

**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 6 , 2018)**

DATED: OCTOBER 31, 2018

**MILLER THOMSON LLP
SCOTIA PLAZA
40 KING STREET WEST, SUITE 5800
P.O. Box 1011
TORONTO, ON CANADA M5H 3S1**

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

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

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

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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 6, 2018)**

KPMG Inc. (“**KPMG**”), in its capacity as Court-appointed liquidator (in such capacity, the “**Liquidator**”) pursuant to section 207 of the Ontario *Business Corporations Act* (“**OBCA**”) of the effects and estate of Tarn Financial Corporation (“**Tarn Financial**”) and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the “**Winding Up Order**”), which appointment was effective on September 25, 2017, and in its capacity as Court-appointed receiver and manager (in such capacities, the “**Receiver**”) of all of the assets, undertakings and properties of Tarn Construction Corporation (“**Tarn Construction**”) pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended (“**CJA**”), and appointed pursuant to the Order of Justice McEwen dated April 13, 2018 (the “**Receivership Order**”), will make a motion to a Judge presiding over the Commercial List on November 6, 2018 at 10:00 a.m. or as soon after that time as the Motion can be heard at the Court house located at 330 University Avenue, 8th Floor, Toronto, Ontario M5G 1R7.

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

THE MOTION IS FOR:

1. An Order (the “**Second Distribution Order**”) substantially in the form contained at Tab 3 of the Motion Record dated October 31, 2018 (the “**Motion Record**”) authorizing and directing the Liquidator to make a distribution to Claimants with valid construction liens in the amount of their Proven Claims as determined by the Liquidator under the Claims Process as defined below; and
2. Such further and other relief as this Honourable Court may deem just;

THE GROUNDS FOR THE MOTION ARE:

Winding Up Order

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

Receivership Order

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

Claims Procedure Order and Second Distribution

5. On April 13, 2018, the Court issued a Claims Procedure Order (the “**Claims Procedure Order**”) approving and establishing a procedure for the solicitation, resolution and barring of certain claims against Tarn Financial as at September 25, 2017 (the “**Claims Process**”);
6. Capitalized terms used and not otherwise defined in this Notice of Motion have the meanings ascribed to them in the Winding Up Order and the Claims Procedure Order;

First Distribution Order

7. On July 26, 2018, the Court issued a First Distribution Order (the “**First Distribution Order**”) authorizing and directing the Liquidator to make a distribution (i) first to Meridian Credit Union (“**Meridian**”) to repay in full the indebtedness owing by Tarn Financial to Meridian, which was secured by first ranking security, (ii) second to Kingsett Mortgage Corporation (“**Kingsett**”) to repay in full the indebtedness owed by Tarn Financial to Kingsett, which was secured by second ranking security, and (iii) subject to establishing a reserve with The Guarantee Company of North America and Tarion Warranty Corporation, third to repay in full the borrowings made by the Liquidator under the Borrowings Charge;

8. As further particularized in the Sixth Report (as defined below), the Liquidator has made the distributions in accordance with the First Distribution Order;

Second Distribution Order

9. The Claims Process contemplated a Claims Bar Date of 5:00 PM Eastern Standard Time on June 15, 2018, by which all Claimants were required to submit a Proof of Claim in respect of their Claims against Tarn Financial;

10. As at the Claims Bar Date, the Liquidator received five Secured Claims from Claimants who registered construction liens pursuant to the *Construction Lien Act* against title to the real property owned by Tarn Financial and municipally known as 2035 Kennedy Road, Toronto Ontario (each a “**Construction Lien**”);

11. The Liquidator is in the process of reconciling amounts claimed by the construction lien Claimants and confirming the amounts secured by the Construction Liens registered;

12. In accordance with the Claims Process, the Liquidator intends to issue Notices of Determination of Claim to each of the Construction Lien Claimants in respect of these Claims upon completion of its analysis;

13. Once these Secured Claims become Proven Claims under the Claims Process, the Liquidator wishes to pay the amount of same on the basis that these Proven Claims would be next in priority to be paid, subject to the Court addressing the security put in place by Samm Capital

Holdings Inc. which is the subject of a motion by the Applicants returnable on the same date as this motion;

14. Accordingly, the Liquidator is seeking the Second Distribution Order to allow payment of the Claims secured by the Construction Liens as they become Proven Claims;

General

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

16. Part XVI of the OBCA; and

17. 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:

18. The Sixth Report of the Liquidator and the Fourth Report of the Receiver dated October 30, 2018 (the “**Sixth Report**”); and

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

October 31, 2018

MILLER THOMSON LLP

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

Kyla Mahar LSO#: 44182G

Tel: 416.597.4303 / Fax: 416.595.8695

Stephanie De Caria LSO#: 68055L

Tel: 416.597.2652 / Fax: 416.595.8695

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

TO: The Service List Attached hereto as Schedule “A”

SCHEDULE "A"

EMAIL SERVICE LIST (as at July 3, 2018)

TO:	<p>KPMG 333 Bay Street Suite 4600 Toronto, ON M5H 2S5</p> <p>Anamika Gadia Tel: 416.777.3842 Email: agadia@kpmg.ca</p> <p>Janine M. Bradley Tel: 416.777.8487 Email: jmbradley@kpmg.ca</p> <p>Marcel Rethore Tel: 647.777.3775 Email: mrethore@kpmg.ca Fax: 416.777.3364</p> <p>Liquidator of Tarn Financial Corporation.</p>
AND TO:	<p>MILLER THOMSON LLP Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1</p> <p>Kyla E.M. Mahar Tel: 416.595.8516 Email: kmahar@millერთhompson.com Fax: 416.595.8695</p> <p>Stephanie De Caria Tel: 416.595.2652 Email: sdecaria@millერთhompson.com Fax: 416.595.8695</p> <p>Lawyers for the Liquidator.</p>

AND TO:	BENNETT JONES LLP 3400 One First Canadian Place P.O. Box 130 Toronto, ON M5X 1A4 Andrew J. Jeanrie Tel: 416.777.4814 Email: jeanriea@bennettjones.com Fax: 416.863.1716
AND TO:	LEVINE CONSULTANTS LTD 34 Oriole Rd Toronto ,ON M4V-2E8 Philip J. Levine Tel: 416.471.1180 Email: phil@levineconsultants.com
AND TO:	GOWLING WLG (CANADA) LLP 1 First Canadian Place Suite 1600 100 King Street West Toronto ON, M5X 1G5 E. Patrick Shea Tel: 416.862.7525 Email: Patrick.shea@gowlingwlg.com Fax: 416.862.7661 Christopher Stanek Tel: 416.862.7525 Email: Christopher.stanek@gowlingwlg.com Fax: 416.862.7661 Lawyers for Volkan Basegmez, Cem Bleda Basegmez, Anil Rukan Basegmez, BA&B Capital Inc., Serdar Kocturk and Kaan Holdings Inc.

AND TO:	<p>TEPLITSKY, COLSON LLP 70 Bond Street| Suite 200 Toronto, ON M5B 1X3</p> <p>Ian Roher Tel: 416.865.5311 Email: iroher@teplitskycolson.com Fax: : 416.365.0695</p> <p>Jonathan Kulathungam Tel: 416.865.5318 Email: jkulathungam@teplitskycolson.com Fax: 416.365.0695</p> <p>Eitan Kadouri Tel: 416.865.5325 Email: ekadouri@teplitskycolson.com Fax: 416.365.0695</p> <p>Eden Ifergan Tel: 416.865.5307 Email: eifergan@teplitskycolson.com Fax: 416.365.0695</p> <p>Lawyers for Ali Akman and SAMM Capital Holdings Inc.</p>
AND TO:	<p>MCCARTHY TETRAULT LLP Suite 5300 Toronto Dominion Bank Tower Toronto ON M5K 1E6</p> <p>Geoff R. Hall Tel: 416.601.7856 Email: ghall@mccarthy.ca Fax: 416.868.0673</p> <p>Adam Goldenberg Tel: 416.601.8357 Email: agoldenberg@mccarthy.ca Fax: 416.868.0673</p> <p>Lawyers for the Appellants, Ali Akman and SAMM Capital Holdings Inc.</p>

AND TO:	<p>MERIDIAN CREDIT UNION 50 Ronson Drive, Unit 155 Toronto, ON M9W 1B3</p> <p>Ryan Topple Tel: 416.438.9351 Email: ryan.topple@meridiancu.ca Fax: 416.438.3023</p> <p>Zenon Iwachiw Tel: 416.438.9351 Email: zenon.iwachiw@meridiancu.ca Fax: 416.438.3023</p> <p>Brian Mocha Tel: 905.988.4042 ext, 2435 Email: brian.mocha@meridiancu.ca Fax: 416.438.3023</p>
AND TO:	<p>SCARFONE HAWKINS LLP 1 James Street South, 14th Floor Hamilton, Ontario L8P 4R5</p> <p>Michael Valente Tel: 905.523.1333 Email: mvalente@shlaw.ca Fax: 905.523.5878</p> <p>Lawyers for Meridian Credit Union</p>
AND TO:	<p>KINGSETT CAPITAL INC. 66 Wellington Street West Suite 4400 Toronto, ON M5K 1H6</p> <p>Daniel Pollack Tel: 416.639.6587 Email: dpollack@kingsettcapital.com Fax: 416.687.6701</p>

AND TO:	LAX O’SULLIVAN LISUS GOTTLIEB LLP 145 King Street West Suite 2750 Toronto, ON M5H Matthew Gottlieb Tel: 416.598.1744 Email: mgottlieb@counsel-toronto.com Andrew Winton Tel: 416.644.5342 Email: awinton@counsel-toronto.com Fax: 416.598.3730 Lawyers for Kingsett Capital Inc.
AND TO:	GOLDMAN SLOAN NASH & HABER LLP 480 University Avenue Suite 1600 Toronto ON M5G 1V2 Leonard Finegold Tel: 416.597.3376 Email: finegold@gsnh.com Fax: 416.597.3370 Lawyers for MCW Consultants LTD
AND TO:	TORKIN MANES LLP 151 Yonge Street Suite 1500 Toronto, ON M5C 2W7 Ryan Hauk Tel: 416.643.8810 Email: rhauk@torkinmanes.com Fax: 1.844.275.6200 Jeff Simpson Tel: 416.777.5413 Email: jsimpson@torkinmanes.com Fax: 1.888.587.9143 Lawyers for Roni Excavating Limited, GFL Infrastructure Group Inc. and Skygrid Construction Inc.

AND TO:	TANZOLA & SORBARA PROFESSIONAL CORPORATION 10 Director Court, Suite 101 Toronto, ON L4L 7E8 Michael Handler Tel: 905.265.2252 Email: mhandler@mhandlerlaw.com. Fax:905.265.0667 Lawyers for The Fence People Limited.
AND TO:	BAKER MCKENZIE 181 Bay St Toronto, ON M5J 2T3 Michael Nowina Tel: 416.863.1221 Email: michael.nowina@bakermckenzie.com Fax: 416.863.6275 Lawyers for Global Hospitality Licensing S.a.r.l.
AND TO:	LAW OFFICE OF LAURA FAIBISH 952 Old County Road Severna Park, Maryland 21146 G. Adam Graber Tel: 410.757.9230 Email: adam.graber@marriott-sp.com Laura Faibish Email: laura.faibish@marriott-sp.com Roz Winegrad Email: roz.winegrad@marriott.com Lawyers for Marriott International Inc.
AND TO:	TORYS LLP 79Wellington Street West Suite 3000 Toronto, ON M5K 1N2 Adam Slavens Tel: 416.865.7333 Fax: 416.865.7380 Email: aslavens@torys.com Lawyers for Tarion Warranty Corporation

AND TO:	THE GUARANTEE COMPANY OF NORTH AMERICA 4950 Yonge Street Suite 1400, Madison Centre, Toronto, ON M2N 6K1 Dick Longland Tel: 416.223.9580 Email: Dick.Longland@theguarantee.com Maria Dellostritto Tel: 416.223.9580 Email: Maria.dellostritto@theguarantee.com
AND TO:	BORDEN LADNER GERVAIS Bay Adelaide Centre, East Tower 22 Adelaide Street West Suite 3400 Toronto, ON, M5H 4E3 Alex MacFarlane Tel: 416.367.6305 Email: AMacFarlane@blg.com Evita Ferreira Tel: 416.367.6708 Email: EFerreira@blg.com Fax: 416.367.6749 Lawyers for The Guarantee Company of North America
AND TO:	SHAPIRO REAL ESTATE AND BUSINESS LAWYERS 333Sheppard Avenue East, Suite 201 Toronto, ON M2N 3B3 Garry Shapiro Tel: 416.224.0808 Email: gshapiro@garryshapirolaw.com Fax: 416.224.0818 Lawyers for Sunray Group of Hotels Inc.

