

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

B E T W E E N :

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

Applicants

– and –

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

Respondents

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

**MOTION RECORD
(RETURNABLE NOVEMBER 17, 2017)**

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

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SUPERIOR COURT OF JUSTICE
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TAB 1

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

BETWEEN:

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

Applicants

– and –

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

Respondents

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

**NOTICE OF MOTION
(Returnable November 17, 2017)**

KPMG Inc., in its capacity as court appointed liquidator (the “**Liquidator**”) pursuant to sections 207 and 248 of the Ontario *Business Corporations Act* (“**OBCA**”) of the effects and estate of Tarn Financial Corporation (“**Tarn**”) and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the “**Winding Up Order**”) effective on September 25, 2017 will make a motion to a Judge presiding over the Commercial List on Friday November 17, 2017 at 10:00 a.m. or as soon after that time as the Motion can be heard at the Court hours located at 330 University Avenue, 8th Floor, Toronto, Ontario M5G 1R7.

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

THE MOTION IS FOR:

- (a) A Sale Process Order substantially in the form attached hereto as Schedule “A”:
 - (i) authorizing the Liquidator, *nunc pro tunc*, to execute and to carry out and perform its obligations under marketing and listing agreement between the

Liquidator and CBRE Limited (“**CBRE**”) dated November 10, 2017 (the “**Marketing and Listing Agreement**”) (including the payment of the amounts due to be paid to CBRE by the Liquidator pursuant to the terms thereof), and approving same;

- (ii) approving the sale process, substantially in the form attached as Schedule A to the Sale Process Order (the “**Sale Process**”); and
 - (iii) authorizing the Liquidator to apply for a consent to sever the real property owned by Tarn and municipally known as 2035 Kennedy Road, Toronto, Ontario (the “**Real Property**”);
- (b) An Order substantially in the form attached hereto as Schedule “B”:
- (i) authorizing the Liquidator to sell, convey, transfer, lease or assign the assets, property and undertaking of Tarn (the “**Assets**” or the “**Property**”) or any part or parts thereof out of the ordinary course of business, without the approval of this Court in respect of any transaction not exceeding \$250,000 provided that the aggregate consideration for all such transactions does not exceed \$1,000,000;
 - (ii) amending the Winding Up Order to include a paragraph confirming the stay of proceedings as against Tarn, the Property, which included Tarn Construction Corporation (“**Tarn Construction**”), and the Liquidator;
 - (iii) approving the First Report of the Liquidator dated November 13, 2017 (the “**First Report**”) and the activities and conduct of the Liquidator from the date of the Winding Up Order to the date of the First Report as set out therein; and
 - (iv) sealing and treating as confidential, Confidential Appendix “1” to the First Report; and
- (c) Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Winding Up Order

- (a) Pursuant to the Winding-Up Order, KPMG Inc. was appointed as Liquidator of the effects and estate of Tarn effective from September 25, 2017, with the powers and obligations set forth in Part XVI of the OBCA and the Winding Up Order;
- (b) Capitalized terms under this section shall have the meaning ascribed to them in the Winding Up Order or the Sale Process;

Sale Process

- (c) Pursuant to the Winding Up Order and the OBCA, the Liquidator is authorized to market the Property for sale;
- (d) The Sale Process is designed to seek market the Assets, obtain offers and select a successful bid to bring forward for Court approval;
- (e) The Sale Process contemplates a two-phase process. In the first phase, Interested Parties that meet the Phase I Participant Requirements set out in the Sale Process, shall be provided with the Confidential Information Memorandum, granted access to a data room and provided with an opportunity to undertake a site visit with CBRE, in order to prepare and submit a Phase I Bid by the Phase I Bid Deadline, being January 17, 2018;
- (f) Phase I Bidders that are determined by the Liquidator and CBRE to be Qualified Phase I Bidders shall be invited to participate in the second phase of the Sale Process, wherein they shall be entitled to submit a Phase II Bid by the Phase II Bid Deadline, being February 7, 2018;
- (g) In the Liquidator's view, the Sale Process is: (i) consistent with market practice; (ii) provides a reasonable opportunity for interested parties to consider the opportunity and participate in the Sale Process; (iii) enables the Liquidator to

maximize realizations from the Assets; and (iv) is reasonable and appropriate in the circumstances;

- (h) Following the determination of the Successful Bid, the Liquidator shall seek Court approval in the form of an Approval and Vesting Order to consummate the transactions provided for in the Successful Bid;

Application for Severance

- (i) The Assets are comprised of (i) the Hotel Assets being all assets related to the operations of the 366-room Delta Toronto East Hotel, and (ii) the Development Assets being the adjoining development lands known as “The Kennedys Condominium Project” (Phase 1), which contemplates the construction of two condominium towers containing a total of 644 units of which substantially all of the units have been pre-sold;
- (j) The Real Property containing the Hotel Assets and the Development Assets has not been legally severed;
- (k) The Liquidator is seeking the ability to apply for a consent to sever the Real Property, in order to allow the Liquidator to preserve the option that the Hotel Assets and the Development Assets may be sold in two parcels as well as together under the Sale Process;

Approval of Marketing and Listing Agreement and Sealing Order

- (l) The Liquidator has, subject to Court approval, engaged CBRE to act as marketing and listing agent in the Sale Process. Further details regarding the Marketing and Listing Agreement are provided in the First Report and a redacted version of the Marketing and Listing Agreement (with the fees redacted) is attached to the First Report;
- (m) The Liquidator is of the view that the engagement of CBRE to act as marketing and listing agent and to assist the Liquidator in the implementation of the Sale Process is beneficial to these winding up proceedings (the “**Winding Up**

Proceedings”) and will assist in the efforts to maximize realizations from the Assets;

- (n) The Liquidator is seeking an order sealing and treating as confidential the unredacted Marketing and Listing Agreement filed with the Court as Confidential Appendix “1”. CBRE has advised the Liquidator that it believes that disclosure of the fees could potentially have an adverse influence on the Sale Process;
- (o) The Liquidator is of the view that the scope of the sealing order is limited and reasonable in the circumstances to protect commercially sensitive information

Amendment to Winding Up Order

- (p) Tarn Construction is a wholly owned subsidiary corporation of Tarn and is therefore captured by the definition of Property contained in the Winding Up Order;
- (q) As set out above the Assets include the Development Assets;
- (r) In connection with the Development Project, Tarn Construction entered into various agreements and contracts as set out in the First Report including the agreements of purchase and sale with purchasers as the vendor of the condominium units and contracts with consultants relating to the development of the Development Project;
- (s) Certain of consultants have registered construction liens as detailed in the First Report, which the Liquidator has then had to address;
- (t) The Liquidator has determined that an amendment to the Winding Up Order, in particular, the addition of a paragraph confirming the stay of proceedings against Tarn, including Tarn Construction, the Property, and the Liquidator, and allowing for perfection of construction liens (among other things) would be facilitative to the Winding Up Proceedings;

Approval of Liquidator’s First Report and Activities

- (u) The First Report sets out in detail the activities of the Liquidator since the date of its appointment to the date of the First Report;

General

- (v) Rule 37 of the *Ontario Rules of Civil Procedure*, R.R.O. 1990, Reg.194, as amended;
- (w) Section 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (x) Part XVI of the OBCA; and
- (y) Such further and other grounds as the lawyers may advise and this Honourable Court may permit.

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

- (a) The First Report; and
- (b) Such further evidence as the lawyers may advise and this Honourable Court may permit.

November 13, 2017

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

TO: The Service List Attached hereto as Schedule "C"

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable November 17, 2107)**

MILLER THOMSON LLP

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

SCHEDULE “A”

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

THE HONOURABLE ●)
)
JUSTICE ●)
) **FRIDAY, THE 17TH DAY**
) **OF NOVEMBER, 2017**

BETWEEN:

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,
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Applicants

– and –

ALI AKMAN, SAMM CAPITAL HOLDINGS INC.
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Respondents

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

SALE PROCESS ORDER

THIS MOTION, made by KPMG Inc., in its capacity as court appointed liquidator (the “**Liquidator**”) pursuant to section 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial Corporation (“**Tarn**”), for an order: (a) authorizing the Liquidator to enter into and approving the marketing and listing agreement between the Liquidator and CBRE Limited (“**CBRE**”) dated November 10, 2017 (the “**Marketing and Listing Agreement**”); (b) approving the sale process, substantially in the form set out in **Schedule “A”** hereto (the “**Sale Process**”), and (c) authorizing the Liquidator to apply for a consent to sever the real property owned by Tarn and municipally known as 2035 Kennedy Road, Toronto, Ontario (the “**Real Property**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Liquidator dated November 13, 2017 (the “**First Report**”), and on hearing the submissions of counsel for the Liquidator, the Applicants, certain of the Respondents, Kingsett Mortgage Corporation, 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 ● sworn November ●, 2017, filed:

DEFINITIONS

1. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings set out in the Sale Process.

SERVICE

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

MARKETING AND LISTING AGREEMENT

3. **THIS COURT ORDERS** that the Liquidator is authorized, *nunc pro tunc*, to execute and to carry out and perform its obligations under the Marketing and Listing Agreement (including the payment of the amounts due to be paid to CBRE by the Liquidator pursuant to the terms thereof), and such Marketing and Listing Agreement is hereby approved.

SALE PROCESS

4. **THIS COURT ORDERS** that the Sale Process substantially in the form attached as **Schedule “A”** be and is hereby approved.

5. **THIS COURT ORDERS** that the Liquidator is authorized and directed to carry out the Sale Process utilizing the services of CBRE for the purpose of soliciting interest in and opportunities for a sale of the assets, property and undertaking of Tarn (the “**Assets**”) and to take such steps and execute such documentation as may be necessary or incidental to the Sale Process.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Liquidator either directly or through CBRE, may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of the Assets (the “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 Liquidator, or in the alternative destroy all such information. The purchaser of the Assets shall be entitled to continue to use the personal information provided to it, and in a manner which is in all material respects identical to the prior use of such information by the Liquidator and/or Tarn, and shall return all other personal information.

7. **THIS COURT ORDERS** that the Liquidator and its respective affiliates, partners, employees and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from gross negligence or wilful misconduct of the Liquidator in performing its obligations under the Sale Process as determined by this Court.

AUTHORIZATION TO COMMENCE APPLICATION FOR SEVERANCE

8. **THIS COURT ORDERS** that the Liquidator is hereby empowered and authorized, but not obligated, to apply for a consent to sever the Real Property and to take such steps and to execute such documentation as may be needed to finally sever the lands, including but not limited to the satisfaction of severance conditions and the conveyance of any interests in the lands to public bodies if required, to allow the Liquidator to preserve the option that the Hotel Assets and the Development Assets may be sold in two parcels as well as together under the Sale Process.

GENERAL

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

Schedule “A” - Sale Process

On September 15, 2017, the Ontario Superior Court of Justice (the “**Court**”) issued an order (the “**Winding Up Order**”), ordering the winding up of Tarn Financial Corporation (“**Tarn**”) and appointing KPMG Inc. as the Liquidator (the “**Liquidator**”) of the estate and effects of Tarn pursuant to the Ontario *Business Corporations Act*, which appointment is effective as of September 25, 2017. Pursuant to the Winding Up Order, the Liquidator is authorized to market the assets, property and undertaking of Tarn (the “**Assets**”) for sale and, subject to approval of the Court, negotiate such terms and conditions of sale as the Liquidator in its discretion may deem appropriate. The Assets include the 366-room Delta Toronto East Hotel (the “**Hotel Assets**”) and adjoining development lands known as “The Kennedy’s Condominium Project”, which contemplates the construction of two condominium towers containing a total of 644 units of which substantially all of the units have been pre-sold (the “**Development Assets**”) each located at 2035 Kennedy Road, Toronto, Ontario (the “**Real Property**”).

On November 17, 2017, the Court made an order (the “**Sale Process Order**”) among other things, (a) approving the marketing and listing agreement between the Liquidator and CBRE Limited dated as of November 10, 2017; (b) approving the Sale Process for the solicitation of offers or proposals (each a “**Bid**”) for the acquisition of the Assets; and (c) authorizing the Liquidator to apply for consent to sever for the Real Property (the “**Land Severance**”).

Accordingly, the following Sale Process shall govern the proposed sale of all or substantially all of the Assets pursuant to one or more Bids. This Sale Process shall govern the process relating to the solicitation by the Liquidator, utilizing CBRE as set out herein, of one or more Bids for the Assets that, alone or in combination, are determined by the Liquidator, taking into account the market expertise of CBRE, to be the highest or otherwise best offer for the Assets to be brought forward by the Liquidator for Court approval. The Sale Process is intended to solicit interest in an acquisition of the Assets, under a fair and competitive sale process pursuant to which all qualified interested parties will be provided with a fair and equal opportunity to participate in the Sale Process.

Notwithstanding anything contained herein, the Liquidator shall have the right to enter into an exclusive transaction for the sale of the Assets, or any portion thereof, outside of the Sale Process prior to the selection of a Successful Bidder (as defined herein).

1. **Definitions**

Capitalized terms used in this Sale Process shall have the definitions given to them in the preamble hereto and as follows:

“**Acknowledgement of Sale Process**” means an acknowledgement of the Sale Process in the form attached as **Schedule 1** hereto;

“**Acquisition Entity**” means an entity specially formed for the purpose of effectuating the contemplated transaction;

“**Approval and Vesting Order**” has the meaning given to it in Section 13 hereof;

“**Back-up Bid**” means the next highest and/or best Qualified Phase II Bid after the Successful Bid, as assessed by the Liquidator and CBRE, taking into account financial and contractual terms, the claims likely to be created by such Bid in relation to other Bids and other factors relevant to the Sale Process, including those factors affecting the speed and certainty of consummating the proposed sale, provided that one or more Portion Bids may form part of the Back-up Bid so long as such Portion Bids, if more than one, do not overlap in respect of the Assets sought to be purchased and the Liquidator has determined that it will be able to obtain the Land Severance;

“**Back-up Bidder**” means the Bidder submitting the Back-up Bid;

“**Bidder**” means a Qualified Phase I Bidder or a Qualified Phase II Bidder;

“**Binding APA**” means executed asset purchase agreement reflecting the applicable Qualified Phase I Bidder’s proposed changes to the Non-Binding APA that it submitted and reflecting the applicable Qualified Phase I Bidder’s proposed changes to the Template APA;

“**CBRE**” means CBRE Limited, in its capacity as listing and marketing agent engaged by the Liquidator pursuant to a Marketing and Listing Agreement dated as of November 10, 2017 and approved by the Court by Order dated November 17, 2017;

“**Confidential Information Memorandum**” means a confidential information memorandum prepared by CBRE providing certain confidential information in respect of or related to the Assets;

“**Confidentiality Agreement**” means an executed confidentiality agreement in form and substance acceptable to the Liquidator and its counsel;

“**Development Assets**” means development lands known as “The Kennedys Condominium Project” (Phase 1), which contemplates the construction of two condominium towers containing a total of 644 units of which substantially all of the units have been pre-sold;

“**Encumbrances**” means, collectively, all charges, pledges, liens, security interests, encumbrances, claims, options, and interests thereon and there against the Assets, other than any permitted encumbrances under the Successful Bidder’s Successful Bid;

“**Good Faith Deposit**” means a cash deposit equal to ten (10) percent of the total purchase price contemplated under the applicable Binding APA;

“**Hotel Assets**” means all of the Assets related to the hotel operations currently branded as the Delta Toronto East Hotel;

“**Interested Party**” means a party participating in this Sale Process and for greater certainty may include any shareholder of Tarn;

“**Land Severance**” has the meaning given to it in Section 2 hereof;

“**Non-Binding APA**” means an asset purchase agreement submitted by the applicable Qualified Phase I Bidder including a mark-up to the Template APA reflecting the applicable Qualified Phase I Bidder’s proposed changes to the Template APA;

“**Notice Parties**” means CBRE to the attention of Bill Stone (bill.stone@cbre.com) Deborah Borotsik (deborah.borotsik@cbre.com), Mike Czestochowski (mike.czestochowski@cbre.com) and Lauren Doughty (lauren.doughty@cbre.com), the Liquidator to the attention of Anamika Gadia (agadia@kpmg.ca) and counsel to the Liquidator, Miller Thomson LLP, to the attention of Kyla Mahar (kmahar@millerthomson.com);

“**Phase I Bid**” means an initial Bid submitted by an Interested Party pursuant to Section 7 hereof;

“**Phase I Bid Deadline**” means noon (Eastern time) on January 17, 2018;

“**Phase I Bidder**” means a bidder submitting a Phase I Bid;

“**Phase I Participant Requirements**” has the meaning given to it in Section 7 hereof;

“**Phase II Bid**” means a Bid submitted by a Qualified Phase I Bidder pursuant to Section 9 hereof;

“**Phase II Bid Deadline**” means noon (Eastern time) on February 7, 2018;

“**Phase II Participant Requirements**” means, collectively, the requirements set out in Section 7(a) through 7(e) hereof;

“**Portion Bid**” means a Bid in respect of either the Hotel Assets or the Development Assets;

“**Portion Bidder**” means a bidder submitting a Portion Bid;

“**Principals**” means, collectively, the equity holder(s) of an Acquisition Entity and any guarantor of any Bid made by such Acquisition Entity;

“**Qualified Phase I Bidder**” means (i) a Phase I Bidder for all of the Assets that delivers the documents described in paragraphs (a) through (d) in Section 7, and that the Liquidator and CBRE, in consultation with the Secured Lenders, determine is reasonably likely to submit a binding *bona fide* offer at fair market value for the Assets that it would be able to consummate if selected as a Successful Bidder or (ii) a Phase I Bidder that is a Portion Bidder and that delivers the documents described in paragraphs (a) through (d) in Section 7, and that the Liquidator and CBRE, in consultation with the Secured Lenders, determine is reasonably

likely to submit a binding *bona fide* offer at fair market value for the Assets it is seeking to purchase that would be able to consummate a transaction if selected as a Successful Bidder.

“**Qualified Phase II Bid**” means a Phase II Bid that satisfies the conditions set out in Section 9 hereof. A Portion Bid may be a Qualified Phase II Bid if the Liquidator has determined that it will be able to obtain a Land Severance;

“**Qualified Phase II Bidder**” means a Bidder submitting a Qualified Phase II Bid;

“**Sale Hearing**” means a hearing to approve the sale of Assets to the Successful Bidder;

“**Secured Lenders**” means Meridian Credit Union Limited and Kingsett Mortgage Corporation;

“**Successful Bid**” means the highest and/or best Qualified Phase II Bid as determined by the Liquidator and CBRE, taking into account financial and contractual terms and the factors relevant to the Sale Process, including those factors affecting the cost, speed and certainty of consummating the proposed sale, the claims likely to be created by such Bid in relation to other Bids and, provided that one or more Portion Bids may be able to form part of the Successful Bid as long as such Portion Bids do not overlap in respect of the Assets sought to be purchased and the Liquidator has determined that it will be able to obtain the Land Severance;

“**Successful Bidder**” means the Bidder submitting the Successful Bid;

“**Template APA**” means a template asset purchase agreement prepared by the Liquidator and available to Interested Parties from CBRE;

“**Units**” means the condominium units pre-sold by Tarn and/or Tarn Construction for The Kennedy’s Condominium Project and “**Unit**” means any one of them.

2. **Assets for Sale**

At the request of the Liquidator, CBRE is soliciting offers for all or a portion of the Assets.

As at the time of commencing the Sale Process, the Real Property containing the Hotel Assets and the Development Assets has not been legally severed. While the Sale Process is being undertaken, the Liquidator has been given the authority to apply for to apply for a consent to sever the Real Property and to take such steps and to execute such documentation as may be needed to finally sever the lands (a “**Land Severance**”), including but not limited to the satisfaction of severance conditions and the conveyance of any interests in the lands to public bodies if required, to allow the Liquidator to preserve the option that the Hotel Assets and the Development Assets may be sold in two parcels as well as together under the Sale Process. Whether obtaining a Land Severance results in value maximization and whether the Liquidator will be able to obtain a Land Severance is uncertain at this time.

For the purposes of the Sale Process, it is recommended that Bidders submit a Phase I Bid for all of the Assets. To the extent that Bidders submitting a Phase I Bid would be interested in also submitting a Portion Bid for the Hotel Assets or the Development Assets, such Phase I Bidder will be required to ascribe a value to these Assets separately and then collectively if their Phase I Bid includes both. CBRE and the Liquidator will consider Phase I Bids that are Portion Bids submitted for either the Hotel Assets or the Development Assets based on, among other factors, the interest from Bidders and the expected ability to obtain a Legal Severance and the timing of obtaining same, the Liquidator and CBRE will determine whether to pursue the Land Severance to allow the Hotel Assets and the Development Assets to be sold separately or whether to seek to introduce Bidders submitting Portion Bids to each other for the purposes of submitting a Qualified Phase II Bid for the Assets collectively.

The Liquidator reserves the right to eliminate certain assets available for sale pursuant to the Sale Process prior to the Phase I Bid Deadline.

3. Sale Process Structure and Bidding Deadlines

The Liquidator has engaged CBRE as listing and marketing agent to undertake the marketing and sale aspects of the Sale Process, subject to the oversight of the Liquidator as the statutory representative of Tarn and officer of the Court. Interested Parties wishing to obtain information about the Sale Process, a copy of the Confidentiality Agreement and information in connection with their due diligence, should contact the following representatives of CBRE: bill.stone@cbre.com; deborah.borotsik@cbre.com, mike.czestochowski@cbre.com and lauren.doughty@cbre.com.

The Sale Process shall consist of two phases. In the first phase, Interested Parties that meet the Phase I Participant Requirements set out herein, shall be provided the Confidential Information Memorandum and provided with an opportunity to undertake a site visit with CBRE in order to prepare and submit their Phase I Bid by the Phase I Bid Deadline. In addition, Phase I Bidders that meet the Phase I Participant Requirements set out herein be given access to an electronic data room in order to undertake their diligence, which will include the Template APA.

All Phase I Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Process so that they are actually received by each of the Notice Parties no later than the Phase I Bid Deadline. All Phase II Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Process so that they are actually received no later than the Phase II Bid Deadline. In addition, written copies of the Bids shall be delivered by the applicable deadline to the Liquidator and its counsel at the following addresses: (a) the Liquidator, KPMG Inc., Bay Adelaide Centre, 4600 – 333 Bay Street, Toronto, Ontario M5H 2S5 Attn.: Anamika Gadia, agadia@kpmg.ca; and (b) counsel to the Liquidator, Miller Thomson LLP, Scotia Plaza, 5800- 40 King Street West, Toronto, Ontario M5H 3S1, Attn: Kyla Mahar, kmahar@millerthomson.com. A Bid received after the Phase I Bid Deadline shall not constitute a Phase I Bid and a Phase II Bid received after the Phase II Bid Deadline may be disqualified. A Bid shall be delivered to all Notice Parties at the same time.

4. **Timeline**

The following table sets out the key milestones under the Sale Process:

Milestone	Date
Phase I Bid Deadline	January 17, 2018
Phase II Bid Deadline	February 7, 2018
Anticipated Timing for Sale Hearing	March 7, 2018

Subject to the terms contained herein and any order of the Court, the dates set out in the Sale Process may be extended by the Liquidator and CBRE, in their sole discretion acting reasonably, all with a view of maximizing the value of the Assets. If the Phase I Bid Deadline or the Phase II Bid Deadline is extended, CBRE will promptly notify all of the Interested Parties that have met the Phase I Participant Requirements or all of the Qualified Phase I Bidders, as applicable.

5. **Access to Due Diligence Materials**

Only Interested Parties that satisfy the Phase I Participant Requirements will be eligible to receive the Confidential Information Memorandum. If the Liquidator and CBRE determine that a Phase I Bidder does not constitute a Qualified Phase I Bidder, then such Phase I Bidder shall not be eligible to receive additional due-diligence access or additional non-public information. Qualified Phase I Bidders will be given access to an expanded electronic data room maintained by CBRE following the Phase I Bid Deadline.

