or a reserve (the “**Reserve**”), as determined by Tarion acting reasonably, to cover Tarion’s liabilities in respect of amounts secured by the Tarion Bonds that have not been extinguished to the satisfaction of Tarion at the time of any reduction. Subject to the foregoing and with the Receiver’s consent, such a Reserve may be established by the Receiver on terms satisfactory to Tarion, acting reasonably, and upon the establishment of any such Reserve, Tarion will return the Tarion Bonds to The Guarantee Company for cancellation.
54. The Receiver is of the view that the Deposit Return Procedure Order provides an appropriate procedure to allow for the termination of the APSs and the return of the Proven Deposits to the Purchasers.

## **VI. CONCLUSION**

55. The Liquidator and Receiver submit this Fourth 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 the Deposit Return Procedure Order.

All of which is respectfully submitted at Toronto, Ontario this 8<sup>th</sup> day of June, 2018.

**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

**FOURTH REPORT OF KPMG INC. in its capacity as  
LIQUIDATOR OF TARN FINANCIAL  
CORPORATION and SECOND 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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**Stephanie De Caria LSUC#: 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 “A”

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

THE HONOURABLE MR )  
JUSTICE LEDERMAN )  
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 “**OBCA**”) 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 and 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.

A handwritten signature in black ink, appearing to read "Ladewig", is written over a horizontal line.

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LE / DANS LE REGISTRE NO:

OCT 06 2017

PER / PAR:

Handwritten initials, possibly "PL", in black ink.



CL

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**  
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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 MR.  
JUSTICE MCEWEN

)  
)  
)

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

**MOTION UNDER** Section 101 of the  
*Courts of Justice Act*, R.S.O. 1990, c. C.43

**ORDER  
(appointing Receiver)**

**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 *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 pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KPMG as receiver and manager (in such capacities, the "**Receiver**") without security,

of all of the assets, undertakings and properties of Tarn Construction Corporation (“**Tarn Construction**”) acquired for, or used in relation to a business carried on by Tarn Construction, 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, and on reading the consent of KPMG to act as the Receiver,

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

#### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, KPMG is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of Tarn Construction acquired for, or used in relation to a business carried on by Tarn Construction, including all proceeds thereof (the “**Property**”).

#### **RECEIVER’S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver 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 Construction, 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 Construction;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, 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 the Receiver'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 Construction or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to Tarn Construction and to exercise all remedies of Tarn Construction in collecting such monies, including, without limitation, to enforce any security held by Tarn Construction;
- (g) to take steps to commence a process to confirm the deposit amounts being held by Tarn Construction pursuant to Agreements of Purchase and Sale between Tarn Construction as vendor and purchasers for pre-sold condominium units for the contemplated development project known as "The Kennedy's";
- (h) to settle, extend or compromise any indebtedness owing to Tarn Construction;

- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of Tarn Construction, for any purpose pursuant to this Order;
- (j) 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 Construction, the Property or the Receiver, and to settle or compromise any such proceedings. 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;
- (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 the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver 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, if thought desirable by the Receiver, in the name of Tarn Construction;
- (n) to exercise any shareholder, partnership, joint venture or other rights which Tarn Construction 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 the Receiver 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 Construction, and without interference from any other Person.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) Tarn Construction, (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 the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver 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 Construction, 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 the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **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 the Receiver for the purpose of allowing the Receiver 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 the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

**NO PROCEEDINGS AGAINST THE RECEIVER**

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

**NO PROCEEDINGS AGAINST TARN CONSTRUCTION OR THE PROPERTY**

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

**NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against Tarn Construction, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or Tarn Construction to carry on any business which Tarn Construction is not lawfully entitled to carry on, (ii) exempt the Receiver or Tarn Construction from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.



**NO INTERFERENCE WITH THE RECEIVER**

10. **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 Construction, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with Tarn Construction 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 Construction 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 the Receiver, and that the Receiver shall be entitled to the continued use of Tarn Construction'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 the Receiver in accordance with normal payment practices of Tarn Construction or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

**PIPEDA**

12. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver 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 the Receiver, 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 Construction, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

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

13. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver 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 the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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 RECEIVER'S LIABILITY**

14. **THIS COURT ORDERS** that the Receiver 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 its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS AND FUNDING OF THE RECEIVERSHIP**

15. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver 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 the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver'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 Receiver'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 subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

16. **THIS COURT ORDERS** that the Liquidator is hereby authorized and directed to pay the reasonable fees and disbursements of the Receiver and its counsel, in each case at their standard rates and charges, and the cost of administering Tarn Construction's receivership, all from the effects and estate of Tarn Financial in accordance with the Winding Up Order and when so paid, shall take the benefit of the Receiver's Charge to the extent of such payment.

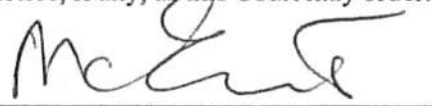
17. **THIS COURT ORDERS** that KPMG and its legal counsel shall not be obligated to maintain accounts in their capacity as Receiver and counsel to the Receiver, which are separate from the accounts they maintain in their capacity as Liquidator and counsel to the Liquidator, which accounts shall be passed from time to time in accordance with the Winding Up Order.

**GENERAL**

18. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

19. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of Tarn Construction.

20. **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 the Receiver 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.



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

APR 13 2018

PER / PAR: 

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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**RECEIVERSHIP ORDER  
(Re: Tarn Construction Corporation)  
DATED APRIL 13, 2018**

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**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

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Tel: 416.597.2652 / Fax: 416.595.8695

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

# APPENDIX “C”

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



**THE HONOURABLE  
JUSTICE MCEWEN**

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)  
)

**FRIDAY, THE 13<sup>TH</sup> DAY  
OF APRIL, 2018**

**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.**

**DEPOSIT CONFIRMATION PROCEDURE 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 approving and establishing a procedure for confirming deposits, was heard contemporaneously with a motion by the Liquidator seeking to appoint KPMG as 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**”), 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, and the schedules appended herein, the following terms shall have the following meanings:

- (a) **“Additional Deposit”** means a Deposit paid after March 31, 2018;
- (b) **“Amended and Restated Deposit Statement”** means the document restating the Deposit remitted by a Purchaser up to and including March 31, 2018 and setting out any Additional Deposit remitted by a Purchaser, as prepared by the Receiver, with the assistance of the Deposit Trustee, in the form substantially attached as **Schedule “B”** to this Order;
- (c) **“APS”** means an agreement of purchase and sale between Tarn Construction and a Purchaser for the sale and purchase of a Proposed Unit at the contemplated Development Project;
- (d) **“Business Day”** means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;
- (e) **“Court”** means the Ontario Superior Court of Justice, Commercial List;