AND TO:	<p>J. JOHN O'DONOGHUE PC 2200 Yonge Street, Suite 1301 Toronto, ON M5S 2C6</p> <p>John O'Donoghue Tel: 416.932.4945 Email: jod@bellnet.ca Fax: 416.481.0618</p> <p>Lawyers for Pinnacle International One Lands Inc.</p>
AND TO:	<p>STEPHEN H. SHUB PROFESSIONAL CORPORATION 5799 Yonge Street, Suite 803 Toronto, ON M2M 3V3</p> <p>Mario Zammit Tel: 416.730.2830 Email: marioz@homelegalcost.com Fax: 416.222.4277</p> <p>Lawyers for the Purchasers of Suites 310, 321, 408, 501, 603, 1111, 2307, 3002.</p>
AND TO:	<p>CANADA REVENUE AGENCY c/o DEPARTMENT OF JUSTICE Ontario Regional Office The Exchange Tower, Box 36 130 King Street West, Suite 3400 Toronto ON M5X 1K6</p> <p>Diane Winters Tel: 416.973.3172 Email: diane.winters@justice.gc.ca Fax: 416.973.0810</p> <p>Lawyers for Canada Revenue Agency</p>
AND TO:	<p>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</p> <p>Kevin O'Hara Tel: 905.433.6934 Email: kevin.ohara@ontario.ca Fax: 905.436.4510</p>

agadia@kpmg.ca; jmbradley@kpmg.ca; mrethore@kpmg.ca; kmahar@millerthomson.com;
sdecaria@millerthomson.com;Patrick.shea@gowlingwlg.com;
Christopher.stanek@gowlingwlg.com; ghall@mccarthy.ca; agoldenberg@mccarthy.ca;
ryan.topple@meridiancu.ca; zenon.iwachiw@meridiancu.ca; brian.mocha@meridiancu.ca;
mvalente@shlaw.ca; dpollack@kingsettcapital.com; awinton@counsel-toronto.com;
mgottlieb@counsel-toronto.com; finegold@gsnh.com; rhauk@torkinmanes.com;
michael.nowina@bakermckenzie.com; adam.graber@marriott-sp.com; laura.faibish@marriott-
sp.com; roz.winegrad@marriott.com; aslavens@torys.com; diane.winters@justice.gc.ca;
Dick.Longland@theguarantee.com; Maria.dellostritto@theguarantee.com;
jkulathungam@teplitskycolson.com; ekadouri@teplitskycolson.com;
eifergan@teplitskycolson.com; jeanriea@bennettjones.com; phil@levineconsultants.com;
AMacfarlane@blg.com; iroher@teplitskycolson.com; gshapiro@garryshapirolaw.com;
kevin.ohara@ontario.ca; mcallahan@tanzola-sorbara.net; jod@bellnet.ca;
marioz@homelegalcost.com; EFerreira@blg.com.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable November 6, 2018)**

MILLER THOMSON LLP

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

Kyla Mahar LSO#: 44182G

Tel: 416.597.4303 / Fax: 416.595.8695

Stephanie De Caria LSO#: 68055L

Tel: 416.595.2652 / Fax: 416.595.8695

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

TAB 2

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

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

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

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

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

OCTOBER 31, 2018

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Appendix D – Fifth Report, without appendices

Appendix E – First Distribution Order

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Appendix G – Corporate Search Results on “Tarn”

I. INTRODUCTION AND SUMMARY OF PROCEEDINGS

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

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

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

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

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

15. The Liquidator issued its fourth report to the Court and the Receiver issued its second report to the Court on June 8, 2018 (collectively, the “**Fourth Report**”). As detailed in the Fourth Report, the Liquidator and Receiver brought a motion returnable on June 14, 2018 seeking an Order (the “**Deposit Return Procedure Order**”) establishing a procedure for the termination of Purchasers’ APSs and the return of Proven Deposits (as defined in the Disputed Deposits Resolution Procedure Order) to Purchasers of proposed condominium, units in the contemplated Development Project (the “**Deposit Return Procedure**”). The Deposit Return Procedure Order:
 - a. Enabled the Receiver to commence the Deposit Return Procedure in order to return Proven Deposits to Purchasers;
 - b. Enabled the Receiver to terminate Purchasers’ APSs in accordance with their terms, as set out in the Termination Entitlement Order, upon being satisfied with (i) an executed Release Agreement, and (ii) properly completed Certificate(s) of Identity attaching copies of two pieces of valid identification from each Purchaser named on the APS;
 - c. Confirmed that interest is not payable on the Proven Deposits pursuant to the *Condominium Act* and its regulations; and
 - d. Released and discharged the Receiver, the Liquidator, Tarn Construction, Tarn Financial, Bennett Jones, in its capacity as Deposit Trustee (the “**Deposit Trustee**”), The Guarantee Company of North America (“**The Guarantee Company**”) and Tarion Warranty Corporation (“**Tarion**”) from any Claims relating to the Deposits, including interest thereon.
16. On June 14, 2018, the Court granted the Deposit Return Procedure Order. A copy of the Deposit Return Procedure Order is attached as **Appendix “C”** to this Sixth Report.
17. The Liquidator issued its fifth report to the Court and the Receiver issued its third report to the Court on July 20, 2018 (collectively, the “**Fifth Report**”). A copy of the Fifth Report, without appendices, is attached as **Appendix “D”** to this Sixth Report. As detailed in the Fifth Report, the Liquidator and Receiver brought a motion returnable on July 26, 2018 seeking

- a. An Order (the “**First Distribution Order**”), subject to the Liquidator either entering into satisfactory reimbursement terms with the following secured creditors relating to potential priority claims or establishing a sufficient reserve to account for potential priority claims, authorizing and directing the Liquidator to make a distribution:
 - (i) First to Meridian Credit Union (“**Meridian**”) to repay in full the indebtedness owed by Tarn Financial to Meridian, which was secured by first ranking security;
 - (ii) Second to Kingsett Mortgage Corporation (“**Kingsett**”) to repay in full the indebtedness owed by Tarn Financial to Kingsett, which was secured by second ranking security; and
 - (iii) Subject to establishing a reserve with The Guarantee Company and Tarion in accordance with the terms of the Deposit Return Procedure Order, third to repay in full the borrowings made by the Liquidator under the Borrowings Charge;
 - b. An Order approving:
 - (i) The fees of the Liquidator and the Receiver and the Liquidator’s and the Receiver’s legal counsel from January 1, 2018 to April 30, 2018; and
 - (ii) The Third Report, the Fourth Report and the Fifth Report and the activities and conduct of the Liquidator and the Receiver as set out therein.
18. The Respondents, SAMM and Akman, requested that the Liquidator and the Receiver adjourn the motion seeking approval of the fees, activities and conduct of the Liquidator and the Receiver and their counsel in order to provide SAMM and Akman additional time to review the fees and dockets of the Liquidator, the Receiver and their counsel. The motion was adjourned on consent.
 19. On July 26, 2018, the Court granted the First Distribution Order. A copy of the First Distribution Order is attached as **Appendix “E”** to this Sixth Report.
 20. On September 14, 2018, counsel for SAMM and Akman advised counsel for the Liquidator and the Receiver that they were not opposing the approval of the fees, activities and conduct of the Liquidator and the Receiver and their counsel. On October 1, 2018, the Court

granted the Order approving: (a) the fees of the Liquidator and the Receiver and the Liquidator's and the Receiver's legal counsel from January 1, 2018 to April 30, 2018; and (b) the Third Report, the Fourth Report and the Fifth Report and the activities and conduct of the Liquidator and the Receiver as set out therein.

21. Capitalized terms not defined herein shall have the meanings set out in the Winding Up Order, the Claims Procedure Order, and the Deposit Return Procedure Order.

II. PURPOSE OF THIS SIXTH REPORT

22. The purpose of this Sixth Report is to update the Court with respect to:
- a. The activities of the Liquidator and the Receiver since the Fifth Report, including, but not limited to:
 - (i) activities relating to Tarn Financial;
 - (ii) activities relating to Tarn Construction; and
 - (iii) other activities in relation to the Winding Up Proceedings;
 - b. The Claims Process;
 - c. The Deposit Return Procedure;
 - d. The distributions made pursuant to the First Distribution Order;
 - e. The Liquidator's statement of receipts and disbursements since the date of its appointment up to and including October 26, 2018;
 - f. The Receiver's statement of receipts and disbursements since the date of the Receivership Order up to and including October 26, 2018; and
 - g. To provide the Court with the necessary information to support the granting of an Order (the "**Second Distribution Order**") substantially in the form contained at Tab 3 of the Motion Record dated October 31, 2018 (the "**Motion Record**") authorizing and directing the Liquidator to make a distribution to construction lien Claimants with valid construction liens in the amount of their Proven Claims as determined under the Claim Process.

23. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
24. The information contained in this Sixth Report has been obtained from the books and records and other information of Tarn Financial or Tarn Construction. The accuracy and completeness of the financial information contained herein has not been audited or otherwise verified by the Liquidator or the Receiver, and the Liquidator and the Receiver do not express an opinion or provide any other form of assurance with respect to the information presented herein or relied upon by the Liquidator or the Receiver in preparing this Sixth Report.
25. Future oriented financial information reported or relied on in preparing this Sixth Report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.

III. ACTIVITIES OF THE LIQUIDATOR AND THE RECEIVER SINCE THE FIFTH REPORT

Activities Relating to Tarn Financial

26. The Liquidator has:
 - a. Continued to review and approve all disbursements made by Tarn Financial relating to the period prior to the Closing Date and in connection with the Winding Up Proceedings;
 - b. Continued to prepare bank reconciliations;
 - c. Continued to coordinate all filings and payments of harmonized sales tax (“**HST**”) and other required statutory remittances;
 - d. Continued to administer the Claims Process, the details of which are described below, including reviewing the Claims with the assistance of its counsel, Miller Thomson;
 - e. Had numerous discussions with representatives of the Canada Revenue Agency (“**CRA**”) and the Department of Justice CRA Liaison regarding the marker claim filed by CRA and the potential priority claims of CRA;
 - f. Addressed and responded to the audit requests of CRA;

- g. Dealt with post-closing matters related to the Transaction including, the work being performed by former Tarn Financial employees pursuant to the Transition Services Agreement and the post-closing adjustments;
- h. Coordinated the preparation of the necessary financial statements to prepare the 2017 and 2018 corporate tax returns, as described below;
- i. Considered the tax consequences of the Transaction, as discussed below;
- j. Reviewed what monies were transferred in or out of Tarn Financial, as described below;
- k. Had discussions with Meridian and Kingsett regarding their Secured Claims; and
- l. Made the distributions pursuant to the First Distribution Order.

Financials Statements and Corporate Tax Returns

- 27. The Liquidator engaged BDO Canada LLP (“**BDO**”) to provide bookkeeping assistance in order to input the financial entries for Tarn Financial’s 2017 fiscal year and prepare its year-end financial statements as at December 31, 2017, given the lack of general ledger for 2017 at the time of the Liquidator’s appointment.
- 28. With the assistance of BDO and the continued assistance of the former Tarn Financial accounting staff, the 2017 internal financial statements have been prepared. The Liquidator has engaged Richter LLP (“**Richter**”) to perform a review engagement, to assist with the preparation and filing of Tarn Financial’s corporate tax returns and to provide other tax advice, as required. Richter’s tax team has advised that CRA requires audited or review engagement financial statements in order for the Liquidator to obtain the necessary clearance certificates to allow for the winding up of Tarn Financial.
- 29. Richter’s tax team updated and refiled Tarn Financial’s 2015 T2 corporate tax return as there were certain errors identified in the tax return previously filed by Tarn Financial. A revised notice of assessment has been received from CRA in respect of the 2015 taxation year. Richter has prepared and filed the 2016 T2 corporate tax return and is awaiting the notice of assessment from CRA.

30. Richter's review engagement of the 2017 financial statements is expected to be completed on or around November 5, 2018. Richter's tax team is working on the preparation of the 2017 T2 corporate tax return in parallel. Once the review engagement is complete and the 2016 notice of assessment is received from CRA, Richter will be able to finalize and file the 2017 corporate tax return.
31. The 2018 internal financial statements to the Closing Date have been prepared by the former Tarn Financial accounting staff under the Transition Services Agreement, with some assistance from BDO. Once the 2017 review engagement is complete, Richter will perform a review engagement on the 2018 financial statements. Additional work will be required by both the former Tarn Financial accounting staff and Richter to update the financial statements to the end of the fiscal year; however, the Liquidator is trying to expedite the process by ensuring that the work that can be completed in advance of the 2018 year end is completed.
32. The Richter tax team will also prepare the 2018 T2 corporate tax return in parallel to its review engagement on the 2018 financial statements so that the 2018 corporate tax return can be filed as soon as possible following year end. The 2018 tax return will include the capital gains tax payable on the Transaction, which is discussed further below.

Capital Gains Tax Payable on the Transaction

33. As part of Richter's engagement by the Liquidator, it reviewed the tax consequences of the Transaction with a view to optimizing the after-tax proceeds for distribution by the Liquidator under the Winding Up Proceedings.
34. Richter provided the Liquidator with a draft analysis of the capital gains tax payable on the Transaction. The draft analysis indicated that the amount of capital gains tax payable on the Transaction by Tarn Financial is dependent on Tarn Financial's corporate status for income tax purposes (i.e. whether Tarn Financial is a Canadian Controlled Private Corporation ("CCPC") or a non-Canadian Controlled Private Corporation ("**Non-CCPC**")). The differential on the capital gains tax payable by Tarn Financial is approximately \$2 million, with the amount being higher if Tarn Financial is a CCPC for income tax purposes.

35. The Liquidator and Richter reviewed how Tarn Financial identified itself in past corporate income tax filings. Tarn Financial filed its 2014 corporate tax return identifying itself as a CCPC and its 2015 corporate tax return identifying itself as a Non-CCPC. The draft 2016 corporate tax return that was prepared by Tarn Financial's former auditor was also prepared on the basis that Tarn Financial is a Non-CCPC.
36. Tarn Financial was incorporated on July 7, 2014 and, on or before the end of 2014, Class A common shares (the "**Class A Shares**") were issued to BA&B Capital Inc. ("**BA&B**"), SAMM, and KAAN Holdings Inc. ("**KAAN**") (collectively, the "**Shareholders**"), such that the shareholdings among the Shareholders were as follows:
 - a. BA&B was issued 40 Class A Shares (40% ownership);
 - b. SAMM was issued 40 Class A Shares (40% ownership); and
 - c. KAAN was issued 20 Class A Shares (20% ownership).
37. The controlling shareholders of BA&B and KAAN are Volkan Basegmez and Serdar Kocturk, respectively. The Liquidator has confirmed with the Applicants' counsel that both Volkan Basegmez and Serdar Kocturk reside outside of Canada for more than 183 days a year and have permanent residences in Turkey.
38. The controlling shareholder of SAMM is Akman and it is the Liquidator's understanding that Akman resides in Canada for more than 183 days a year and, accordingly, is a Canadian resident for income tax purposes.
39. The Liquidator understands that based on the Class A Shares and the residency of the controlling shareholders of the three Shareholders, Tarn Financial would be classified as a Non-CCPC because 60% of the ownership is controlled by non-Canadian residents for income tax purposes.
40. However, based on a review of the Application materials and the Decision of Justice Lederman released September 15, 2017 (the "**Decision**"), the Liquidator understands that Akman created a new class of shares by amending Tarn Financial's articles of incorporation and thereafter issued 100 Class B voting shares (the "**Class B Shares**") of Tarn Financial to SAMM. The new Class B Shares gave Akman voting control of Tarn Financial. This was discovered by KAAN and BA&B in mid-2016 and the Class B Shares

were the subject matter of the allegations of oppression in the Application before Justice Lederman for the Winding Up Order.