CBRE, in its reasonable business judgment, in consultation with the Liquidator as it deems necessary, and subject to competitive and other business considerations, may give each Qualified Phase I Bidder, such access to due diligence materials and information relating to the Assets as it deems appropriate. CBRE will be responsible for the coordination of all reasonable requests for additional information and due-diligence access from Qualified Phase I Bidders. CBRE may designate a representative to coordinate all reasonable requests for additional information and due diligence access from Qualified Phase I Bidders and the manner in which such requests must be communicated.

Neither the Liquidator or CBRE or any of each of their affiliates (or any of its respective representatives) will be obligated to furnish any information relating to the Assets to any person, in its discretion. The Liquidator and CBRE each make no representation or warranty as to the information to be provided through this due diligence process or otherwise, except as may be set forth in a Binding APA with the Successful Bidder(s). Neither the Liquidator nor CBRE shall be obligated to furnish any due diligence information after the Phase II Bid Deadline. Neither the Liquidator nor CBRE is responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Assets.

6. Information From Interested Parties

Each Interested Party shall comply with all reasonable requests for additional information by CBRE and/or the Liquidator regarding such Interested Party and its contemplated transaction. Failure by an Interested Party to comply with requests for additional information will be a basis for the Liquidator and CBRE to determine that the Interested Party is not a Qualified Phase I Bidder or a Qualified Phase II Bidder, as applicable.

7. Participant Requirements

Phase I Participant Requirements.

To participate in Phase I of the Sale Process and to otherwise be considered for any purpose hereunder, each Interested Party must provide CBRE with each of the following prior to being provided with the Confidential Information Memorandum: (i) an executed Confidentiality Agreement; and (ii) an executed Acknowledgement of Sale Process (collectively, the “Phase I Participant Requirements”).

Phase II Participant Requirements.

Only Qualified Phase I Bidders shall be allowed to participate in Phase II of the Sale Process. In order for the Liquidator and CBRE to determine whether an Interested Party is a Qualified Phase I Bidder, the Interested Party must provide, in form and substance satisfactory to the Liquidator and CBRE, in consultation with the Secured Lenders, the following on or before the Phase I Bid Deadline:

- (a) Identification of Phase I Bidder. Identification of the Phase I Bidder and any Principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (b) Non-Binding APA. A Non-Binding APA satisfactory to the Liquidator and CBRE that must reasonably identify the contemplated transaction, including whether the Hotel Assets or the Development Assets or all Assets (or such portions thereof) are proposed to be acquired, the proposed purchase price including allocation, if any, and any contingencies, and conditions precedent to closing;
- (c) Corporate Authority. Written evidence of the Phase I Bidder’s chief executive officer or other appropriate senior executive’s approval of the Phase I Bid; provided, however, that, if the Phase I Bidder is an Acquisition Entity, then the Phase I Bidder must furnish written evidence reasonably acceptable to the Liquidator and CBRE of the approval of the Phase I Bid by the Acquisition Entity’s Principals; and
- (d) Proof of Financial Ability to Perform. Written evidence upon which the Liquidator and CBRE may reasonably conclude that the Phase I Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in

such contemplated transaction. Such information should include, among other things, the following:

- (i) the Phase I Bidder's or, in the case of an Acquisition Entity, the Principals', current financial statements (audited if they exist);
- (ii) contact names and numbers for verification of financing sources;
- (iii) evidence of the Phase I Bidder's or Principals' internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction; and
- (iv) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Liquidator and CBRE demonstrating that such Phase I Bidder has the ability to close the contemplated transaction;

provided, however, that the Liquidator and CBRE shall determine, in their reasonable discretion, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Phase I Bidder's financial qualifications.

The Liquidator and CBRE may determine whether to entertain bids for the Assets that do not conform to one or more of the requirements specified herein and deem such bids to be a Qualified Phase I Bidder.

If the Liquidator and CBRE are not satisfied with the number or terms of the Non-Binding APAs, the Liquidator and CBRE may extend the Phase I Bid Deadline or amend the Sale Process. CBRE will promptly notify all of the Interested Parties that have met the Phase I Participant Requirements of such extension or amendment.

8. Designation as Qualified Bidder

Following the Phase I Bid Deadline, the Liquidator and CBRE, in consultation with the Secured Lenders, shall determine which Phase I Bidders are Qualified Phase I Bidders. CBRE shall notify each Phase I Bidder of the determination as to whether the Phase I Bidder is a Qualified Phase I Bidder as soon as practicable after the Phase I Bid Deadline.

Following the Phase II Bid Deadline, the Liquidator and CBRE, in consultation with the Secured Lenders, shall determine which Qualified Phase I Bidders are Qualified Phase II Bidders. CBRE shall notify each Qualified Phase I Bidder of its determination as to whether they are a Qualified Phase II Bidder as soon as practicable after the Phase II Bid Deadline.

9. Phase II Bid Requirements

Only Qualified Phase I Bidders shall be entitled to submit a Phase II Bid. CBRE will take all reasonable steps to negotiate and assist the Qualified Phase I Bidders in completing any unperformed due diligence, or any other Bid matters including any discussions or

negotiations required to be completed with any stakeholders in the winding up proceedings of Tarn, with a view of submitting a Binding APA on or before the Phase II Bid Deadline. In order to be considered a Qualified Phase II Bid, as determined by the Liquidator and CBRE, in consultation with the Secured Lenders, a Phase II Bid shall satisfy the following conditions:

- (a) Written Submission of Binding APA and Commitment to Close. The Phase II Bid must be submitted by the Phase II Bid Deadline in the form of a Binding APA (together with a blackline of the Binding APA against the Template APA outlining all changes from the Template APA and also a blackline from the Non-Binding APA submitted by the Qualified Phase I Bidder), and a written and binding commitment to close on the terms and conditions set forth therein.
- (b) Irrevocable. Include a letter stating that the Phase 2 Bid is irrevocable and open for acceptance until the Successful Bid and the Back-up Bid have been selected by the Liquidator and CBRE;
- (c) Contingencies. A Phase II Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other contingencies associated will be considered by the Liquidator and CBRE based on the other Phase II Bids received;
- (d) Financing Sources. A Phase II Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Liquidator and CBRE and appropriate contact information for such financing sources must be provided;
- (e) No Fees payable to Qualified Phase II Bidder. A Phase II Bid may not request or entitle the Qualified Phase II Bidder to any break-up fee, expense reimbursement or similar type of payment;
- (f) Disclosure: Fully disclose the identity of each entity that will be entering into the transaction and that is participating or benefiting by such Bid; and
- (g) Good-Faith Deposit. Each Phase II Bid must be accompanied by a Good Faith Deposit that shall be paid to the Liquidator by wire transfer or banker's draft, to be held by the Liquidator in trust in accordance with this Sale Process and which may be adjusted based on the process set out in Section 10.

The Liquidator and CBRE shall be entitled to seek additional information and clarifications from Qualified Phase I Bidders in respect of their Phase II Bids at any time. The Liquidator and CBRE may determine whether to entertain Bids for the Assets that do not conform to one or more the requirements specified herein and deem such Bids to be Qualified Phase II Bids.

10. **Determination of Successful Bid**

A Qualified Phase II Bid will be valued based upon several factors including, without limitation, items such as the purchase price and the net value provided by such Bid, the claims likely to be created by such Bid in relation to other Bids, the counterparties to such transactions, the proposed transaction documents, other factors affecting the speed and certainty of the closing of the transaction, the value of the transaction, the Assets included or excluded from the Bid, the transition services required from the Liquidator (if any), any related transaction costs, and the likelihood and timing of consummating such transactions, each as determined by the Liquidator and CBRE, in consultation with the Secured Lenders. For greater certainty, any Qualified Phase II Bid received from a shareholder of Tarn will be evaluated on the same criteria as any Qualified Phase II Bid received from a third party.

If more than one Qualified Phase II Bids are received by the Phase II Bid Deadline, the Liquidator and CBRE shall have the option to:

- (a) Conduct an auction amongst the Qualified Phase II Bidders, on terms to be determined by the Liquidator, to determine the Successful Bid and the Back-up Bid;
- (b) Negotiate with the Qualified Phase II Bidders and determine the Successful Bid and the Back-up Bid; or
- (c) Determine which of the Qualified Phase II Bids shall be the Successful Bid and which of the Qualified Phase II Bids shall be the Back-up Bid.

11. **Acceptance of Successful Bid**

The Liquidator shall complete the sale transaction or transactions with the Successful Bidder following approval of the Successful Bid by the Court. The Liquidator will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Liquidator will be deemed to have accepted a Back-up Bid only when it has been approved by the Court and has been deemed to be a Successful Bid.

12. **“As Is, Where Is”**

The sale of any of the Assets pursuant to this Sale Process shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Liquidator, CBRE or their respective directors, officers, employees or agents except to the extent set forth in the Successful Bid. By submitting a Bid, each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Process or as set forth in a Binding APA approved by the Court.

13. Free Of Any And All Encumbrances

Except as otherwise provided in the Successful Bid, all of the rights, title and interests of Tarn in and to the Assets, or any portion thereof, shall be sold free and clear of all Encumbrances, pursuant to an order by the Court approving the sale of the Assets, or a portion thereof, and vesting in the Successful Bidder all of Tarn's rights, title and interests in and to such Assets, or a portion thereof, by way of an approval and vesting order (the "**Approval and Vesting Order**"). For greater certainty, such Encumbrances shall attach to the net proceeds of the sale of such Assets following the granting of the Approval and Vesting Order and closing of the transaction.

14. Sale Hearing

A Sale Hearing shall be conducted by the Court as soon as practicable after the determination by the Liquidator of the Successful Bidder. If the Successful Bid is approved by the Court and the Successful Bidder fails to consummate the transaction in accordance with the terms and conditions of the Successful Bid, the Liquidator shall, provided it is so authorized by the Court, be entitled, but not required, to deem the Back-up Bid the Successful Bid and the Liquidator shall be authorized, but not required, to consummate the transaction with the Back-up Bidder and upon so doing the Back-up Bidder shall be deemed to be the Successful Bidder, subject to approval by the Court, which approval may be sought by the Liquidator on a conditional basis at the Sale Hearing, at the Liquidator's discretion.

15. Return of Good Faith Deposit

Good Faith Deposits of all Qualified Phase II Bidders shall be held in an account of the Liquidator. Good Faith Deposits of all Qualified Phase II Bidders, other than the Successful Bidder and the Back-Up Bidder, shall be returned to such Qualified Phase II Bidders within ten (10) business days of the selection of the Successful Bidder and Back-Up Bidder. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. The Good Faith Deposit of the Back-Up Bidder shall be returned to the Back-Up Bidder within three (3) business days of the closing of the transactions contemplated by the Successful Bid. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Liquidator shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of their damages resulting from the breach or failure to perform by the Successful Bidder. If the Successful Bidder fails to consummate an approved sale for any reason, and a transaction is completed with the Back-Up Bidder, the Good Faith Deposit of the Back-Up Bidder shall be applied to the purchase price of the transactions contemplated by the purchase agreement of the Back-Up Bidder at closing.

16. Reservation of Rights

The Liquidator may, after consultation with CBRE and the stakeholders it determines to be appropriate to consult in the circumstances, reject at any time before entry of an order of the Court approving a Successful Bid, any Bid that is (a) inadequate or insufficient, (b) not in

conformity with the requirements of this Sale Process, or (c) contrary to the best interests of the Winding Up.

17. Miscellaneous

This Sale Process is solely for the benefit of the Liquidator and nothing contained in the Sale Process Order or this Sale Process shall create any rights in any other person or Bidder (including without limitation rights as third party beneficiaries or otherwise).

Except as provided in the Sale Process Order and Sale Process, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Sale Process Order and the Sale Process.

Schedule "1"
Acknowledgement of Sale Process

The undersigned hereby acknowledges receipt of the Sale Process approved by the Order of the Honourable Justice ● of the Ontario Superior Court of Justice (Commercial List) dated November 17, 2017 and that compliance with the terms and provisions of the Sale Process is required in order to participate in the Sale Process and for any Phase I Bid or Phase II Bid to be considered by the Liquidator.

This _____ day of _____.

[NAME]

By:

[Signing Officer]

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**SALE PROCESS ORDER
(DATED: NOVEMBER 17, 2017)**

MILLER THOMSON LLP

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

SCHEDULE “B”

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

THE HONOURABLE ●) FRIDAY, THE 17th DAY
JUSTICE ●) OF NOVEMBER, 2017

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.

ORDER

(Re: Authorization to sell assets without Court Approval, Amendment to Winding Up Order Approval of Liquidator’s First Report and Activities and Granting of Sealing Order)

THIS MOTION, made by KPMG Inc., in its capacity as court appointed liquidator (the “**Liquidator**”) pursuant to sections 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial Corporation (“**Tarn**”) and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the “**Winding Up Order**”) effective on September 25, 2017, for an order: (a) authorizing the Liquidator to sell, convey, transfer, lease or assign the assets, property and undertaking of Tarn (the “**Property**”) or any part or parts thereof out of the ordinary course of business, without the approval of this

Court in respect of any transaction not exceeding \$250,000 provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; (b) amending the Winding Up Order to include a paragraph confirming the stay of proceedings as against Tarn, the Property, which included Tarn Construction Corporation, and the Liquidator; (c) approving the First Report of the Liquidator dated November 13, 2017 (the “**First Report**”) and the activities and conduct of the Liquidator from the date of the Winding Up Order to the date of the First Report as set out therein; and (d) sealing and treating as confidential, Confidential Appendix “1” to the First Report was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report, and on hearing the submissions of counsel for the Liquidator, the Applicants, certain of the Respondents, Kingsett Mortgage Corporation, 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 ● sworn November ●, 2017, filed:

SERVICE

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

AUTHORITY TO SELL PROPERTY WITHOUT COURT APPROVAL

2. **THIS COURT ORDERS** that KPMG is hereby empowered and authorized, but not obligated, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, without the approval of this Court in respect of any transaction not exceeding \$250,000 provided that the aggregate consideration for all such transactions does not exceed \$1,000,000.

AMENDMENT TO WINDING UP ORDER

3. **THIS COURT ORDERS** that the Winding Up Order be and is hereby amended, *nunc pro tunc*, to include the following heading and paragraph to be inserted after paragraph 8 as paragraph 8(a):

NO EXERCISE OF RIGHTS OR REMEDIES

8(a). **THIS COURT ORDERS** that all rights and remedies against Tarn including against its wholly owned subsidiary, Tarn Construction Corporation, the Liquidator, or affecting the Property, existing as at the date of the Winding Up Order are hereby stayed and suspended except with the written consent of the Liquidator 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 *Bankruptcy and Insolvency Act*, and further provided that nothing in this paragraph shall (i) empower the Liquidator in the name of Tarn to carry on any business which Tarn is not lawfully entitled to carry on, (ii) exempt the Liquidator or Tarn 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.

APPROVAL OF LIQUIDATOR’S FIRST REPORT AND ACTIVITIES

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

SEALING ORDER

5. **THIS COURT ORDERS** that, subject to further Order of the Court, Confidential Appendix “1” shall be sealed and kept confidential and shall not form part of the public record but rather shall be placed, separate and apart from all other contents of the file, in a sealed envelope that identifies the title of these proceedings and notes that the contents thereof are subject to a sealing order that may only be opened upon further Order of the Court.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

ORDER DATED NOVEMBER 17, 2017

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Lawyers for KPMG Inc., in its capacity as
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SCHEDULE "C"

EMAIL SERVICE LIST
(as at Nov 13, 2017)

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

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TAB 2

Court File No. CV-17-11697-0000

**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**

**FIRST REPORT OF KPMG INC. in its capacity as
LIQUIDATOR OF TARN FINANCIAL CORPORATION**

NOVEMBER 13, 2017

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I. INTRODUCTION

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 (the “**OBCA**”) seeking an Order winding up Tarn Financial Corporation (“**Tarn**”) and appointing KPMG Inc. (“**KPMG**”) as liquidator for that purpose. The Applicants are shareholders of Tarn and collectively hold 60% of the common shares of Tarn. The remaining 40% of the common shares of Tarn 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 His Honour reserved his decision at the ending of the hearing. Justice Lederman released his Reasons for Judgment on September 15, 2017 (the “**Reasons for Judgment**”) and for the reasons set forth therein His Honour ordered the winding up of Tarn and the appointment of KPMG as liquidator for that purpose. The Order of Justice Lederman dated September 15, 2017 (the “**Winding Up Order**”), among other things, orders that Tarn be wound-up (the “**Winding Up Proceedings**”) and appoints KPMG as liquidator (the “**Liquidator**”) for that purpose over the effects and estate of Tarn effective from September 25, 2017 with the powers and obligations set forth in Part XVI of the OBCA and the Winding Up Order. A copy of the Reasons for Judgment and the Winding Up Order are attached as **Appendix “A”** and **Appendix “B”**, respectively to this report, which is the Liquidator’s First Report to the Court (the “**First Report**”).
3. On the date of its appointment, the Liquidator took the steps necessary to take over the management of the business operations of Tarn (the “**Business**”) and to preserve and protect the assets, property and undertaking of Tarn (the “**Assets**”) all as more particularly set out in this First Report. Akman cooperated with the Liquidator in turning over management of the Business and Assets of Tarn to the Liquidator.
4. The Business and Assets of Tarn include the Delta Toronto East Hotel (the “**Hotel**”) and adjoining development lands being developed by Tarn, through its wholly-owned

subsidiary, Tarn Construction Corporation (“**Tarn Construction**”), as a development known as “The Kennedys” (the “**Development Project**”) as described in detail below located at 2035 Kennedy Rd., Scarborough Ontario (the “**Real Property**”).

5. On October 6, 2017, Akman and SAMM (collectively, the “**Appellants**”) filed a Notice of Appeal with the Divisional Court of the Ontario Superior Court of Justice (the “**Notice of Appeal**”) appealing the Winding-Up Order (the “**Appeal**”). In their Notice of Appeal, the Appellants seek the following relief:
 - a. The order that Tarn be wound up and KPMG appointed as Liquidator of the effects and estate of Tarn should be set aside;
 - b. The fair market value of the Applicants’ shares in Tarn should be determined by an independent valuation supervised and approved by the Court;
 - c. The Appellants should be ordered to purchase the Applicants’ shares in Tarn for their fair market value as at the date of the independent valuation; and
 - d. A monitor should be appointed to supervise the management of Tarn until such time as the Appellants purchase the Applicants’ shares in Tarn.

A copy of the Notice of Appeal is attached as **Appendix “C”** to this First Report.

6. On October 26, 2017, the Appellants sought and obtained an Order expediting the hearing of the Appeal (the “**Expedite Order**”). Pursuant to the Expedite Order, the Appeal is scheduled to be heard on December 22, 2017. A copy of the Expedite Order is attached as **Appendix “D”** to this First Report.
7. The purpose of this First Report is to update this Honourable Court with respect to:
 - a. Certain background information on Tarn;
 - b. The activities of the Liquidator since its appointment, including, but not limited to:
 - (i) possession and preservation of the Assets;
 - (ii) notices to and communications with various stakeholders;
 - (iii) activities relating to Tarn and the Hotel operations; and
 - (iv) activities relating to Tarn Construction and the Development Project.

- c. The Liquidator's statement of receipts and disbursements since its appointment to November 10, 2017; and
- d. To provide the Court with the necessary information to support the following relief:
 - (i) A Sale Process Order substantially in the form attached as Schedule "A" to the Liquidator's Notice of Motion dated November 13, 2017 (the "**Notice of Motion**"):
 - (A) authorizing the Liquidator, *nunc pro tunc*, to execute and to carry out and perform its obligations under the marketing and listing agreement between the Liquidator and CBRE Limited ("**CBRE**") dated November 10, 2017 (the "**Marketing and Listing Agreement**") (including the payment of the amounts due to be paid to CBRE by the Liquidator pursuant to the terms thereof), and approving same;
 - (B) approving the sale process, substantially in the form attached as Schedule A to the Sale Process Order (the "**Sale Process**"); and
 - (C) authorizing the Liquidator to apply for a consent to sever the Real Property;
 - (v) An Order substantially in the form attached as Schedule "B" to the Notice of Motion:
 - (A) authorizing the Liquidator to sell, convey, transfer, lease or assign the Assets or any part or parts thereof out of the ordinary course of business, without the approval of this Court in respect of any transaction not exceeding \$250,000 provided that the aggregate consideration for all such transactions does not exceed \$1,000,000;
 - (B) amending the Winding Up Order to include a paragraph confirming the stay of proceedings as against Tarn, the Property, which included Tarn Construction, and the Liquidator;

- (C) approving the First Report and the activities and conduct of the Liquidator from the date of the Winding Up Order to the date of the First Report as set out therein; and
 - (D) sealing and treating as confidential, Confidential Appendix “1” to this First Report.
8. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars. Capitalized terms not otherwise defined are as defined in the Winding Up Order or the Sale Process Order.
 9. The information contained in this First Report has been obtained from the books and records and other information of Tarn or Tarn Construction. The accuracy and completeness of the financial information contained herein has not been audited or otherwise verified by the Liquidator, and the Liquidator does not express an opinion or provide any other form of assurance with respect to the information presented herein or relied upon by the Liquidator in preparing this First Report.
 10. Future oriented financial information reported or relied on in preparing this First Report is based on Management’s assumptions regarding future events; actual results may vary from forecast and such variations may be material.

II. BACKGROUND

11. On or about September 29, 2014, Tarn purchased the Hotel, which consists of a 15-storey tower and a 4-storey tower and is a full-service hotel with 366 guest rooms.
12. Tarn has approximately 240 employees that work at the Hotel, of which 179 are represented by the Unite Here Local 75 union (the “**Union**”) pursuant to a collective agreement in force from February 1, 2014 to January 31, 2018 (the “**CBA**”).
13. Through Tarn Construction, Tarn was developing “The Kennedys”, a three-phased development project on the lands adjacent to the Hotel. The first phase of the Development Project contemplates the construction of a 644-unit condominium development encompassing a 32-storey tower and a 30-storey tower, of which substantially all of the units have been pre-sold (“**Phase 1**”). The second phase of the

Development Project contemplates a new 40-storey tower where the 4-storey Hotel tower is located which would include 100 new hotel suites (replacing the current 75 located in the 4-storey tower) as well as 400 residential condominium units above. The third phase contemplates an office building in place of a parking structure which is currently adjacent to the Hotel.

14. The Real Property on which the Development Project is to be built is in the name of Tarn and has not been severed from the land the Hotel is situated on. Tarn Construction is the vendor under the agreements of purchase and sale (“**APSs**” and each an “**APS**”) entered into with purchasers of the pre-sold condominium units in Phase 1 (the “**Purchasers**”). Bennett Jones LLP (“**Bennett Jones**”) acted as Tarn’s development and real estate counsel prior to the Winding Up Order.
15. As set out above, the Applicants obtained the Winding Up Order on September 15, 2017 with the Liquidator’s appointment being effective as at September 25, 2017. The Liquidator has retained Miller Thomson LLP (“**Miller Thomson**”) as its independent legal counsel and has consulted with and sought the assistance of Miller Thomson in respect of the matters set out in this First Report. The Liquidator has continued the retainer of Bennett Jones to, among other things, continue to maintain the trust accounts with respect to deposits received from the Purchasers for Phase 1.
16. In addition to the activities described in the First Report below, the Liquidator has, pursuant to the Winding Up Order, established a website at www.kpmg.com/ca/tarn (the “**Website**”), where all materials filed with the Court and all orders granted by the Court in connection with the Winding Up Proceedings will be made available in electronic form.

III. ACTIVITIES OF THE LIQUIDATOR SINCE ITS APPOINTMENT

17. The Liquidator has taken over the management of the operations of the Hotel and has ceased all work relating to the Development Project all as set out more particularly below.
18. The Liquidator established a telephone hotline at (416) 649-7623 or (1-855) 222-8083 and email address at tarn@kpmg.ca for inquiries regarding the Winding Up Proceedings.