- (f) **“Deposit”** means any monies including, without limitation, deposit monies and monies on account of extras and upgrades paid by a Purchaser pursuant to an APS for a Proposed Unit at the Development Project;
- (g) **“Deposit Confirmation Bar Date”** means 5:00 PM Eastern Standard Time on May 15, 2018 with respect to the Deposits set out on the Deposit Statement and thirty (30) calendar days after the date set out on the Amended and Restated Deposit Statement with respect to the Additional Deposits, or such later date as may be ordered by this Court;
- (h) **“Deposit Confirmation Procedure”** means the procedure outlined in this Order in connection with the confirmation and assertion of Deposits remitted to Tarn Construction, as amended or supplemented by further Order of the Court;
- (i) **“Deposit Statement”** means the document setting out the Deposit remitted by a Purchaser up to and including March 31, 2018, as prepared by the Receiver, with the assistance of the Deposit Trustee, in the form substantially attached as **Schedule “A”** to this Order;
- (j) **“Deposit Trustee”** means Bennett Jones LLP;
- (k) **“Development Project”** means the contemplated residential condominium development located at 2035 Kennedy Road, Toronto, Ontario, known as the “The Kennedys”;
- (l) **“Known Additional Deposit”** has the meaning set forth in paragraph 17 of this Order;
- (m) **“Known Deposit”** has the meaning set forth in paragraph 13 of this Order;
- (n) **“Notice of Dispute of Amended and Restated Deposit Statement”** means a notice disputing the Amended and Restated Deposit Statement, substantially in the form attached as **Schedule “D”** to this Order;



- (o) “**Notice of Dispute of Deposit Statement**” means a notice disputing the Deposit Statement, substantially the form attached as **Schedule “C”** to this Order;
- (p) “**Proposed Unit**” means a residential condominium unit at the Development Project;
- (q) “**Purchaser**” means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity, that has entered into an APS and/or has paid a Deposit, as indicated by the books and records of Tarn Construction and/or the Deposit Trustee;
- (r) “**Receiver**” means KPMG, in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of Tarn Construction pursuant to the Receivership Order; and
- (s) “**Receivership Order**” means the Order appointing KPMG as Receiver pursuant to section 101 of the CJA granted on April 13, 2018 by the Court in these proceedings.

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 the Deposit Confirmation Procedure and the form of the Deposit Statement, the Amended and Restated Deposit Statement, the Notice of Dispute of Deposit Statement and the Notice of Dispute of Amended and Restated Deposit Statement be and are hereby approved. Notwithstanding the foregoing, the Receiver may from time to time, make minor changes to the forms, in its sole discretion, as may be necessary or desirable.

6. **THIS COURT ORDERS** that the Receiver is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and may waive strict compliance with the requirements of this Order as to completion, execution and submission of such forms and to request any further documentation from a Purchaser that the Receiver may require.

7. **THIS COURT ORDERS** that copies of all forms delivered and received hereunder, as applicable, shall be maintained by the Receiver.

#### **ROLE OF THE RECEIVER**

8. **THIS COURT ORDERS** that the Receiver, in addition to its prescribed rights and obligations under the Receivership Order, shall administer the Deposit Confirmation Procedure provided for herein and is hereby directed and empowered to take such actions and fulfill such other roles as are contemplated by this Order.

#### **NOTICE REQUIREMENTS**

9. **THIS COURT ORDERS** that the Receiver shall, no later than five (5) Business Days after the date of this Order, deliver to each Purchaser a Deposit Statement.

10. **THIS COURT ORDERS** that the Receiver shall, no later than ten (10) Business Days after the Deposit Trustee receives an Additional Deposit from a Purchaser, deliver to such Purchaser an Amended and Restated Deposit Statement.

11. **THIS COURT ORDERS** that the Receiver shall, no later than five (5) Business Days after the date of this Order, post a copy of this Order on the website maintained in respect of these proceedings at [www.kpmg.com/ca/tarn](http://www.kpmg.com/ca/tarn).

12. **THIS COURT ORDERS** that the Receiver shall be entitled to rely on the accuracy and completeness of the information obtained from the books and records of Tarn Construction and the Deposit Trustee regarding the Purchasers and the Deposits. For greater certainty, the Receiver shall have no liability in respect of the information provided to it or otherwise obtained by it regarding the Purchasers and the Deposits and shall not be required to conduct any independent inquiry and/or investigation with respect to that information.

## **DEPOSIT STATEMENT**

13. **THIS COURT ORDERS** that the Receiver shall deliver a Deposit Statement to each Purchaser pursuant to paragraph 9 of this Order. Such Deposit Statement, as prepared by the Receiver, with the assistance of the Deposit Trustee, based on the books and records of Tarn Construction and the Deposit Trustee, shall be substantially in the form attached hereto as Schedule "A" and shall specify the classification, amount and nature of such Purchaser's Deposit (the "**Known Deposit**").

14. **THIS COURT ORDERS** that any Purchaser who does not dispute the classification, amount or nature of the Known Deposit set forth in the Deposit Statement delivered to such Purchaser is not required to take any further action and the Deposit of such Purchaser shall be deemed to be the Known Deposit.

15. **THIS COURT ORDERS** that any Purchaser who wishes to dispute the classification, amount and/or nature of the Known Deposit set forth in the Deposit Statement delivered to such Purchaser, shall be required to deliver a Notice of Dispute of Deposit Statement to the Receiver so that it is actually received by the Receiver by no later than the Deposit Confirmation Bar Date.

16. **THIS COURT ORDERS** that any Purchaser that does not deliver a Notice of Dispute of Deposit Statement in respect of a Deposit Statement pursuant to paragraph 15, shall be forever barred from disputing the classification, amount or nature of the Known Deposit set forth in the Deposit Statement and any Deposit in excess of the amount specified in the Deposit Statement, except for a Known Additional Deposit, shall be forever barred and extinguished.

## **AMENDED AND RESTATED DEPOSIT STATEMENT**

17. **THIS COURT ORDERS** that, in accordance with paragraph 10 of this Order, the Receiver shall deliver an Amended and Restated Deposit Statement to every Purchaser that pays an Additional Deposit to the Deposit Trustee. Such Amended and Restated Deposit Statement, as prepared by the Receiver, with the assistance of the Deposit Trustee, based on the books and records of Tarn Construction and the Deposit Trustee, shall be substantially in the form attached hereto as Schedule "B" and shall restate the Known Deposit, and specify the classification, amount and nature of such Purchaser's Additional Deposit (the "**Known Additional Deposit**").

18. **THIS COURT ORDERS** that any Purchaser who does not dispute the classification, amount or nature of the Known Additional Deposit set forth in the Amended and Restated Deposit Statement delivered to such Purchaser is not required to take any further action and the Additional Deposit of such Purchaser shall be deemed to be the Known Additional Deposit.

19. **THIS COURT ORDERS** that any Purchaser who wishes to dispute the classification, amount and/or nature of the Known Additional Deposit set forth in the Amended and Restated Deposit Statement delivered to such Purchaser, shall be required to deliver a Notice of Dispute of Amended and Restated Deposit Statement to the Receiver so that it is actually received by the Receiver by no later than the Deposit Confirmation Bar Date.

20. **THIS COURT ORDERS** that any Purchaser that does not deliver a Notice of Dispute of Amended and Restated Deposit Statement in respect of an Amended and Restated Deposit Statement pursuant to paragraph 19, shall be forever barred from disputing the classification, amount or nature of the Known Additional Deposit set forth in the Amended and Restated Deposit Statement and any Deposit in excess of the amount specified in the Amended and Restated Deposit Statement shall be forever barred and extinguished.