41. Justice Lederman considered the validity of Akman creating the Class B Shares and securing absolute voting control of Tarn Financial for himself in the Decision. Justice Lederman finds that 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”¹. A copy of the Decision is attached hereto as **Appendix “F”** to this Sixth Report.
42. Upon understanding the impact of the determination for corporate tax purposes of whether Tarn Financial is a CCPC or a Non-CCPC, the Liquidator had discussions with the each of Shareholder’s counsel regarding the capital gains tax considerations, the issue of the Class B Shares’ impact on Tarn Financial’s corporate status for income tax purposes and ultimately on the estimated amount of capital gains tax payable on the Transaction. The Liquidator advised the Shareholders that this issue will need to be addressed prior to the end of the fiscal year so that the 2018 corporate tax returns can be properly prepared and filed in early 2019.
43. Given the Applicants familiarity with the situation relating to the Class B Shares and the litigation relating to same, the Applicants advised that they would bring a motion to rescind the Class B Shares based on the Decision.
44. The Liquidator understands that if the Class B Shares are rescinded, then based on all of the other facts relating to Tarn Financial, the corporation is a Non-CCPC for income tax purposes.

Report on Tarn Financial’s Sources and Uses of Monies

45. Pursuant to paragraph 2(h) of the Winding Up Order, the Liquidator was authorized and directed to conduct a review of the monies that were transferred in or out of Tarn Financial. Given the level of interdependency between Tarn Financial and its wholly-owned subsidiary, Tarn Construction, the Liquidator undertook a review of the sources and uses

¹ Decision of Justice Lederman released September 15, 2018 at paras. 43-44.

of monies in and out of both Tarn Financial and Tarn Construction in order to understand the movement of monies between both entities.

46. The Liquidator undertook the review utilizing the expertise of KPMG's forensic group. The Liquidator's review covers the period from July 7, 2014 to September 30, 2017. The Liquidator prepared a Draft Report of the Liquidator dated August 31, 2018 re: Analysis of Sources and Uses of Monies during the period July 7, 2014 to September 30, 2017 (the "**Draft Sources and Uses Report**") detailing the Liquidator's procedures and findings as a result of the review.
47. The Liquidator provided each of the Shareholder's counsel with the Draft Sources and Uses Report on August 31, 2018 to allow the Shareholders the opportunity to review the draft report and provide any additional information that any of the Shareholders believe may assist the Liquidator in finalizing the report before it is filed with the Court.
48. The Liquidator asked the Shareholders how long they would require to review and provide comments on the Draft Sources and Uses Report and both the Applicants and the Respondents originally expected to get the Liquidator comments within approximately one month.
49. Counsel for the Applicants provided the Liquidator with certain information relating to the Draft Sources and Uses Report on October 1, 2018.
50. Counsel for the Respondents have updated the Liquidator on a number of occasions since receiving the Draft Sources and Uses Report advising that the Respondents' accountant needed more time to review the findings in the report. On October 29, 2018, the Respondents' counsel provided an initial request for back up information with respect to certain findings and advised that they were expecting further comments from the Respondents to be delivered on October 31, 2018.
51. Once the Liquidator receives the information/comments from the Respondents on the Draft Sources and Uses Report, the Liquidator will review the information/comments received and make any necessary amendments to the report in order to finalize same. Thereafter, the Liquidator intends to deliver the finalized report to the Shareholders and file the report with the Court on a confidential basis and seek a sealing order with respect to same.

Activities in Relation to Tarn Construction

52. The Liquidator and the Receiver have continued to do the following in respect of Tarn Construction:
- a. Undertake the Deposit Return Procedure, the details of which are described below, including reviewing the Certificates of Identity and Release Agreements provided by Purchasers in respect of their Proven Deposits and following up with Purchasers who have not yet provided the required documentation;
 - b. Have discussions with The Guarantee Company and Tarion regarding the Deposit Return Procedure and the decrease of the Bonds or setting up of a reserve pursuant to the Deposit Return Procedure Order;
 - c. Address and respond to the audit requests of CRA; and
 - d. Respond to inquiries regarding the Claims Process commenced in respect of Tarn Financial.

Other Activities in Relation to the Winding Up Proceedings

53. The Liquidator and the Receiver, with the assistance of their counsel, have also undertaken the following in relation to the Winding Up Proceedings:
- a. Had regular discussions with the Shareholders' counsel regarding the Winding Up Proceedings and responded to inquiries from the Shareholders regarding same;
 - b. Responded to inquiries from other stakeholders regarding the Winding Up Proceedings;
 - c. Posted materials relating to the Winding Up Proceedings on its website (www.kpmg.com/ca/tarn);
 - d. Maintained a telephone hotline at (416) 649-7623 or (1-855) 222-8083 and email address at tarn@kpmg.ca for inquiries regarding the Winding Up Proceedings; and
 - e. Attended Court on July 26, 2018 and October 1, 2018; and
 - f. Prepared and delivered the Sixth Report.

IV. THE CLAMS PROCESS

54. On April 13, 2018, the Court issued the Claims Procedure Order, which approved the Claims Process. Capitalized terms used in this section of the Sixth Report are as defined in the Claims Procedure Order.
55. The Third Report and Fourth Report set out in detail the activities of the Liquidator in connection with undertaking the Claims Process.
56. As detailed in the Fifth Report, the Liquidator received 244 Proofs of Claim in the aggregate amount of \$58,905,433.66, inclusive of Claims filed by the Non Arms-Length Claimants and three Proofs of Claim that the Liquidator received after the Claims Bar Date but prior to the Fifth Report, which the Liquidator advised the Court it intended to accept as properly filed Claims.
57. Since the date of the Fifth Report, the Liquidator has received one additional late-filed Proof of Claim, which the Liquidator intends to accept as a properly filed Claim. In addition, the Liquidator has been in discussions with one Claimant as it appeared that they filed two duplicate Claims. As a result of those discussions, the Claimant has confirmed that one of their two Proofs of Claim submitted prior to the Claims Bar Date is a duplicate Claim and accordingly it has been withdrawn.

Claims Summary	Number of Claims (#)	Allowed (\$)
Total as per the Fifth Report	244	58,905,433.66
Add: Late Claim	1	1,429.12
Remove: Withdrawn Claim	(1)	(509,465.39)
Total	244	58,397,397.39

58. As of the date of this Sixth Report, there are 244 Proofs of Claim in the aggregate amount of \$58,397,397.39, inclusive of Claims filed by the Non Arms-Length Claimants. The following table provides a summary of the Claims:

Claims Summary	Notes	Number of Claims (#)	Amount of Claim (\$)	Security/Lien Amount (\$)
	Priority Claim	1	1	1.00
Secured Creditor Claims	2	4	23,710,062.63	43,930,000.00
Construction Lien Claims	3	5	2,791,861.33	2,592,525.65
Other Claims Filed as Secured Claims	4	8	966,931.13	
Wages and Benefits Claims	5	43	1,075,129.37	
Unsecured Claims	6	177	7,891,447.58	
Non Arms-Length Claims	7	6	21,961,964.35	
Total Claims		244	58,397,397.39	46,522,525.65

Note 1: CRA has submitted a placeholder Claim for potential priority claims including source deductions, HST and withholding taxes in respect of Tarn Financial and Tarn Construction. Since submitting the placeholder Claim, as discussed below, CRA has agreed to a reserve of \$750,000 in respect of this priority Claim until it can be finally determined.

Note 2: Secured creditor Claims include contingent Claims filed by The Guarantee Company and Tarion, which will be addressed pursuant to the Deposit Return Procedure Order. The total quantum of the registered secured creditors' security is set out in the Security/Lien Amount column.

Note 3: In the weeks following the granting of the Winding Up Order, five contractors registered a claim for lien against the Real Property pursuant to the *Construction Lien Act* ("**Construction Lien**"). The Liquidator consented to the registration and perfection of each of these Construction Liens on the basis that no further steps be taken in respect of the Construction Liens without consent of the Liquidator or leave of the Court.

Note 4: Eight Claimants filed their Proofs of Claim with the Liquidator indicating that their Claims were Secured Claims. Based on the Liquidator's review, the Liquidator notes that no security documentation has been provided with respect to these Claims, the parties have no registered security interests against Tarn Financial and accordingly these Claims are being considered by the Liquidator as Unsecured Claims.

Note 5: 43 Claimants filed their Proofs of Claim with the Liquidator indicating that their Claims were Wages and Benefits Claims. Of these Claims, 42 were made by Claimants that are not former employees of Tarn Financial, nor are these Claimants former employees of Tarn Construction. The remaining Claim, which is the late-filed Claim that was received after the date of the Fifth Report is a Wages and Benefits Claim by a former employee of Tarn Financial.

Note 6: The Liquidator received a large number of Proofs of Claim from Claimants whose supporting documentation is with an entity other than Tarn Financial. A number of these Claimants have contracts with Tarn Construction. Additionally, a number of the counterparties contained in their supporting documentation are not corporations/limited partnerships or business names. Examples include: Delta Tor, Delta Toronto East, Samm Holding, Kennedy Road Hospitality Operations Toronto Ltd, Tarn Finance Inc., The Kennedys, SAMM Developments, SAMM Holdings Inc., Delta Toronto East Hotels, and Tarn Financial Services.

Note 7: The Liquidator received Proofs of Claim from each of the Shareholders with respect to their initial advances to Tarn Financial. In addition, SAMM filed three additional Proofs of Claim claiming amounts with respect to cash advances made to Tarn Financial and Tarn Construction, managements fees relating to Tarn Financial and development fees relating to Tarn Construction. All of the Claims filed by SAMM have been filed as Secured Claims. Pursuant to the Claims Procedure Order, the Non Arms-Length Claims are not being determined by the Liquidator.

CRA Priority Claim

59. As set out in the table above, CRA submitted a placeholder claim for potential priority claims including source deductions, HST and withholding taxes in respect of Tarn Financial and Tarn Construction. The Liquidator has had extensive contact with representatives of CRA and the Department of Justice CRA Liaison to discuss the Claim submitted by CRA, to ensure that the appropriate audits are undertaken to determine the amounts owing to CRA, to explain that the Claims Process only relates to Tarn Financial

and to request that a reserve be established to allow for payments to be made in accordance with the First Distribution Order. The Liquidator advised CRA that the Claims Process is in respect of amounts owing by Tarn Financial and accordingly, any amounts owing from Tarn Construction will need to be addressed separately and that there are no assets in Tarn Construction.

60. To date, the CRA has completed an HST audit for fiscal years 2015 to 2017 and a payroll trust audit for fiscal years 2017 to 2018 in respect of Tarn Financial. While the final assessment notices have not yet been issued, the Liquidator has been advised by representatives of CRA that, based on the review to date, neither the HST audit nor the payroll audit have resulted in any reassessment or monies owing.
61. At the time of the Liquidator's appointment, there was no account established with CRA for non-resident withholding tax remittances, albeit that Tarn Financial had been withholding ten percent from the monthly royalty payments being made pursuant to the License Agreement between Tarn Financial and Delta Hotels Limited (or any successor or assignee of its interests) ("**Marriott**"). Tarn Financial began withholding amounts from its royalty payments to Marriott in April, 2015, which is when Marriott (a non-resident for tax purposes) purchased Delta Hotels Limited (a Canadian resident for tax purposes). The Liquidator understands that the amounts that were withheld by Tarn Financial from amounts owing to Marriott prior to the Liquidator's appointment were not remitted to CRA.
62. Following its appointment, the Liquidator established an account with CRA for non-resident withholding tax remittances in the name of the Liquidator and began remitting the amounts that were being withheld from royalty payments to Marriott during the Winding Up Proceedings.
63. Given that no non-resident withholding tax account existed in the name of Tarn Financial, CRA was not aware of any amounts owing by Tarn Financial in respect of withholding taxes. The Liquidator advised CRA of this issue during its discussions over the past several months. CRA has since advised the Liquidator to complete and file non-resident tax remittances on behalf of Tarn Financial for fiscal years 2015 to 2017 and remit the amounts that were withheld by Tarn Financial and not remitted. The Liquidator is finalizing those non-resident tax remittances and will be paying the withholding taxes to CRA shortly.

Once the remittances are received by CRA, an audit of the newly established withholding tax account will be commenced. The Liquidator understands that it is likely that CRA will assess penalties and interest on the amount owing for withholding taxes given the late payment of these amounts.

64. In order to allow for the payment of the valid Secured Claims and, upon being finally determined, any Proven Claims by Construction Lien Claimants, the Liquidator discussed with CRA the establishment of a reserve in respect of its potential priority claims until such time as the remaining audits are completed and any amounts owing to CRA can be finally determined. After finalizing the HST and payroll audits discussed above and understanding the approximate quantum of the amount of withholding taxes to be remitted, CRA agreed to a reserve of \$750,000 to cover its potential priority claims. At this time, it is expected that the priority claims owing by Tarn Financial to the CRA will be less than the established reserve.
65. The Liquidator will continue to work with CRA in order to complete the necessary audits to allow for the final determination of the amount of their Claim.