Initial Possession and Preservation of the Assets

19. Immediately upon its appointment, the Liquidator, among other things:
 - a. Attended the corporate and administrative offices of Tarn and Tarn Construction located at the Hotel;
 - b. Met with Akman, his counsel and his other advisors to transition management of the Hotel and the Development Project to the Liquidator;
 - c. Attended and toured the premises of the Hotel to understand and confirm the state of the operations;
 - d. Changed the locks to all of the administrative offices located at the Hotel, as well as the offices of Tarn Construction;
 - e. Changed the locks to the fencing surrounding the Development Project;
 - f. Took control of all cash located on the premises, including taking possession of all keys and combinations to the safes;
 - g. Notified Meridian Credit Union Limited (“**Meridian**”) and TD Canada Trust, which maintain the bank accounts of Tarn and Tarn Construction of the issuance of the Winding Up Order;
 - h. Changed signing authorities on all bank accounts to authorized individuals of the Liquidator, restricted access to all bank accounts to the Liquidator’s authorized individuals and took possession of all cheque stock for each of the bank accounts;
 - i. Opened new bank accounts in the name of “KPMG Inc., in its capacity as Liquidator of Tarn Financial Corporation” with the Canadian Imperial Bank of Commerce;
 - j. Confirmed that adequate insurance coverage is in place over the Hotel and the Development Project as detailed further below;
 - k. Identified all information technology systems and processes and established control of the systems in a manner that maintained the integrity of the data, systems and processes, including terminating remote access to the systems where applicable and restricting physical access to the on-site servers without the approval of the Liquidator;

- l. Completed a full backup (copy) of all servers and individual computers, which copies are in the care and possession of KPMG LLP's forensic technology team to maintain chain of custody; and
- m. Secured the books and records of Tarn and Tarn Construction as at the date of the Liquidator's appointment.

Notice of Appointment as Liquidator

20. Pursuant to subsection 210(4) of the OBCA, (a) notice of KPMG's appointment as Liquidator was given to the Ministry of Government and Consumer Services pursuant to Form 16 (Notice Concerning Winding Up) on October 10, 2017 and (b) notice of the Liquidator's appointment was published in the Ontario Gazette on October 14, 2017. A copy of these notices are attached hereto as **Appendix "E"**.

Employee Meetings and Communications

21. On September 25, 2017, the Liquidator met with the Hotel management team ("**Management**") to advise them of KPMG's appointment as Liquidator and to understand Management's roles and responsibilities and the employee structure. Pursuant to paragraph 11 of the Winding Up Order, the Liquidator advised Management that all employees of Tarn would remain employees of Tarn and that employees would be subject to terminations in the ordinary course of business. Management provided the Liquidator with a copy of the CBA. The Liquidator was advised by Management that all salaries and wages, statutory remittances and amounts relating to Union dues and pension and benefit payments owing pursuant to the CBA had been paid in the normal course and all amounts were current when the Liquidator was appointed.
22. On September 26, 2017, the Liquidator attended an informal meeting of the employees of the Hotel, which was coordinated by representatives of the Union and took place during the lunch hour in the employee lunchroom. The Liquidator advised of KPMG's appointment and its mandate and answered a number of questions at that meeting.
23. The Liquidator met with representatives of the Union on September 26, 2017 and September 29, 2017.

24. On September 29, 2017 the Liquidator held a meeting with all employees of Tarn and their Union representatives to formally advise of KPMG's appointment as Liquidator, explain the nature of the Winding Up Proceedings and the Liquidator's role in same and answer any questions. The Liquidator provided each employee with a letter regarding the Winding Up Proceedings, a copy of which is attached hereto as **Appendix "F"**.
25. On October 18, 2017, Management brought to the Liquidator's attention that as at that date approximately \$29,000 was outstanding and owing to unionized employees with respect to a transit allowance contained in the CBA as these amounts had not been paid since Tarn purchased the Hotel. The Liquidator has arranged for the outstanding amounts to be remitted to the unionized employees and for this benefit to be paid going forward in accordance with the terms of the CBA.
26. Management of the Hotel continue to deal with personnel issues in the normal course and the Liquidator is working with Management to ensure that the staffing needs of the Hotel are met during the Winding Up Proceedings.

Tarn Construction Contract Employee Communications

27. Upon its appointment, the Liquidator was advised that there were three individuals who work on a contract basis in respect of Tarn Construction (the "**Tarn Construction Contract Employees**") and provide project management, financial and administrative support. These individuals were engaged either by Tarn Construction or SAMM to provide these services. The Liquidator advised the Tarn Construction Contract Employees that their services would only be required on a short term basis, in order to assist the Liquidator in understanding the status of the Development Project. The Liquidator advised the Tarn Construction Contract Employees that it would honour the terms of their contracts with Tarn Construction or SAMM for services rendered from and after the date of the Winding Up Order.
28. The Liquidator was advised that approximately \$44,600 was outstanding and owing by Tarn Construction to one of the Tarn Construction Contract Employees as at September 15, 2017. The Liquidator advised the Tarn Construction Contract Employees that any

amounts owing prior to the Winding Up Order would be dealt with in accordance with the terms of the OBCA and the Winding Up Order.

29. On October 25, 2017, the Liquidator advised two of the Tarn Construction Contract Employees that their services were no longer required as all activities with respect to the Development Project had ceased. On November 2, 2017, it was determined that the last Tarn Construction Contract Employee's services were no longer required.

Communications with Secured Lenders

30. The Liquidator provided Tarn's two third-party secured lenders, Meridian and Kingsett Mortgage Corporation ("**Kingsett**" and collectively with Meridian, the "**Secured Lenders**") with copies of the Reasons for Decision and the Winding Up Order upon being appointed.
31. The Liquidator has had a number of meetings and discussions with the 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, the status of funding under the Borrowing Charge (as defined herein) and the Sale Process being proposed by the Liquidator.
32. The Liquidator was advised by the Secured Lenders and has confirmed based on the books and records of Tarn that Tarn owes Meridian approximately \$18 million and owes Kingsett approximately \$6 million. The Liquidator has authorized the continued payment of all principal and interest payments pursuant to the terms of the Secured Lenders' credit agreements since its appointment.

Communications with Consultants to the Development Project

33. On September 28, 2017, the Liquidator issued a letter (the "**First Consultants Letter**") to all consultants, engineers, architects, contractors and sale agents listed on the books and records of Tarn Construction (collectively, the "**Consultants**") advising them of the Winding Up Proceedings and also advising that all activities in respect to the Assets and the Development Project were to immediately cease until further notice to allow the Liquidator to assess the options available with respect to the Development Project. The

First Consultants Letter also advised that only the Liquidator was authorized and empowered to provide instructions in respect of the Assets and the Development Project.

34. On October 3, 2017, the Liquidator issued a second letter (the “**Second Consultants Letter**”) to the Consultants advising, among other things, that any amounts owing to them from Tarn or Tarn Construction are stayed by the Winding Up Order and would be dealt with in accordance with the terms of the OBCA and the Winding Up Order.
35. Copies of the First Consultants Letter and the Second Consultants Letter are attached as **Appendix “G”** and were posted to the Liquidator’s Website when issued. The Liquidator has received and responded to numerous inquiries from Consultants as to the status of the Winding Up Proceedings and the Development Project. As discussed further herein, these have included inquiries regarding registering and perfecting construction liens in some instances.

Communications with Purchasers

36. On October 11, 2017, the Liquidator issued a letter (the “**First Purchasers Letter**”) to the Purchasers advising of the Winding Up Proceedings and confirming that amounts the Liquidator has been advised have been paid in respect of deposit funds under the APSs continue to be held in trust by Bennett Jones, under the oversight of the Liquidator. Additionally, the Liquidator advised that it temporarily ceased processing assignments under the APSs until the Liquidator has determined the appropriate sale process to market the Assets.
37. On October 13, 2017, the Liquidator issued a second letter (the “**Second Purchasers Letter**”) to the Purchasers confirming that their APSs remain in full force and effect, that all payments due in accordance with the terms of their APS should continue to be made and that these payments would be held in trust with Bennett Jones, under the oversight of the Liquidator. The letter also advised that the Development Project has been placed on hold and that the Liquidator is determining the appropriate sale process to market the Assets.
38. Copies of the First Purchasers Letter and the Second Purchasers Letter are attached hereto as **Appendix “H”** and were posted to the Liquidator’s Website when issued. The

Liquidator has received and responded to numerous inquiries from Purchasers regarding, among other things, the status of the Winding Up Proceedings, the status of the APSs and the deposit monies.

Communications with Real Estate Brokers and Agents

39. On October 11, 2017, the Liquidator issued a letter to all of the real estate brokers and agents (the “**Brokers**”) involved in the sale of the condominium units of Phase 1 of the Development Project advising them of the Winding Up Proceedings and also advising that any amounts owing from Tarn or Tarn Construction are stayed by the Winding Up Order and would be dealt with in accordance with the terms of the OBCA and the Winding Up Order. The letter also annexed a copy of the First Purchasers Letter. A copy of the letter is attached hereto as **Appendix “I”**.
40. The Liquidator has received and responded to numerous inquiries from Brokers regarding, among other things, the status of the Winding Up Proceedings, their commissions and the status of the Development Project.

Marriott Communications and Notices

41. As set out above, the Hotel is branded a Delta. There is a Hotel Licence Agreement in place between Tarn and Delta Hotels Limited (or any successor or assignee of its interests) (“**Marriott**”) dated November 13, 2014 (the “**License Agreement**”). Pursuant to the License Agreement, Tarn is responsible for royalty, licensing, and marketing fees, which are to be paid on or before the tenth day of the month in respect of the preceding month. In addition to the License Agreement, on May 5, 2016, Tarn entered into a Consent to Development of Premises and Amendment to Hotel License Agreement (the “**Consent**”) with Marriott.
42. On September 26, 2017, the Liquidator had an initial telephone discussion with a representative of Marriott regarding the Winding Up Proceedings and the Liquidator’s appointment and mandate in the Winding Up Proceedings.
43. On October 5, 2017, Marriot issued two default notices to Tarn. The first default notice (the “**First Notice**”) advised Tarn that it was in default of the License Agreement for non-payment of fees and other amounts due and owing pursuant to the License

Agreement. The First Notice indicates that as at October 4, 2017, at least \$481,992.77 was due and owing, all of which the Liquidator understands pre-dates the Winding Up Order. The First Notice indicates that Marriott issued previous notices of breach to Tarn on May 12, 2017 and June 30, 2017. The second default notice (the “**Second Notice**”) advised Tarn that it was in default under the License Agreement and Consent for failure to comply with certain Property Improvement Plan deadlines (the “**PIP**”). The Second Notice indicates that Marriott issued previous notices of breach to Tarn on April 5, 2017, May 19, 2017 and June 30, 2017.

44. Since its appointment, the Liquidator has had a number of discussions with representatives of Marriott and its counsel regarding the status of the Hotel operations and Development Project, the PIP, the outstanding amounts owing to Marriott and the proposed Sale Process. Since being appointed, the Liquidator has ensured that Marriott was paid all amounts owing to it for the month of September 2017 to ensure continuation of Marriott’s services without disruption. Due to cash flow constraints, the Liquidator advised Marriott that it is unable to pay the remaining outstanding balance at this time and that these amounts would be dealt with in accordance with the terms of the OBCA and the Winding Up Order. The Liquidator also confirmed that all amounts owing for continuing services from and after the Winding Up Order will be paid in accordance with the terms of the License Agreement.
45. On October 17, 2017, the Liquidator issued a letter to Marriott requesting that all notices under the License Agreement be sent to the Liquidator and to no other party and formally requested that all access to the systems and tools available through Marriott’s system be limited to the Liquidator.
46. From the date of its appointment, the Liquidator has been working with Marriott to address items identified as critical issues by Marriott. On October 25, 2017, the Liquidator met with a representative of Marriott to undertake a site visit at the Hotel for this purpose. On November 8, 2017, Marriott issued a notice of default to the Liquidator identifying defaults that were existing at the time of the Liquidator’s appointment that are continuing relating to the operations at the Hotel that are considered critical defaults by Marriott and setting up timelines by which the issues have to be remedied. The

Liquidator is acting diligently to remedy these critical defaults within the timelines prescribed by Marriott and has been working closely with Marriott to do so.

Communications with Shareholders

47. As set out above, on September 25, 2017, the Liquidator with its counsel met with Akman, his legal counsel and his other advisors to discuss the transition of custody and control of Tarn to the Liquidator. At that meeting, it was agreed that the Liquidator would treat any Management Agreement between Tarn and Akman Hospitality Inc., a company owned by Akman (the “**Akman Management Agreement**”) as being of no force and effect during the Winding Up Proceedings.
48. In preparation for the meeting with the Liquidator and its counsel on September 25, 2017, Akman and his advisors prepared an electronic data room that contained copies of all material contracts for Tarn and Tarn Construction. The Liquidator and Miller Thomson have reviewed these contracts to ensure all required contracts remain in force and that any change in control notifications were completed.
49. On September 25, 2017, the Liquidator also met with a representative of the Applicants to discuss the transition of custody and control of Tarn to the Liquidator.
50. On October 2, 2017, the Liquidator and its counsel had a telephone call with Akman, his legal counsel and his other advisors to discuss a number of matters related to the Winding Up Proceedings including Akman’s willingness to provide funding under the Borrowing Charge. As discussed below, Akman’s counsel advised thereafter that Akman was not prepared to fund the Borrowing Charge.
51. Upon its appointment, the Liquidator was advised that Tarn’s benefit plan for the Hotel employees also included coverage for employees of another company owned by Akman as well as Akman and certain of his family members. Akman was approached by the Liquidator and given the option to either pay for these benefits going forward or to have these parties removed from the benefit plans and it was decided that these parties would be removed. This occurred on October 3, 2017.
52. On October 4, 2017, the Liquidator and its counsel met with representatives of the Applicants and their legal counsel to discuss a number of matters pertaining to the

Winding Up Proceedings including the Applicants' willingness to provide funding under the Borrowing Charge. As discussed below, the Applicants' counsel advised that their clients were not prepared to fund the Borrowing Charge, however, upon reflection the Applicants have decided that they are prepared to fund the Borrowing Charge.

53. On October 13, 2017, Miller Thomson issued a letter to counsel for Akman confirming that the Akman Management Agreement and any other management agreement between Tarn and Akman or any of his corporations are of no force and effect during the Winding Up Proceedings.
54. In addition to the above, the Liquidator and its counsel have had numerous and extensive communications with the Applicants and the Respondents since the commencement of the Winding Up Proceedings. In particular, the Respondents have raised a number of concerns about the Winding Up Proceedings (a number of which are based on misinformation). The Liquidator has responded to these concerns in a transparent and constructive manner.

Communications with Insurers

55. The Liquidator was provided with copies of all insurance policies relating to the Hotel and Tarn Construction. In total, there are three insurance policies, one policy which covers the Hotel and two policies (a builder's risk policy and a wrap-up liability policy) that cover Tarn Construction (collectively the "**Policies**"). The Liquidator confirmed that the Policies are in force and notified each of the insurance providers of its appointment and requested that the Liquidator be added as a named party to each of the Policies. In reviewing the Policies, it was determined that the insurance policy covering the Hotel also provides coverage for a separate hotel owned by Akman. In addition, the two insurance policies covering Tarn Construction also insure multiple related companies of Akman, being SAMM, SAMM Development Inc., and SAMM Holdings Inc.
56. On October 2, 2017, the Liquidator notified counsel for Akman and SAMM, that alternative insurance arrangements were required and that this should be completed as soon as possible, as the unrelated parties to Tarn and Tarn Construction would be removed from the Policies.

57. The insurance policy covering the Hotel expires on November 13, 2017. On October 31, 2017, the Liquidator renewed the policy for a term of one year, maintaining the same loss coverage as prior to the Winding Up Order.
58. On October 25, 2017, the Liquidator was advised by the insurer of the Tarn Construction builder's risk policy, that since there has been no construction activity onsite for more than 30 consecutive days, that their "Cessation of Coverage" clause is in effect and therefore they cannot continue to collect premium on a policy that can no longer recover a claim for events moving forward. Since Tarn Construction has ceased all activities in respect of the Development Project and has not started construction yet, there isn't any true builder's risk exposure. The Liquidator agreed with the insurer that the policy should be canceled and reissued once the Assets are sold and/or the Development Project is recommenced. Tarn Construction's wrap-up liability policy remains unchanged.

Other Activities Relating to Tarn and the Hotel Operations

59. Pursuant to the Winding Up Order, the Liquidator has been operating the Hotel on a "business as usual" basis while it considers how best to take the Assets to market. The Liquidator has been paying for all goods and services in accordance with normal payment practices from and after the date of the Winding Up Order in accordance with paragraph 9 of the Winding Up Order. In addition, in order to ensure the continuation of the supply of goods and services without disruption, certain suppliers were identified as critical to the continued operations of the Hotel (the "**Critical Suppliers**"). In order to preserve the operations of the Hotel, the Liquidator authorized approximately \$975,000 to be paid to the Critical Suppliers for amounts that were owing for goods or services that were received in the weeks immediately prior to the Winding Up Order. This amount includes approximately \$383,000 that was paid in respect of Harmonized Sales Tax ("**HST**"), which payment is discussed in further detail below.
60. The Liquidator has been reviewing all purchase orders issued and contracts signed since its appointment. Additionally, the Liquidator continues to ensure that regular maintenance is completed at the Hotel and that critical maintenance and repairs are completed as necessary and as set out above is working closing with Marriott in this regard.

(a) Taxes

61. The Liquidator has confirmed that Tarn is up to date on all source deduction payments to Canada Revenue Agency (the “CRA”) and workplace safety insurance board filings and payments. These payments will continue to be made by the Liquidator on a go-forward basis.
62. At the time the Liquidator was appointed, approximately \$383,000 in respect of HST relating to the month of August 2017 and for September 1 through 24, 2017 (the “**Outstanding HST**”) had been collected but not yet remitted by Tarn. As indicated above, the Liquidator paid the Outstanding HST given the super priority status that amounts owing for HST have pursuant to the *Excise Tax Act*. The Liquidator has filed and will continue to file all required HST returns and make all required payments on a go-forward basis.
63. The Liquidator has been advised that the royalties due to Marriott pursuant to the License Agreement are subject to a 10% withholding tax under the *Income Tax Act* since the royalties arise in Canada and Marriott is a U.S. resident and is the beneficial owner of the royalties (the “**Withholding Tax**”). The invoices from Marriott specifically note the withholding tax that is to be withheld from the amounts owing to Marriott and remitted to CRA. The Liquidator understands that Tarn has been deducting the Withholding Tax from their monthly royalty payments to Marriott; however, Tarn has not established a non-resident withholding tax remittance account with CRA and has not remitted the amount withheld from the payments due to the Marriott as Withholding Tax to CRA. The Liquidator is of the view that any amounts owing to CRA with respect to Withholding Tax that has been withheld and not remitted will have to be determined under a claims process in due course and paid in accordance with the OBCA and the Winding Up Order.
64. On October 31, 2017, the Liquidator applied to CRA to have a non-resident withholding tax remittance account established in the name of “KPMG Inc., in its capacity as Liquidator of Tarn Financial Corporation”. Once established, the Liquidator will commence remitting all required Withholding Taxes owing after the date of the Winding Up Order.

65. The Liquidator understands that prior to its appointment, Tarn had not completed or filed its 2016 corporate tax filings with the CRA, which were due June 30, 2017. Amounts owing by Tarn for corporate taxes, if any, will be dealt with in accordance with the OBCA and the Winding Up Order. The Liquidator is in the process of determining whether Tarn had engaged anyone to complete the 2016 corporate tax filings and the status of any tax returns. From and after the date of the Winding Up Order, the Liquidator will cause Tarn to file all required corporate tax returns on a go-forward basis.

(b) 2016 Audit

66. The Liquidator has been advised that Tarn retained a new auditor, Richter LLP (“**Richter**”), to complete the audit for the fiscal year ended December 31, 2016 (the “**2016 Audit**”). The Liquidator has been advised by Richter that the 2016 Audit had not been finalized prior to the date of the Winding Up Order as the auditor had not been paid for its services. The Liquidator is not taking any steps to complete the 2016 Audit given the Winding Up Proceedings.

(c) Corporate Vehicles

67. As at the date of the appointment of the Liquidator, Tarn owned, leased or previously owned three vehicles that were in the possession of the shareholders.

68. The Liquidator has been working with the shareholders to ensure that it receives payments due to Tarn in respect of vehicles currently owned, leased or previously owned by Tarn that were in the possession of the shareholders as at the date of the Liquidator’s appointment. As of November 10, 2017, the Liquidator has resolved all issues relating to the vehicles currently owned, leased or previously owned by Tarn and in the possession of the shareholders.

69. A 2017 Jeep Grand Cherokee (the “**Jeep**”) that was financed by Tarn was in the possession of Akman and was returned to Tarn on September 27, 2017. The Liquidator has had discussions with the car dealership where the vehicle was purchased and the car dealership offered to re-purchase the Jeep (subject to certain conditions) for the following: (a) pay off the loan balance (including accrued interest) of approximately \$23,600 with the Royal Bank of Canada, and (b) pay \$10,000 to Tarn.

70. Currently the Winding Up Order does not permit the Liquidator to sell any Assets without Court Approval. As a result, the Liquidator is seeking authorization to sell Assets out of the ordinary course of business without Court approval within certain thresholds as set out in the proposed draft Order. This relief will allow the Liquidator to sell the Jeep and also to deal with other Assets that it may be prudent to sell outside of the Sale Process.

(d) *Fraudulent Cheques drawn on Tarn Account*

71. As a result of the Liquidator's daily review of the Tarn bank accounts, on October 26, 2017, it came to the Liquidator's attention that a fraudulent cheque in the amount of \$388,016.94, had been issued to and cashed by a law firm in British Columbia, against a Tarn bank account. The Liquidator quickly verified that the cheque was counterfeit and immediately contacted both the law firm and the bank to advise them of the situation.

72. The law firm agreed to return the funds, which were received by the Liquidator on October 30, 2017. The Liquidator confirmed that the proper safeguards and procedures are in place in order to identify such transactions and had discussions with Meridian in this regard.

73. The Liquidator also immediately advised the Royal Canadian Mounted Police of the incident and have cooperated with them in their investigation and provided all information they have requested.

74. As a result of the Liquidator's daily review of the Tarn bank accounts, it came to the Liquidator's attention that another three fraudulent cheques in the amount of \$288,016.94, \$23,600 and \$9,600, respectively, were issued and cashed in Ontario. The Liquidator quickly verified that the cheques were counterfeit and the monies were returned to the Liquidator the next day by Meridian.

75. The Toronto Police department was advised of the incident and all relevant information has been provided by the Liquidator.

76. In order to prevent the passing of any further counterfeit cheques on Tarn's account with Meridian, the Liquidator has frozen the relevant bank account and opened a new bank account with Meridian for the purpose of writing cheques on behalf of Tarn.

(e) *Legal Proceedings against Tarn*

77. The Liquidator has been advised of two legal proceedings that were commenced against Tarn or the Hotel. The first was issued on June 2, 2017 in the Ontario Superior Court of Justice (Toronto Small Claims Court), Claim number SC-17-5676-00 where it is alleged there was a breach of contract. The damages being sought are \$5,000. The second was issued on August 25, 2017 in the Ontario Superior Court of Justice (Toronto Small Claims Court), Claim number SC17-9042-00, where a claim is being made under the *Human Rights Code*. The damages being sought are \$25,000.
78. On October 23, 2017, pursuant to paragraph 7 of the Winding Up Order, Miller Thomson advised the plaintiffs and the Toronto Small Claims Court of the Winding Up Proceedings and that the legal proceedings cannot continue without the written consent of the Liquidator or without leave of this Court and any and all proceedings currently under way against or with respect to Tarn are stayed.

Other Activities Relating to the Development Project and Tarn Construction

79. As discussed above, Tarn through its wholly-owned subsidiary, Tarn Construction, was in the process of developing the Real Property into the Development Project. Phase 1 of the Development Project is comprised of a 644-condominium unit housing development in two towers, which units have been substantially pre-sold.