#### **DETERMINATION OF DEPOSITS**

21. **THIS COURT ORDERS** that, except as contemplated by paragraphs 14, 16, 18 and 20 of this Order, the applicable procedures for reviewing and determining Deposits shall be established by further Order of the Court.

#### **SERVICE AND NOTICE**

22. **THIS COURT ORDERS** that, except as set out in this Order, any Deposit Statement or Amended and Restated Deposit Statement to be given under this Order by the Receiver to a Purchaser shall be in writing and may be delivered by prepaid ordinary mail, by courier, by delivery, by facsimile transmission or electronic mail to the Purchaser to such address, facsimile number or e-mail address, as applicable, for such Purchaser as shown on the books of Tarn Construction or the Deposit Trustee. 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.

23. **THIS COURT ORDERS** that any Notice of Dispute of Deposit Statement and/or Notice of Dispute of Amended and Restated Deposit Statement required to be delivered to the Receiver 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 Receiver and Manager  
of Tarn Construction 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)

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

25. **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**

26. **THIS COURT ORDERS** that the Receiver 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.

27. **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 Receiver 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its respective agents in carrying out the terms of this Order.

28. **THIS COURT ORDERS** that the Receiver 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 Receiver 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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ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

APR 13 2018

PER / PAR:



SCHEDULE "A"

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DEPOSIT STATEMENT  
IN RESPECT OF A DEPOSIT PAID TO TARN CONSTRUCTION CORPORATION

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**Date:** [Insert Date of Issuance]

**Deposit Reference Number:** [Insert Deposit Reference Number]

**To:** [Insert Name of Purchaser] (the "**Purchaser**")  
[Insert Address of Purchaser]

**Regarding:** Agreement of Purchase and Sale between Tarn Construction Corporation and the Purchaser dated [Insert signing date of Agreement of Purchase and Sale] (the "**APS**")

**Proposed Unit:** [Unit [●], Level [●], TSCP, City of Toronto]  
[Suite [●], 2035 Kennedy Road, Toronto, Ontario, MIT 3G2] (the "**Proposed Unit**")

As you may be aware, on September 15, 2017, the Ontario Superior Court of Justice (the "**Court**") granted an Order (the "**Winding Up Order**") pursuant to the *Business Corporations Act*, R.S.O. 1990, c. B.16., as amended, appointing KPMG Inc. ("**KPMG**") as liquidator (in such capacity, the "**Liquidator**") of the effects and estate of Tarn Financial Corporation ("**Tarn Financial**"), which appointment was effective on September 25, 2017, for the purpose of winding up Tarn Financial and distributing its assets (the "**Winding Up Proceedings**"). Tarn Financial owns and operates Tarn Construction Corporation ("**Tarn Construction**") which contemplated the residential condominium development known as 'The Kennedys' (the "**Development Project**") at the real property owned by Tarn Financial and municipally known as 2035 Kennedy Road, Toronto, Ontario.

On April 13, 2018, the Court granted an Order (the "**Receivership Order**") pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, appointing KPMG as receiver and manager (in such capacities, the "**Receiver**") of all of the assets, undertakings and properties of Tarn Construction (the "**Receivership**"). On April 13, 2018, the Court also granted a Deposit Confirmation Procedure Order approving and establishing a procedure for confirming deposits (the "**Deposit Confirmation Procedure Order**"). Copies of all Orders and information pertaining to the Winding Up Proceedings and the Receivership can be found at [www.kpmg.com/ca/tarn](http://www.kpmg.com/ca/tarn).

Capitalized terms not defined herein have the meanings given to them in the Deposit Confirmation Procedure Order.

YOU ARE RECEIVING THIS DEPOSIT STATEMENT PURSUANT TO THE DEPOSIT CONFIRMATION PROCEDURE ORDER BECAUSE THE RECEIVER HAS IDENTIFIED

THAT YOU HAVE AN EXECUTED APS FOR THE PURCHASE OF A PROPOSED UNIT AT THE DEVELOPMENT PROJECT.

According to the books and records of the Deposit Trustee, Bennett Jones LLP, the amounts presented below have been received in conjunction with your APS as at March 31, 2018. All amounts are in Canadian dollars unless otherwise stated. If you agree with the amounts presented below in the Known Deposit table, **YOU ARE NOT REQUIRED TO DO ANYTHING FURTHER**. The Receiver will take your silence on the matter to mean that you are in agreement with the amount of the Known Deposit as defined in the Deposit Confirmation Procedure Order and as set out below.

**KNOWN DEPOSIT AS AT MARCH 31, 2018**

<b>Payment Type</b>	<b>Deposit Date</b>	<b>Deposit Amount</b>	<b>Deposit Classification (APS Deposit or Upgrades)</b>
<b>Total</b>			

**IF YOU WISH TO DISPUTE THE CLASSIFICATION, AMOUNT OR NATURE OF THE KNOWN DEPOSIT SET FORTH IN THIS DEPOSIT STATEMENT, YOU MUST TAKE THE STEPS OUTLINED BELOW.**

The Deposit Confirmation Procedure Order provides that if you disagree with the Known Deposit set forth in this Deposit Statement, you must deliver to the Receiver a completed Notice of Dispute of Deposit Statement before 5:00 PM Eastern Standard Time on May 15, 2018 (the “**Deposit Confirmation Bar Date**”), a copy of which is enclosed with this Deposit Statement.



If you make an Additional Deposit pursuant to your APS after March 31, 2018, the Receiver will send you an Amended and Restated Deposit Statement in accordance with the Deposit Confirmation Procedure Order. You are not required to do anything in respect of your Additional Deposit until you receive the Amended and Restated Deposit Statement.

**IF YOU FAIL TO DELIVER A NOTICE OF DISPUTE OF DEPOSIT STATEMENT IN RESPECT OF A DEPOSIT STATEMENT BY THE DEPOSIT CONFIRMATION BAR DATE, YOU SHALL BE FOREVER BARRED FROM DISPUTING THE CLASSIFICATION, AMOUNT OR NATURE OF THE KNOWN DEPOSIT SET FORTH IN THE DEPOSIT STATEMENT AND ANY DEPOSIT IN EXCESS OF THE AMOUNT SPECIFIED IN THE DEPOSIT STATEMENT, EXCEPT FOR A KNOWN ADDITIONAL DEPOSIT, SHALL BE FOREVER BARRED AND EXTINGUISHED.**

If you have any questions or concerns about the Deposit Confirmation Procedure Order or this Deposit Statement, please contact the Receiver directly at the following address:

KPMG Inc.,  
in its capacity as court-appointed Receiver and Manager  
of Tarn Construction 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)

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

**SCHEDULE "B"**

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**AMENDED AND RESTATED DEPOSIT STATEMENT  
IN RESPECT OF A DEPOSIT PAID TO TARN CONSTRUCTION CORPORATION**

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Capitalized terms not defined herein have the meanings given to them in the Deposit Confirmation Procedure Order of the Ontario Superior Court of Justice dated April 13, 2018 (the "Deposit Confirmation Procedure Order") or the Deposit Statement.