Secured Creditor Claims

66. The Liquidator received Secured Claims from Meridian, Kingsett, The Guarantee Company and Tarion. The Claims filed by Meridian and Kingsett relate to their first and second ranking security against Tarn Financial, respectively. The Claims filed by The Guarantee Company and Tarion are contingent Claims which are addressed pursuant to the Deposit Return Procedure Order. The Guarantee Company has third ranking security against Tarn Financial as it relates to the bonds issued by The Guarantee Company to Tarion in relation to the Development Project.
67. As set out in the Fifth Report, the Liquidator received an opinion from its independent counsel, Miller Thomson, that both Meriden and Kingsett have valid and enforceable security against Tarn Financial. Accordingly, the Liquidator sought and obtained the First Distribution Order to allow it to repay in full the indebtedness owed by Tarn Financial to Meridian and Kingsett, respectively, subject to the Liquidator either entering into satisfactory reimbursement terms with the secured creditors relating to potential priority claims or establishing a sufficient reserve to account for potential priority claims.

68. The Liquidator entered into a reimbursement agreement with Meridian resulting in repayment to Meridian being made immediately following the granting of the First Distribution Order, as discussed below in this Sixth Report. The Liquidator repaid Kingsett on October 26, 2018 after establishing the reserve with CRA discussed above, all in accordance with the First Distribution Order. Given the time elapsed between the filing of their Claims and the dates of the distributions, the amounts paid to Meridian and Kingsett differed from the amounts of their respective Claims. The Secured Creditor Claims and related distributions are summarized in the table below:

Claims Summary	Amount of Claim (\$)	Distribution (\$)
Meridian Credit Union Limited	17,603,247.93	17,494,361.72
KingSett Mortgage Corporation	6,079,972.07	6,094,522.85
The Guarantee Company of North America	26,842.63	-
Tarion Warranty Corporation	-	-
Total	23,710,062.63	23,588,884.57

Construction Lien Claims

69. As set out above, the Liquidator received five Secured Claims from Claimants who registered Construction Liens against the Real Property pursuant to the *Construction Lien Act*. The amount of the Construction Liens registered and the amount of the Secured Claim filed by Construction Lien Claimants is set out in the table below:

Claimant	Amount in Proof of Claim filed by Claimant (\$)	Amount of Construction Lien Registered by Claimant (\$)
MCW Consultants Inc.	124,300.00	124,300.00
The Fence People Limited	74,784.53	74,784.53
Roni Excavating Limited	448,699.99	448,699.99
Skygrid Construction Inc.	516,667.76	317,332.08
GFL Infrastructure Group Inc.	1,627,409.05	1,627,409.05
Total	2,791,861.33	2,592,525.65

70. The Liquidator is in the process of reconciling the amounts claimed and determining the amount secured by the Construction Liens registered. The Liquidator has made requests of certain of the Construction Lien Claimants to properly review these Secured Claims. The Liquidator expects to finalize its analysis in the next two weeks subject to receiving the relevant information requested from the Claimants. In addition, the Liquidator has

shared the Construction Lien Claims with the Applicants. The Liquidator will issue allowances/disallowances in respect of these Claims upon its analysis being completed.

71. Once these Secured Claims become Proven Claims under the Claims Process, the Liquidator would like to pay the amount of the Proven Claims since these secured Proven Claims would be next in priority to be paid, subject to addressing the security put in place by SAMM, as discussed below. As a result, the Liquidator is seeking the Second Distribution Order to allow payment of same as they become Proven Claims.

Wages and Benefit Claims

72. Pursuant to section 221 of the OBCA, in distributing the property of the corporation, debts to employees of the corporation for services performed for it due at the commencement of the winding up or within one month before, not exceeding three months' wages and vacation pay accrued for not more than twelve months, are to be paid in priority to the claims of the ordinary creditors (Unsecured Creditors), and such persons are entitled to rank as ordinary creditors for the residue of their claims.
73. As set out above, 43 Claimants filed their Proofs of Claim with the Liquidator indicating that their Claims were Wages and Benefits Claims. However, having reviewed the Claims, the Liquidator has determined that 42 were made by Claimants that are not former employees of Tarn Financial and are not proper Wages and Benefits Claims but rather regular Unsecured Claims. One Claim, which is a late-filed Claim that was received after the date of the Fifth Report, relates to wages improperly withheld from an employee by Tarn Financial and is therefore properly a Wages and Benefits Claim. The Claim is in the amount of \$1,429.12 and has been reviewed and allowed by the Liquidator.

Unsecured Claims

74. As set out above, eight Claimants filed their Proofs of Claim with the Liquidator indicating that their Claims were Secured Claims; however, the Liquidator notes that no security documentation has been provided with respect to these Claims and no security interest is registered in favour of any of the Claimants. As a result, the Liquidator is reviewing these Claims as Unsecured Claims.

75. The Liquidator, with the assistance of its counsel, Miller Thomson, has reviewed the Unsecured Claims. The table below summarizes the current status of the Unsecured Claims and the review being undertaken:

Unsecured Claims Summary	Number of Claims (#)	Amount (\$)
Allowed	4	81,583.47
Partially Allowed	1	439,439.29
Partially Disallowed	9	85,912.38
Disallowed	197	315,761.38
To be Disallowed	17	5,093,241.59
To be Resolved	228	3,917,609.97
Total	228	9,933,548.08
Total Allowed and Partially Allowed		521,022.76
Total Disallowed, Partially Disallowed and To Be Disallowed		5,494,915.35
To Be Resolved		3,917,609.97

76. As set out in the table above, there are a number of Claims that remain to be resolved as at the date of this Sixth Report. Given the positions raised by the Respondents in previous Court attendances and in correspondence to the Liquidator, the Liquidator thought it would be beneficial to provide its views on how it is treating and intends to treat various categories of Unsecured Claims received in the Claims Process.
77. As further described below, Unsecured Claims received by the Liquidator can be categorized into four main categories as follows:
- a. Claims for which the supporting documentation filed in respect of the Claim is in the name of Tarn Financial only (the “**Tarn Financial Claims**”);
 - b. Claims for which the supporting documentation filed in respect of the Claim is in the name of Tarn Construction Corporation, without any supporting documentation to link the Claim to Tarn Financial (the “**Tarn Construction Claims**”);
 - c. Claims for which the supporting documentation filed in respect of the Claim includes an agreement in the name of Tarn Finance Inc. (“**Tarn Finance**”), which is not a legal entity (the “**Tarn Finance Claims**”); and
 - d. Claims for which the supporting documentation filed in respect of the Claim is not in the name of Tarn Financial or a name similar (the “**Non-Tarn Claims**”).

Tarn Financial Claims

78. As part of the Claims Process, the Liquidator received Claims submitted where the supporting documentation filed in respect of the Claims is in the name of Tarn Financial only. Subject to determining the quantum and merit of these Claims, the Liquidator is allowing the Tarn Financial Claims and is delivering Notices of Determination of Claim to the Claimants in accordance with the Claims Process.

Tarn Construction Claims

79. As part of the Claims Process, the Liquidator received Claims submitted where the supporting documentation filed in respect of the Claims is in the name of Tarn Construction and the amounts claimed under the Claims are in the books and records of Tarn Construction. In this case, there is no supporting documentation that identifies Tarn Financial as being liable for the amounts being claimed in the Proofs of Claim. An example of these Claims include Claims submitted by condominium brokers pursuant to Broker Agreements with Tarn Construction.
80. Tarn Construction does not have any assets and there are no funds available in Tarn Construction for distribution. As a result, the Receiver did not seek an Order for a claims process for claims against Tarn Construction. The Claims Procedure Order calls for Claims against Tarn Financial.
81. As a result, the Liquidator intends to disallow the Tarn Construction Claims and will deliver Notices of Determination of Claim in accordance with the Claims Process disallowing same. These Claims are contained under the heading “To be Disallowed” in the table above.

Tarn Finance Claims

82. As part of the Claims Process, the Liquidator received Claims where the supporting documentation filed in respect of the Claim, or subsequently obtained from the Claimant when documentation was requested by the Liquidator to support the Claim, includes an agreement where the counterparty is Tarn Finance. The supporting documentation filed in respect of the Tarn Finance Claims include contracts and letter agreements executed by Akman on behalf of Tarn Finance Inc., in some instances, in his capacity as President of

Tarn Finance Inc. and, in some instances, by another individual for and on behalf of Akman on behalf of Tarn Finance Inc.

83. As set out above, the Liquidator's counsel determined by undertaking corporate searches that Tarn Finance Inc. is not a corporation. Corporate searches were conducted against "Tarn" in two separate databases and across all jurisdictions in Canada. Attached hereto as **Appendix "G"** to this Sixth Report is a copy of the corporate search result, demonstrating the name Tarn Finance is not listed.
84. A review of the agreements relating to the Tarn Finance Claims identified that each of the above-noted agreements were entered into by Tarn Finance after the incorporation of Tarn Financial (i.e. after July 7, 2014), but before the incorporation of Tarn Construction (i.e. before June 17, 2015). In other words, the above-noted contracts were created at a time where the only "Tarn" company that existed was Tarn Financial.
85. Given the similarity between the names "Tarn Financial" and "Tarn Finance" and given that the only "Tarn" company that could have entered into the contracts and/or supporting agreements at the time they were entered into was Tarn Financial, the Liquidator is of the view that the use of Tarn Finance contained in the Tarn Finance Claims should be viewed as a mistake. Given this view, the Liquidator has considered the ramification of such a mistake.
86. To not rectify the name of Tarn Finance, as the contracting party and signatory to the agreements, would result in a disallowance of the Tarn Finance Claims and would disadvantage the Claimants based on a mistake likely unknown to them at the time of entering into their respective agreements. The Liquidator is of the view that this would lead to an unfair result. The Liquidator is of the view that Tarn Financial knew or ought to have known "Tarn Finance Inc." was an error and therefore it should be rectified. As a result, the Liquidator intends to allow the Tarn Finance Claims in the Claims Process, subject to the Liquidator reconciling the amounts of the Tarn Finance Claims and determining that the amounts thereunder are properly owing. Subject to determining the quantum and merit of these Claims, the Liquidator will deliver Notices of Determination of Claim to the Claimants in accordance with the Claims Process.

87. The Tarn Finance Claims are contained under the heading “To be Resolved” in the table above along with Tarn Financial Claims that have not been finally determined by the Liquidator.

Non-Tarn Claims

88. As part of the Claims Process, the Liquidator received Claims where the supporting documentation filed in respect of the Claim, or subsequently obtained from the Claimant when documentation was requested by the Liquidator to support the Claim, is not in the name of Tarn Financial, Tarn Finance or Tarn Construction but is in the name of other entities or non-entities. Examples are Claims with supporting documents in the name of “The Kennedys”, “Delta Tor”, and “Samm Holding”.
89. The Liquidator intends to disallow these Non-Tarn Claims on the basis that the supporting documentation filed in respect of same is not in the name of Tarn Financial and is not sufficiently similar to this name to be considered to be a mistake that would warrant rectification.
90. Accordingly, the Liquidator will deliver Notices of Determination of Claim in accordance with the Claims Process. These Claims are contained under the heading “To be Disallowed” in the table above.

Non Arms-Length Claims

91. As set out above, the Liquidator received Proofs of Claim from each of the Shareholders with respect to their initial advances to Tarn Financial. In addition, SAMM filed three additional Proofs of Claim claiming amounts with respect to cash advances made to Tarn Financial and Tarn Construction, managements fees relating to Tarn Financial and development fees relating to Tarn Construction. All of the Claims filed by SAMM have been filed as Secured Claims.
92. As discussed in the Fifth Report, pursuant to the Claims Procedure Order, upon receipt of the Non Arms-Length Claims, the Liquidator delivered the Proofs of Claim to the Applicants and the Respondents. The Liquidator has been advised that the Applicants intend to dispute the Non Arms-Length Claims filed by the Respondent, SAMM, including the validity of the security registered in favour of SAMM.

93. The Applicants have brought a motion to set aside the loan, guarantee security and other agreements Akman caused Tarn Financial to enter into to secure the claims of SAMM, among others.

V. THE DEPOSIT RETURN PROCEDURE

94. The Receiver has obtained three Orders relating to the Deposits originally held by the Deposit Trustee on behalf of Purchasers of proposed condominium units in the Development Project with the view to determining the amount of Deposits, terminating the APSs and returning the Deposits to the Purchasers. The Receiver sought and obtained the Deposit Confirmation Procedure Order on April 13, 2018, the Disputed Deposits Resolution Procedure Order on May 9, 2018 and the Deposit Return Procedure Order on June 14, 2018. Capitalized terms used in this section of the Sixth Report are as defined in the Deposit Confirmation Procedure Order or the Deposit Return Procedure Order.
95. The Fifth Report sets out in detail the activities of the Receiver in connection with undertaking the Deposit Return Procedure.
96. As of the date of this Sixth Report, the Receiver has terminated 623 APSs and returned, either in person or via regular mail, 623 Proven Deposits totaling \$29,574,092.70.
97. Included in the amount above is an overpayment in the amount of \$24,296.00 that was made to one Purchaser as a result of the Deposit Trustee inadvertently recording a Deposit to the wrong unit and APS when it was received by the Deposit Trustee, the Purchaser not correcting the Deposit Statement it received from the Liquidator and then executing and delivering the Release Agreement to the Receiver wherein the Purchaser expressly warranted and represented that it was owed an amount inflated by \$24,296.00. The inadvertent error contained in the Deposit Trustee's records was not discovered until after payment had been made under the Deposit Return Procedure Order. A demand letter has been sent to the Purchaser in an attempt to recover these funds.
98. As of the date of this Sixth Report, the Receiver is holding 5 Purchasers' Proven Deposits totaling \$177,450.88. The Receiver is waiting to receive the appropriate documentation from these Purchasers in order to send, via regular mail, a cheque for their Proven Deposit and to terminate the related APS. The Receiver has unsuccessfully attempted to contact

these Purchasers on multiple occasions and will continue to attempt to contact these Purchasers.