(a) *Purchasers*

80. Upon its appointment, the Liquidator was provided with a sample APS that was used for each tower of Phase 1. As set out above, the vendor of the condominium units for Phase 1 is Tarn Construction. Miller Thomson has reviewed the sample APSs to confirm that the Winding Up Proceedings do not impact the force and effect of the APSs.
81. Immediately following its appointment, the Liquidator confirmed that pursuant to the APSs, the Purchasers' deposits are being held in trust with Bennett Jones. As set out above, effective on September 25, 2017, the Liquidator retained Bennett Jones to continue to provide services with respect to the Development Project as directed by the Liquidator. As at October 31, 2017, Bennett Jones is holding \$28,803,701 in trust with

respect to the pre-sold units in Phase 1 of the Development Project, all under the oversight of the Liquidator.

82. A review of the deposits that should have been made by Purchasers prior to the appointment of the Liquidator identifies that a significant number of Purchasers had not made all their deposits that were required under their respective APSs prior to the appointment of the Liquidator. The Liquidator has been advised by the Tarn Construction Contract Employees that there was no follow up to these Purchasers prior to the appointment of the Liquidator for non-payment of deposits due and as a result these remained outstanding and overdue at the time the Liquidator was appointed. Pursuant to the books and records of Tarn Construction, approximately \$3.8 million remains outstanding and owing on account of deposits pursuant to the APSs as at October 31, 2017.
83. Pursuant to the terms of the APSs, Purchasers are to continue to pay their deposits as they become due, which will be paid to Bennett Jones, in trust. Upon the Liquidator's appointment, there was some confusion by a number of Purchasers who originally issued stop payments or wrote letters questioning whether they should continue to make payments. However, once the Liquidator issued its Second Purchasers Letter described above, most of the Purchasers who had put stop payments on their cheques reached out to either Bennett Jones or the Liquidator to find out how they could send replacement cheques.
84. Since the date of the Winding Up Order, 548 deposits totalling \$8,578,915 were due to be paid. Of the above, a total of 43 Purchasers canceled their deposits in the aggregate amount of \$663,614 (which amount is included in the \$3.8 million referenced in paragraph 82 above). All payments received from Purchasers since the date of the Winding Up Order were deposited into Bennett Jones' trust account.
85. Pursuant to the APS, a Purchaser shall not sell or assign their interest under the APS without prior written consent of Tarn Construction. As set out above, given the pending sale of the Assets, the Liquidator has temporarily ceased processing individual requests for an assignment of an APS.
86. On October 19, 2017 and October 26, 2017, the Liquidator received notices of rescission of the APS from two Purchasers each demanding a return of their deposits under section

74 of the *Condominium Act* on the basis of a material change (each a “**Rescission Notice**”). The Liquidator reviewed the issue with Miller Thomson and Bennett Jones and came to the view that the Liquidator should commence applications under the *Condominium Act* against each of the Purchasers seeking, among other relief:

- a. A declaration that the Rescission Notice and any claims, actions or other proceedings by the Purchasers are subject to a stay of proceedings pursuant to the Winding Up Order;
- b. A declaration that the Rescission Notice was not delivered by the Purchasers within the 10 day statutory period prescribed by the *Condominium Act*, and are therefore time-barred;
- c. A declaration that the Purchasers are bound by the terms of the APS;
- d. A declaration that the Rescission Notice is void and of no force or effect; and
- e. A declaration that the Winding Up Proceedings do not constitute a material change to the Development Project under the *Condominium Act*.

(b) Brokers and Consultants

87. Tarn Construction entered into Agreements to Co-operate (“**ATC**”) with Brokers on the sale of the condominium units of Phase 1 of the Development Project. Pursuant to the ATC, 4% of the purchase price (excluding HST, extras and upgrades), plus HST, thereon (the “**Commission**”), would be paid to the Brokers. One percent of the Commission was payable after a fully executed APS was entered into and all deposits, post-dated cheques and mortgage pre-approval were received. The Liquidator has been advised that approximately \$1.1 million in Commissions are outstanding and owing to Brokers as at the date of the Winding Up Order. The Liquidator has also been advised that an additional approximately \$642,000 could be due in the near term. The Liquidator takes the position that these amounts are stayed since Tarn Construction is one of the Assets of Tarn. As such, the amounts owing will be dealt with in accordance with the terms of the OBCA and the Winding Up Order.
88. In relation to the Development Project, Tarn and Tarn Construction entered into a number of service contracts with Consultants. The Liquidator has been advised that

approximately \$4 million is outstanding and owing to the Consultants as at the date of the Liquidator's appointment. The Liquidator has not paid any of these amounts and takes the position that these amounts are stayed since Tarn Construction is one of the Assets of Tarn.

89. The Liquidator has been notified that a number of Consultants have registered a claim for lien against Tarn and Tarn Construction pursuant to the *Construction Lien Act* ("Lien"). On October 31, 2017, Miller Thomson obtained a parcel register search for the Real Property a copy of which is attached as **Appendix "J"**. As at October 31, 2017, five Liens had been registered against the Real Property totalling \$1,592,526. These Liens were registered notwithstanding paragraph 7 of the Winding Up Order. The Liquidator, through its counsel, has since consented to the registration and perfection of each of these Liens on the basis that no further steps be taken in respect of the Liens.
90. The Liquidator is seeking an amendment to the Winding Up Order to include the following paragraph 8(a) to clarify the stay of proceedings and to confirm that such stay does not prevent the registration of a claim for Lien:

NO EXERCISE OF RIGHTS OR REMEDIES

8(a). **THIS COURT ORDERS** that all rights and remedies against Tarn including against its wholly owned subsidiary, Tarn Construction Corporation, the Liquidator, or affecting the Property, existing as at the date of the Winding Up Order are hereby stayed and suspended except with the written consent of the Liquidator 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 *Bankruptcy and Insolvency Act*, and further provided that nothing in this paragraph shall (i) empower the Liquidator in the name of Tarn to carry on any business which Tarn is not lawfully entitled to carry on, (ii) exempt the Liquidator or Tarn 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.

(c) *Re-Zoning Application*

91. On September 27, 2017 the Liquidator and Miller Thomson, met with Bennett Jones to discuss the status of the zoning and site plan submissions to the City of Toronto (the “City”) for the Development Project. Bennett Jones provided the Liquidator and Miller Thomson with an overview of the background surrounding the Development Project as well as a status update on the related plans, applications, permits and reports.
92. As of the date of the Winding Up Order, construction of Phase 1 of the Development Project had not commenced. Tarn had submitted an application to amend the former City of Scarborough Employment Districts Zoning By-law No. 24982 (the “Zoning By-law”), as amended, in order to, among other things, permit the residential uses and increase the permitted heights and density otherwise permitted by the Zoning By-law on the site. The initial application was made in June 2015 and two resubmissions have been made since, each following review and comments from the City.
93. The Liquidator understands that a staff recommendation report was approved by the City council in mid-2017 and that the Zoning By-law was being held pending the resolution by Tarn and Tarn Construction of outstanding engineering issues and Tarn entering into a Section 37 Agreement, pursuant to the *Planning Act*, with the City.
94. The Liquidator understands that Tarn had hoped to have the outstanding engineering issues resolved and the Section 37 Agreement finalized in order to be added to the list for the City council meeting on October 2, 2017 (the “City Meeting”) to address the application for the amendment to the Zoning By-law and in order for Tarn to execute a Section 37 Agreement with the City.
95. As a result of timing of the Liquidator’s appointment and in order for the Liquidator to take the time necessary to understand and review the required information and documentation needed in order to make a well-informed decision with respect to the Development Project, the Liquidator requested that Bennett Jones advise the City that Tarn would not be seeking to be added to the list to attend the City Meeting. Bennett Jones also advised the City of the Liquidator’s appointment and that the Liquidator was the only party authorized to speak on Tarn and Tarn Construction’s behalf.

96. The Liquidator has been advised that once a zoning by-law is amended, essentially no changes or amendments can be made to the zoning by-law for a period of two years. As such and given that the Liquidator has not yet commenced the Sale Process for the Assets, the Liquidator is of the view that it would be prudent to postpone the application for the Zoning By-law, until the Sale Process has progressed further and the Liquidator gauges the interest in the Development Assets (as defined in the Sale Process).

(d) HST Returns

97. The Liquidator was advised by a Tarn Construction Contract Employee that Tarn Construction is current in its HST filings and that it has historically always been in a refund position. The filing for July 1 to September 30, 2017 was due on October 31, 2017. The Liquidator requested that the filing be prepared; however, the Liquidator was advised and agreed that a zero return should be filed as very few payments for which input tax credits would be claimed were in fact made during the period. Moreover, any payments that were made, could be claimed on the next filing. As a result, the Liquidator filed a zero return.

IV. OBTAINING FINANCING UNDER THE BORROWING CHARGE

98. Pursuant to paragraph 18 of the Winding Up Order, the Liquidator has the ability 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 at any time and is subordinate in priority to (i) any valid and enforceable security interest registered against the Property in favour of persons not related to, or not dealing at arm's length with, Tarn; and (ii) the Liquidator's Charge (the "**Borrowing Charge**").

99. Based on the Liquidator's projected cash flow forecast, the Liquidator is of the view that the full \$2,000,000 will be required by the Liquidator under the Borrowing Charge. As set out above, the Liquidator approached the shareholders to determine whether they would be willing to provide the required funding under the Borrowing Charge. Initially both the Applicants and the Appellants declined to provide financing under the Borrowing Charge.

100. The Liquidator also approached the Secured Lenders to determine if they would be willing to provide funding under the Borrowing Charge and neither lender is prepared to provide funding under the Borrowing Charge on a subordinate basis. Both Secured Lenders advised that if the Liquidator could not obtain funding on a subordinate basis that they would consider providing funding if the Borrowing Charge was elevated to a priority position.
101. As set out above, one of the Applicants, Volkan Basegmez (“**Volkan**”) has reconsidered providing financing and has advised that he is prepared to provide financing under the Borrowing Charge on the following terms:
 - a. Funding would be made personally by Volkan using his personal resources;
 - b. U.S. dollar denominated lending equal to the Canadian (“**CAD**”) dollar equivalent of CAD\$2.0 million principal amount. The principal amount will be provided in U.S. dollars in a single tranche: equivalent to CAD\$2.0 million on or about November 15, 2017. The principal amount of the loan will be repaid in U.S. dollars advanced (the currency risk on the principal amount rests with the Liquidator, however Volkan is willing to take CAD on the interest portion on the basis of CAD\$2.0 million);
 - c. The advance will be secured by the Borrowing Charge behind the Secured Lenders, which have outstanding indebtedness collectively of approximately \$25 million;
 - d. Interest on the loan would accrue at 12% per annum, with interest payable monthly in advance, in CAD; and
 - e. The advance would be subject to definitive agreements in form and substance acceptable to Volkan.
102. The Liquidator is working with Volkan to reach a final agreement to obtain funding under the Borrowing Charge.

V. LIQUIDATOR'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

The following table represents a high level summary of total receipts and disbursements for the period September 25 to November 10, 2017 (the "Period").

Statement of Receipts and Disbursements	
For the period September 25, 2017 to November 10, 2017	
(in CAD)	
Receipts	
Total receipts	3,421,670
Disbursements	
Operating expenses	775,186
Salaries and wages	967,527
HST payable	425,296
Insurance	16,957
Utilities	161,168
Marriott fee	153,188
Other	205
Total operating disbursements	2,499,527
Operating cash flow	922,143
Loan Facilities and Professional Fees	
Secured lenders - Principal and interest	217,336
Professional fees	186,809
Non-operating disbursements	404,145
Opening book balance	(70,185)
Net cash flow	517,998
Closing book balance	447,813

103. Actual receipts for the Period are \$3,421,670, and consist of guest room, food and beverage and parking-related revenues.
104. Actual disbursements for the Period total approximately \$2,903,672 and consist of: (a) payroll totalling approximately \$967,527, (b) operating expenses of \$775,186 (c) HST payments of \$425,296, (d) principal and interest payments to the Secured Creditors of \$217,336, (e) other expenses, namely insurance, utilities and payments to Marriott of

\$331,518 and (f) professional fees of \$186,809, which consist of the professional fees of the Liquidator and its independent legal counsel.

VI. SALES PROCESS ORDER BEING SOUGHT

Sale Process

105. Capitalized terms used in this section of the First Report are as defined in the Sale Process attached as **Appendix “K”** to this First Report, unless otherwise defined.
106. The Liquidator seeks the Court’s approval to implement the Sale Process, which if approved, establishes the process pursuant to which the Liquidator will market the Assets and determine the Successful Bid(s).
107. The Sale Process contemplates a two-phase process.
108. In the first phase, Interested Parties that meet preliminary participant requirements set out in the Sale Process, which include executing a Confidentiality Agreement, shall be provided a Confidential Information Memorandum and access to an electronic data room by CBRE in order to prepare and submit a Phase I Bid by the Phase I deadline.
109. Phase I Bidders that are determined by the Liquidator and CBRE to be Qualified Phase I Bidders shall be invited to participate in the second phase wherein they will be given access to an expanded data room by CBRE containing additional confidential information in order to complete their due diligence prior to submitting a Phase II Bid.
110. CBRE, in consultation with the Liquidator, will prepare a list of potential interested parties that will be invited to participate in the Sale Process. CBRE will also use its worldwide network to ensure that the opportunity is appropriately publicized. The Sale Process will also be posted on the Liquidator’s Website. Any potential interested party that contacts the Liquidator or CBRE will be invited to participate in the Sale Process.
111. The Sale Process provides that a Phase I Bid, being a Non-Binding APA including a mark-up to the Template APA (which will be available to Interested Parties in the data room) identifying the proposed changes to the Template APA, must be submitted by the Phase I Deadline of noon (Eastern time) on January 17, 2017. This date was chosen, in part, to allow the Appeal to be heard prior to Phase I Bids being delivered.

112. The Sale Process provides that a Phase II Bid, which includes a Binding APA executed by the Qualified Phase I Bidder with a markup showing changes from the Template APA and that includes, among other things, a Good Faith Deposit equal to ten percent of the total purchase price, must be received by the Phase II Bid Deadline of noon (Eastern time) on February 7, 2017.
113. The Phase I Bids and the Phase II Bids will be reviewed by the Liquidator and CBRE, in consultation with the Secured Lenders, to determine Qualified Phase I Bidders and the Qualified Phase II Bidders, respectively.
114. If more than one Qualified Phase II Bids are received by the Phase II Bid Deadline, the Liquidator and CBRE shall have the option to:
 - a. Conduct an auction amongst the Qualified Phase II Bidders, on terms to be determined by the Liquidator, to determine the Successful Bid and the Back-up Bid;
 - b. Negotiate with the Qualified Phase II Bidders and determine the Successful Bid and the Back-up Bid; or
 - c. Determine which of the Qualified Phase II Bids shall be the Successful Bid and which of the Qualified Phase II Bids shall be the Back-up Bid.
115. Following the determination of the Successful Bid, the Liquidator shall seek Court approval in the form of an Approval and Vesting Order to consummate the transactions provided for in the Successful Bid.
116. Given the nature of the Assets and the current status of Real Property, the Liquidator has divided the Assets into the following two categories (a) the Hotel Assets being all the Assets related to the hotel operations currently branded as the Delta Toronto East Hotel and (b) the Development Assets being the development lands known as “The Kennedys Condominium Project”, which contemplates the construction of Phase 1 being two condominium towers containing a total of 644 units, of which substantially all of the units have been pre-sold.

Authorization for Land Severance

117. As at the time of commencing the Sale Process, the Real Property containing the Hotel Assets and the Development Assets has not been legally severed. While the Sale Process is being undertaken, the Liquidator is seeking the Court's authority to apply for a consent to sever the Real Property and to take such steps and to execute such documentation as may be needed to finally sever the lands (a "**Land Severance**"), including but not limited to the satisfaction of severance conditions and the conveyance of any interests in the lands to public bodies if required, to allow the Liquidator to preserve the option that the Hotel Assets and the Development Assets may be sold in two parcels as well as together under the Sale Process.
118. Whether obtaining a Land Severance results in value maximization and whether the Liquidator will be able to obtain a Land Severance is uncertain at this time. For the purposes of the Sale Process, the Liquidator recommends that Bidders submit a Phase I Bid for all of the Assets. To the extent that Bidders submitting a Phase I Bid would be interested in also submitting a Portion Bid for the Hotel Assets or the Development Assets, such Phase I Bidder will be required to ascribe a value to these Assets separately and then collectively if their Phase I Bid includes both.
119. CBRE and the Liquidator will consider Phase I Bids that are Portion Bids submitted for either the Hotel Assets or the Development Assets based on among other factors, the interest from Bidders and the expected ability to obtain a Legal Severance and the timing of obtaining same. The Liquidator and CBRE will determine whether to pursue the Land Severance to allow the Hotel Assets and the Development Assets to be sold separately or whether to seek to introduce Bidders submitting Portion Bids to each other for the purposes of submitting a Qualified Phase II Bid for the Assets collectively.

Engagement of CBRE and Sealing of Unredacted Marketing and Listing Agreement

120. Capitalized terms used in this section of the First Report are as defined in the Marketing and Listing Agreement executed by the Liquidator and CBRE dated November 10, 2017. A redacted copy of the Marketing and Listing Agreement is attached as **Appendix "L"** to this First Report.

121. Pursuant to the Marketing and Listing Agreement, subject to Court approval, the Liquidator has engaged CBRE to act as the marketing and listing agent in the Sale Process and to undertake all aspects contemplated in the Sale Process.
122. CBRE is one of the world's largest commercial real estate service firms, with approximately 450 offices in approximately 60 countries. The team assisting the Liquidator is from Toronto and includes expertise with respect to the sale of the Hotel Assets and the Development Assets. The Hotel Assets team is being supervised by Bill Stone, Executive Vice President, CBRE Hotels. The Development Assets team is being supervised by Mike Czestochowski, Executive Vice President, Land Services Group.
123. Prior to retaining CBRE, the Liquidator had discussions with, met and obtained proposals from CBRE and another large commercial real estate service firms in order to consider, which firm it would retain. The Liquidator ultimately chose CBRE based on its overall assessment of which firm would be value accretive to the Sale Process and work collaboratively with the Liquidator. The Liquidator shared its decision to retain CBRE with the Secured Lenders and the Shareholders.
124. The Marketing and Listing Agreement contemplates a term of six months, however, the Liquidator has the ability to terminate the agreement in the event that the Appeal is successful. The fee structure under the Agreement is commission based and CBRE shall be responsible for all travel and marketing costs other than third party reports if needed, unless the Liquidator terminates as a result of the Appeal being successful, in which case CBRE is entitled to its costs plus a nominal break fee.
125. The Liquidator has been advised by CBRE that in their opinion disclosure of the specific fees under the Marketing and Listing Agreement could potentially have an adverse influence on the Sale Process and are commercially sensitive. As a result, CBRE has requested that the Liquidator seek a sealing order in respect of such fees.
126. An unredacted copy of the Marketing and Listing Agreement is included in **Confidential Appendix "1"** to this First Report and the Liquidator is requesting a sealing order in respect of Confidential Appendix "1".

Recommendations and Conclusions

127. The Liquidator is of the view that the scope of the sealing order is limited and reasonable in the circumstances to protect commercially sensitive information.
128. The Liquidator is of the view that the engagement of CBRE to act as marketing and listing agent and to assist the Liquidator in the implementation of the Sale Process is beneficial to the Winding Up Proceedings and will assist in the efforts to maximize realizations from the Assets.
129. In the Liquidator's view, the Sale Process:
 - a. Is consistent with market practice;
 - b. Provides a reasonable opportunity for potential interested parties to consider the opportunity and the participate in the Sale Process;
 - c. Enables the Liquidator to maximize realizations from the Assets; and
 - d. Is reasonable and appropriate in the circumstances.

VII. CONCLUSION

130. The Liquidator submits this First Report to the Court in support of the Liquidator's Motion for the relief as set out in the Notice of Motion and recommends that the Court grant the following relief:
 - a. A Sale Process Order substantially in the form attached as Schedule "A" to the Liquidator's Notice of Motion:
 - (i) authorizing the Liquidator, nunc pro tunc, to execute and to carry out and perform its obligations under the Marketing and Listing Agreement and approving same;
 - (ii) approving the Sale Process, substantially in the form attached as Schedule A to the Sale Process Order; and
 - (iii) authorizing the Liquidator to apply for a consent to sever the Real Property;

- b. An Order substantially in the form attached as Schedule “B” to the Notice of Motion:
- (i) authorizing the Liquidator to sell, convey, transfer, lease or assign the Assets or any part or parts thereof out of the ordinary course of business, without the approval of this Court in respect of any transaction not exceeding \$250,000 provided that the aggregate consideration for all such transactions does not exceed \$1,000,000;
 - (ii) amending the Winding Up Order to include a paragraph confirming the stay of proceedings as against Tarn, the Property, which included Tarn Construction, and the Liquidator;
 - (iii) approving the First Report and the activities and conduct of the Liquidator from the date of the Winding Up Order to the date of the First Report as set out therein; and
 - (iv) sealing and treating as confidential, Confidential Appendix “1” to this First Report.

All of which is respectfully submitted at Toronto, Ontario this 13th day of November, 2017.

**KPMG Inc., in its sole capacity as
Court Appointed Liquidator of
Tarn Financial Corporation**



Per: _____

Anamika Gadia
Senior Vice President

Appendix “A”

[2] The applicants allege that there has been a fundamental and complete breakdown of trust in the relationship among the shareholders/partners of Tarn Financial arising from the alleged breach by Akman of his duties owing to Serdar and Tarn Financial and his commitment to the Basegmez Family that justifies the appointment of a liquidator and the winding up of Tarn Financial.

BACKGROUND FACTS

[3] Tarn Financial is an “incorporated partnership” among the Basegmez Family, Serdar and Akman. The company owns: (a) the Delta Hotel Toronto East in Mississauga, Ontario (the “Delta Hotel”); and (b) certain lands adjacent to the Delta Hotel on which a condominium project is planned (the “Development Lands”). Tarn Financial also owns all of the shares of Tarn Construction Corporation (“Tarn Construction”). Tarn Construction is involved in developing the Development Lands.

[4] Tarn Financial was incorporated by Akman under the Ontario *Business Corporations Act* (the “OBCA”) in or about July of 2014.

[5] The individual applicants and respondent come from the Republic of Turkey and that is how they came to know each other and agree to participate in a common business venture.

[6] Akman who is a Canadian citizen and resident in Canada, was the driving force behind the acquisition of the Delta Hotel and the Development Lands.

[7] Akman informed Volkan and Serdar about an opportunity to invest in this real estate project in Toronto. Serdar and Volkan agreed to participate as partners in the acquisition by Akman of the Delta Hotel and the Development Lands. It was agreed among Volkan, Serdar and Akman that Volkan would contribute \$6 million to Tarn Financial in exchange for a 40% interest to be held by the Basegmez Family’s company, BA&B; Serdar would contribute \$3 million to Tarn Financial in exchange for a 20% interest to be held by his company, KAAN; and Akman agreed to contribute \$4.3 million in exchange for a 40% interest to be held by his company, SAMM.

[8] There is no shareholders agreement among SAMM, BA&B and KAAN. However, there are communications between the parties which demonstrate their expectations and intent.

[9] Volkan wanted to provide his son Bleda and his nephew Anil an opportunity to immigrate to Canada. In connection with his investment, Volkan wanted to place them under the care and mentorship of Akman so that they could improve their business skills and obtain experience in an international environment. As well, Akman would sponsor them for immigration purposes.

[10] It was agreed that Akman would receive the same amount of shares as Volkan, despite contributing less capital because the balance of Akman’s contribution would be through the management of Tarn Financial and issuance of personal guarantees that may be required by financial institutions. The applicants allege that it was agreed that based on his reduced capital contribution, Akman would not be entitled to receive any management or development fees from Tarn Financial.