**Date:** [Insert Date of Issuance]

**Deposit Reference Number:** [Insert Deposit Reference Number]

**To:** [Insert Name of Purchaser] (the "Purchaser")  
[Insert Address of Purchaser]

**Regarding:** Agreement of Purchase and Sale between Tarn Construction Corporation and the Purchaser dated [Insert signing date of Agreement of Purchase and Sale] (the "APS")

**Proposed Unit:** [Unit [●], Level [●], TSCP, City of Toronto]  
[Suite [●], 2035 Kennedy Road, Toronto, Ontario, MIT 3G2] (the "Proposed Unit")

YOU ARE RECEIVING THIS AMENDED AND RESTATED DEPOSIT STATEMENT PURSUANT TO THE DEPOSIT CONFIRMATION PROCEDURE ORDER BECAUSE THE RECEIVER HAS IDENTIFIED THAT YOU HAVE AN EXECUTED APS FOR THE PURCHASE OF A PROPOSED UNIT AT THE DEVELOPMENT PROJECT AND YOU HAVE MADE AN ADDITIONAL DEPOSIT PURSUANT TO YOUR APS AFTER MARCH 31, 2018.

According to the books and records of the Deposit Trustee, Bennett Jones LLP, the Known Additional Deposit amounts presented below have been received in conjunction with your APS after March 31, 2018, and as of the date of this Amended and Restated Deposit Statement. All amounts are in Canadian dollars unless otherwise stated. If you agree with the amounts presented below in the Known Additional Deposit table, **YOU ARE NOT REQUIRED TO DO ANYTHING FURTHER**. The Receiver will take your silence on the matter to mean that you are in agreement with the Known Additional Deposit, as defined in the Deposit Confirmation Procedure Order and as set out below.

The Known Deposit set out in the Deposit Statement originally delivered to you is restated below. Please refer to the Deposit Statement for instructions and the deadline for disputing the classification, amount or nature of the Known Deposit restated below.

**RESTATED KNOWN DEPOSIT AS AT MARCH 31, 2018**



**and Restated Deposit Statement, being [Date to be Inserted] (the “Deposit Confirmation Bar Date”)**.

If you have already submitted a Notice of Dispute of Deposit Statement in respect of the Known Deposit restated herein in this Amended and Restated Deposit Statement, then YOU ARE NOT REQUIRED TO RE-SUBMIT a Notice of Dispute of Amended and Restated Deposit Statement in respect of the Known Deposit restated herein.

**IF YOU FAIL TO DELIVER A NOTICE OF DISPUTE OF AMENDED AND RESTATED DEPOSIT STATEMENT IN RESPECT OF AN AMENDED AND RESTATED DEPOSIT STATEMENT BY THE DEPOSIT CONFIRMATION BAR DATE, YOU SHALL BE FOREVER BARRED FROM DISPUTING THE CLASSIFICATION, AMOUNT OR NATURE OF THE ADDITIONAL KNOWN DEPOSIT SET FORTH IN THE AMENDED AND RESTATED DEPOSIT STATEMENT AND ANY DEPOSIT IN EXCESS OF THE AMOUNT SPECIFIED IN THE AMENDED AND RESTATED DEPOSIT STATEMENT SHALL BE FOREVER BARRED AND EXTINGUISHED.**

If you have any questions or concerns about the Deposit Confirmation Procedure Order or this Amended and Restated Deposit Statement, please contact the Receiver directly at the following address:

KPMG Inc.,  
in its capacity as court-appointed Receiver and Manager  
of Tarn Construction 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)

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

**SCHEDULE "C"**

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**NOTICE OF DISPUTE OF DEPOSIT STATEMENT  
IN RESPECT OF A DEPOSIT PAID TO TARN CONSTRUCTION CORPORATION**

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Capitalized terms not defined herein have the meanings given to them in the Deposit Confirmation Procedure Order of the Ontario Superior Court of Justice dated April 13, 2018 (the "Deposit Confirmation Procedure Order") or the Deposit Statement.

**I. PARTICULARS OF PURCHASER**

**Deposit Reference Number:** [Insert Deposit Reference Number listed on Deposit Statement]

**Full Legal Name of Purchaser** \_\_\_\_\_

**Full Mailing Address of Purchaser** \_\_\_\_\_

\_\_\_\_\_

**Telephone Number** \_\_\_\_\_

\_\_\_\_\_

**Email Address** \_\_\_\_\_

\_\_\_\_\_

**Attention (Contact Person)** \_\_\_\_\_

\_\_\_\_\_

**II. DISPUTE OF KNOWN DEPOSIT SET OUT IN DEPOSIT STATEMENT**

The Purchaser hereby disputes the classification, amount and/or nature of the Known Deposit set out in the Deposit Statement and asserts the Deposit as set out in the following table.

**KNOWN DEPOSIT AS AT MARCH 31, 2018**

<b>Payment Type</b>	<b>Deposit Date</b>	<b>Deposit Amount</b>	<b>Deposit Classification (APS Deposit or Upgrades)</b>

<b>Total</b>			

**III. REASONS FOR DISPUTE**

Provide full particulars below as to the basis for the Purchaser’s dispute of the Known Deposit as set out in the Deposit Statement and provide supporting documentation. This includes, without limitation, description and copies of agreement(s) giving rise to the Deposit and proof of Deposit dates and amounts (copies of cheques, bank statements or other form of proof from a financial institution to confirm that a deposit was paid by the Purchaser named on the APS). The particulars provided must support the value of the Deposit as stated by the Purchaser in the table above.

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

\_\_\_\_\_  
Signature of Purchaser or its  
Authorized Signatory

This Notice of Dispute of Deposit Statement **MUST** be delivered to the Receiver at the address below by no later than **5:00 PM Eastern Standard Time on May 15, 2018** (the “**Deposit Confirmation Bar Date**”).

KPMG Inc.,  
in its capacity as court-appointed Receiver and Manager  
of Tarn Construction 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)

If a completed Notice of Dispute of Deposit Statement in respect of the Known Deposit is not received by the Receiver by the Deposit Confirmation Bar Date, the Purchaser shall be forever barred from disputing the classification, amount or nature of the Known Deposit and any Deposit of a different classification or nature or in excess of the amount specified in the Known Deposit, except for a Known Additional Deposit, shall be forever barred and extinguished.

**IF A NOTICE OF DISPUTE OF DEPOSIT STATEMENT IS NOT RECEIVED BY THE RECEIVER WITHIN THE PRESCRIBED TIME PERIOD, THE KNOWN DEPOSIT AS SET OUT IN THE DEPOSIT STATEMENT WILL BE DEEMED TO BE THE KNOWN DEPOSIT OF THE PURCHASER AND WILL BE FINAL AND BINDING ON THE PURCHASER FOR ALL PURPOSES.**

**SCHEDULE "D"**

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**NOTICE OF DISPUTE OF AMENDED AND RESTATED DEPOSIT STATEMENT  
IN RESPECT OF A DEPOSIT PAID TO TARN CONSTRUCTION CORPORATION**

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Capitalized terms not defined herein have the meanings given to them in the Deposit Confirmation Procedure Order of the Ontario Superior Court of Justice dated April 13, 2018 (the "**Deposit Confirmation Procedure Order**"), the Deposit Statement or the Amended and Restated Deposit Statement.