99. As at the date of this Sixth Report, there are four Notices of Dispute of Deposit Statement that are still being held in abeyance until the Claims filed by these Claimants under the Claims Process have been reviewed and determined. This has been done in consultation with The Guarantee Company and Tarion. All four of the Notices of Dispute of Deposit Statement are from sales agents that sold proposed condominium units on behalf of Tarn Construction and rather than get paid certain of their commissions they requested that Tarn Construction fund Deposits on units that they purchased. The Deposit Trustee did not hold any money with respect to these four Purchasers. These sales agents have also filed Proofs of Claim for their commissions in the Claims Process. Through counsel, the Receiver and these sales agents have agreed to hold their Disputed Deposits in abeyance until their Proofs of Claim can be determined.
100. In addition, there were 12 proposed condominium units where no Deposits were received by the Deposit Trustee, no APS exists and, therefore, no Proven Deposits are owing.
101. As discussed in the Fifth Report, the Receiver requested a Statutory Declaration (Schedule C of the Deposit Return Procedure Order) from Akman the former President of Tarn Financial and Tarn Construction. As at the date of this Sixth Report, the requested Statutory Declaration has not been provided by Akman.
102. Pursuant to the Deposit Return Procedure Order, the Receiver is required to deliver on a bi-weekly basis to Tarion and The Guarantee Company a Statutory Declaration (Schedule G of the Deposit Return Procedure Order) including (a) a ledger of the Proven Deposits paid to Purchasers and the Proven Deposits not paid; (b) a current Deposits determination summary outlining the Proven Deposits and Disputed Deposits pursuant to the Orders made in these proceedings (if applicable); and (c) attaching copies of the corresponding Release Agreements and Certificates of Identity.
103. As discussed in the Fifth Report, the Receiver delivered the first Statutory Declaration to Tarion and The Guarantee Company on July 18, 2018. Since the date of the Fifth Report, as provided for in the Deposit Return Procedure Order, the Receiver has continued to deliver Statutory Declarations and the relevant supporting documents to Tarion and The

Guarantee Company on a bi-weekly basis in order to keep them apprised of progress in relation to the Deposit Return Procedure.

104. Pursuant to paragraph 28 of the Deposit Return Procedure Order, subject to the compliance of the Receiver in providing the bi-weekly Statutory Declarations required by the Deposit Return Procedure Order and Tarion being satisfied that its liability to the relevant Purchasers for Claims in respect of their Proven Deposits has been extinguished, there is a mechanism by which Tarion is to notify The Guarantee Company of a reduction in the Tarion Bonds to account for the Proven Deposits that have been returned. Tarion is entitled to retain a sufficient portion of the Tarion Bonds or a Reserve to cover Tarion's liabilities in respect of amounts secured by the Tarion Bonds which have not been extinguished to the satisfaction of Tarion.

VI. DISTRIBUTIONS PURSUANT TO THE FIRST DISTRIBUTION ORDER

105. On July 26, 2018, the Court granted the First Distribution Order, which, subject to the Liquidator either entering into satisfactory reimbursement terms with the following secured creditors relating to potential priority claims or establishing a sufficient reserve to account for potential priority claims, authorized and directed the Liquidator to repay in full Meridian, Kingsett and, subject to establishing a reserve with The Guarantee Company and Tarion in accordance with the terms of the Deposit Return Procedure that addresses The Guarantee Company's third ranking secured position, to repay in full the borrowings made by the Liquidator under the Borrowings Charge. Since the granting of the First Distribution Order, the Liquidator has made the distributions to Meridian, Kingsett and the lenders under the Borrowings Charge pursuant to the terms of the First Distribution Order.
106. In order to make the above-noted distributions, the Liquidator needed to first address the potential priority claims of CRA. The Liquidator approached the secured creditors, Meridian and Kingsett and requested that they execute reimbursement agreements as the Liquidator was still working with CRA to determine the amounts of its priority claims and the timing of determining same was unknown at the time given that audits were yet to be completed.
107. On July 26, 2018, after receiving a fully executed reimbursement agreement from Meridian, the Liquidator made a distribution in the amount of \$17,494,361.72 to Meridian

which repaid in full the indebtedness owed by Tarn Financial to Meridian, which was secured by first ranking security.

108. Prior to obtaining the First Distribution Order, Kingsett advised the Liquidator that is was not willing to sign a reimbursement agreement and therefore it would wait until the priority claims of CRA were finally determined or a reserve was established with CRA prior to receiving repayment of its secured indebtedness. The Liquidator understands that, unlike a traditional lender, Kingsett is unable to redeploy capital that is subject to a reimbursement agreement. As discussed earlier in this report, a reserve has since been established with CRA to address its potential priority claims and accordingly, on October 26, 2018, the Liquidator made a distribution in the amount of \$6,094,522.85 which repaid in full the indebtedness owed by Tarn Financial to Kingsett, which was secured by second ranking security.
109. The Liquidator reviewed the amounts held by it after the Transaction with The Guarantee Company and Tarion and the amount of Proven Deposits still to be returned and the parties agreed and confirmed that the Liquidator had a sufficient reserve to address any potential claim by The Guarantee Company and Tarion under The Guarantee Company's security. Accordingly, on September 14, 2018, after receiving fully executed reimbursement agreements from both Volkan Basegmez and Serdar Kocturk, the Liquidator repaid in full the borrowings made by the Liquidator under the Borrowings Charge. The Liquidator made a distribution to Volkan Basegmez of USD\$1,583,998.36 in respect of outstanding principal and CAD\$83,854.57 in respect of outstanding accrued interest pursuant to the terms of the Liquidator's Certificates dated December 17, 2017 and February 5, 2018. The Liquidator made a distribution to Serdar Kocturk of CAD\$1,025,084.50 in respect of outstanding principal and accrued interest pursuant to the terms of the Liquidator's Certificate dated May 17, 2018.
110. As of the date of this Sixth Report, the Liquidator has not made any other distributions in respect of Claims against Tarn Financial.

VII. LIQUIDATOR'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

111. The Liquidator reported on the total receipts and disbursements from the date of the Liquidator's appointment to July 17, 2018 in the Fifth Report.

112. The following table provides a summary of the total receipts and disbursements from the date of the Liquidator’s appointment to October 26, 2018 (the “**R&D Period**”):

Statement of Receipts and Disbursements			
For the period September 25, 2017 to October 26, 2018			
(in CAD)			
	Sep 25, 2017 to July 17, 2018	July 18, 2018 to Oct 26, 2018	Sep 25, 2017 to Oct 26, 2018
Receipts			
Operating receipts	17,815,596	359,976	18,175,572
Liquidator's Borrowings	2,977,805	-	2,977,805
Collected on behalf of Sunray Hotels Inc.	-	203,249	203,249
Net sale proceeds	59,303,653	-	59,303,653
Total receipts	80,097,054	563,225	80,660,278
Disbursements			
Operating disbursements	3,345,053	61,692	3,406,745
Salaries and wages	6,254,094	15,016	6,269,111
Taxes	1,891,578	1,166	1,892,744
Accounting and tax costs	233,963	21,008	254,970
Insurance	249,956	10,753	260,709
Utilities	1,050,494	-	1,050,494
Marriott fee	1,443,407	37,738	1,481,145
Critical Maintenance	368,046	-	368,046
Collected on behalf of Sunray Hotels Inc.	-	203,249	203,249
Total operating disbursements	14,836,592	350,622	15,187,214
Operating cash flow	65,260,462	212,602	65,473,064
Loan Facilities and Professional Fees			
Secured lenders - Principal and Interest	1,804,874	152,894	1,957,768
Sales Commission	847,500	-	847,500
Professional fees	2,963,215	158,406	3,121,622
Non-operating disbursements	5,615,589	311,301	5,926,890
Distributions			
Meridian Credit Union	-	17,494,362	17,494,362
Kingsett Mortgage Corporation	-	6,094,523	6,094,523
Liquidator's Borrowing Charge	-	3,179,364	3,179,364
Total distributions	-	26,768,248	26,768,248
Opening book balance	(70,185)	59,574,688	(70,185)
Net cash flow	59,644,873	(26,866,947)	32,777,926
Closing book balance	59,574,688	32,707,741	32,707,741

113. Receipts during the R&D Period were \$80,660,278 and consist of: (a) guest room, food and beverage and parking-related revenues of \$18,175,572; (b) funding of \$2,977,805 under the Borrowings Charge; (c) net sale proceeds of \$59,303,653; and (d) amounts collected on behalf of Sunray after the Closing Date of \$203,249.
114. Disbursements during the R&D Period total approximately \$47,882,352 and include: (a) salaries and wages in the amount of \$6,269,111; (b) operating expenses of \$3,406,745; (c) HST and other tax payments in the amount of \$1,892,744; (d) principal and interest payments to secured creditors of \$1,957,768; (e) professional fees and disbursements inclusive of HST of \$3,121,622, which consists of the professional fees of the Liquidator

and the Receiver, their independent legal counsel, Miller Thomson, and Bennett Jones; and (f) distributions pursuant to the First Distribution Order in the amount of \$26,768,248.

115. As discussed in the Fifth Report, section 6.02 of the Asset Purchase Agreement contemplates that there will be adjustments made to the estimated amounts in the statement of adjustments after the Closing Date as necessary within sixty (60) days after the Closing Date. The Liquidator and Sunray agreed to extend the above date to November 15, 2018 as there were still certain amounts that needed to be finalized at the expiry of the initially contemplated sixty-day period including as a result of the ongoing need for services to be provided under the Transition Services Agreement to allow for the completion of financial information necessary to complete the Winding Up Proceedings. There have been two adjustments pursuant to section 6.02 of the Asset Purchase Agreement since the date of the Fifth Report in favour of Sunray in the amounts of \$163,250 and \$39,999, respectively, relating to amounts that the Liquidator collected on behalf of Sunray for revenue earned after the Closing Date. The final adjustment has been agreed between the Liquidator and Sunray and is expected to be settled shortly. That adjustment will be in favour of the Liquidator.
116. The Liquidator is responsible for the payment of all goods and/or services rendered to the Hotel between the period September 25, 2017 up to and including June 28, 2018 (the “**Service Period**”). As detailed in the Fifth Report, on July 6, 2018, the Liquidator sent a notice to all suppliers requesting that suppliers issue invoices for the Service Period to the Liquidator by no later than August 15, 2018 so that the Liquidator may process these invoices and make payment for all goods and/or services rendered during the Service Period. Since the date of the Fifth Report, the Liquidator has made certain payments to suppliers for goods and services rendered during the Service Period. The Liquidator does not expect much in the way of further payments relating to the Service Period; however, it anticipates seeking an Order in the near term authorizing a final call for Claims that will include a call for any Claims arising during the Winding Up Proceedings.

Future Disbursements

117. As set out above, capital gains taxes owing with respect to the Transaction is not owing until after 2018 year end and the amount to be paid will depend on whether the motion by

the Applicants to rescind the Class B Shares is successful. At this time, the capital gains tax is estimated to be between \$3.0 million and \$5.0 million depending on whether Tarn Financial is a CCPC or a Non-CCPC.

VIII. RECEIVER’S STATEMENT OF RECEIPTS AND DISBURSEMENTS

118. The following table provides a summary of the total receipts and disbursements from the date of the appointment of the Receiver on April 13, 2018 to October 26, 2018 in the Receiver’s trust account (the “Receiver’s R&D Period”).

Statement of Receipts and Disbursements			
For the period April 13, 2018 to October 26, 2018			
(in CAD)			
	Apr 13, 2018 to July 17, 2018	July 18, 2018 to Oct 26, 2018	Apr 13, 2018 to Oct 26, 2018
Receipts			
Deposit funds received and held in trust	30,094,631	-	30,094,631
Interest	17,678	30,383	48,060
Total receipts	30,112,308	30,383	30,142,691
Disbursements			
Proven Deposits returned to Purchasers	25,963,056	3,611,037	29,574,093
Bank charges	2	599	600
Total disbursements	25,963,057	3,611,636	29,574,693
Opening book balance	-	4,149,251	-
Net cash flow	4,149,251	(3,581,253)	567,998
Ending book balance	4,149,251	567,998	567,998

119. Receipts during the Receiver’s R&D Period were \$30,142,691 and consist of (a) Deposit Funds of \$30,094,631 from the Deposit Trustee and (b) interest of \$48,060 earned since the Deposit Funds were deposited into the Receiver’s trust account on June 18, 2018.


120. Disbursements during the Receiver’s R&D Period total approximately \$29,574,693 and consist of payments to Purchasers of their Proven Deposits pursuant to the Deposit Return Procedure.

IX. CONCLUSION

121. The Liquidator and the Receiver submit this Sixth Report to the Court in support of the Liquidator’s and the Receiver’s Motion for the relief as set out in the Motion Record and recommends that the Court grant the Second Distribution Order authorizing and directing the Liquidator to make a distribution to construction lien claimants with valid construction liens in the amount of their Proven Claims as determined under the Claim Process.

All of which is respectfully submitted at Toronto, Ontario this 31st day of October, 2018.

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

Per: 
Anamika Gadia
Senior Vice President

APPENDIX “A”

CL

Court File No. CV-17-11697-0000

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



**THE HONOURABLE MR)
JUSTICE LEDERMAN)**

**FRIDAY, THE 15th DAY
OF SEPTEMBER 2017**

BETWEEN:

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

Applicants

- and -

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

Respondents

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

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

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

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

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

WINDING-UP OF TARN FINANCIAL

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

KPMG'S POWERS

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO KPMG

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

4. **THIS COURT ORDERS** that all Persons shall forthwith advise KPMG of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of Tarn Financial, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to KPMG or permit KPMG to make, retain and take away copies thereof and grant to KPMG unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to KPMG due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to KPMG for the purpose of allowing KPMG to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as KPMG in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of KPMG. Further, for the purposes of this paragraph, all Persons shall provide KPMG with all such assistance in gaining immediate access to the information in the Records as KPMG may in its discretion require including providing KPMG with instructions on the use of any computer or other system and providing KPMG with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST KPMG

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

NO PROCEEDINGS AGAINST TARN FINANCIAL OR THE PROPERTY

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

NO INTERFERENCE WITH KPMG

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

CONTINUATION OF SERVICES

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

KPMG TO HOLD FUNDS

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

EMPLOYEES

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

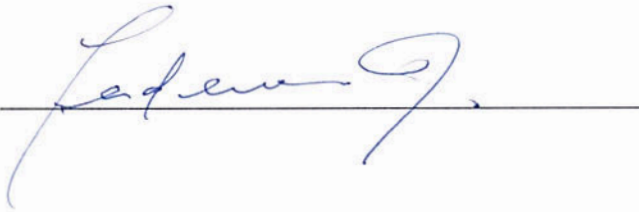
SERVICE AND NOTICE

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.