[11] The Articles of Incorporation of Tarn Financial provide for only two classes of shares: unlimited number of Class A common shares and unlimited number of Class B preferred shares. The holders of Class B preferred shares were not entitled to vote at meetings of shareholders.

[12] Volkan, Serdar and Akman agreed that each shareholder would have voting rights in Tarn Financial in proportion to their shareholdings and no one shareholder was to have a majority.

[13] Only Class A common shares were issued to BA&B, KAAN and SAMM in accordance with this intention. Akman held Serdar or KAAN's Class A common shares in trust for the benefit of Serdar.

ALLEGED ACTS OF OPPRESSION

[14] In mid-2016, Serdar and the Basegmez Family discovered that Akman created a new class of shares by amending the Articles and issued new 100 Class B shares of Tarn Financial to his company SAMM, with the right to vote at shareholders meetings without the consent of either Volkan or Serdar. No such class of shares was authorized in the original Articles of Tarn Financial. The new Class B shares gave Akman voting control of Tarn Financial.

[15] Akman changed the capital structure of Tarn Financial to give himself voting control by creating these new Class B shares. These shares carried only voting rights and created no economic interest in the company. They were issued for \$1 each thereby giving Akman absolute voting control of Tarn Financial for a total price of \$100.

[16] There had been no prior discussion with Serdar or Volkan about this amendment. Rather than calling a shareholders meeting to explain what he was doing, Akman chose to effect this amendment by way of special resolution.

[17] The special resolution was signed by Anil who had authority to sign on behalf of the Basegmez Family. Akman signed the resolution as trustee for Serdar as he was holding Serdar's interest in trust. Anil stated that he did not realize what he was signing in the circumstances and did not have sufficient background information or knowledge as to what he was signing.

[18] Further, as trustee for Serdar, Akman owed Serdar a positive duty to obtain his informed consent before signing a special resolution on his behalf. Akman did not obtain Serdar's instructions with respect to this Amending Resolution.

[19] The effect of this amendment was to provide SAMM with a 70% voting interest in Tarn Financial as opposed to the 40% interest it was intended Akman would have when Tarn Financial was incorporated and to dilute in half the voting interests of the Serdar and the Basegmez Family.

[20] Once Akman obtained voting control, the applicants allege that he treated Tarn Financial as his own company and totally disregarded the interests of the applicants.

[21] Akman caused Tarn Financial to enter into a management contract with his company, Akman Hospitality Management Inc., under which Tarn Financial pays it a management fee of 4%

of the hotel's gross revenue accrued monthly for a term of 15 years. This management contract would cost Tarn Financial approximately \$12 million over 15 years.

[22] In addition, Akman has used the hotel's capital to finance personal investments and Tarn Financial has entered into a number of deals and loans with other companies controlled by Akman at prices and terms that are unfavourable to Tarn Financial but favourable to the Akman companies. All of this took place without the consent of the other shareholders of Tarn Financial.

[23] Further, there are no effective controls in Tarn Financial in place to review and verify Akman's personal expenses and there is no support for many of the expenses claimed by Akman and paid by Tarn Financial.

[24] Akman created an off-shore account in the name of a company controlled by him into which he funneled surplus cash from Tarn Financial. This was not disclosed to shareholders nor approved by them.

[25] Akman caused Tarn Financial to pay his company SAMM \$1 million for development fees without their being any communication with shareholders. This amounts to self-dealing as the services provided by SAMM are provided by Akman who is also an officer of Tarn Financial.

[26] None of the related-party transactions entered into between Tarn Financial and Akman companies were disclosed to or approved by the other shareholders.

[27] Auditors were to be appointed by shareholders but instead of that, Akman exercised his new Class B shares to give himself sole authority to appoint auditors, thereby taking away appropriate controls.

POSITION OF THE RESPONDENTS

[28] Akman asserts that the applicants chose to participate in the acquisition of the Delta Hotel and the condo development project as silent partners or passive investors. They were to have no involvement in the decision making for Tarn Financial, the management of Tarn Financial or the day to day operations of Tarn Financial. This was the basis upon which Akman agreed to allow Serdar and Volkan to participate in the business venture and in fact that was how the business was run during the first two years following the acquisition of the hotel and vacant adjacent lands. This is evident from the fact that the applicants did not expect, seek or obtain representation on the Tarn Financial board of directors.

[29] The primary motivation for Volkan investing in Tarn Financial was that he wanted to get a sizeable sum of money out of Turkey, given the political and financial instability in the country. He was also interested in having Bleda and Anil acquire business experience and to have them set up outside of Turkey.

[30] Akman submits that the manner in which Tarn Financial operated during the first two years reflected the parties' intentions going into the business venture together. The applicants never expressed any concerns, dissatisfaction or displeasure in the way in which Akman was running the operation. In fact, as a result of Akman's efforts alone, the performance of the Delta Hotel has

improved significantly in the almost three years of ownership by Tarn Financial. Tarn Financial has obtained all of the necessary zoning and severance required to proceed with the condo development and is ready to proceed to construction with 100% of phase 1 of the project having been sold and all the necessary construction financing approved. All of this has significantly increased the value of the adjacent lands.

[31] Akman submits that following the closing of the Delta Hotel purchase, he took steps to give effect to the intention of the parties at the time they made their investment in Tarn Financial regarding control of Tarn Financial. This led to the creation of the new Class B common shares.

[32] Notwithstanding the original corporate structure, Akman submits that the applicants in this case understood their roles as silent partners at the time that the business was created and it was operated under that understanding for two full years. There was no doubt that Akman was to have exclusive control over all decision making, management and operations of Tarn Financial.

[33] There are no detailed agreements by the parties in terms of management fees and development fees. In defies logic, according to Akman, that he would have agreed to indefinitely provide management services free of charge and forego almost \$500,000 a year for an indefinite number of years all in consideration for putting in approximately \$1.6 million less for his shares in Tarn Financial. The same would apply to development fees and all of the work done in that regard by Akman. Akman asserts that, in other words, he would be giving up well over \$10 million to save \$1.6 million up front and that was never the intention.

[34] There is an astounding lack of documentation indicating the intention of the parties. Their arrangement was completely informal and Volkan and Serdar were betting on Akman and his skills and talents in making their investment profitable.

[35] Neither Volkan nor Serdar had any experience with hotels and development and Akman submits that they were quite content to trust in Akman's decision making and not involve themselves in the ordinary day-to-day management of the company.

[36] In fact, the business has done well under Akman's management. The value of the applicants' share has risen significantly. Akman obtained the sale of 100% of the units in the condominium development project and he was the one who obtained the necessary zoning and construction financing on phase 1.

[37] In argument, counsel for the respondents indicated that "the optics may not be great" but everyone knew that Akman would be charging for management and development fees.

[38] Although it is clear that the parties no longer want to do business together the respondents submit that, a winding up of Tarn Financial would be such a draconian measure given that the business operation has been so successful.

[39] As for the allegations of self-dealing, the respondents argue that, there are remedies of disgorgement that are available if that has been established and further, arbitration could be utilized for the issue of management and development fees.

ANALYSIS

[40] There is no real dispute in this case over the governing legal principles with respect to the oppression remedy and what constitutes oppressive conduct. The essential purpose of the oppression remedy provisions vis-à-vis shareholders is to protect the minority from unfair treatment by the majority. It does this by protecting the reasonable expectations of corporate stakeholders with respect to the operation of the company.

[41] There is no written shareholders agreement among the parties. But even in the absence of one, the most basic of the expectations of a shareholder is that the company will be operated by its officers and directors in accordance with the OBCA and that they will comply with their statutory obligations. Any shareholder would have a reasonable expectation that a company's directors would fulfill their fiduciary duties and would act honestly and in good faith with a view to the best interests of the corporation. Breach of those duties must be a breach of a shareholder's reasonable expectations. [*D'Antonio v. Monaco* 2013 ONSC 5007 at par. 93 affirmed 2015 ONCA 274].

[42] The reasonable expectation of the parties is set out in communications between the parties and the capital structure of Tarn Financial at the time of the initial investment. That structure prevented Akman from unilaterally passing either an ordinary or special resolution. There is no doubt that if the parties had turned their minds to the matter they would have not accepted a unilateral re-organization of the capital structure of Tarn Financial to provide absolute voting control of the company to Akman. Further, the breaches by Akman of his statutory obligations as sole officer and director of Tarn Financial and in particular his self-dealing and use of Tarn Financial as a personal bank account were not within the expectation of the parties.

[43] Shortly after receiving the investment funds from the applicants, Akman took immediate steps to alter the capital structure of Tarn Financial to secure absolute voting control for himself for only \$100 and established himself as the sole director. He abused his powers by engaging in self-dealing transactions that have diverted millions of dollars out of Tarn Financial for his personal benefit and has indicated a clear intention to continue to operate the company without any regard to the interests of Serdar and the Basegmez Family or his statutory obligations.

[44] Such conduct clearly falls within the meaning of "oppression" to a shareholder under s. 248(2) of the OBCA in that Akman has acted in a manner which is unfairly prejudicial to or unfairly disregards the interests of the shareholders. The court has jurisdiction to provide remedies which include the winding up of the company.

[45] At the hearing of this motion, the court was faced only with the choice of continuing the status quo or ordering that there be a winding up. No other option was provided by way of cross-motion.

[46] While this matter was under reserve, I gave the parties time to discuss other possible alternatives to winding up for disengagement such as a buy-sell arrangement. They could reach no agreement.

[47] Counsel for the respondents indicated that they wished to bring a new motion to approve an offer for the applicants' shares. It was denied because it was too late and moreover, there would be no ability on the applicants' part to assess the offer price and decide whether it was appropriate as they had no access to the requisite financial information of Tarn Financial.

[48] There is no question that this partnership cannot continue. There has been a complete breakdown in trust and the applicants have no means at the moment of assessing the value of the company.

[49] Although a winding-up order is a drastic remedy, there appears to be no alternative that the parties can agree to. Here, the applicant shareholders have a justifiable lack of confidence in the conduct of Akman in his management of Tarn Financial. The breakdown is in confidence, not over any disagreement of policies of the management. The applicants do not want to take over the management of the company. They simply want out because of serious misconduct by Akman in his deliberate violations of the OBCA, blatantly disregarding the rights of the other shareholders, and engaging in improper self-dealing. Although a court is reluctant to order a winding-up, no other less disruptive order is appropriate in these circumstances.

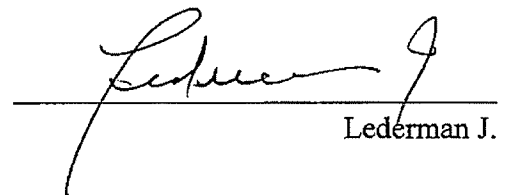
[50] A liquidator has wide powers to take control of the property, including all bank accounts and records of the company and can utilize accountants and appraisers, and other professionals to provide valuations and financial statements and for stability and an orderly liquidation.

[51] A liquidator would be in a position to control expenditures and review what monies have been transferred out. In the absence of any buy-out plan, the liquidator is best situated to deal with this.

[52] A liquidator can give a first opportunity to the parties to acquire, at fair asset value, any asset sought by a party or otherwise sell the assets at the best price obtainable.

[53] Ample time has been given to the parties to attempt to work out alternative arrangements. They have not been able to do so. Accordingly, an order will go under s. 248 of the OBCA for the winding up of Tarn Financial and appointing KPMG LLP as liquidator for that purpose. The terms of the order can be settled on a 9:30 appointment.

[54] If the parties cannot agree as to costs they may make written submissions: the applicants within 15 days; the respondents within 15 days thereafter; and reply, if any, within 7 days thereafter.


Lederman J.

CITATION: Basegmez v. Akman, 2017 ONSC 5370
COURT FILE NO.: CV-17-11697-000
DATE: 20170915

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

BASEGMEZ, ANIL RUKAN BASEGMEZ, BA&B
CAPITAL INC., SERDAR KOCTURK and KAAN
HOLDINGS INC.

Applicants

– and –

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

Respondents

REASONS FOR JUDGMENT

Lederman J.

Released: September 15, 2017

Appendix “B”

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

THE HONOURABLE MR) **FRIDAY, THE 15th DAY**
)
JUSTICE LEDERMAN) **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 an after the date of this Order.

PIPEDA

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

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE KPMG'S LIABILITY

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

LIQUIDATOR'S ACCOUNTS

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

FUNDING OF KPMG

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

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

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

SERVICE AND NOTICE

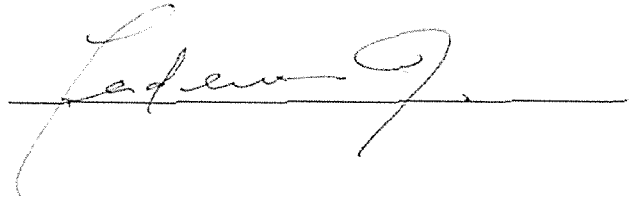
20. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.kpmg.com/ca/tarn.

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 cursive script, appearing to read "Ladewig", is written over a horizontal line.

BETWEEN:

BASEGMEZ *et al*
– Applicants –

AND

AKMAN *et al*
– Respondents –

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)

ORDER

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Barristers and Solicitors
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Facsimile: (416) 862-7661

LAWYERS FOR THE APPLICANTS

Appendix “C”

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

BETWEEN:

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

Applicants
(Respondents)

- and -

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

Respondents
(Appellants)

NOTICE OF APPEAL

THE APPELLANTS APPEAL to the Divisional Court from the Order of the Honourable Justice Sidney N. Lederman dated September 15, 2017 (the “**Order**”), made at Toronto.

THE APPELLANTS ASK that the Order be varied as follows:

1. the remedy ordered by the Honourable Justice Lederman should be varied as follows:
 - (a) the order that Tarn Financial Corporation (“**Tarn**”) be wound up and KPMG appointed as liquidator of the effects and estate of Tarn should be set aside;
 - (b) the fair market value of Respondents’ shares in Tarn should be determined by an independent valuation supervised and approved by the Superior Court of Justice (Commercial List);

- (c) the Appellants should be ordered to purchase the Respondents' shares in Tarn for their fair market value as of the date of their independent valuation; and
 - (d) a monitor should be appointed to supervise the management of Tarn until such time as the Appellants purchase the Respondent's shares in Tarn;
2. the Appellants seek their costs of this appeal and, if applicable, a variance of the costs award on the application to reflect the remedy ordered by this Court; and
 3. the Appellants also seek such further and other relief as this Court considers just.

THE GROUNDS OF APPEAL are as follows:

1. This appeal arises from an application under the oppression provisions of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "**OBCA**") against Tarn and one of its shareholders.
2. Tarn owns a hotel in Scarborough, Ontario, as well as certain adjacent lands on which the development of a condominium project is underway. Shares in Tarn are held by:
 - (a) the Appellant, SAMM Capital Holdings Inc. ("**SAMM**"), on behalf of the Appellant, Ali Akman ("**Akman**");
 - (b) the Respondent, BA&B Capital Inc., on behalf of the Respondents, Volkan Basegmez, Cem Bleda Basegmez, and Anil Rukan Basegmez; and
 - (c) the Respondent, KAAN Holdings Inc., on behalf of the Respondent, Serdar Kocturk.
3. Akman was at all times the driving force behind Tarn and its investments. Shortly after the Respondents invested in Tarn, Akman took steps that effectively gave him, through SAMM, voting control of Tarn. He then caused Tarn to enter into a number

of transactions, including with his own companies, that the Respondents alleged defeated their reasonable expectations.

4. The application judge found that the Appellants' conduct was unfairly prejudicial to or unfairly disregarded the Respondents' interests. He ordered that Tarn be wound up and that KPMG be appointed as its liquidator.

5. In doing so, the application judge erred in law:

(a) The application judge failed to exercise his discretion pursuant to s. 248 of the *OBCA*. Rather than consider what remedy would be fit in the circumstances, the application judge effectively gave the Respondents a veto; the application judge treated the parties' failure to agree on an alternative to winding up as dispositive of the question of remedy. The application judge ordered that Tarn be wound up not because doing so would rectify unfair prejudice or disregard, but because the Respondents did not consent to anything else.

(b) The application judge failed to craft a remedy that would achieve the purpose of the oppression remedy, which is to rectify oppressive conduct. Rather, the application judge characterized Akman's conduct as effectively having looted Tarn — a characterization that was not supported by the record — and then imposed a draconian remedy the purpose of which was to punish Akman, not to rectify the oppressive conduct.

(c) The effect of the application judge's errors of law was to thwart the proper application of s. 248 of the *OBCA* and to penalize the Appellants at the expense of Tarn and its other corporate stakeholders.

6. The Appellants will also rely on such further and other grounds as counsel may advise and this Court may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS: The Order was a final order made in a proceeding under the *OBCA*. As such, an appeal lies to the Divisional Court as of right pursuant to s. 255 of the *OBCA*.

The appellants request that this appeal be heard at Toronto.

October 6, 2017

McCARTHY TÉTRAULT LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Geoff R. Hall LSUC#: 347010
Email: ghall@mccarthy.ca
Tel: (416) 601-7856

Adam Goldenberg LSUC#: 69114R
Email: agoldenberg@mccarthy.ca
Tel: (416) 601-8357
Fax: (416) 868-0673

Lawyers for the Respondents (Appellants)

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

E. Patrick Shea LSUC#: 39655K
Christopher Stanek LSUC#: 45127K
Tel: (416) 369-7399 / (416) 862-4369
Fax: (416) 862-7661

Lawyers for the Applicants (Respondents)

Basegmez, et al. Akman, et al.
Applicants/Respondents and Respondents/Appellants

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)**

Proceeding commenced at Toronto

NOTICE OF APPEAL

McCARTHY TÉTRAULT LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Geoff R. Hall LSUC#: 347010
Email: ghall@mccarthy.ca
Tel: (416) 601-7856

Adam Goldenberg LSUC#: 69114R
Email: agoldenberg@mccarthy.ca
Tel: (416) 601-8357
Fax: (416) 868-0673

Lawyers for the Respondents (Appellants)

DOCS 17118006

Appendix “D”

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)**

THE HONOURABLE)

THURSDAY, THE 26TH

JUSTICE *PATILLO*)

DAY OF OCTOBER, 2017

BETWEEN:

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

Applicants

(Respondents in Appeal/Responding Parties)

- and -

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

Respondents

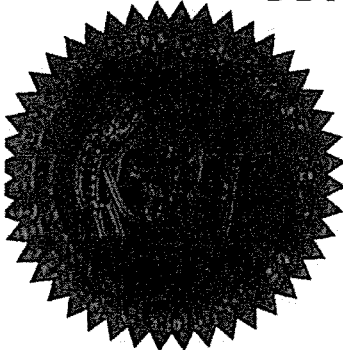
(Appellants/Moving Parties)

**ORDER
(expediting appeal)**

THIS MOTION, made by the Appellants/Moving Parties, Ali Akman and SAMM Capital Holdings Inc., for an order expediting this appeal, was heard this day at Toronto.

ON READING the notice of motion, the Affidavit of Ali Akman sworn October 16, 2017, and the letter of Kyla Mahar (counsel for the liquidator KPMG Inc. (the "**Liquidator**") dated October 24, 2017 (the "**Mahar Letter**"), and on hearing the submissions of counsel for the Appellants/Moving Parties and counsel for the Respondents in Appeal/Responding Parties, Volkan Basegmez, Cem Bleda Basegmez, Anil Rukan Basegmez, BA&B Capital Inc., Serdar Kocturk, and KAAH Holdings Inc.;

and counsel for the Liquidator:



1. **THIS COURT ORDERS** that the time for service of the notice of motion and other materials in support of this motion is abridged such that the motion is properly returnable today.

2. **THIS COURT ORDERS** that this appeal is expedited and shall proceed on the following timetable:

(a) ~~the factum and responding compendium (if any) of the Respondents in Appeal/Responding Parties will be served and filed no later than November 10, 2017; and~~

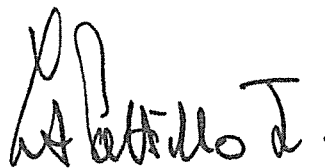
(b) the hearing of the appeal will take place on ^{December 22} ~~November 17~~, 2017 at 10 a.m. at Osgoode Hall, Toronto, with two hours set for the oral argument.

3. **THIS COURT ORDERS** that:

(a) subject to further order of either a judge of the Divisional Court or a judge of the Ontario Superior Court of Justice (Commercial List), the materials filed on this motion (including but not limited to the Mahar Letter) (the "**Motion Materials**") shall be sealed and kept confidential and will not form part of the public record, but rather shall be placed, separate and apart from all other contents of the file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and may only be opened upon further order of the court;

- (b) notwithstanding any other order made by the Ontario Superior Court of Justice (Commercial List), the Liquidator is not required to post the Motion Materials to the website the Liquidator is maintaining in respect of the liquidation proceedings in respect of Tarn Financial Corporation; and
- (c) the Liquidator is at liberty, in the exercise of its duties as Liquidator, to make copies of the Motion Materials available to interested stakeholders upon such terms as to confidentiality that the Liquidator considers appropriate.

ENTERED AT / INSCRIT A TORONTO ON / BOOK NO: 22 LE / DANS LE REGISTRE NO.: OCT 27 2017 294 PER / PAR: AL
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Basegmez et al. Akman et al.
Applicants and Respondents
(Respondents in Appeal/Responding Parties) (Appellants/Moving Parties)

Court File No.: 594/17

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)**

Proceeding commenced at Toronto

ORDER

McCARTHY TÉTRAULT LLP

Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Geoff R. Hall LSUC#: 347010

Email: ghall@mccarthy.ca

Tel.: (416) 601-7856

Adam Goldenberg LSUC#: 69114R

Email: agoldenberg@mccarthy.ca

Tel.: (416) 601-8357

Fax: (416) 868-0673


Lawyers for the Respondents (Appellants/Moving
Parties)

MT DOCS 17189541v4

Appendix “E”

6. This notice is filed under subsection 210 (4) of the *Business Corporation Act*. The court has appointed the above named as the liquidator(s) of the corporation.

Le présent avis est déposé conformément au paragraphe 210 (4) de la Loi sur les sociétés par actions. Le tribunal a nommé les personnes susmentionnées comme liquidateur de la société.

By/Par :  _____

(Signature of an Officer of the Corporation or the Liquidator)
(Signature d'un dirigeant de la société ou du liquidateur)

Stephanie De Cerica, Miller Thomson LLP
Lawyers for the Liquidator.



- [The Ontario Gazette \(https://www.ontario.ca/search/ontario-gazette\)](https://www.ontario.ca/search/ontario-gazette)
- [Ontario Gazette Volume 150 Issue 41 | October 14, 2017 \(https://www.ontario.ca/document/ontario-gazette-volume-150-issue-41-october-14-2017\)](https://www.ontario.ca/document/ontario-gazette-volume-150-issue-41-october-14-2017)
- [Corporation Notices \(https://www.ontario.ca/document/ontario-gazette-volume-150-issue-41-october-14-2017/corporation-notices\)](https://www.ontario.ca/document/ontario-gazette-volume-150-issue-41-october-14-2017/corporation-notices)

[Print all](#)

Corporation Notices

[Download 8 MB \(https://www.ontario.ca/files.ontario.ca/books/ontariogazette_150-41.pdf\)](https://www.ontario.ca/files.ontario.ca/books/ontariogazette_150-41.pdf)

Notice of Appointment of Liquidator Tarn Financial Corporation (the “Corporation”)

notice is hereby given pursuant to subsection 210 (4) of the *Business Corporations Act* (Ontario) that by Order of the Ontario Superior Court of Justice dated September 15, 2017, KPMG Inc., was appointed as Liquidator of the Corporation listed above, effective as of September 25, 2017.

Dated this 28th day of September, 2017.

KPMG Inc., Liquidator
c/o miller thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Kyla E.M. Mahar
kmahar@millerthomson.com (<mailto:kmahar@millerthomson.com>)
Tel: 416-597-4303
Fax: 416-595-8695
Lawyers for the Liquidator

(150-P315)

Updated: October 13, 2017

Appendix “F”



KPMG Inc.