**I. PARTICULARS OF PURCHASER**

**Deposit Reference Number:** [Insert Deposit Reference Number listed on the Amended and Restated Deposit Statement]

**Full Legal Name of Purchaser** \_\_\_\_\_

**Full Mailing Address of Purchaser** \_\_\_\_\_

\_\_\_\_\_

**Telephone Number** \_\_\_\_\_

\_\_\_\_\_

**Email Address** \_\_\_\_\_

\_\_\_\_\_

**Attention (Contact Person)** \_\_\_\_\_

\_\_\_\_\_

**II. DISPUTE OF KNOWN ADDITIONAL DEPOSIT SET OUT IN AMENDED AND RESTATED DEPOSIT STATEMENT**

The Purchaser hereby disputes the classification, amount and/or nature of the Known Additional Deposit set out in the Amended and Restated Deposit Statement and asserts the Additional Deposits as set out in the following table (*see next page*).

**KNOWN ADDITIONAL DEPOSIT MADE AFTER MARCH 31, 2018**

<b>Payment Type</b>	<b>Deposit Date</b>	<b>Deposit Amount</b>	<b>Deposit Classification (APS Deposit or Upgrades)</b>
<b>Total</b>			



**III. REASONS FOR DISPUTE**

Provide full particulars below as to the basis for the Purchaser’s dispute of the Known Additional Deposit as set out in the Amended and Restated Deposit Statement and provide supporting documentation. This includes, without limitation, description and copies of agreement(s) giving rise to the Additional Deposit and proof of Additional Deposit dates and amounts (copies of cheques, bank statements or other form of proof from a financial institution to confirm that a deposit was paid by the Purchaser named on the APS). The particulars provided must support the value of the Additional Deposit as stated by the Purchaser in the table above.

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

\_\_\_\_\_  
Signature of Purchaser or its  
Authorized Signatory

This Notice of Dispute of Amended and Restated Deposit Statement **MUST** be delivered to the Receiver at the address below by no later than **5:00 PM Eastern Standard Time thirty (30) calendar days after the date set out on the Amended and Restated Deposit Statement** (the “**Deposit Confirmation Bar Date**”).

KPMG Inc.,  
in its capacity as court-appointed Receiver and Manager  
of Tam Construction 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)

If a completed Notice of Dispute of Amended and Restated Deposit Statement in respect of the Known Additional Deposit is not received by the Receiver by the Deposit Confirmation Bar Date, the Purchaser shall be forever barred from disputing the classification, amount or nature of the Known Additional Deposit and any Additional Deposit of a different classification or nature or in excess of the amount specified in the Known Additional Deposit shall be forever barred and extinguished.

**IF A NOTICE OF DISPUTE OF AMENDED AND RESTATED DEPOSIT STATEMENT IS NOT RECEIVED BY THE RECEIVER WITHIN THE PRESCRIBED TIME PERIOD, THE KNOWN ADDITIONAL DEPOSIT AS SET OUT IN THE AMENDED AND RESTATED DEPOSIT STATEMENT WILL BE DEEMED TO BE THE KNOWN ADDITIONAL DEPOSIT OF THE PURCHASER AND WILL BE FINAL AND BINDING ON THE PURCHASER FOR ALL PURPOSES.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**DEPOSIT CONFIRMATION  
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 “D”

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

THE HONOURABLE ) WEDNESDAY, THE 9<sup>th</sup> DAY  
JUSTICE MCEWEN ) OF MAY, 2018

**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.

**DISPUTED DEPOSITS RESOLUTION PROCEDURE ORDER**

**THIS MOTION**, made by KPMG Inc. (“**KPMG**”), 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 and appointed pursuant to the Order of Justice McEwen dated April 13, 2018 (the “**Receivership Order**”), upon the application of 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 establishing a procedure for the resolution of Disputed Deposits (as defined below) asserted by purchasers of proposed

condominium units in the contemplated residential condominium development located at 2035 Kennedy Road, Toronto, Ontario, known as the "The Kennedys" was heard May 1, 2018 at 330 University Avenue, Toronto, Ontario.

**ON READING** the Third Report of the Liquidator and the First Report of the Receiver dated April 24, 2018 and on hearing the submissions of counsel for the Receiver, 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 25, 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) **"Additional Deposit"** means a Deposit paid after March 31, 2018;
- (b) **"Amended and Restated Deposit Statement"** means the document delivered to Purchasers restating the Deposit remitted by a Purchaser up to and including March 31, 2018 and setting out any Additional Deposit remitted by a Purchaser, as prepared by the Receiver, with the assistance of the Deposit Trustee, in the form substantially attached as Schedule "B" to the Deposit Confirmation Procedure Order;
- (c) **"APS"** means an agreement of purchase and sale between Tarn Construction and a Purchaser for the sale and purchase of a Proposed Unit at the contemplated Development Project;
- (d) **"Business Day"** means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;

- (e) **“Court”** means the Ontario Superior Court of Justice, Commercial List;
- (f) **“Deposit”** means any monies including, without limitation, deposit monies and monies on account of extras and upgrades paid by a Purchaser pursuant to an APS for a Proposed Unit at the Development Project;
- (g) **“Deposit Confirmation Bar Date”** means 5:00 PM Eastern Standard Time on May 15, 2018 with respect to the Deposits set out on the Deposit Statement and thirty (30) calendar days after the date set out on the Amended and Restated Deposit Statement with respect to the Additional Deposits, or such later date as may be ordered by this Court;
- (h) **“Deposit Confirmation Procedure”** means the procedure outlined in the Deposit Confirmation Procedure Order in connection with the confirmation and assertion of Deposits remitted to Tarn Construction, as amended or supplemented by further Order of the Court;
- (i) **“Deposit Confirmation Procedure Order”** means the Order approving the Deposit Confirmation Procedure granted on April 13, 2018 by the Court in these proceedings;
- (j) **“Deposit Statement”** means the document delivered to Purchasers setting out the Deposit remitted by a Purchaser up to and including March 31, 2018, as prepared by the Receiver, with the assistance of the Deposit Trustee, in the form substantially attached as Schedule “A” to the Deposit Confirmation Procedure Order;
- (k) **“Deposit Trustee”** means Bennett Jones LLP;
- (l) **“Development Project”** means the contemplated residential condominium development located at 2035 Kennedy Road, Toronto, Ontario, known as the “The Kennedys”;
- (m) **“Disputed Deposit”** means a Deposit that a Purchaser has disputed for any reason by delivering a Notice of Dispute of Deposit Statement or Notice of Dispute of

Amended and Restated Deposit Statement, as applicable, to the Receiver in accordance with the Deposition Confirmation Procedure Order;