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

BETWEEN:

BASEGMEZ *et al*
– Applicants –

AND

AKMAN *et al*
– Respondents –

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)

ORDER

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

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

LAWYERS FOR THE APPLICANTS

APPENDIX “B”

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



THE HONOURABLE

)

FRIDAY, THE 13th DAY

)

JUSTICE MCEWEN

)

OF APRIL, 2018

BETWEEN:

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

Applicants

– and –

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

Respondents

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

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

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

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

SERVICE

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

DEFINITIONS AND INTERPRETATION

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

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

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

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

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

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

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

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

LIQUIDATOR’S ROLE

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

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

PUBLICATION OF NOTICE

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

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

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

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

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

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

CLAIMS BAR DATE

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

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

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

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

COLLECTION OF PROOFS OF CLAIM

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

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

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

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

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

DETERMINATION OF CLAIMS

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

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

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

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

RESOLUTION OF DISPUTES REGARDING CLAIMS

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

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

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

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

CLAIMS OF NON ARMS-LENGTH CLAIMANTS

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

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

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

NOTICES AND COMMUNICATIONS

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

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

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

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

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

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

GENERAL PROVISIONS

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

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

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

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



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

APR 13 2018

PER / PAR:



**SCHEDULE A
CLAIMS PROCESS NOTICE**

IN RESPECT OF CLAIMS AGAINST TARN FINANCIAL CORPORATION

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

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

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

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

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

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

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

Address of the Liquidator

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

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

SCHEDULE B

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

1. PARTICULARS OF CLAIMANT

Full Legal Name of Claimant: _____ (the "Claimant")

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

Full Mailing Address of the Claimant:

Telephone Number of Claimant: _____

Facsimile Number of Claimant: _____

Attention (Contact Person): _____

Email Address: _____

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

Yes _____ No _____ (If yes please complete section D)

2. PROOF OF CLAIM:

I, _____ [Name of Claimant or Representative of the Claimant], do

hereby certify :

that I am (please check one):

_____ the Claimant; or

_____ hold the following position of _____ the Claimant and have

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

3. PARTICULARS OF CLAIM:

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

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

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

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

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

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

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

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

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

Full Mailing Address of the Assignee(s)

Telephone Number of Assignee: _____

Facsimile Number of Assignee: _____

Email Address: _____

Attention (Contact Person): _____

FILING OF CLAIMS:

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

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

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

Address of the Liquidator:

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

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

DATED at _____ this _____ day of _____, 2018.

(Signature of Witness)

(Signature of individual completing this form)

SCHEDULE C

NOTICE OF DETERMINATION OF CLAIM

To: _____ (the "Claimant")

Date: _____

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

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

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

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

Claim Determination

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

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

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

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

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

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

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

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

DATED the _____ day of _____ 2018.

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

Per: _____
Anamika Gadia
Senior Vice President

SCHEDULE D

NOTICE OF OBJECTION

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

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

Date: _____

Claimant: _____ (the “**Claimant**”)

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

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

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

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

Address for service of this Notice of Objection:

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

Attention: Marcel Réthoré
Fax: 416-777-3364
E-mail: tarn@kpmg.ca

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

DATED the _____ day of _____ 2018.

(Signature of Witness)

(Signature of Claimant)

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

Per:

(Signature of authorized signatory)

Name:

Title:

I have the authority to bind the corporation

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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

MILLER THOMSON LLP

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

Kyla Mahar LSO#: 44182G

Tel: 416.597.4303 / Fax: 416.595.8695

Stephanie De Caria LSO#: 68055L

Tel: 416.597.2652 / Fax: 416.595.8695

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

APPENDIX “C”

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

THE HONOURABLE MR.) THURSDAY, THE 14TH DAY
)
JUSTICE T. MCEWEN) OF JUNE, 2018

BETWEEN:

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

Applicants

– and –

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

Respondents

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

DEPOSIT RETURN PROCEDURE ORDER

THIS MOTION, made by KPMG Inc. (“**KPMG**”), in its capacity as Court-appointed receiver and manager (in such capacities, the “**Receiver**”) of all of the assets, undertakings and properties of Tarn Construction Corporation (“**Tarn Construction**”) pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended and appointed pursuant to the Order of Justice McEwen dated April 13, 2018 (the “**Receivership Order**”), upon the application of KPMG in its capacity as Court-appointed liquidator (in such capacity, the “**Liquidator**”) pursuant to section 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial Corporation (“**Tarn Financial**”), and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the “**Winding Up Order**”), which appointment was effective on September 25, 2017, for an Order: (a) directing that no further deposits be paid by purchasers of proposed condominium units in the contemplated residential

condominium development located at 2035 Kennedy Road, Toronto, Ontario, known as the “The Kennedys” (the “**Development Project**”); (b) declaring that no interest is payable on the Proven Deposits (as defined below) being returned pursuant to this Order; and (c) establishing a procedure for the termination of the agreements of purchase and sale entered into by Tarn Construction in respect of the Development Project and the return of Proven Deposits to purchasers of proposed condominium units in the Development Project was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report of the Liquidator and the Second Report of the Receiver dated June 8, 2018 and on hearing the submissions of counsel for the Receiver, and such other counsel as were present as indicated on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Service sworn June 11, 2018, filed:

SERVICE

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

DEFINITIONS AND INTERPRETATION

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

- (a) **“Additional Deposit”** means a Deposit paid after March 31, 2018;
- (b) **“Amended and Restated Deposit Statement”** means the document delivered to Purchasers restating the Deposit remitted by a Purchaser up to and including March 31, 2018 and setting out any Additional Deposit remitted by a Purchaser, as prepared by the Receiver, with the assistance of the Deposit Trustee, in the form substantially attached as Schedule “B” to the Deposit Confirmation Procedure Order;

- (c) “**APS**” means an agreement of purchase and sale between Tarn Construction and a Purchaser for the sale and purchase of a Proposed Unit at the contemplated Development Project;
- (d) “**Business Day**” means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;
- (e) “**Certificate of Identity**” means the Purchaser’s certificate of identity substantially in the form attached as **Schedule “F”** to this Order;
- (f) “**Claim**” or “**Claims**” means all actions, causes of action, suits, proceedings, debts, accounts, bonds, covenants, contracts, claims, liabilities, damages, grievances, executions, judgments and demands of any kind whatsoever, both in law and in equity, whether implied or express, direct or indirect, which any Purchaser ever had, now has or can, shall or may have in the future against any of the Receiver, the Liquidator, Tarn Construction, Tarn Financial, the Deposit Trustee, Tarion or The Guarantee Company by reason of, arising out of, by virtue of or with respect to or in any way connected with, any act, omission, cause, matter or thing existing up to the present time, including, but without limiting the generality of the foregoing, by reason of, arising out of, by virtue of or with respect to or in any way connected with any act, omission, cause, matter or thing whatsoever connected with, arising out of or being the subject matter of the APS, the Deposit, the Tarion Bonds, the Condominium Act and the Plan Act;
- (g) “**Condominium Act**” means the *Condominium Act* (Ontario), R.S.O. 1998, c. 19, as amended;
- (h) “**Court**” means the Ontario Superior Court of Justice, Commercial List;
- (i) “**Deposit**” means any monies including, without limitation, deposit monies and monies on account of extras and upgrades paid by a Purchaser pursuant to an APS for a Proposed Unit at the Development Project;

- (j) “**Deposit Confirmation Procedure**” means the procedure outlined in the Deposit Confirmation Procedure Order in connection with the confirmation and assertion of Deposits remitted to Tarn Construction, as amended or supplemented by further Order of the Court;
- (k) “**Deposit Confirmation Procedure Documentation**” has the meaning set forth in paragraph 15 of this Order.
- (l) “**Deposit Confirmation Procedure Order**” means the Order approving the Deposit Confirmation Procedure granted on April 13, 2018 by the Court in these proceedings;
- (m) “**Deposit Funds**” means all funds held in trust by the Deposit Trustee in respect of all Deposits received by the Deposit Trustee, including all interest earned thereon;
- (n) “**Deposit Return Notice**” has the meaning set forth in paragraph 19 of this Order;
- (o) “**Deposit Return Procedure**” means the procedure outlined in this Order for returning Proven Deposits to Purchasers;
- (p) “**Deposit Statement**” means the document delivered to Purchasers setting out the Deposit remitted by a Purchaser up to and including March 31, 2018, as prepared by the Receiver, with the assistance of the Deposit Trustee, in the form substantially attached as Schedule “A” to the Deposit Confirmation Procedure Order;
- (q) “**Deposit Trustee**” means Bennett Jones LLP, in its capacity as Deposit Trustee;
- (r) “**Development Project**” has the meaning set forth in the opening paragraph of this Order;
- (s) “**Disputed Deposit**” means a Deposit that a Purchaser has disputed for any reason by delivering a Notice of Dispute of Deposit Statement or a Notice of Dispute of Amended and Restated Deposit Statement, as applicable, to the Receiver in accordance with the Deposit Confirmation Procedure Order;

- (t) **“Disputed Deposit Resolution Procedure”** means the procedure outlined in the Disputed Deposits Resolution Procedure Order for determining Proven Deposits and resolving Disputed Deposits;
- (u) **“Disputed Deposits Resolution Procedure Order”** means the Order approving the Disputed Deposit Resolution Procedure granted on May 9, 2018 by the Court in these proceedings;
- (v) **“Hotel”** means the Delta Toronto East Hotel located at 2035 Kennedy Road, Toronto, Ontario;
- (w) **“Notice of Dispute of Amended and Restated Deposit Statement”** means a notice disputing the Amended and Restated Deposit Statement, substantially in the form attached as “Schedule D” to the Deposit Confirmation Procedure Order;
- (x) **“Notice of Dispute of Deposit Statement”** means a notice disputing the Deposit Statement, substantially in the form attached as Schedule “C” to the Deposit Confirmation Procedure Order;
- (y) **“Plan Act”** means the Ontario *New Home Warranties Plan Act*, R.S.O. 1990, chapter 0.31, any amendments thereto and the regulations thereunder;
- (z) **“Proposed Unit”** means a residential condominium unit at the Development Project;
- (aa) **“Proven Deposit”** means the amount and/or validity of a Deposit as finally determined by the Receiver, in consultation with The Guarantee Company, in accordance with the Disputed Deposits Resolution Procedure Order, and for greater certainty a Proven Deposit will be “finally determined” for the purposes of this definition if any one of the following circumstances applies:
 - (i) the Receiver has delivered a Deposit Statement or Amended and Restated Deposit Statement to a Purchaser and the applicable time period for filing a Notice of Dispute of Deposit Statement and/or a Notice of Dispute of Amended and Restated Deposit Statement under the Deposit Confirmation

Procedure Order has expired without such notice being filed by the Purchaser with the Receiver;

- (ii) a Disputed Deposit has been reviewed by the Receiver, in consultation with the Deposit Trustee and The Guarantee Company, and then consensually resolved with the Purchaser in accordance with the Disputed Deposits Resolution Procedure Order;
 - (iii) the Purchaser has failed to bring a motion in accordance with the timelines set out in paragraph 12 of the Disputed Deposits Resolution Procedure Order to determine the amount and/or validity of a Disputed Deposit that has not been consensually resolved; or
 - (iv) the Court has made a determination with respect to the amount and/or validity of a Disputed Deposit, and no appeal or application for leave to appeal therefrom has been taken or served, or where such appeal or application for leave to appeal has been dismissed, determined or withdrawn;
- (bb) “**Purchaser**” means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity, that has entered into an APS and/or has paid a Deposit, as indicated by the books and records of Tam Construction and/or the Deposit Trustee;
- (cc) “**Release Agreement**” means the Release Agreement to be executed by the Purchaser(s) and delivered to the Receiver substantially in the form attached as **Schedule “E”** to this Order;
- (dd) “**Reserve**” has the meaning set forth in paragraph 28 of this Order
- (ee) “**Tarion**” means the Tarion Warranty Corporation;

- (ff) “**Tarion Bonds**” means the Tarion Bond No. TM5120189 dated June 7, 2016, as amended, and Tarion Bond No. TM5193638 dated July 13, 2016, issued by The Guarantee Company to Tarion on behalf of Tarn Construction;
- (gg) “**Termination Entitlement Order**” means the Order confirming that the Receiver is entitled to terminate the APSs in accordance with the terms of the APSs, subject to further Order of the Court being granted to address the return of Deposits to the Purchasers prior to doing so, granted on May 9, 2018 by the Court in these proceedings;
- (hh) “**The Guarantee Company**” means The Guarantee Company of North America;
- (ii) “**Trust Records**” has the meaning set forth in paragraph 8(b) of this Order; and
- (jj) “**Website**” means www.kpmg.com/ca/tarn.

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

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

ROLE OF THE RECEIVER

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

ADDITIONAL DEPOSITS

6. **THIS COURT ORDERS AND DIRECTS** that Purchasers are hereby no longer required to make Additional Deposits under their APSs and that to the extent a payment of an Additional

Deposit is received by the Deposit Trustee or the Receiver from and after the date of this Order, the payment shall be returned to the Purchaser as soon as practicable.

INTEREST NOT PAYABLE ON PROVEN DEPOSITS

7. **THIS COURT DECLARES** that pursuant to the Condominium Act and its regulations, no interest is payable on the Proven Deposits being returned to Purchasers pursuant to the terms of this Order.