Bay Adelaide Centre
333 Bay Street Suite 4600
Toronto ON M5H 2S5
Canada

Telephone (416) 777-8500
Fax (416) 777-3364
Internet www.kpmg.ca

September 29, 2017

Dear Employee:

The Ontario Superior Court of Justice granted an Order dated September 15, 2017 pursuant to the *Business Corporations Act*, R.S.O. appointing KPMG Inc. (“KPMG”) as liquidator of Tarn Financial Corporation (“Tarn”) effective September 25, 2017 for the purpose of winding up Tarn (the “Order”). Tarn owns and operates the Delta Toronto East hotel.

The winding up of a corporation is a legal process where the assets of a business are sold and the proceeds are distributed by the liquidator.

As liquidator, KPMG will: investigate the business and affairs of Tarn; take possession and exercise control over Tarn’s property and assets; manage, operate and carry on the business of Tarn; and market and sell Tarn’s property, among other things. The business of Tarn will continue in the ordinary course with the oversight of KPMG.

Your commitment to and employment with Tarn is greatly valued. Notwithstanding the Order, all employees of Tarn, including you, will remain employees of Tarn. As indicated above, Tarn’s business will continue to operate uninterrupted, and your terms of employment, wages and benefits will continue as usual during the winding up process. Tarn will continue to fund all of your employee-related remittances on a go-forward basis.

Should you have any additional questions, please reach out to your department head or feel free to reach out to KPMG at tarn@kpmg.ca or (416) 649-7623 or (1 855) 222-8083. Information pertaining to the winding up proceedings will be posted on KPMG’s website at www.kpmg.com/ca/tarn.

We look forward to your continued employment with Tarn. Thank you in advance for your patience and support as we work to achieve an outcome that serves the best interests of all stakeholders.

Yours truly,

KPMG Inc.
Liquidator of Tarn Financial Corporation

Per:

Anamika Gadia
Senior Vice-President

Appendix “G”



KPMG Inc.
Bay Adelaide Centre
333 Bay Street Suite 4600
Toronto ON M5H 2S5
Canada

Telephone (416) 777-8500
Fax (416) 777-3364
Internet www.kpmg.ca

September 28, 2017

To Whom It May Concern,

Re: Development Project at 2035 Kennedy Road (the “Kennedys”)

As you may be aware, the Ontario Superior Court of Justice granted an Order dated September 15, 2017 pursuant to the *Business Corporations Act*, R.S.O. appointing KPMG Inc. (“**KPMG**”) as liquidator of Tarn Financial Corporation (“**Tarn**”) effective September 25, 2017 for the purpose of winding up Tarn (the “**Order**”). Tarn owns and operates Tarn Construction Corporation (“**Tarn Construction**”), which is developing the Kennedys. A copy of the Order and information pertaining to the winding up proceedings will be posted on KPMG’s website, which can be found at www.kpmg.com/ca/tarn.

The winding up proceeding is a legal process whereby the assets of the business are sold and the proceeds are distributed by the liquidator. As a result of the Order, KPMG is empowered and authorized, but is not obligated, to act in respect of the assets, property and undertaking of Tarn and Tarn Construction.

Based on the foregoing, KPMG requests that you cease all activities in respect of the Kennedys development project until further notice from KPMG. Given our recent appointment, KPMG is currently assessing the options available in respect of the project. From and after the date of our appointment, you should not take instructions from anyone other than KPMG regarding the Kennedys development project.

Should you wish to discuss this matter further, please contact KPMG at (416) 649-7623 or (1-855) 222-8083 or at tarn@kpmg.ca.

Yours truly,

KPMG Inc.
Solely in its capacity as Liquidator of
Tarn Financial Corporation
Per:

Anamika Gadia
Senior Vice-President



KPMG Inc.

Bay Adelaide Centre
333 Bay Street Suite 4600
Toronto ON M5H 2S5
Canada

Telephone (416) 777-8500
Fax (416) 777-3364
Internet www.kpmg.ca

October 3, 2017

To Whom It May Concern,

Re: Development Project at 2035 Kennedy Road (the “Kennedys”)

As you may be aware, the Ontario Superior Court of Justice granted an Order dated September 15, 2017 pursuant to the *Business Corporations Act*, R.S.O. (“**OBCA**”) appointing KPMG Inc. (“**KPMG**”) as liquidator of Tarn Financial Corporation (“**Tarn**”) effective September 25, 2017 for the purpose of winding up Tarn (the “**Order**”) and distributing its assets (the “**Winding Up Proceedings**”). Tarn owns and operates Tarn Construction Corporation (“**Tarn Construction**”), which is developing the Kennedys (the “**Development Project**”). The real property municipally known as 2035 Kennedy Road, Toronto that is being developed for the Kennedys is also owned by Tarn (the “**Real Property**”). A copy of the Order and information pertaining to the Winding Up Proceedings will be posted on KPMG’s website, which can be found at www.kpmg.com/ca/tarn.

This letter is further to our letter to you dated September 28, 2017 advising of the Winding Up Proceedings and advising you that all activities you are undertaking in respect of the Development Project are to cease until further notice from KPMG. We have received a number of inquiries as a result of our September 28, 2017 letter and the following is intended to address the inquiries to date.

Any amounts owing to you from Tarn or Tarn Construction are currently stayed by the Order and will be dealt with in accordance with the terms of the OBCA and the Order. The only party entitled to instruct you with respect to Tarn, Tarn Construction, the Development Project or the Real Property and to otherwise deal with Tarn, Tarn Construction, the Development Project and the Real Property from and after September 25, 2017 is KPMG in accordance with the Order. At this time, construction of the Development Project has been temporarily placed on hold.

To the extent that the counter party to your contract is a legal entity other than Tarn or Tarn Construction, we confirm that that counter party has no authorization to deal with Tarn, Tarn Construction, the Development Project or the Real Property from and after September 25, 2017 and that KPMG is not appointed over any other entity other than Tarn and Tarn Construction.

Parties should issue any outstanding invoices to the counter party to their contract in accordance with their past practice.

Should you wish to discuss this matter further, please contact KPMG at (416) 649-7623 or (1-855) 222-8083 or at tarn@kpmg.ca.

Yours truly,



Page 2

KPMG Inc.
Solely in its capacity as Liquidator of
Tarn Financial Corporation

Per:

A handwritten signature in cursive script that reads "Anamika Gadia".

Anamika Gadia
Senior Vice-President

Appendix “H”



KPMG Inc.
Bay Adelaide Centre
333 Bay Street Suite 4600
Toronto ON M5H 2S5
Canada

Telephone (416) 777-8500
Fax (416) 777-3364
Internet www.kpmg.ca

October 11, 2017

To Buyer of a unit at the Kennedys,

Re: Development Project at 2035 Kennedy Road (the “Kennedys”)

As you may be aware, the Ontario Superior Court of Justice granted an Order dated September 15, 2017 pursuant to the *Business Corporations Act*, R.S.O. appointing KPMG Inc. (“KPMG” or “Liquidator”) as liquidator of Tarn Financial Corporation (“Tarn”) effective September 25, 2017 for the purpose of winding up Tarn (the “Order”) and distributing its assets (the “Winding Up Proceedings”). Tarn owns and operates Tarn Construction Corporation (“Tarn Construction” and the “Vendor”), which is developing the Kennedys (the “Development Project”). The real property municipally known as 2035 Kennedy Road, Toronto that is being developed for the Kennedys is also owned by Tarn. A copy of the Order and information pertaining to the Winding Up Proceedings will be posted on KPMG’s website, which can be found at www.kpmg.com/ca/tarn.

The winding up proceeding is a legal process whereby the Liquidator is the statutory representative for the purposes of winding up the corporation, which includes the sale of the assets of the business and the distribution of the proceeds. As a result of the Order, KPMG is empowered and authorized, but is not obligated, to act in respect of the assets, property and undertaking of Tarn and through Tarn, for Tarn Construction.

We have undertaken an initial review with counsel for Tarn and Tarn Construction and confirm that all amounts that KPMG has been advised have been paid by you in respect of your deposit funds to the Vendor under the Agreement of Purchase and Sale (each an “APS”) continue to be held in trust. These funds will remain in trust and be under the oversight of KPMG. We confirm that deposits will continue to be received in trust in accordance with your APS.

Given the pending sale of the assets, KPMG has temporarily ceased processing individual requests for an assignment of an APS until KPMG has determined the appropriate sale process to market the assets, which will be approved by the Court prior to KPMG commencing such a process. In addition, KPMG has ceased all activities relating to the construction of the Development Project while it determines the sale process that it intends to seek to market the assets.

Should you wish to discuss this matter further, please contact KPMG at (416) 649-7623 or (1-855) 222-8083 or at tarn@kpmg.ca.

Yours truly,

KPMG Inc.
Solely in its capacity as Liquidator of
Tarn Financial Corporation

Per:

Anamika Gadia
Senior Vice-President



KPMG Inc.
Bay Adelaide Centre
333 Bay Street Suite 4600
Toronto ON M5H 2S5
Canada

Telephone (416) 777-8500
Fax (416) 777-3364
Internet www.kpmg.ca

October 13, 2017

To Buyer of a unit at the Kennedys,

Re: Development Project at 2035 Kennedy Road (the “Kennedys”)

As you may be aware, the Ontario Superior Court of Justice granted an Order dated September 15, 2017 pursuant to the *Business Corporations Act*, R.S.O. appointing KPMG Inc. (“**KPMG**” or the “**Liquidator**”) as liquidator of Tarn Financial Corporation (“**Tarn**”) effective September 25, 2017 for the purpose of winding up Tarn (the “**Order**”) and distributing its assets (the “**Winding Up Proceedings**”). Tarn owns and operates Tarn Construction Corporation (“**Tarn Construction**”), which is developing the Kennedys (the “**Development Project**”). The real property municipally known as 2035 Kennedy Road, Toronto that is being developed for the Kennedys is also owned by Tarn. A copy of the Order and information pertaining to the Winding Up Proceedings will be posted on KPMG’s website, which can be found at www.kpmg.com/ca/tarn.

This letter is further to our letter to you dated October 11, 2017 advising of the Winding Up Proceedings. A copy of our October 11, 2017 letter is attached. We have received a number of inquiries as a result of our October 11, 2017 letter and the following is intended to respond to the inquiries received.

The Agreement of Purchase and Sale (each an “**APS**”) that you have entered into remains in full force and effect. Failure to comply with your obligations under the APS may lead to you being noted in default.

All payments due by you as a purchaser under the APS should continue to be made in accordance with the terms of your APS. To the extent that you have not provided post-dated cheques with respect to your deposit payments, future payments should be directed as follows:

Bennett Jones LLP C/O Tarn Financial Corporation
2035 Kennedy Road
Toronto, ON
M1T 3G2

As indicated in the October 11, 2017 letter, all deposits received to date are being held in trust. These funds are currently held with Bennett Jones LLP and will continue to be held in trust in accordance with your APS and be under the oversight of KPMG. Future deposits received under the APS will also be held in trust and be under the oversight of KPMG.

The Development Project has been placed on hold at this time. KPMG is in the process of determining the appropriate sale process to market the assets of the business and this sale process will be approved by the Court prior to KPMG commencing it. At this time, KPMG does not anticipate work continuing with respect to the Development Project during the sale process.

KPMG is the only party that is authorized to deal with the Development Project pursuant to the Order. 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. **A representative of KPMG will endeavour to respond to your inquiry within 48 hours.**

Yours truly,

KPMG Inc.
Solely in its capacity as Liquidator of
Tarn Financial Corporation

Appendix “I”



KPMG Inc.
Bay Adelaide Centre
333 Bay Street Suite 4600
Toronto ON M5H 2S5
Canada

Telephone (416) 777-8500
Fax (416) 777-3364
Internet www.kpmg.ca

October 11, 2017

To Real Estate Brokers involved in the Sale of Units at the Kennedys,

Re: Development Project at 2035 Kennedy Road (the “Kennedys”)

As you may be aware, the Ontario Superior Court of Justice granted an Order dated September 15, 2017 pursuant to the Ontario *Business Corporations Act* appointing KPMG Inc. (“**KPMG**” or “**Liquidator**”) as liquidator of Tarn Financial Corporation (“**Tarn**”) effective September 25, 2017 for the purpose of winding up Tarn (the “**Order**”) and distributing its assets (the “**Winding Up Proceedings**”). Tarn owns and operates Tarn Construction Corporation (“**Tarn Construction**” and the “**Vendor**”), which is developing the Kennedys (the “**Development Project**”). The real property municipally known as 2035 Kennedy Road, Toronto that is being developed for the Kennedys is also owned by Tarn. A copy of the Order and information pertaining to the Winding Up Proceedings will be posted on KPMG’s website, which can be found at www.kpmg.com/ca/tarn.

The winding up proceeding is a legal process whereby the Liquidator is the statutory representative for the purposes of winding up the corporation, which includes the sale of the assets of the business and the distribution of the proceeds. As a result of the Order, KPMG is empowered and authorized, but is not obligated, to act in respect of the assets, property and undertaking of Tarn and through Tarn, for Tarn Construction.

KPMG is currently determining the appropriate sale process to market the assets of the business and this process will be approved by the Court. In the interim, KPMG has ceased all activities relating to the construction of the Development Project.

Any amounts owing to you from Tarn or Tarn Construction are currently stayed by the Order and will be dealt with in accordance with the terms of the OBCA and the Order. KPMG is in the process of reconciling the amounts owing by Tarn and Tarn Construction. If you have information that will assist KPMG in determining the amount owing to you, please provide by email to KPMG at the email set out below.

For your information, we enclose a copy of the notice that has been sent to all of the purchasers of the units at the Kennedys explaining the current situation. If you receive any inquiries from purchasers, please direct them to KPMG at the contact details set out below.

Should you wish to discuss this matter further, please contact KPMG at (416) 649-7623 or (1-855) 222-8083 or at tarn@kpmg.ca.

Yours truly,

KPMG Inc.
Solely in its capacity as Liquidator of
Tarn Financial Corporation



KPMG Inc.
Bay Adelaide Centre
333 Bay Street Suite 4600
Toronto ON M5H 2S5
Canada

Telephone (416) 777-8500
Fax (416) 777-3364
Internet www.kpmg.ca

October 11, 2017

To Buyer of a unit at the Kennedys,

Re: Development Project at 2035 Kennedy Road (the “Kennedys”)

As you may be aware, the Ontario Superior Court of Justice granted an Order dated September 15, 2017 pursuant to the *Business Corporations Act*, R.S.O. appointing KPMG Inc. (“KPMG” or “Liquidator”) as liquidator of Tarn Financial Corporation (“Tarn”) effective September 25, 2017 for the purpose of winding up Tarn (the “Order”) and distributing its assets (the “Winding Up Proceedings”). Tarn owns and operates Tarn Construction Corporation (“Tarn Construction” and the “Vendor”), which is developing the Kennedys (the “Development Project”). The real property municipally known as 2035 Kennedy Road, Toronto that is being developed for the Kennedys is also owned by Tarn. A copy of the Order and information pertaining to the Winding Up Proceedings will be posted on KPMG’s website, which can be found at www.kpmg.com/ca/tarn.

The winding up proceeding is a legal process whereby the Liquidator is the statutory representative for the purposes of winding up the corporation, which includes the sale of the assets of the business and the distribution of the proceeds. As a result of the Order, KPMG is empowered and authorized, but is not obligated, to act in respect of the assets, property and undertaking of Tarn and through Tarn, for Tarn Construction.

We have undertaken an initial review with counsel for Tarn and Tarn Construction and confirm that all amounts that KPMG has been advised have been paid by you in respect of your deposit funds to the Vendor under the Agreement of Purchase and Sale (each an “APS”) continue to be held in trust. These funds will remain in trust and be under the oversight of KPMG. We confirm that deposits will continue to be received in trust in accordance with your APS.

Given the pending sale of the assets, KPMG has temporarily ceased processing individual requests for an assignment of an APS until KPMG has determined the appropriate sale process to market the assets, which will be approved by the Court prior to KPMG commencing such a process. In addition, KPMG has ceased all activities relating to the construction of the Development Project while it determines the sale process that it intends to seek to market the assets.

Should you wish to discuss this matter further, please contact KPMG at (416) 649-7623 or (1-855) 222-8083 or at tarn@kpmg.ca.

Yours truly,

KPMG Inc.
Solely in its capacity as Liquidator of
Tarn Financial Corporation

Per:

Anamika Gadia
Senior Vice-President

Appendix “J”

PROPERTY DESCRIPTION: LT 19 RCP 9945 SCARBOROUGH PT 1, PL 66R28554; CITY OF TORONTO

PROPERTY REMARKS: FOR THE PURPOSE OF THE QUALIFIER, THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2016/03/17.

ESTATE/QUALIFIER:
FEE SIMPLE
LT ABSOLUTE PLUS

RECENTLY:
RE-ENTRY FROM 06164-0187

PIN CREATION DATE:
2016/03/17

OWNERS' NAMES
TARN FINANCIAL CORPORATION

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2016/03/17 **						
**SUBJECT TO SUBSECTION 44 (1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
SC618244	1981/06/18	AGREEMENT REMARKS: SITE PLAN			THE CORP. OF THE BOROUGH OF SCARBOROUGH	C
TB966207	1995/03/03	AGREEMENT REMARKS: RE: SC618244		THE CORPORATION OF THE CITY OF SCARBOROUGH	767748 ONTARIO LIMITED	C
TR39151	1999/03/23	NOTICE OF LEASE		767748 ONTARIO LIMITED	MICROCELL CONNEXIONS INC.	C
AT3740675	2014/11/14	TRANSFER	\$32,750,000	KENNEDY ROAD HOSPITALITY OPERATIONS LTD.	TARN FINANCIAL CORPORATION	C
AT3740682	2014/11/14	CHARGE	\$19,800,000	TARN FINANCIAL CORPORATION	MERIDIAN CREDIT UNION LIMITED	C
AT3740683	2014/11/14	NO ASSGN RENT GEN REMARKS: AT3740682.		TARN FINANCIAL CORPORATION	MERIDIAN CREDIT UNION LIMITED	C
AT4101101	2015/12/21	CHARGE		*** DELETED AGAINST THIS PROPERTY *** TARN FINANCIAL CORPORATION	MERIDIAN CREDIT UNION LIMITED	C
66R28554	2016/03/17	PLAN REFERENCE				C
AT4169525	2016/03/17	APL ABSOLUTE TITLE REMARKS: AT3986997		TARN FINANCIAL CORPORATION		C
AT4242765	2016/06/09	CHARGE	\$7,120,000	TARN FINANCIAL CORPORATION	THE GUARANTEE COMPANY OF NORTH AMERICA	C
AT4280809	2016/07/15	NOTICE REMARKS: AT4242765	\$2	TARN FINANCIAL CORPORATION	THE GUARANTEE COMPANY OF NORTH AMERICA	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT4381181	2016/10/25	NOTICE		*** COMPLETELY DELETED *** TRAN FINANCIAL CORPORATION	MERIDIAN CREDIT UNION LIMITED	
		REMARKS: AT4101101				
AT4443337	2016/12/23	CHARGE	\$11,250,000	TARN FINANCIAL CORPORATION	KINGSETT MORTGAGE CORPORATION	C
AT4443338	2016/12/23	NO ASSGN RENT GEN		TARN FINANCIAL CORPORATION	KINGSETT MORTGAGE CORPORATION	C
		REMARKS: AT4443337.				
AT4448402	2017/01/04	DISCH OF CHARGE		*** COMPLETELY DELETED *** MERIDIAN CREDIT UNION LIMITED		
		REMARKS: AT4101101.				
AT4518239	2017/03/23	CHARGE	\$39,500,000	TARN FINANCIAL CORPORATION	TRISURA GUARANTEE INSURANCE COMPANY	C
AT4623337	2017/07/11	CHARGE	\$4,000,000	TARN FINANCIAL CORPORATION	SAMM CAPITAL HOLDINGS INC.	C
AT4623338	2017/07/11	NO ASSGN RENT GEN		TARN FINANCIAL CORPORATION	SAMM CAPITAL HOLDINGS INC.	C
		REMARKS: AT4623337. DELETE AT4623338 UPON DELETION OF AT4623337				
AT4657388	2017/08/17	NOTICE	\$2	TARN FINANCIAL CORPORATION	SAMM CAPITAL HOLDINGS INC.	C
		REMARKS: AT4623337				
66R29568	2017/09/27	PLAN REFERENCE				C
AT4693066	2017/09/28	CONSTRUCTION LIEN	\$448,700	RONI EXCAVATING LIMITED		C
AT4694989	2017/09/29	CONSTRUCTION LIEN	\$124,300	MCW CONSULTANTS LTD.		C
AT4698119	2017/10/04	CONSTRUCTION LIEN	\$317,332	SKYGRID CONSTRUCTION INC.		C
AT4701329	2017/10/06	CONSTRUCTION LIEN	\$1,627,409	GFL INFRASTRUCTURE GROUP INC.		C
AT4714314	2017/10/24	CONSTRUCTION LIEN	\$74,785	THE FENCE PEOPLE LIMITED		C

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #66

06164-0197 (LT)

PAGE 1 OF 6
PREPARED FOR DSparrow
ON 2017/10/31 AT 15:31:12

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: PARCEL 28-8, SECTION S6 PART LOT 28, CONCESSION 2, SCAR BEING PT 1, 2 66R12484 SCARBOROUGH , CITY OF TORONTO

PROPERTY REMARKS: CORRECTION: INSTRUMENT NUMBER A240663 WAS ENTERED IN ERROR AGAINST THIS PROPERTY AND WAS REMOVED AND CERTIFIED ON 2003/12/09 BY STAN BURY. CORRECTION: INSTRUMENT NUMBER A240664 WAS ENTERED IN ERROR AGAINST THIS PROPERTY AND WAS REMOVED AND CERTIFIED ON 2003/12/09 BY STAN BURY. CORRECTION: INSTRUMENT NUMBER A240665 WAS ENTERED IN ERROR AGAINST THIS PROPERTY AND WAS REMOVED AND CERTIFIED ON 2003/12/09 BY STAN BURY.