- (n) **Disputed Deposit Resolution Procedure**” means the procedure outlined in this Order for determining Proven Deposits and resolving Disputed Deposits;
- (o) **“Known Additional Deposit”** means a Purchaser’s Additional Deposit known by the Receiver based on the books and records of Tarn Construction and the Deposit Trustee, and as set out in the Amended and Restated Deposit Statement prepared by the Receiver;
- (p) **“Known Deposit”** means a Purchaser’s Deposit known by the Receiver based on the books and records of Tarn Construction and the Deposit Trustee, and as set out in the Deposit Statement prepared by the Receiver;
- (q) **“Notice of Dispute of Amended and Restated Deposit Statement”** means a notice disputing the Amended and Restated Deposit Statement, substantially in the form attached as “Schedule D” to the Deposit Confirmation Procedure Order;
- (r) **“Notice of Dispute of Deposit Statement”** means a notice disputing the Deposit Statement, substantially the form attached as Schedule “C” to the Deposit Confirmation Procedure Order;
- (s) **“Proposed Unit”** means a residential condominium unit at the Development Project;
- (t) **“Proven Deposit”** means the amount and/or validity of a Deposit as finally determined by the Receiver, in consultation with The Guarantee Company, in accordance with this Disputed Deposits Resolution Procedure Order, and for greater certainty a Proven Deposit will be “finally determined” for the purposes of this definition if any one of the following circumstances applies:
  - (i) the Receiver has delivered a Deposit Statement or Amended and Restated Deposit Statement to a Purchaser and the applicable time period for filing a Notice of Dispute of Deposit Statement and/or Notice of Dispute of



Amended and Restated Deposit Statement under the Deposit Confirmation Procedure Order has expired without such notice being filed by the Purchaser with the Receiver;

- (ii) a Disputed Deposit has been reviewed by the Receiver, in consultation with the Deposit Trustee and The Guarantee Company, and then consensually resolved with the Purchaser in accordance with this Disputed Deposit Resolution Procedure Order;
- (iii) the Purchaser has failed to bring a motion in accordance with the timelines set out in paragraph 12 of this Order to determine the amount and/or validity of a Disputed Deposit that has not been consensually resolved;
- (iv) the Court has made a determination with respect to the amount and/or validity a Disputed Deposit, and no appeal or application for leave to appeal therefrom has been taken or served, or where such appeal or application for leave to appeal has been dismissed, determined or withdrawn;
- (u) “**Purchaser**” means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity, that has entered into an APS and/or has paid a Deposit, as indicated by the books and records of Tarn Construction and/or the Deposit Trustee; and
- (v) “**The Guarantee Company**” means The Guarantee Company of North America;

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 the Disputed Deposits Resolution Procedure be and is hereby approved. The Receiver is hereby authorized and directed to implement the Disputed Deposit Resolution Procedure, in conjunction with the Deposit Trustee and The Guarantee Company.

#### **ROLE OF THE RECEIVER**

6. **THIS COURT ORDERS** that the Receiver, in addition to its prescribed rights and obligations under the Receivership Order, shall administer the Disputed Deposit Resolution Procedure provided for herein and is hereby directed and empowered to take such actions and fulfill such other roles as are contemplated by this Order.

#### **DETERMINATION OF PROVEN DEPOSITS**

7. **THIS COURT ORDERS** that if the Receiver does not receive a Notice of Dispute of Deposit Statement from a Purchaser by the Deposit Confirmation Bar Date in accordance with the Deposit Confirmation Procedure Order, then the Known Deposit set forth in the Deposit Statement shall be a Proven Deposit.

8. **THIS COURT ORDERS** that if the Receiver does not receive a Notice of Dispute of Amended and Restated Deposit Statement from a Purchaser by the Deposit Confirmation Bar Date in accordance with the Deposit Confirmation Procedure Order, then the Known Additional Deposit set forth in the Amended and Restated Deposit Statement shall be a Proven Deposit.

9. **THIS COURT ORDERS** that following the Deposit Confirmation Bar Date, the Receiver, in consultation with the Deposit Trustee, shall review all Notices of Dispute of Deposit Statement and Notices of Dispute of Amended and Restated Deposit Statement received on or before the applicable Deposit Confirmation Bar Date and shall send copies of same to The Guarantee Company.

#### **RESOLUTION OF DISPUTED DEPOSITS**

10. **THIS COURT ORDERS** that, as soon as reasonably practicable, the Receiver, in consultation with the Deposit Trustee and The Guarantee Company, may attempt to resolve the classification, amount or nature of the Disputed Deposit with the Purchaser on a consensual basis.

11. **THIS COURT ORDERS** that if a Disputed Deposit is resolved by consent between the Receiver, The Guarantee Company and the Purchaser, then the Receiver may deliver a revised Deposit Statement or revised Amended and Restated Deposit Statement, as applicable, setting out the agreed amount of the Known Deposit and/or Additional Known Deposit, as applicable and such settled Known Deposit and/or Known Additional Deposit shall be a Proven Deposit.

12. **THIS COURT ORDERS** that in the event the Receiver, The Guarantee Company and the Purchaser are not able to resolve the Disputed Deposit or any matters arising pursuant to the Notice of Dispute of Deposit Statement and/or Notice of Dispute of Amended and Restated Deposit Statement, as applicable, the Purchaser shall schedule a motion before the Court, supported by an Affidavit setting out the basis for the Purchaser's Disputed Deposit, to be heard not later than 45 calendar days following the applicable Deposit Confirmation Bar Date. The Purchaser must serve the motion materials upon the Receiver and The Guarantee Company as set out in the Service List posted to the website in respect of these proceedings at: [www.kpmg.com/ca/tarn](http://www.kpmg.com/ca/tarn).

13. **THIS COURT ORDERS** that in the event the Purchaser fails to schedule the motion by the deadline set out in paragraph 12 of this Order, the Purchaser shall be deemed to accept the amount of the Known Deposit as set forth in the Deposit Statement and/or the Known Additional Deposit as set forth in the Amended and Restated Deposit Statement and such Known Deposit and/or Additional Known Deposit shall be a Proven Deposit.

#### **SERVICE AND NOTICE**

14. **THIS COURT ORDERS** that, except as set out in this Order, any notice or document to be given under this Order by the Receiver to a Purchaser shall be in writing and may be delivered by prepaid ordinary mail, by courier, by delivery, by facsimile transmission or electronic mail to the Purchaser to such address, facsimile number or e-mail address, as applicable, for such Purchaser as shown on the books of Tarn Construction or the Deposit Trustee. 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.

15. **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**

16. **THIS COURT ORDERS** that the Receiver 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.

17. **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 Receiver 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its respective agents in carrying out the terms of this Order.

18. **THIS COURT ORDERS** that the Receiver 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 Receiver 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.

A handwritten signature in black ink, appearing to read 'McE...', is written above a horizontal line.

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

MAY 10 2018

PER / PAR:

Handwritten initials 'NB' in black ink.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**DISPUTED DEPOSIT  
RESOLUTION PROCEDURE ORDER  
(DATED MAY 9, 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 and Court-appointed Receiver of Tarn Construction Corporation.

# APPENDIX “E”

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

THE HONOURABLE ) WEDNESDAY, THE 9<sup>th</sup> DAY  
JUSTICE MCEWEN ) OF MAY, 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.