DEPOSITS HELD BY DEPOSIT TRUSTEE TO BE DELIVERED TO THE RECEIVER

8. **THIS COURT ORDERS** the Deposit Trustee to deliver to the Receiver:

(a) the Deposit Funds, including without limitation any post-dated cheques being held by the Deposit Trustee on account of Additional Deposits due after the date of this Order; and

(b) all books and records pertaining to the Deposits (the “**Trust Records**”),

within 5 Business Days of the date of this Order.

9. **THIS COURT ORDERS** that the Deposit Trustee shall provide the Statutory Declaration in the form attached as **Schedule “A”** to this Order upon delivery of the Deposit Funds and the Trust Records to the Receiver.

10. **THIS COURT ORDERS** that, upon delivery of the Deposit Funds, the Trust Records and the Statutory Declaration pursuant to paragraph 9 of this Order, the Deposit Trustee shall be released and forever discharged from any Claims arising in respect of the Deposit Funds, other than in respect of any Claims arising from gross negligence or willful misconduct.

11. **THIS COURT ORDERS** that the Receiver shall deposit the Deposit Funds into a separate bank account held by the Receiver, from which it shall fund the return of Proven Deposits to Purchasers in accordance with this Order.

RETURN OF PROVEN DEPOSITS TO PURCHASERS

12. **THIS COURT ORDERS** that the Deposit Return Procedure and the forms attached to this Order be and are hereby approved. The Receiver is hereby authorized and directed to implement the Deposit Return Procedure, in conjunction with The Guarantee Company. Notwithstanding the foregoing, the Receiver may from time to time, make minor changes to the forms, in its sole discretion, as may be necessary or desirable.

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

14. **THIS COURT ORDERS** that copies of all forms delivered and received hereunder and all APSs, together with any amendments or letter agreements relating to such APSs, shall be maintained by the Receiver and be made available for inspection by Tarion and The Guarantee Company upon request. Upon the discharge of the Receiver, at the request of Tarion, the Receiver shall provide all APSs, together with any amendments or letter agreements relating to such APSs, to Tarion.

15. **THIS COURT ORDERS** that the Receiver shall provide Tarion and The Guarantee Company with copies of the following documentation in its possession (a) all issued Deposit Statements, Amended and Restated Deposit Statements, Notices of Dispute of Deposit Statement and Notices of Dispute of Amended and Restated Deposit Statement and all related documents and other correspondence with respect to Notices of Dispute of Deposit Statement and Notices of Dispute of Amended and Restated Deposit Statement or ongoing communications with Purchasers regarding Disputed Deposits in accordance with the Orders made in these proceedings; and (b) any and all Deposit determination summaries that have been prepared by the Receiver (all such documents referred to in this paragraph, collectively, the “**Deposit Confirmation Procedure Documentation**”). The Deposit Confirmation Procedure Documentation will be provided as soon

as reasonably practicable in an electronic format and organized on a unit-by-unit basis, where applicable.

16. **THIS COURT ORDERS** that the Receiver shall forthwith provide Tarion and The Guarantee Company with copies of APSs in an electronic format for all Purchasers that have a Disputed Deposit that has not been resolved to become a Proven Deposit as at the date of this Order.

17. **THIS COURT ORDERS** that the Receiver shall provide the Statutory Declaration in the form attached as **Schedule "B"** to this Order to Tarion with a copy to The Guarantee Company, as soon as reasonably practicable and in any event no later than 5 Business Days from the date of this Order.

18. **THIS COURT ORDERS** that the Receiver shall request from Ali Akman, the former President of Tarn Financial and Tarn Construction a Statutory Declaration in the form attached as **Schedule "C"** to the Receiver as soon as reasonably practicable and in any event no later than 5 Business Days from the date of this Order. As soon as reasonably practicable following its receipt of such Statutory Declaration and in any event no later than 5 Business Days from the date of such receipt, the Receiver shall provide such Statutory Declaration to Tarion with a copy to The Guarantee Company. The failure of the former President of Tarn Financial and Tarn Construction to provide the aforementioned Statutory Declaration will not prevent payment of Proven Deposits to Purchasers.

19. **THIS COURT ORDERS** that the Receiver shall send a letter to all Purchasers with Proven Deposits substantially in the form attached as **Schedule "D"** to this Order (the "**Deposit Return Notice**"), which shall enclose a copy of the Release Agreement and the Certificate of Identity that are required to be executed by each Purchaser in order to obtain a return of their Proven Deposit and shall also post a copy of the Deposit Return Notice on the Website within 5 Business Days of the date of this Order.

20. **THIS COURT ORDERS** that upon a Purchaser delivering to the Receiver and the Receiver being satisfied with: (a) an executed Release Agreement, and (b) a properly completed Certificate of Identity attaching copies of two pieces of current (and not expired) government

issued identification (one which shall include a photo of the Purchaser and one which shall include the Purchaser's address as more particularly set out in the Certificate of Identity), the Receiver shall terminate the Purchaser's APS in accordance with its terms and shall issue a cheque in the name of the Purchaser in the amount of the Purchaser's Proven Deposit. For greater certainty, to the extent that an APS is in the name of more than one Purchaser, each Purchaser named in the APS shall have delivered a Release Agreement and a Certificate of Identity attaching copies of two pieces of government issued identification both in a form satisfactory to the Receiver, prior to the Receiver terminating the Purchasers' APS and issuing a cheque in the name of the Purchasers in the amount of the Purchasers' Proven Deposit.

21. **THIS COURT ORDERS** that, to facilitate termination of the APSs and payment of the Purchasers' Proven Deposits, the Receiver shall set up a Proven Deposit return desk at the Hotel between the hours of 8:30 a.m. and 8:30 p.m. on Wednesday July 11, 2018 and on Saturday July 14, 2018 to allow Purchasers to deliver their executed Release Agreement and Certificate of Identity in person and receive a cheque in the amount of the Purchasers' Proven Deposits.

22. **THIS COURT ORDERS** that in order to facilitate the termination of their APSs, Purchasers shall either:

- (a) attend at the Hotel, at their sole expense, with an executed copy of the Release Agreement, an executed copy of the Certificate of Identity and copies of two pieces of government issued identification on one of the dates set out in paragraph 21 of this Order; or
- (b) deliver to the Receiver at the address set out in paragraph 31 of this Order an executed Release Agreement, an executed copy of the Certificate of Identity and copies of two pieces of government issued identification.

23. **THIS COURT ORDERS** that the Receiver and The Guarantee Company shall be entitled to assume and rely upon, without independent investigation, confirmation or verification, the accuracy, truth, veracity, authenticity, validity and genuineness of: (a) the identification or any other information provided by a Purchaser to the Receiver pursuant to this Order, and (b) the signatures applied to a Certificate of Identity and/or Release Agreement by a Purchaser.

24. **THIS COURT ORDERS** that: (a) the Receiver, the Liquidator, Tarn Construction, Tarn Financial, Tarion and The Guarantee Company shall have no liability to any person for a payment made to a Purchaser pursuant to a Proven Deposit where the identification provided to the Receiver was bogus, forged, tampered with, altered, falsified or counterfeit, and (b) the Receiver, the Liquidator, Tarn Construction, Tarn Financial, Tarion and The Guarantee Company shall have no liability to any person for a payment made to a Purchaser pursuant to a Proven Deposit where the signature applied to a Certificate of Identity and / or Release Agreement was forged or falsified.

25. **THIS COURT ORDERS** that if (a) a Purchaser does not present copies of two pieces of current (and not expired) government issued identification (one which shall include a photo of the Purchaser and one which shall include the Purchaser's address) to the Receiver in accordance with this Deposit Return Procedure Order; (b) the Purchaser does not execute a Certificate of Identity or Release Agreement; or (c) for any reason, the Receiver or The Guarantee Company is not satisfied with the identification of a Purchaser, then the Receiver is entitled to refuse to pay a Proven Deposit to the Purchaser and such issue shall be addressed pursuant to a further Order of this Court.

26. **THIS COURT ORDERS** that, in each case where the Receiver makes a payment to a Purchaser of its Proven Deposit, the Purchaser (including its heirs, executors and assigns) shall be:

- (a) deemed to absolutely and unconditionally remise, release, acquit and forever discharge the Receiver, the Liquidator, Tarn Construction, Tarn Financial, the Deposit Trustee, Tarion and The Guarantee Company for any Claims for return of a Deposit, including interest thereon; and
- (b) forever barred, estopped and enjoined from making, asserting or enforcing any such claim for a Deposit, including interest thereon, against the Receiver, the Liquidator, Tarn Construction, Tarn Financial, the Deposit Trustee, Tarion and The Guarantee Company and all such Claims shall be forever extinguished as against all such parties.

27. **THIS COURT ORDERS** that, starting on July 18, 2018 and once every two weeks thereafter, upon release of the Proven Deposits, the Receiver shall provide to Tarion and The Guarantee Company the Statutory Declaration in the form attached as **Schedule “G”** to this Order.

28. **THIS COURT ORDERS** that, subject to the compliance by the Receiver with the terms of this Order, upon receipt of the Statutory Declarations referenced in paragraph 27 of this Order and Tarion being satisfied that its liability to the relevant Purchasers for Claims in respect of their Proven Deposits has been extinguished, Tarion will provide confirmation to The Guarantee Company once every two weeks that the Tarion Bonds are reduced by the amount of the Proven Deposit, as applicable, on a APS by APS basis, to a maximum of \$20,000 for each Proven Deposit; provided, however, that Tarion shall at all times be entitled to retain a sufficient portion of the Tarion Bonds or a reserve (the “**Reserve**”), as determined by Tarion acting reasonably, to cover Tarion’s liabilities in respect of amounts secured by the Tarion Bonds that have not been extinguished to the satisfaction of Tarion at the time of any reduction. Subject to the foregoing and with the Receiver’s consent, such a Reserve may be established by the Receiver on terms satisfactory to Tarion, acting reasonably, and upon the establishment of any such Reserve, Tarion will return the Tarion Bonds to The Guarantee Company for cancellation.

29. **THIS COURT ORDERS** that upon being satisfied that its liability in respect of amounts secured by the Tarion Bonds has been extinguished, or upon the establishment of a Reserve pursuant to paragraph 28, Tarion will return the Tarion Bonds to The Guarantee Company for cancellation. Following the establishment of a Reserve or upon the extinguishment of Tarion’s liability in respect of the amounts secured by the Tarion Bonds, the Receiver shall seek a distribution order from the proceeds of sale to The Guarantee Company that provides for a reimbursement of all its reasonable fees, costs and expenses, together with any other amounts that may be claimed by The Guarantee Company, related to the Tarion Bonds and the Indemnity Agreement dated June 7, 2016, among Tarn Construction, Tarn Financial, SAMM Capital Holdings Inc., Ali Akman and The Guarantee Company.

SERVICE AND NOTICE

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

31. **THIS COURT ORDERS** that any document required to be delivered to the Receiver under this Order shall be in writing and, where applicable, substantially in the form provided for in this Order, and will be sufficiently delivered only if delivered to:

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

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

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

33. **THIS COURT ORDERS** that if, during any period during which notices or other communications are being given pursuant to this Order a postal strike or postal work stoppage of

general application should occur, such notices or other communications then not received or deemed received shall not, absent further Order of this Court, be effective. Notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, delivery, facsimile transmission or electronic mail in accordance with this Order.

GENERAL PROVISIONS

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

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

36. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

A handwritten signature in black ink, appearing to be 'M. S.', written over a horizontal line.

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

JUN 14 2018

Handwritten initials 'MB' in black ink.

SCHEDULE "A"

STATUTORY DECLARATION

CANADA	)	IN THE MATTER OF the proposed
	)	development of a condominium project (the
PROVINCE OF ONTARIO	)	"Development Project") by Tarn
	)	Construction Corporation (the "Vendor")
	)	situated in the City of Toronto on those lands
	)	and premises owned by Tarn Financial
	)	Corporation, set out in PINs 06164-0197 (LT)
	)	and 06164-0509 (LT) and located at 2035
	)	Kennedy Road, Toronto, Ontario (the "Real
TO WIT:	)	Property")
)	

I, _____, of the City of _____, DO SOLEMNLY DECLARE THAT:

1. I am a Partner at Bennett Jones LLP, the Deposit Trustee pursuant to a Deposit Trust Agreement among Tarn Construction Corporation, The Guarantee Company of North America and Bennett Jones LLP dated June 7, 2016 relating to the Deposits in respect of Tower A of the Development Project and pursuant to a Deposit Trust Agreement among Tarn Construction Corporation, The Guarantee Company of North America and Bennett Jones LLP dated July 13, 2016 relating to the Deposits in respect of Tower B of the Development Project.
2. All capitalized terms not defined herein have the meaning given to such terms in the Deposit Return Procedure Order.
3. All Deposits paid under APSs to the Deposit Trustee in respect of Proposed Units of the Development Project for both Tower A and Tower B as set out in Schedule "A" hereto including all monies earned on account of interest have been paid to the Receiver.
4. To the best of my knowledge and belief, all Trust Records have been turned over to the Receiver.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME in City of
Toronto, in the Province of Ontario, this
____ day of _____, 2018.

A COMMISSIONER, ETC.