ESTATE/QUALIFIER: FEE SIMPLE ABSOLUTE
RECENTLY: FIRST CONVERSION FROM BOOK

PIN CREATION DATE: 1991/02/25

OWNERS' NAMES: TARN FINANCIAL CORPORATION
CAPACITY SHARE:

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1991/02/25 ON THIS PIN						
WAS REPLACED WITH THE "PIN CREATION DATE" OF 1991/02/25						
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 1990/12/30 **						
SC72205	1948/04/23	BYLAW				C
A90238	1962/04/06	NOTICE AGREEMENT				C
REMARKS: BY-LAW NO. 10372						
A927533	1981/06/19	NOTICE AGREEMENT				C
C471372	1988/05/25	TRANSFER		*** COMPLETELY DELETED ***	767748 ONTARIO LIMITED	
C495078	1988/08/12	CHARGE		*** COMPLETELY DELETED ***	HONG KONG BANK OF CANADA	
C495135	1988/08/12	NOTICE		*** COMPLETELY DELETED ***		
REMARKS: RENTS, C495078						
C572017	1989/06/06	CHARGE		*** COMPLETELY DELETED ***	HONG KONG BANK OF CANADA	
CORRECTIONS: 'AMOUNT' CHANGED FROM '\$ 50000.00' TO '\$ 50000000.00' ON 1997/10/16 BY NAZ KARAMAT.						
C667306	1990/08/30	NOTICE OF LEASE		*** COMPLETELY DELETED ***	SHERATON TORONTO EAST HOTEL AND TOWERS	
REMARKS: CHATTELS						
C938338	1995/03/03	NOTICE		767748 ONTARIO LIMITED	THE CORPORATION OF THE CITY OF SCARBOROUGH	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
<i>REMARKS: A927533</i>						
E148904	1998/02/16	CHARGE		*** COMPLETELY DELETED *** 767748 ONTARIO LIMITED	CANADIAN PACIFIC HOTELS CORPORATION	
E151110	1998/02/26	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** HONGKONG BANK OF CANADA	CANADIAN PACIFIC HOTELS CORPORATION	
<i>REMARKS: C495078</i>						
E151111	1998/02/26	NOTICE		*** COMPLETELY DELETED *** CANADIAN PACIFIC HOTELS CORPORATION	HONGKONG BANK OF CANADA	
<i>REMARKS: RENTS - C495135, C495078</i>						
E151112	1998/02/26	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** HONGKONG BANK OF CANADA	CANADIAN PACIFIC HOTELS CORPORATION	
<i>REMARKS: C572017</i>						
E236074	1999/03/23	NOTICE OF LEASE		767748 ONTARIO LIMITED	MICROCELL CONNEXIONS INC.	C
E281653	1999/09/30	TRANSFER		*** COMPLETELY DELETED *** 767748 ONTARIO LIMITED	3428851 CANADA LTD.	
<i>REMARKS: DELETED ON NOV 7 2014 PURSUANT TO EXPIRED INTEREST BY T.PARIS</i>						
E281654	1999/09/30	NOTICE OF LEASE		*** COMPLETELY DELETED *** 3428851 CANADA LTD.	LEGACY HOTELS CORPORATION	
E281655	1999/09/30	DISCH OF CHARGE		*** COMPLETELY DELETED *** CANADIAN PACIFIC HOTELS CORPORATION		
<i>REMARKS: RE: C495078</i>						
E281656	1999/09/30	DISCH OF CHARGE		*** COMPLETELY DELETED *** CANADIAN PACIFIC HOTELS CORPORATION		
<i>REMARKS: RE: E148904</i>						
E281657	1999/09/30	DISCH OF CHARGE		*** COMPLETELY DELETED *** CANADIAN PACIFIC HOTELS CORPORATION		
<i>REMARKS: RE: C572017</i>						
AT359947	2003/12/12	CHARGE		*** COMPLETELY DELETED *** 3428851 CANADA LTD.	COMPUTERSHARE TRUST COMPANY OF CANADA	
AT359987	2003/12/12	NO ASSG LESSOR INT		*** COMPLETELY DELETED *** 3428851 CANADA LTD.	COMPUTERSHARE TRUST COMPANY OF CANADA	

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
<i>REMARKS: LEASE E281654 & CHARGE AT359947</i>						
AT367708	2003/12/18	CHARGE		*** COMPLETELY DELETED *** 3428851 CANADA LTD.	DELTA HOTELS LIMITED	
AT367709	2003/12/18	NO CHARGE LEASE		*** COMPLETELY DELETED *** LEGACY HOTELS CORPORATION	DELTA HOTELS LIMITED	
<i>REMARKS: LEASE E281654</i>						
AT1691594	2008/01/22	NO ASSG LESSEE INT		*** COMPLETELY DELETED *** LEGACY HOTELS CORPORATION	TORONTO EAST HOTEL GP INC.	
<i>REMARKS: E281654</i>						
AT1903591	2008/09/23	APL (GENERAL)		*** COMPLETELY DELETED *** ENBRIDGE GAS DISTRIBUTION INC.		
<i>REMARKS: DELETES C667306</i>						
AT1921617	2008/10/10	CHARGE		*** COMPLETELY DELETED *** 3428851 CANADA LTD.	ROYAL BANK OF CANADA	
AT1921619	2008/10/10	NO CHARGE LEASE		*** COMPLETELY DELETED *** TORONTO EAST HOTEL GP INC.	ROYAL BANK OF CANADA	
AT1921674	2008/10/10	POSTPONEMENT		*** COMPLETELY DELETED *** DELTA HOTELS LIMITED	ROYAL BANK OF CANADA	
<i>REMARKS: AT367708 POSTPONES AT1921617</i>						
AT1921675	2008/10/10	POSTPONEMENT		*** COMPLETELY DELETED *** DELTA HOTELS LIMITED	ROYAL BANK OF CANADA	
<i>REMARKS: AT367709 POSTPONES AT1921619</i>						
AT2014469	2009/02/19	DISCH OF CHARGE		*** COMPLETELY DELETED *** COMPUTERSHARE TRUST COMPANY OF CANADA		
<i>REMARKS: RE: AT359947</i>						
AT2014470	2009/02/19	APL (GENERAL)		*** COMPLETELY DELETED *** COMPUTERSHARE TRUST COMPANY OF CANADA		
<i>REMARKS: DELETE AT359987</i>						
AT2565843	2010/12/01	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA	CADIM FINANCE INC.	
<i>REMARKS: AT1921617.</i>						

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT2565844	2010/12/01	APL (GENERAL)		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA	CADIM FINANCE INC.	
		REMARKS: NOTICE OF ASSIGNMENT OF CHARGE OF LEASE AT1921619				
AT2687708	2011/05/10	TRANSFER		*** COMPLETELY DELETED *** 3428851 CANADA LTD.	KENNEDY ROAD HOSPITALITY OPERATIONS LTD.	
AT2687709	2011/05/10	APL (GENERAL)		*** COMPLETELY DELETED *** 3428851 CANADA LTD.		
		REMARKS: DELETE E281654 & AT1691594				
AT2687711	2011/05/10	DISCH OF CHARGE		*** COMPLETELY DELETED *** CADIM FINANCE INC.		
		REMARKS: AT1921617.				
AT2687713	2011/05/10	DISCH OF CHARGE		*** COMPLETELY DELETED *** CADIM FINANCE INC.		
		REMARKS: AT1921619.				
AT2687714	2011/05/10	DISCH OF CHARGE		*** COMPLETELY DELETED *** DELTA HOTELS LIMITED		
		REMARKS: AT367709.				
AT2687715	2011/05/10	DISCH OF CHARGE		*** COMPLETELY DELETED *** DELTA HOTELS LIMITED		
		REMARKS: AT367708.				
AT2687716	2011/05/10	CHARGE		*** COMPLETELY DELETED *** KENNEDY ROAD HOSPITALITY OPERATIONS LTD.	RETURN ON INNOVATION CAPITAL LTD.	
AT2687717	2011/05/10	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** KENNEDY ROAD HOSPITALITY OPERATIONS LTD.	RETURN ON INNOVATION CAPITAL LTD.	
AT2687718	2011/05/10	NO ASSGN RENT SPEC		*** COMPLETELY DELETED *** KENNEDY ROAD HOSPITALITY OPERATIONS LTD.	RETURN ON INNOVATION CAPITAL LTD.	
		REMARKS: E236074. DELETED PER AT3443482, 2014/08/25 W. T.				
AT3443441	2013/10/31	CHARGE		*** COMPLETELY DELETED *** KENNEDY ROAD HOSPITALITY OPERATIONS LTD.	GE CANADA REAL ESTATE FINANCING HOLDING COMPANY	
AT3443475	2013/10/31	APL CH NAME INST		*** COMPLETELY DELETED *** RETURN ON INNOVATION CAPITAL LTD.	RETURN ON INNOVATION ADVISORS LTD.	
		REMARKS: AT2687716.				

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT3443482	2013/10/31	DISCH OF CHARGE		*** COMPLETELY DELETED *** RETURN ON INNOVATION ADVISORS LTD.		
		REMARKS: AT2687716.				
AT3740675	2014/11/14	TRANSFER	\$32,750,000	KENNEDY ROAD HOSPITALITY OPERATIONS LTD.	TARN FINANCIAL CORPORATION	C
AT3740682	2014/11/14	CHARGE	\$19,800,000	TARN FINANCIAL CORPORATION	MERIDIAN CREDIT UNION LIMITED	C
AT3740683	2014/11/14	NO ASSGN RENT GEN		TARN FINANCIAL CORPORATION	MERIDIAN CREDIT UNION LIMITED	C
		REMARKS: AT3740682.				
AT3741234	2014/11/14	DISCH OF CHARGE		*** COMPLETELY DELETED *** GE CANADA REAL ESTATE FINANCING HOLDING COMPANY		
		REMARKS: AT3443441.				
AT4101101	2015/12/21	CHARGE		*** DELETED AGAINST THIS PROPERTY *** TARN FINANCIAL CORPORATION	MERIDIAN CREDIT UNION LIMITED	
AT4242765	2016/06/09	CHARGE	\$7,120,000	TARN FINANCIAL CORPORATION	THE GUARANTEE COMPANY OF NORTH AMERICA	C
AT4280809	2016/07/15	NOTICE	\$2	TARN FINANCIAL CORPORATION	THE GUARANTEE COMPANY OF NORTH AMERICA	C
		REMARKS: AT4242765				
AT4381181	2016/10/25	NOTICE		*** COMPLETELY DELETED *** TRAN FINANCIAL CORPORATION	MERIDIAN CREDIT UNION LIMITED	
		REMARKS: AT4101101				
AT4443337	2016/12/23	CHARGE	\$11,250,000	TARN FINANCIAL CORPORATION	KINGSETT MORTGAGE CORPORATION	C
AT4443338	2016/12/23	NO ASSGN RENT GEN		TARN FINANCIAL CORPORATION	KINGSETT MORTGAGE CORPORATION	C
		REMARKS: AT4443337.				
AT4448402	2017/01/04	DISCH OF CHARGE		*** COMPLETELY DELETED *** MERIDIAN CREDIT UNION LIMITED		
		REMARKS: AT4101101.				
AT4518239	2017/03/23	CHARGE	\$39,500,000	TARN FINANCIAL CORPORATION	TRISURA GUARANTEE INSURANCE COMPANY	C
AT4623337	2017/07/11	CHARGE	\$4,000,000	TARN FINANCIAL CORPORATION	SAMM CAPITAL HOLDINGS INC.	C
AT4623338	2017/07/11	NO ASSGN RENT GEN		TARN FINANCIAL CORPORATION	SAMM CAPITAL HOLDINGS INC.	C
		REMARKS: AT4623337. DELETE AT4623338 UPON DELETION OF AT4623337				

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AT4657388	2017/08/17	NOTICE	\$2	TARN FINANCIAL CORPORATION	SAMM CAPITAL HOLDINGS INC.	C
	REMARKS: AT4623337					
66R29568	2017/09/27	PLAN REFERENCE				C
AT4693066	2017/09/28	CONSTRUCTION LIEN	\$448,700	RONI EXCAVATING LIMITED		C
AT4694989	2017/09/29	CONSTRUCTION LIEN	\$124,300	MCW CONSULTANTS LTD.		C
AT4698119	2017/10/04	CONSTRUCTION LIEN	\$317,332	SKYGRID CONSTRUCTION INC.		C
AT4701329	2017/10/06	CONSTRUCTION LIEN	\$1,627,409	GFL INFRASTRUCTURE GROUP INC.		C

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Appendix “K”

Schedule “A” - Sale Process

On September 15, 2017, the Ontario Superior Court of Justice (the “**Court**”) issued an order (the “**Winding Up Order**”), ordering the winding up of Tarn Financial Corporation (“**Tarn**”) and appointing KPMG Inc. as the Liquidator (the “**Liquidator**”) of the estate and effects of Tarn pursuant to the Ontario *Business Corporations Act*, which appointment is effective as of September 25, 2017. Pursuant to the Winding Up Order, the Liquidator is authorized to market the assets, property and undertaking of Tarn (the “**Assets**”) for sale and, subject to approval of the Court, negotiate such terms and conditions of sale as the Liquidator in its discretion may deem appropriate. The Assets include the 366-room Delta Toronto East Hotel (the “**Hotel Assets**”) and adjoining development lands known as “The Kennedy’s Condominium Project”, which contemplates the construction of two condominium towers containing a total of 644 units of which substantially all of the units have been pre-sold (the “**Development Assets**”) each located at 2035 Kennedy Road, Toronto, Ontario (the “**Real Property**”).

On November 17, 2017, the Court made an order (the “**Sale Process Order**”) among other things, (a) approving the marketing and listing agreement between the Liquidator and CBRE Limited dated as of November 10, 2017; (b) approving the Sale Process for the solicitation of offers or proposals (each a “**Bid**”) for the acquisition of the Assets; and (c) authorizing the Liquidator to apply for consent to sever for the Real Property (the “**Land Severance**”).

Accordingly, the following Sale Process shall govern the proposed sale of all or substantially all of the Assets pursuant to one or more Bids. This Sale Process shall govern the process relating to the solicitation by the Liquidator, utilizing CBRE as set out herein, of one or more Bids for the Assets that, alone or in combination, are determined by the Liquidator, taking into account the market expertise of CBRE, to be the highest or otherwise best offer for the Assets to be brought forward by the Liquidator for Court approval. The Sale Process is intended to solicit interest in an acquisition of the Assets, under a fair and competitive sale process pursuant to which all qualified interested parties will be provided with a fair and equal opportunity to participate in the Sale Process.

Notwithstanding anything contained herein, the Liquidator shall have the right to enter into an exclusive transaction for the sale of the Assets, or any portion thereof, outside of the Sale Process prior to the selection of a Successful Bidder (as defined herein).

1. **Definitions**

Capitalized terms used in this Sale Process shall have the definitions given to them in the preamble hereto and as follows:

“**Acknowledgement of Sale Process**” means an acknowledgement of the Sale Process in the form attached as **Schedule 1** hereto;

“**Acquisition Entity**” means an entity specially formed for the purpose of effectuating the contemplated transaction;

“**Approval and Vesting Order**” has the meaning given to it in Section 13 hereof;

“**Back-up Bid**” means the next highest and/or best Qualified Phase II Bid after the Successful Bid, as assessed by the Liquidator and CBRE, taking into account financial and contractual terms, the claims likely to be created by such Bid in relation to other Bids and other factors relevant to the Sale Process, including those factors affecting the speed and certainty of consummating the proposed sale, provided that one or more Portion Bids may form part of the Back-up Bid so long as such Portion Bids, if more than one, do not overlap in respect of the Assets sought to be purchased and the Liquidator has determined that it will be able to obtain the Land Severance;

“**Back-up Bidder**” means the Bidder submitting the Back-up Bid;

“**Bidder**” means a Qualified Phase I Bidder or a Qualified Phase II Bidder;

“**Binding APA**” means executed asset purchase agreement reflecting the applicable Qualified Phase I Bidder’s proposed changes to the Non-Binding APA that it submitted and reflecting the applicable Qualified Phase I Bidder’s proposed changes to the Template APA;

“**CBRE**” means CBRE Limited, in its capacity as listing and marketing agent engaged by the Liquidator pursuant to a Marketing and Listing Agreement dated as of November 10, 2017 and approved by the Court by Order dated November 17, 2017;

“**Confidential Information Memorandum**” means a confidential information memorandum prepared by CBRE providing certain confidential information in respect of or related to the Assets;

“**Confidentiality Agreement**” means an executed confidentiality agreement in form and substance acceptable to the Liquidator and its counsel;

“**Development Assets**” means development lands known as “The Kennedys Condominium Project” (Phase 1), which contemplates the construction of two condominium towers containing a total of 644 units of which substantially all of the units have been pre-sold;

“**Encumbrances**” means, collectively, all charges, pledges, liens, security interests, encumbrances, claims, options, and interests thereon and there against the Assets, other than any permitted encumbrances under the Successful Bidder’s Successful Bid;

“**Good Faith Deposit**” means a cash deposit equal to ten (10) percent of the total purchase price contemplated under the applicable Binding APA;

“**Hotel Assets**” means all of the Assets related to the hotel operations currently branded as the Delta Toronto East Hotel;

“**Interested Party**” means a party participating in this Sale Process and for greater certainty may include any shareholder of Tarn;

“**Land Severance**” has the meaning given to it in Section 2 hereof;

“**Non-Binding APA**” means an asset purchase agreement submitted by the applicable Qualified Phase I Bidder including a mark-up to the Template APA reflecting the applicable Qualified Phase I Bidder’s proposed changes to the Template APA;

“**Notice Parties**” means CBRE to the attention of Bill Stone (bill.stone@cbre.com) Deborah Borotsik (deborah.borotsik@cbre.com), Mike Czestochowski (mike.czestochowski@cbre.com) and Lauren Doughty (lauren.doughty@cbre.com), the Liquidator to the attention of Anamika Gadia (agadia@kpmg.ca) and counsel to the Liquidator, Miller Thomson LLP, to the attention of Kyla Mahar (kmahar@millerthomson.com);

“**Phase I Bid**” means an initial Bid submitted by an Interested Party pursuant to Section 7 hereof;

“**Phase I Bid Deadline**” means noon (Eastern time) on January 17, 2018;

“**Phase I Bidder**” means a bidder submitting a Phase I Bid;

“**Phase I Participant Requirements**” has the meaning given to it in Section 7 hereof;

“**Phase II Bid**” means a Bid submitted by a Qualified Phase I Bidder pursuant to Section 9 hereof;

“**Phase II Bid Deadline**” means noon (Eastern time) on February 7, 2018;

“**Phase II Participant Requirements**” means, collectively, the requirements set out in Section 7(a) through 7(e) hereof;

“**Portion Bid**” means a Bid in respect of either the Hotel Assets or the Development Assets;

“**Portion Bidder**” means a bidder submitting a Portion Bid;

“**Principals**” means, collectively, the equity holder(s) of an Acquisition Entity and any guarantor of any Bid made by such Acquisition Entity;

“**Qualified Phase I Bidder**” means (i) a Phase I Bidder for all of the Assets that delivers the documents described in paragraphs (a) through (d) in Section 7, and that the Liquidator and CBRE, in consultation with the Secured Lenders, determine is reasonably likely to submit a binding *bona fide* offer at fair market value for the Assets that it would be able to consummate if selected as a Successful Bidder or (ii) a Phase I Bidder that is a Portion Bidder and that delivers the documents described in paragraphs (a) through (d) in Section 7, and that the Liquidator and CBRE, in consultation with the Secured Lenders, determine is reasonably likely to submit a

binding *bona fide* offer at fair market value for the Assets it is seeking to purchase that would be able to consummate a transaction if selected as a Successful Bidder.

“**Qualified Phase II Bid**” means a Phase II Bid that satisfies the conditions set out in Section 9 hereof. A Portion Bid may be a Qualified Phase II Bid if the Liquidator has determined that it will be able to obtain a Land Severance;

“**Qualified Phase II Bidder**” means a Bidder submitting a Qualified Phase II Bid;

“**Sale Hearing**” means a hearing to approve the sale of Assets to the Successful Bidder;

“**Secured Lenders**” means Meridian Credit Union Limited and Kingsett Mortgage Corporation;

“**Successful Bid**” means the highest and/or best Qualified Phase II Bid as determined by the Liquidator and CBRE, taking into account financial and contractual terms and the factors relevant to the Sale Process, including those factors affecting the cost, speed and certainty of consummating the proposed sale, the claims likely to be created by such Bid in relation to other Bids and, provided that one or more Portion Bids may be able to form part of the Successful Bid as long as such Portion Bids do not overlap in respect of the Assets sought to be purchased and the Liquidator has determined that it will be able to obtain the Land Severance;

“**Successful Bidder**” means the Bidder submitting the Successful Bid;

“**Template APA**” means a template asset purchase agreement prepared by the Liquidator and available to Interested Parties from CBRE;

“**Units**” means the condominium units pre-sold by Tarn and/or Tarn Construction for The Kennedy’s Condominium Project and “**Unit**” means any one of them.

2. **Assets for Sale**

At the request of the Liquidator, CBRE is soliciting offers for all or a portion of the Assets.

As at the time of commencing the Sale Process, the Real Property containing the Hotel Assets and the Development Assets has not been legally severed. While the Sale Process is being undertaken, the Liquidator has been given the authority to apply for a consent to sever the Real Property and to take such steps and to execute such documentation as may be needed to finally sever the lands (a “**Land Severance**”), including but not limited to the satisfaction of severance conditions and the conveyance of any interests in the lands to public bodies if required, to allow the Liquidator to preserve the option that the Hotel Assets and the Development Assets may be sold in two parcels as well as together under the Sale Process. Whether obtaining a Land Severance results in value maximization and whether the Liquidator will be able to obtain a Land Severance is uncertain at this time.

For the purposes of the Sale Process, it is recommended that Bidders submit a Phase I Bid for all of the Assets. To the extent that Bidders submitting a Phase I Bid would be interested

in also submitting a Portion Bid for the Hotel Assets or the Development Assets, such Phase I Bidder will be required to ascribe a value to these Assets separately and then collectively if their Phase I Bid includes both. CBRE and the Liquidator will consider Phase I Bids that are Portion Bids submitted for either the Hotel Assets or the Development Assets based on, among other factors, the interest from Bidders and the expected ability to obtain a Legal Severance and the timing of obtaining same, the Liquidator and CBRE will determine whether to pursue the Land Severance to allow the Hotel Assets and the Development Assets to be sold separately or whether to seek to introduce Bidders submitting Portion Bids to each other for the purposes of submitting a Qualified Phase II Bid for the Assets collectively.

The Liquidator reserves the right to eliminate certain assets available for sale pursuant to the Sale Process prior to the Phase I Bid Deadline.

3. Sale Process Structure and Bidding Deadlines

The Liquidator has engaged CBRE as listing and marketing agent to undertake the marketing and sale aspects of the Sale Process, subject to the oversight of the Liquidator as the statutory representative of Tarn and officer of the Court. Interested Parties wishing to obtain information about the Sale Process, a copy of the Confidentiality Agreement and information in connection with their due diligence, should contact the following representatives of CBRE: bill.stone@cbre.com; deborah.borotsik@cbre.com, mike.czystochowski@cbre.com and lauren.doughty@cbre.com.

The Sale Process shall consist of two phases. In the first phase, Interested Parties that meet the Phase I Participant Requirements set out herein, shall be provided the Confidential Information Memorandum and provided with an opportunity to undertake a site visit with CBRE in order to prepare and submit their Phase I Bid by the Phase I Bid Deadline. In addition, Phase I Bidders that meet the Phase I Participant Requirements set out herein be given access to an electronic data room in order to undertake their diligence, which will include the Template APA.

All Phase I Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Process so that they are actually received by each of the Notice Parties no later than the Phase I Bid Deadline. All Phase II Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Process so that they are actually received no later than the Phase II Bid Deadline. In addition, written copies of the Bids shall be delivered by the applicable deadline to the Liquidator and its counsel at the following addresses: (a) the Liquidator, KPMG Inc., Bay Adelaide Centre, 4600 – 333 Bay Street, Toronto, Ontario M5H 2S5 Attn.: Anamika Gadia, agadia@kpmg.ca; and (b) counsel to the Liquidator, Miller Thomson LLP, Scotia Plaza, 5800- 40 King Street West, Toronto, Ontario M5H 3S1, Attn: Kyla Mahar, kmahar@millerthomson.com. A Bid received after the Phase I Bid Deadline shall not constitute a Phase I Bid and a Phase II Bid received after the Phase II Bid Deadline may be disqualified. A Bid shall be delivered to all Notice Parties at the same time.

4. Timeline

The following table sets out the key milestones under the Sale Process:

Milestone	Date
Phase I Bid Deadline	January 17, 2018
Phase II Bid Deadline	February 7, 2018
Anticipated Timing for Sale Hearing	March 7, 2018

Subject to the terms contained herein and any order of the Court, the dates set out in the Sale Process may be extended by the Liquidator and CBRE, in their sole discretion acting reasonably, all with a view of maximizing the value of the Assets. If the Phase I Bid Deadline or the Phase II Bid Deadline is extended, CBRE will promptly notify all of the Interested Parties that have met the Phase I Participant Requirements or all of the Qualified Phase I Bidders, as applicable.

5. Access to Due Diligence Materials

Only Interested Parties that satisfy the Phase I Participant Requirements will be eligible to receive the Confidential Information Memorandum. If the Liquidator and CBRE determine that a Phase I Bidder does not constitute a Qualified Phase I Bidder, then such Phase I Bidder shall not be eligible to receive additional due-diligence access or additional non-public information. Qualified Phase I Bidders will be given access to an expanded electronic data room maintained by CBRE following the Phase I Bid Deadline.