**ORDER**

**(Re: Entitlement to Terminate Condominium Agreements of Purchase and Sale)**

**THIS MOTION**, made by KPMG Inc. ("**KPMG**"), 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**" and the "**Vendor**") pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended and appointed pursuant to the Order of Justice McEwen dated April 13, 2018 (the "**Receivership Order**"), upon the application of 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 advice and directions from the Court in accordance with paragraph 18 of the Receivership Order



specifically confirming that the Receiver is entitled to terminate the Agreements of Purchase and Sale (the “APSs”) entered into by Tarn Construction as Vendor and individual purchasers (the “Purchasers”) for the sale and purchase of proposed condominium units in the unbuilt development project known as “The Kennedys” 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**”) and confirming the timing of the Receiver’s ability to do so was heard May 1, 2018 330 University Avenue, Toronto, Ontario.

**ON READING** the Third Report of the Liquidator and the First Report of the Receiver dated April 24, 2018 and on hearing the submissions of counsel for the Receiver, 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 25, 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.

#### **DEFINED TERMS**

2. **THIS COURT ORDERS** that for the purposes of this Order capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Deposit Confirmation Procedure Order granted by the Court on April 13, 2018 in these proceedings.

#### **ENTITLEMENT TO TERMINATE APSs PURSUANT TO CONSTRUCTION FINANCING EARLY TERMINATION CONDITION**

3. **THIS COURT ORDERS AND DECLARES** that the Receiver is entitled to rely upon the Construction Financing Early Termination Condition to terminate the APSs on behalf of Tarn Construction without damages and that the Receiver is hereby authorized to give notice of

termination to terminate the APSs at any time from the date of this Order, subject to further Order of the Court being granted to address the return of Deposits to the Purchasers prior to doing so.

4. **THIS COURT ORDERS AND DECLARES** that upon termination of the APSs pursuant to paragraph 3 of this Order, the only obligation of the Receiver thereafter shall be to return Deposits on behalf of Tarn Construction to the Purchasers in accordance with the terms of the APSs and the further Order of the Court regarding the return of such Deposits. For greater certainty, upon fulfilling such obligation, in no instance thereafter shall the Vendor, Tarn Construction, its parent, Tarn Financial, the Receiver or the Liquidator be liable to the Purchasers for any other costs or claims or damages whatsoever, including, without limitation, any loss of bargain, relocation costs, loss of use of deposit monies or any other fees, professional or otherwise, expended in relation to the APSs.



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

MAY 10 2018

PER / PAR:



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER  
(RE: ENTITLEMENT TO TERMINATE  
CONDOMINIUM AGREEMENTS OF  
PURCHASE AND SALE)  
(DATED MAY 9, 2018)**

**MILLER THOMSON LLP**  
Scotia Plaza  
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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”

**CITATION:** VOLKAN BASEGMEZ ET AL V. ALI AKMAN ET AL., 2018 ONSC 3069

**COURT FILE NO:** CV-17-11697-00CL

**DATE OF HANDWRITTEN ENDORSEMENT:** 20180509

**DATE OF RELEASE:** 20180515

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**COMMERCIAL LIST**

**RE:** 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

**BEFORE:** McEwen J.

**COUNSEL:** Kyla Mahar and Stephanie De Caria, for KPMG Inc., in its capacity as  
Liquidator for Tarn Financial Corporation and in its capacity as Receiver for  
Tarn Construction Corp.

Patrick Shea, for the Applicants

Michael Valente, for Meridian Credit Union

Evita Ferreira for the Guarantee Company of North America

Jonathan Kulathungam, for Ali Akman

Brad Vermeersch for Kingsett Capital Inc.

**HEARD:** May 1, 2018

**ENDORSEMENT**

**Introduction**

1. KPMG brings this motion seeking three orders. Given that there is some time sensitivity surrounding this matter, I am releasing these reasons by way of a handwritten endorsement.
2. For the reasons below, I am granting the three orders sought.

3. From the outset I should note that, subject to my comments below, the Respondents do not oppose the orders sought nor does the Applicant or any other of the interested corporate parties that attended.
4. Not surprisingly, a number of people who signed Agreements of Purchase and Sale (APSs) with Tarn Construction also attended. They are understandably upset and some made submissions to the Court. Most would like to see the project proceed, others seek a speedy return of their deposits<sup>1</sup>.
5. As I indicated at the hearing, I have great sympathy for these purchasers, but as I will indicate below, it is my respectful view that the APSs ought to be terminated.
6. First, I will deal with the Disputed Deposits Resolution Procedure Order. The recommended procedure is reasonable.
7. Tarion and the Guarantee Company, support the order sought. The purchasers' rights are protected. Any difficulties with the May 15, 2018 bar date can be dealt with by me, if necessary. It is also important to note that the terminations are not occurring at this time. A further motion to terminate and return deposits will follow
8. The second order involves the Approval and Vesting Order. I have previously approved the sale process. The process undertaken has been robust and competitive. It has been run in two phases.
9. I have also reviewed the Confidential Appendices which contain the most competitive bids. The accepted bid contains the highest price and is unconditional. Financing is confirmed. Employees are retained and there are a number of other sensible commercial provisions.
10. The order also provides for the contemplation of a back-up bid on an expedited basis, if necessary.
11. The order, at para 7, also addresses the termination of the excluded assets including the APSs. It is in the keeping with prior orders of the Court including in *Urbancorp*, wherein Justice Newbould (at para 6) approved an Approval and Vesting Order free of APSs in similar circumstance where APSs did not attach to the real property.
12. The remainder of the order deals with non-contentious issues and closely follows the model order.
13. Overall, the process and the offer received comply with the factors to be considered as set out in *Royal Bank of Canada v. Soundair Corp.* I agree that the sale represents the highest and best outcome.
14. In this regard, I also agree that the Confidential Appendices should be sealed as per the *Sierra Club* decision. The sensitive commercial information ought not to be disclosed as to avoid prejudice in the event the sale does not close.

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<sup>1</sup> Twelve people attended. Five spoke to the court.

15. Last, the third order involves the entitlement of KPMG to terminate the agreements of purchase and sale – APSs. The terms of the APSs, as approved by Tarion, allow for early termination if certain conditions are met.
16. In considering this issue it is important to remember that Tarn Construction, the vendor, does not own the land and the APSs do not attach to the land. Tarn Construction's parent, Tarn Financial, is subject to these proceedings and the Winding Up Order. Tarn Financial, pursuant to this sales process is selling all its assets – including the property where the condominium development was to be built.
17. In considering whether this order, as drafted, should be granted it should first be noted that the early termination conditions include receipt by Tarn Construction of financing for the project on terms satisfactory to it, by October 9, 2018.
18. The question that arises is whether Tarn Construction will fulfill the condition regarding financing, by October 9, 2018 and if not, what are the ramifications.
19. Based on the record and submissions of counsel for KPMG, I am also satisfied that Tarn Construction has no chance of obtaining financing by October 9, 2018. As noted, Tarn Construction has no assets, does not own the land which is being sold, the APSs do not attach to the land, and its parent company is being liquidated and wound up.
20. Accordingly, where it has been established that it is “certain, inevitable, predestined and beyond doubt” that the condition precedent could not be met, Tarn Construction via KPMG can terminate the APSs without liability or damages other than the return of the deposits (and interest, if any): see *Pabla v. Tara Development (1999) Ltd.*, 2004 BCSC 1036.
21. The Purchasers should not have to wait until after October 9, 2018 in these circumstances.
22. Given this finding, it is also my view that s. 25(c) of the APS applies which limits the purchasers recovery as per the terms of that section. The purchasers therefore cannot pursue Tarn Construction for other costs or claims as per s. 25(c). The draft order in paras 3 and 4 recites those restrictions on liability.
23. A few of the condominiums purchasers sought costs. Based on the wording of s. 25(c) costs are not recoverable.
24. I should also note that Mr. Akman, although he did not oppose the orders sought, requested some terms as set out in para 2 of the affidavit of Kathy Ples. 2(a) was abandoned at the hearing.
25. I am not prepared to grant the terms requested in paras 2(b) - 2(e). First, Mr. Akman brings no motion and provides no caselaw to support its arguments.
26. Second, the relief he seeks in paras 2(c) and (d) is premature as the matter will be returning to me at a later stage where these issues, which will be much better known, can be dealt with.

27. Further, there is no basis that I can see at this time to expand the language as Mr. Akman proposes, as per para 2(b). Once again, it is premature and he can bring a motion on a proper record if he wishes, which will be served on all interested persons.
28. Last, there is no juristic reason I can think of to add para 2(e) at this time.
29. It is also necessary to note that one bid – Mr. Akman's - did contemplate allowing for development of the condominiums.
30. The problems with this bid is that it is much lower than the highest bid; it was conditional on financing; the liquidator sought permission to speak to the proposed financier and this was denied; plus there was no evidence of construction financing in place; and, there was no evidence of financing to close the transaction.
31. There was therefore no reasonable hope that the APSs could ultimately be saved.
32. The final issue involved the purchasers right to rescind. Although, once again, there was no motion before the Court, this issue also arose.
33. In my view, there is no need at this time to amend the order to deal with the right of rescission. The orders made are without prejudice to any purchaser's right to seek rescission if they so wish. The lifting of the stay would have to be addressed. I can deal with this issue if it arises.
34. The three orders shall therefore go as per the drafts filed. Counsel can provide me with copies for signature.

McEwen, T.



# APPENDIX “G”



**KPMG Inc.**  
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Canada

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Fax (416) 777-3364  
Internet [www.kpmg.ca](http://www.kpmg.ca)

May 11, 2018  
Sent by Email

To: Purchaser of a condominium unit at "The Kennedys",

**Re: Development project at 2035 Kennedy Road ("The Kennedys")**

As you are aware, KPMG Inc. ("KPMG") was appointed court appointed liquidator (in such capacity, the "**Liquidator**") of Tarn Financial Corporation ("**Tarn Financial**") pursuant to the Order (the "**Winding Up Order**") of the Ontario Superior Court of Justice (the "**Court**") dated September 15, 2017, which appointment was effective on September 25, 2017 pursuant to the Ontario *Business Corporations Act* for the purpose of winding up Tarn Financial and distributing its assets (the "**Winding Up Proceedings**"). Tarn owns and operates Tarn Construction Corporation ("**Tarn Construction**"), which is developing the condominium development project known as The Kennedys. The real property municipally known as 2035 Kennedy Road, Toronto that is being developed for The Kennedys is also owned by Tarn Financial (the "**Real Property**"). On April 13, 2018, the Court also granted a Receivership Order pursuant to the Ontario *Courts of Justice Act* appointing KPMG as receiver and manager (in such capacities, the "**Receiver**"), without security, of all of the assets, undertakings and properties of Tam Construction acquired for, or used in relation to a business carried on by Tam Construction (the "**Receivership Order**").

A copy of the Winding Up Order, the Receivership Order and information pertaining to the Winding Up Proceedings including all other Orders referenced in this letter are posted on KPMG's website at [www.kpmg.com/ca/tarn](http://www.kpmg.com/ca/tarn) (the "**Website**").

We are writing to you with respect to the condominium unit(s) in The Kennedys that you purchased pursuant to an Agreement of Purchase and Sale (an "**APS**") with the vendor, Tarn Construction. This letter is further to our letter to you dated April 17, 2018 and our follow up email on April 26, 2017, copies of which are posted on the Website.

We are writing to you to advise you that on May 9, 2018 the Court granted three Orders and issued reasons for the granting of the Orders (the "**Reasons**"). The three Orders and the Reasons have been posted to the Website.

First, the Court approved the Successful Bid for the sale of the Assets of Tarn Financial including the Real Property on May 9, 2018. The Successful Bid does not contemplate the purchase of the shares of Tarn Construction, the purchase of the Deposits paid pursuant to the APSs or the assumption of the APSs. The Order approving the Successful Bid specifically excludes the APSs and allows for the transfer of the Real Property free and clear of the APSs.



Page 2

Second, the Court confirmed that the Receiver is entitled to terminate the APSs on behalf of Tarn Construction without damages, subject to further Order of the Court being granted to address the return of Deposits to the Purchasers prior to doing so. The Court confirmed that, other than a return of their Deposits, Purchasers cannot pursue any other claims or costs (see page 8 of the Reasons).

Third the Court granted the Disputed Deposits Resolution Order which established a process to resolve any disputes relating to deposits held by the Deposit Trustee, Bennett Jones LLP.

As you are aware, on April 13, 2018, the Court granted a Deposit Confirmation Procedure Order establishing a process for confirming Deposits paid to Tarn Construction by Purchasers of condominium units in The Kennedys (the “**Deposit Confirmation Procedure**”). Pursuant to the Deposit Confirmation Procedure, you should have received a Deposit Statement by mail setting out the Deposit paid by you to Tarn Construction up to and including March 31, 2018, as indicated by the books and records of Tarn Construction and the Deposit Trustee. If you did not receive the Deposit Statement, please contact KPMG by phone at 1-855-222-8083 or by email at [tarn@kpmg.ca](mailto:tarn@kpmg.ca) to request that your Deposit Statement be resent to you. The Deposit Statement has instructions on what is required of you. If you agree with the amount of the Deposits set out on the Deposit Statement then you do not have to do anything. If you dispute the amounts set out on the Deposit Statement, you are to file a Notice of Dispute of Deposit Statement (“**Notice of Dispute**”) with KPMG by May 15, 2018. Thereafter, KPMG will review the Notices of Dispute received and seek to resolve the disputes in accordance with the Disputed Deposits Resolution Order.

Once KPMG has reviewed and considered any Notices of Dispute received, it intends to bring a motion to address the return of Deposits to the Purchasers to allow KPMG to terminate the APSs. KPMG will advise you when this motion will be heard by the Court.

Should you wish to discuss this matter further, **all inquiries** should be directed to KPMG’s voicemail box at (416) 649-7623 or (1-855) 222-8083 or at [tarn@kpmg.ca](mailto:tarn@kpmg.ca). **A representative of KPMG will endeavour to respond to your inquiry within 48 hours.**

Yours truly,

**KPMG Inc.**  
**In its capacity as Liquidator of**  
**Tarn Financial Corporation and Receiver**  
**of Tarn Construction Corporation**