CBRE, in its reasonable business judgment, in consultation with the Liquidator as it deems necessary, and subject to competitive and other business considerations, may give each Qualified Phase I Bidder, such access to due diligence materials and information relating to the Assets as it deems appropriate. CBRE will be responsible for the coordination of all reasonable requests for additional information and due-diligence access from Qualified Phase I Bidders. CBRE may designate a representative to coordinate all reasonable requests for additional information and due diligence access from Qualified Phase I Bidders and the manner in which such requests must be communicated.

Neither the Liquidator or CBRE or any of each of their affiliates (or any of its respective representatives) will be obligated to furnish any information relating to the Assets to any person, in its discretion. The Liquidator and CBRE each make no representation or warranty as to the information to be provided through this due diligence process or otherwise, except as may be set forth in a Binding APA with the Successful Bidder(s). Neither the Liquidator nor CBRE shall be obligated to furnish any due diligence information after the Phase II Bid Deadline. Neither the Liquidator nor CBRE is responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Assets.

6. Information From Interested Parties

Each Interested Party shall comply with all reasonable requests for additional information by CBRE and/or the Liquidator regarding such Interested Party and its contemplated transaction. Failure by an Interested Party to comply with requests for additional information will be a basis

for the Liquidator and CBRE to determine that the Interested Party is not a Qualified Phase I Bidder or a Qualified Phase II Bidder, as applicable.

7. Participant Requirements

Phase I Participant Requirements.

To participate in Phase I of the Sale Process and to otherwise be considered for any purpose hereunder, each Interested Party must provide CBRE with each of the following prior to being provided with the Confidential Information Memorandum: (i) an executed Confidentiality Agreement; and (ii) an executed Acknowledgement of Sale Process (collectively, the “**Phase I Participant Requirements**”).

Phase II Participant Requirements.

Only Qualified Phase I Bidders shall be allowed to participate in Phase II of the Sale Process. In order for the Liquidator and CBRE to determine whether an Interested Party is a Qualified Phase I Bidder, the Interested Party must provide, in form and substance satisfactory to the Liquidator and CBRE, in consultation with the Secured Lenders, the following on or before the Phase I Bid Deadline:

- (a) Identification of Phase I Bidder. Identification of the Phase I Bidder and any Principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (b) Non-Binding APA. A Non-Binding APA satisfactory to the Liquidator and CBRE that must reasonably identify the contemplated transaction, including whether the Hotel Assets or the Development Assets or all Assets (or such portions thereof) are proposed to be acquired, the proposed purchase price including allocation, if any, and any contingencies, and conditions precedent to closing;
- (c) Corporate Authority. Written evidence of the Phase I Bidder’s chief executive officer or other appropriate senior executive’s approval of the Phase I Bid; provided, however, that, if the Phase I Bidder is an Acquisition Entity, then the Phase I Bidder must furnish written evidence reasonably acceptable to the Liquidator and CBRE of the approval of the Phase I Bid by the Acquisition Entity’s Principals; and
- (d) Proof of Financial Ability to Perform. Written evidence upon which the Liquidator and CBRE may reasonably conclude that the Phase I Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:
 - (i) the Phase I Bidder’s or, in the case of an Acquisition Entity, the Principals’, current financial statements (audited if they exist);

- (ii) contact names and numbers for verification of financing sources;
- (iii) evidence of the Phase I Bidder's or Principals' internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction; and
- (iv) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Liquidator and CBRE demonstrating that such Phase I Bidder has the ability to close the contemplated transaction;

provided, however, that the Liquidator and CBRE shall determine, in their reasonable discretion, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Phase I Bidder's financial qualifications.

The Liquidator and CBRE may determine whether to entertain bids for the Assets that do not conform to one or more of the requirements specified herein and deem such bids to be a Qualified Phase I Bidder.

If the Liquidator and CBRE are not satisfied with the number or terms of the Non-Binding APAs, the Liquidator and CBRE may extend the Phase I Bid Deadline or amend the Sale Process. CBRE will promptly notify all of the Interested Parties that have met the Phase I Participant Requirements of such extension or amendment.

8. Designation as Qualified Bidder

Following the Phase I Bid Deadline, the Liquidator and CBRE, in consultation with the Secured Lenders, shall determine which Phase I Bidders are Qualified Phase I Bidders. CBRE shall notify each Phase I Bidder of the determination as to whether the Phase I Bidder is a Qualified Phase I Bidder as soon as practicable after the Phase I Bid Deadline.

Following the Phase II Bid Deadline, the Liquidator and CBRE, in consultation with the Secured Lenders, shall determine which Qualified Phase I Bidders are Qualified Phase II Bidders. CBRE shall notify each Qualified Phase I Bidder of its determination as to whether they are a Qualified Phase II Bidder as soon as practicable after the Phase II Bid Deadline.

9. Phase II Bid Requirements

Only Qualified Phase I Bidders shall be entitled to submit a Phase II Bid. CBRE will take all reasonable steps to negotiate and assist the Qualified Phase I Bidders in completing any unperformed due diligence, or any other Bid matters including any discussions or negotiations required to be completed with any stakeholders in the winding up proceedings of Tarn, with a view of submitting a Binding APA on or before the Phase II Bid Deadline. In order to be considered a Qualified Phase II Bid, as determined by the Liquidator and CBRE, in consultation with the Secured Lenders, a Phase II Bid shall satisfy the following conditions:

- (a) Written Submission of Binding APA and Commitment to Close. The Phase II Bid must be submitted by the Phase II Bid Deadline in the form of a Binding APA (together with a blackline of the Binding APA against the Template APA outlining all changes from the Template APA and also a blackline from the Non-Binding APA submitted by the Qualified Phase I Bidder), and a written and binding commitment to close on the terms and conditions set forth therein.
- (b) Irrevocable. Include a letter stating that the Phase 2 Bid is irrevocable and open for acceptance until the Successful Bid and the Back-up Bid have been selected by the Liquidator and CBRE;
- (c) Contingencies. A Phase II Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other contingencies associated will be considered by the Liquidator and CBRE based on the other Phase II Bids received;
- (d) Financing Sources. A Phase II Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Liquidator and CBRE and appropriate contact information for such financing sources must be provided;
- (e) No Fees payable to Qualified Phase II Bidder. A Phase II Bid may not request or entitle the Qualified Phase II Bidder to any break-up fee, expense reimbursement or similar type of payment;
- (f) Disclosure: Fully disclose the identity of each entity that will be entering into the transaction and that is participating or benefiting by such Bid; and
- (g) Good-Faith Deposit. Each Phase II Bid must be accompanied by a Good Faith Deposit that shall be paid to the Liquidator by wire transfer or banker's draft, to be held by the Liquidator in trust in accordance with this Sale Process and which may be adjusted based on the process set out in Section 10.

The Liquidator and CBRE shall be entitled to seek additional information and clarifications from Qualified Phase I Bidders in respect of their Phase II Bids at any time. The Liquidator and CBRE may determine whether to entertain Bids for the Assets that do not conform to one or more the requirements specified herein and deem such Bids to be Qualified Phase II Bids.

10. **Determination of Successful Bid**

A Qualified Phase II Bid will be valued based upon several factors including, without limitation, items such as the purchase price and the net value provided by such Bid, the claims likely to be created by such Bid in relation to other Bids, the counterparties to such transactions, the proposed transaction documents, other factors affecting the speed and certainty of the closing of the transaction, the value of the transaction, the Assets included or excluded from the Bid, the transition services required from the Liquidator (if any), any related transaction costs, and the likelihood and timing of consummating such transactions, each as determined by the Liquidator

and CBRE, in consultation with the Secured Lenders. For greater certainty, any Qualified Phase II Bid received from a shareholder of Tarn will be evaluated on the same criteria as any Qualified Phase II Bid received from a third party.

If more than one Qualified Phase II Bids are received by the Phase II Bid Deadline, the Liquidator and CBRE shall have the option to:

- (a) Conduct an auction amongst the Qualified Phase II Bidders, on terms to be determined by the Liquidator, to determine the Successful Bid and the Back-up Bid;
- (b) Negotiate with the Qualified Phase II Bidders and determine the Successful Bid and the Back-up Bid; or
- (c) Determine which of the Qualified Phase II Bids shall be the Successful Bid and which of the Qualified Phase II Bids shall be the Back-up Bid.

11. Acceptance of Successful Bid

The Liquidator shall complete the sale transaction or transactions with the Successful Bidder following approval of the Successful Bid by the Court. The Liquidator will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Liquidator will be deemed to have accepted a Back-up Bid only when it has been approved by the Court and has been deemed to be a Successful Bid.

12. “As Is, Where Is”

The sale of any of the Assets pursuant to this Sale Process shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Liquidator, CBRE or their respective directors, officers, employees or agents except to the extent set forth in the Successful Bid. By submitting a Bid, each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Process or as set forth in a Binding APA approved by the Court.

13. Free Of Any And All Encumbrances

Except as otherwise provided in the Successful Bid, all of the rights, title and interests of Tarn in and to the Assets, or any portion thereof, shall be sold free and clear of all Encumbrances, pursuant to an order by the Court approving the sale of the Assets, or a portion thereof, and vesting in the Successful Bidder all of Tarn’s rights, title and interests in and to such Assets, or a portion thereof, by way of an approval and vesting order (the “**Approval and Vesting Order**”). For greater certainty, such Encumbrances shall attach to the net proceeds of the sale of such Assets following the granting of the Approval and Vesting Order and closing of the transaction.

14. Sale Hearing

A Sale Hearing shall be conducted by the Court as soon as practicable after the determination by the Liquidator of the Successful Bidder. If the Successful Bid is approved by the Court and the Successful Bidder fails to consummate the transaction in accordance with the terms and conditions of the Successful Bid, the Liquidator shall, provided it is so authorized by the Court, be entitled, but not required, to deem the Back-up Bid the Successful Bid and the Liquidator shall be authorized, but not required, to consummate the transaction with the Back-up Bidder and upon so doing the Back-up Bidder shall be deemed to be the Successful Bidder, subject to approval by the Court, which approval may be sought by the Liquidator on a conditional basis at the Sale Hearing, at the Liquidator's discretion.

15. Return of Good Faith Deposit

Good Faith Deposits of all Qualified Phase II Bidders shall be held in an account of the Liquidator. Good Faith Deposits of all Qualified Phase II Bidders, other than the Successful Bidder and the Back-Up Bidder, shall be returned to such Qualified Phase II Bidders within ten (10) business days of the selection of the Successful Bidder and Back-Up Bidder. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. The Good Faith Deposit of the Back-Up Bidder shall be returned to the Back-Up Bidder within three (3) business days of the closing of the transactions contemplated by the Successful Bid. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Liquidator shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of their damages resulting from the breach or failure to perform by the Successful Bidder. If the Successful Bidder fails to consummate an approved sale for any reason, and a transaction is completed with the Back-Up Bidder, the Good Faith Deposit of the Back-Up Bidder shall be applied to the purchase price of the transactions contemplated by the purchase agreement of the Back-Up Bidder at closing.

16. Reservation of Rights

The Liquidator may, after consultation with CBRE and the stakeholders it determines to be appropriate to consult in the circumstances, reject at any time before entry of an order of the Court approving a Successful Bid, any Bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of this Sale Process, or (c) contrary to the best interests of the Winding Up.

17. Miscellaneous

This Sale Process is solely for the benefit of the Liquidator and nothing contained in the Sale Process Order or this Sale Process shall create any rights in any other person or Bidder (including without limitation rights as third party beneficiaries or otherwise).

Except as provided in the Sale Process Order and Sale Process, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Sale Process Order and the Sale Process.

Schedule "1"
Acknowledgement of Sale Process

The undersigned hereby acknowledges receipt of the Sale Process approved by the Order of the Honourable Justice ● of the Ontario Superior Court of Justice (Commercial List) dated November 17, 2017 and that compliance with the terms and provisions of the Sale Process is required in order to participate in the Sale Process and for any Phase I Bid or Phase II Bid to be considered by the Liquidator.

This _____ day of _____.

[NAME]

By:

[Signing Officer]

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**SALE PROCESS ORDER
(DATED: NOVEMBER 17, 2017)**

MILLER THOMSON LLP

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Toronto Ontario M5H 3S1

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

Appendix “L”

THIS EXCLUSIVE SALES LISTING AGREEMENT dated November 10, 2017 (the “**Agreement**”)

BETWEEN

KPMG Inc., solely in its capacity as Liquidator (the “**Liquidator**”) of Tarn Financial Corporation (“**Tarn**”)

-and-

CBRE Limited (the “**Brokerage**”)

WHEREAS the Liquidator has been appointed as liquidator of the effects and estate of Tarn (the “**Property**”), pursuant to the order (the “**Winding Up Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 15, 2017 and effective as of September 25, 2017;

AND WHEREAS the Liquidator intends to seek approval of the Court for a process for the marketing and sale of the Property (the “**Sales Process**”). Capitalized terms not defined herein shall have the meaning ascribed to them in the Sale Process;

AND WHEREAS the Liquidator intends to seek authorization from the Court to retain the Brokerage to serve as the exclusive marketing and listing agent for the Property in connection with the Sale Process, and to seek Court approval of this Agreement (the “**Appointment**”);

AND WHEREAS the Brokerage is a real estate brokerage, licensed to carry on business in the Province of Ontario and provide commercial real estate brokerage services (the “**Services**”) in listing the Property for sale;

NOW THEREFORE in consideration of the Appointment and the Services, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties to this Agreement, the Liquidator and the Brokerage hereby agree as follows:

ARTICLE 1 – RECITALS

1.1 The above recitals are true and accurate in all respects.

ARTICLE 2 – TERM AND SCOPE OF ENGAGEMENT

2.1 Subject to the approval by the Court of (i) the Sale Process and (ii) this Agreement, the Liquidator hereby engages the Brokerage and gives it the exclusive right to list the Property for sale for a period of six (6) calendar months from the Court’s approval of the Sale Process (the “**Term**”).

2.2 Subject to the approval by the Court of this Agreement, the Liquidator, by its signature below, acknowledges and agrees that this Agreement is for a Term exceeding one hundred and eighty (180) days.

2.3 Subject to the approval of the Court, the Services will be as set out in the Sale Process and will include:

- a) assisting the Liquidator in the implementation of the Sale Process;
- b) identifying and assisting the Liquidator in evaluating potential interested parties and dealing with inbound enquiries with respect to participating in the Sale Process;
- c) preparing appropriate marketing materials for the Property for distribution to potential interested parties;

- d) contacting potential interested parties and providing access to such information about the Property as may be appropriate and acceptable to the Liquidator, subject to customary business confidentiality arrangements via a virtual data room prepared and managed by the Brokerage;
- e) assisting the Liquidator in structuring potential transactions and participating in the negotiation of such transactions;
- f) providing such written reports as may be reasonably requested by the Liquidator with respect to the Sale Process in connection with any motion for Court approval of a transaction; and
- g) rendering such other advisory and marketing services as would customarily be provided in connection with the marketing of assets of a Liquidator as may be requested by the Liquidator.

2.4 The Brokerage shall report to the Liquidator on request in such detail as the Liquidator may reasonably require in connection with the Services hereunder and, without limiting the generality of the foregoing, shall provide the Liquidator with bi-weekly reporting including details of contact with potential purchasers, changes to market conditions and comments with respect to the actual activities undertaken and those proposed by the Brokerage.

2.5 The Brokerage shall market the Property on terms and conditions agreed and acceptable to the Liquidator and in accordance with the Sale Process, including without limitation, and sale of the Property shall be subject to approval of the Court and shall be on an “as-is, where-is” basis, with no representations or warranties from the Liquidator or the Brokerage (as applicable) as to any matter including, without limitation, title, quality, use, zoning, type or value of the Property.

ARTICLE 3 –THE BROKERAGE REMUNERATION

3.1 The Liquidator agrees to pay the Brokerage a commission equivalent to [REDACTED] (the “**Commission**”). Gross sales price shall include any and all consideration received or receivable, in whatever form, including but not limited to assumption or release of existing liabilities, without downward adjustment for any capital or environmental issues. Commissions shall be paid and deemed earned if and only if a closing occurs pursuant to a contract of sale executed and delivered by the Liquidator.

3.2 The Commission shall be earned by the Brokerage in the event that during the Term the Liquidator enters into a binding agreement of purchase and sale for the Property with a purchaser procured by the Brokerage, the Liquidator or from any other source whatsoever, including any of the existing stakeholders.

3.3 The Commission shall be payable immediately upon the closing of the agreement of purchase and sale referred to in section 3.2 above, notwithstanding that the sale may close, or the transfer may be completed, following the expiry of the Term.

3.4 The Commission payable herein shall be subject to the payment of Harmonized Sales Tax (HST) thereon by the Liquidator.

3.5 The Brokerage shall be responsible for all travel and marketing costs other than third party reports, if any are required as determined by CBRE and the Liquidator.

ARTICLE 4 – HOLDOVER

4.1 The Liquidator further agrees to pay the Brokerage the Commission if, within one hundred and eighty (180) calendar days after the expiration of the Term (the “**Holdover Period**”), with or without the involvement of the Brokerage, the Liquidator enters into a binding agreement of purchase and sale for the Property, or negotiations continue, resume or commence and thereafter

continue leading to the execution of a binding agreement of purchase and sale for the Property outside of the Holdover Period, with any person or entity (including his/her/its successors, assigns or affiliates) with whom the Brokerage has negotiated (either directly or through another agent) or to whom the Property was introduced or submitted, from any source whatsoever, or to whom the Liquidator was introduced, from any source whatsoever.

- 4.2 The Commission shall be payable immediately upon the closing of the agreement of purchase and sale; regardless of whether the closing occurs during or outside the Holdover Period.

ARTICLE 5 – EXCLUSIVE ENGAGEMENT

- 5.1 The Liquidator warrants to the Brokerage that, as at the execution of this Agreement, the Liquidator is not a party to any valid listing agreement with any other real estate brokerage with respect to the sale of the Property. The Liquidator shall not engage the services of another real estate brokerage during the Term with respect to the sale of the Property.
- 5.2 The Liquidator and the Brokerage agree to cooperate in bringing about a sale of the Property and the Liquidator will refer all inquiries to the Brokerage of anyone interested in the Sale Process. All negotiations are to be conducted in accordance with the Sale Process.
- 5.3 The Liquidator and the Brokerage hereby acknowledge that this is an exclusive listing and that the Brokerage shall not be required to cooperate with any other brokerage in connection with this exclusive listing. At the sole discretion of the Brokerage, a third-party real estate brokerage (the “**Cooperating Brokerage**”) may be permitted to cooperate in the sale of the Property on terms which shall be established by CBRE and such Cooperating Brokerage; and, which terms shall not require the Liquidator to pay any commission in addition to the Commission set out herein.

ARTICLE 6 – DUAL AGENCY

- 6.1 The Liquidator acknowledges and agrees that the Brokerage may represent both the Liquidator and Interested Parties in a dual agency relationship as long as such relationship is fully disclosed to the Liquidator and the Liquidator consents to such dual agency relationship in advance. The Liquidator hereby acknowledges the possibility of limited dual agency wherein the Brokerage maintains confidentiality with respect to pricing intentions, corporate objectives and motivation for the Interested Parties it represents prior to the submission of an Interested Party’s Phase I Bid and Phase II Bid as applicable. In all circumstances the Brokerage shall maintain the confidentiality with respect to any intentions of the Liquidator and for greater certainty to ensure such confidentiality is maintained no member of the Brokerage team assisting the Liquidator may act in a dual agency relationship. The Brokerage acknowledges and confirms that to the extent it represents one or more Qualified Phase II Bidders, the Liquidator shall, if it determines it necessary exclude the Brokerage from participating in the consideration of the Qualified Phase II Bids under the Sale Process and in such a circumstance the Liquidator shall determine the Successful Bid otherwise in accordance with the Sale Process.

ARTICLE 7 – GENERAL PROVISIONS

- 7.1 *Authority:* The execution of this Agreement by the Liquidator is subject to the approval of the Court. The Brokerage acknowledges and agrees that the Liquidator, KPMG Inc., and each of its affiliates, agents, directors, officers and employees, shall have not personal liability under, as a result of or in connection with any obligations under this Agreement.

- 7.2 *Entire Agreement:* This Agreement constitutes the entire agreement between the Liquidator and the Brokerage, and supersedes all prior discussions, negotiations and agreements, whether oral or written. In case of any inconsistencies between this Agreement and any commission provisions in the agreement of purchase and sale, the provisions of this Agreement shall govern and be paramount.
- 7.3 *Amendments:* No amendment or alteration of this Agreement shall be valid or binding unless made in writing and signed by the Liquidator and the Brokerage.
- 7.4 *Severability:* Should any provision of this Agreement be unenforceable at law, it shall be considered separate and severable from the remaining provisions of this Agreement, which shall continue in force and shall be binding as though such provision had not been included.
- 7.5 *Interpretation:* The headings inserted in this Agreement are for convenience of reference only and, in no way define, limit or enlarge the scope or meaning of any of the terms and conditions contained in this Agreement. The preamble to this Agreement forms an integral part of this Agreement and shall be used in its interpretation.
- 7.6 *Jurisdiction:* This Agreement shall be governed by, and shall be subject to, the laws of the Province of Ontario; and the Liquidator and the Brokerage hereby attorn to the jurisdiction of the courts of the Province of Ontario with respect to any dispute concerning the interpretation, application and enforcement of this Agreement.
- 7.7 *Real Estate Licensure:* The real estate brokerage services provided pursuant to this Agreement shall be provided by representatives of the Brokerage who are licensed and insured in the Province in which the Property is located.
- 7.8 *Confidentiality:* The Liquidator acknowledges being advised by the Brokerage that, in its opinion, disclosure of the terms of the Commission set out in this Agreement could potentially have an adverse influence on the Sale Process, and accordingly have requested that the Liquidator seek a sealing order in respect of the Commission when it seeks Court approval of this Agreement.

ARTICLE 9 – TERMINATION AND SURVIVAL

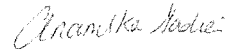
- 8.1 In the event that this Agreement is not approved by the Court, this Agreement shall be terminated and shall be null and void.
- 8.2 The Brokerage acknowledges that the Winding Up Order is currently under appeal. In the event that the appeal is successful, the Brokerage acknowledges and agrees that its engagement hereunder and this Agreement shall be terminated.
- 8.3 Upon Termination of this Agreement pursuant to Section 8.2 of the Agreement only, the Brokerage would be entitled to its out of pocket costs and expenses payable from the Liquidator from the date of its engagement to the date of the Agreement is terminated [REDACTED]. The Brokerage agrees to provide an accounting of its out of pocket costs and expenses within 14 days of the Liquidator's appointment ceasing to allow the Liquidator to claim such costs under the Liquidator's Charge (as defined in the Winding Up Order).
- 8.4 This Agreement may be terminated for cause by the Liquidator on written notice to the Brokerage.

8.5 Upon a termination of this Agreement, the rights and obligations of the Liquidator and the Brokerages shall be at an end, save and except for the rights and obligations set out in Sections 7.1 and 8.3 hereof which shall survive termination of this Agreement.

IN WITNESS WHEREOF the Liquidator and Brokerage agree to the terms and conditions as set out herein; and have executed this Agreement as of the date first written above.

KPMG Inc., solely in its capacity as Liquidator of Tarn Financial Corporation and not in its personal or corporate capacity (the "Liquidator")

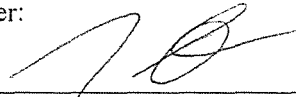
Per:



Per: Anamika Gadia
Senior Vice President

CBRE Limited (the "Brokerage")

Per:



I have authority to bind the company

Print Name: W. PIETL

Volkan Basegmez et al.
Applicants

and Ali Akman et al.
Respondents

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

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

Proceeding commenced at Toronto

**LIQUIDATOR'S FIRST REPORT
DATED NOVEMBER 13, 2017**

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Lawyers for KPMG Inc., in its capacity as
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Volkan Basegmez et al.
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and Ali Akman et al.
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**ONTARIO
SUPERIOR COURT OF JUSTICE -
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Proceeding commenced at Toronto

**MOTION RECORD
(RETURNABLE NOVEMBER 17, 2017)**

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