)
)
)
)
)
)
)
)
)
)
)

Name:
Title: Partner

SCHEDULE "B"

STATUTORY DECLARATION

CANADA	)	IN THE MATTER OF the proposed
	)	development of a condominium project (the
PROVINCE OF ONTARIO	)	"Development Project") by Tarn
	)	Construction Corporation (the "Vendor")
	)	situated in the City of Toronto on those lands
	)	and premises owned by Tarn Financial
	)	Corporation, set out in PINs 06164-0197 (LT)
	)	and 06164-0509 (LT) and located at 2035
	)	Kennedy Road, Toronto, Ontario (the "Real
TO WIT:	)	Property")
)	

I, Anamika Gadia, of the City of Toronto, DO SOLEMNLY DECLARE THAT:

1. I am the Senior Vice-President of KPMG Inc. ("KPMG"), which has been appointed as Court-appointed receiver and manager of all of the assets, undertakings and properties of the Vendor (in such capacities, the "Receiver") pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended and appointed pursuant to the Order of Justice McEwen dated April 13, 2018, upon the application of KPMG, in its capacity as Court appointed liquidator (in such capacity, the "Liquidator") pursuant to section 207 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended of the effects and estate of Tarn Financial Corporation ("Tarn Financial"), and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017, which appointment was effective on September 25, 2017 ("Winding Up Proceedings").
2. To the best of my knowledge and belief, Tarn Financial owned a 100% beneficial interest in the Real Property prior to it being sold in the Winding Up Proceedings pursuant to the Approval and Vesting Order dated May 9, 2018.
3. To the best of my knowledge and belief, the Vendor is not proceeding with the Development Project known as "The Kennedys" that the Vendor had proposed to construct on the Real Property.

4. To the best of my knowledge and belief: (i) the Vendor entered into six hundred and thirty-six (636) agreements of purchase and sale with respect to proposed residential condominium units in the Development Project (collectively, the “APSs”); and (ii) aside from, and since the time of, the APSs and the agreement pursuant to which the Real Property was sold by the Liquidator, no other agreements of purchase and sale have been entered into in respect of the Development Project or the Real Property.

5. Nothing has come to my attention that would suggest that sales of the proposed residential condominium units in the Development Project were agreed to by the Vendor other than pursuant to the APSs.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME in City of)
 Toronto, in the Province of Ontario, this)
 ____ day of _____, 2018.)
)
)
 _____)
 A COMMISSIONER, ETC.)

 Name: Anamika Gadia
 Title: Senior Vice-President

SCHEDULE "C"

STATUTORY DECLARATION

CANADA	)	IN THE MATTER OF the proposed
	)	development of a condominium project (the
PROVINCE OF ONTARIO	)	"Development Project") by Tarn
	)	Construction Corporation (the "Vendor")
	)	situated in the City of Toronto on those lands
	)	and premises owned by Tarn Financial
	)	Corporation, set out in PINs 06164-0197 (LT)
	)	and 06164-0509 (LT) and located at 2035
	)	Kennedy Road, Toronto, Ontario (the "Real
TO WIT:	)	Property")
)	

I, Ali Akman, of the City of _____, DO SOLEMNLY DECLARE THAT:

1. I am the former President of the Vendor and Tarn Financial Corporation, and as such have knowledge of the matters hereinafter declared.
2. To the best of my knowledge and belief, the Vendor is not proceeding with the Development Project known as "The Kennedys" that the Vendor had proposed to construct on the Real Property.
3. The Vendor has provided all deposits it received in respect of the sale of proposed residential condominium units in the Development Project to Bennett Jones LLP, the Deposit Trustee for the Vendor.
4. The Vendor entered into only six-hundred and thirty-six (636) agreements of purchase and sale for proposed residential condominium units in the Development Project and did not enter into any other agreements of purchase and sale for the proposed residential condominium units in the Development Project.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME in City
of Toronto, in the Province of Ontario,
this ____ day of _____,
2018.

Name: Ali Akman

A COMMISSIONER, ETC.

SCHEDULE "D"

[LETTERHEAD OF KPMG]

June 9, 2018

Sent by Email and Regular Mail

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

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

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

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

We are writing to you with respect to the condominium unit(s) in The Kennedys that you purchased pursuant to an Agreement of Purchase and Sale (an "**APS**") with the vendor, Tarn Construction. This letter is further to our letters to you dated April 17, 2018 and May 11, 2018 and our email to you on June 11, 2018 advising of the Receiver's motion to address the return of Deposits to the Purchasers, copies of which are posted on the Website.

As set out in the letter to you dated May 11, 2018, the Court confirmed that the Receiver is entitled to terminate the APSs on behalf of Tarn Construction without damages, subject to further Order of the Court being granted to address the return of Deposits to the Purchasers prior to doing so. The Court confirmed that, other than a return of their Deposits, Purchasers cannot pursue any other claims or costs (see paragraph 22 of the Endorsement of Justice McEwen dated May 9, 2018 which can be found on the Website).

The Court granted the Deposit Return Procedure Order on June 14, 2018 to address the termination of Purchasers' APSs and the return of Deposits. This letter is being sent to you pursuant to the

Deposit Return Procedure Order to explain what you are required to do in order to get your Proven Deposits returned to you.

In order for you to receive a cheque in the amount of your Proven Deposits, you must execute the enclosed Release Agreement and fill out and execute the enclosed Certificate of Identity and attach copies of two pieces of current (and not expired) government issued identification (one which shall include a photo of the Purchaser and one which shall include the Purchaser's address as more particularly set out in the Certificate of Identity) and deliver these documents to the Receiver for review. Once the Receiver has reviewed your documentation and confirmed that the Release Agreement and Certificate of Identity have been properly filled out and executed, the Receiver will deliver a cheque to you in the amount of your Proven Deposits.

In order to facilitate the delivery of your executed Release Agreement and Certificate of Identity attaching copies of two pieces of government issued identification, the Receiver will be setting up a Proven Deposits return desk in the former condominium sales office located at the Delta Toronto East Hotel at 2035 Kennedy Road between the hours of 8:30 a.m. and 8:30 p.m. on Wednesday July 11, 2018 and on Saturday July 14, 2018. Purchasers may attend on these dates to deliver your executed Release Agreement and Certificate of Identity including copies of two pieces of government issued identification in person to the Receiver. The Receiver will then review your documentation to ensure it has been properly filled out and executed and once this has been confirmed will deliver a cheque to the Purchaser in the amount of the Purchaser's Proven Deposits.

If you cannot attend in person on one of the dates above, you may deliver your executed Release Agreement and Certificate of Identity attaching copies of two pieces of government issued identification by sending it by regular mail, courier, email or facsimile to the following:

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

Attention: Marcel Réthoré
Fax: 416-777-3364
E-mail: tarn@kpmg.ca

The Receiver will review the Purchaser's documentation received to ensure it has been properly filled out and executed and once this has been confirmed will deliver a cheque to the Purchaser in the amount of the Purchaser's Proven Deposits by regular mail.

To the extent that the APS is in the name of more than one Purchaser, each Purchaser named in the APS is required to deliver a Release Agreement and Certificate of Identity attaching copies of two pieces of government issued identification, both in a form satisfactory to the Receiver, prior to the Receiver terminating the Purchasers' APS and issuing a cheque in the name of the Purchasers in the amount of the Purchasers' Proven Deposits.

You may obtain independent legal advice in connection with the matters described herein, including, without limitation, with respect to the enclosed Release Agreement. Please contact the Receiver directly at 1-855-222-8083 or at tarn@kpmg.ca if you have any questions or concerns.

Yours truly,

KPMG Inc., solely in its capacity as the Court-appointed Receiver
of Tarn Construction Corporation

cc: The Guarantee Company of North America
Tarion Warranty Corporation

SCHEDULE "E"
RELEASE AGREEMENT

TO: THE GUARANTEE COMPANY OF NORTH AMERICA (the "**Surety**")

AND TO: TARION WARRANTY CORPORATION ("**Tarion**")

AND TO: TARN CONSTRUCTION CORPORATION (the "**Vendor**")

AND TO: TARN FINANCIAL CORPORATION ("**Tarn Financial**")

AND TO: KPMG INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER OF TARN CONSTRUCTION CORPORATION (the "**Receiver**") AND IN ITS CAPACITY AS THE COURT-APPOINTED LIQUIDATOR OF TARN FINANCIAL CORPORATION (the "**Liquidator**")

AND TO: BENNETT JONES LLP, IN ITS CAPACITY AS DEPOSIT TRUSTEE (the "**Deposit Trustee**")

AND TO: ● (the "**Purchaser**")

PROVEN DEPOSITS AMOUNT: ● (the "**Proven Deposits**")

WHEREAS:

- (a) The Purchaser and the Vendor entered into an agreement of purchase and sale dated the ● day of ●, ● (as it may have been amended from time to time, the "**APS**") pertaining to the Purchaser's acquisition from the Vendor of UNIT NO. ●, Level●, Suite ●, together with an undivided interest in the common elements appurtenant thereto (hereinafter referred to as the "**Proposed Unit**"), in accordance with condominium plan proposed to be registered against those lands and premises situated in the City of Toronto, municipally known as 2035 Kennedy Road and more particularly described in the APS (hereinafter referred to as the "**Real Property**");
- (b) The Surety issued Tarion Bond No. TM5120189 dated June 7, 2016, as amended, and Tarion Bond No. TM5193638 dated July 13, 2016 (collectively, the "**Tarion Bonds**") to Tarion on behalf of the Vendor;
- (c) Pursuant to the Deposit Return Procedure Order of Justice McEwen dated June 14, 2018 (the "**Deposit Return Procedure Order**"), a copy of which has been emailed

to you and is available on the Liquidator's website at www.kpmg.com/ca/tarn, upon execution of this Release Agreement and completion of a Certificate of Identity, the Purchaser is being returned its Proven Deposits (as defined in the Deposit Return Procedure Order) related to the Proposed Unit by the Receiver ; and

- (d) As a result of the sale of the Real Property, the Receiver will terminate the Purchaser's APS in accordance with its terms upon receiving from the Purchaser, among other things, this Release Agreement (the "**Release Agreement**") that releases the Surety, Tarion, the Receiver, the Liquidator, Tarn Financial, Tarn Construction and the Deposit Trustee and their respective agents, directors, officers, partners, representatives, servants, employees, successors and assigns (the "**Released Parties**") from any and all claims that they may have arisen under (or in connection with) the APS, the Purchaser's Proven Deposits, the Tarion Bonds, the Condominium Act and the Plan Act.

NOW THEREFORE THESE PRESENTS WITNESSETH that in consideration of the releases hereinafter set forth, the sum of TEN (\$10.00) DOLLARS of lawful money of Canada now paid to the Purchaser and other good and valid consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the Purchaser hereto hereby covenants and agrees to the following:

1. In this Release Agreement, capitalized terms not otherwise defined herein have the meanings ascribed to them in Schedule "A" of this Release Agreement.
2. The Purchaser represents and warrants that the recitals set out above are true in substance and in fact.
3. The Purchaser covenants, acknowledges, represents and warrants to the Released Parties that the total of Deposits paid to the Vendor or to the Deposit Trustee on behalf of the Vendor in connection with the Proposed Unit is \$●, and that is the total amount of the Proven Deposits payable to the Purchaser.
4. The Purchaser hereby absolutely and unconditionally remise, release, acquit and forever discharge each of the Released Parties from and against any and all Claims.

5. Without restricting the generality of paragraph 4, it is expressly understood and agreed that the Purchaser shall not make or pursue any Claim against any other person who might claim contribution or indemnity (or any claim similar or akin thereto) from any one or more of the Purchaser and Released Parties in connection with the APS.
6. The Purchaser hereby represents and warrants to each of the Released Parties that all Claims being released hereunder have been satisfied and discharged in full by this Release Agreement and that he, she or it (as the case may be) has not sold, transferred, assigned any of the Claims being released hereunder or with respect to which the Purchaser agrees not to make any Claim or take any proceedings. The Purchaser acknowledges and agrees that he, she or it (as the case may be) is executing this Release Agreement freely without compulsion, coercion, duress, inducement or pressure and has either obtained independent legal advice with respect to this Release Agreement or has waived their right to do so.
7. This Release Agreement shall be governed by, and construed and enforced in accordance with, the laws in force in the Province of Ontario. The Purchaser irrevocably submits to the exclusive jurisdiction of the Courts of Ontario with respect to any matter arising hereunder or related hereto.
8. This Release Agreement shall enure to the benefit of and shall be binding upon the Purchaser and the Released Parties.
9. This Release Agreement shall be read and construed with all changes of gender and/or number as may be required by the context, and if more than one individual comprises the Purchaser, then all of the foregoing covenants and agreements of the Purchaser shall be deemed and construed to be joint and several covenants and agreements thereof.

10. This Release Agreement may be transmitted by facsimile or e-mail transmission.

IN WITNESS WHEREOF, the undersigned parties have hereunto affixed their hands and seal, or corporate seals, as the case may be this _____ day of _____, 2018.

SIGNED, SEALED AND DELIVERED

Purchaser is an individual

In the presence of:

(Witness)
Name:
Address:

(Purchaser)
Name:
Address:

(Witness)
Name:
Address:

(Purchaser)
Name:
Address:

Schedule "A"

In this Release Agreement:

- (a) **"Claim"** or **"Claims"** means all actions, causes of action, suits, proceedings, debts, accounts, bonds, covenants, contracts, claims, liabilities, damages, grievances, executions, judgments and demands of any kind whatsoever, both in law and in equity, whether implied or express, direct or indirect, which any Purchaser ever had, now has or can, shall or may have in the future against any of the Receiver, the Liquidator, Tarn Construction, Tarn Financial, the Deposit Trustee, Tarion or The Guarantee Company by reason of, arising out of, by virtue of or with respect to or in any way connected with, any act, omission, cause, matter or thing existing up to the present time, including, but without limiting the generality of the foregoing, by reason of, arising out of, by virtue of or with respect to or in any way connected with any act, omission, cause, matter or thing whatsoever connected with, arising out of or being the subject matter of the APS, the Deposit, the Tarion Bonds, the Condominium Act and the Plan Act;
- (b) **"Condominium Act"** means the *Condominium Act* (Ontario), R.S.O. 1998, c. 19, as amended;
- (c) **"Deposit"** means any monies including, without limitation, deposit monies and monies on account of extras and upgrades paid by a Purchaser pursuant to an APS for a Proposed Unit at the Development Project; and
- (d) **"Plan Act"** means the Ontario *New Home Warranties Plan Act*, R.S.O., 1990, chapter 0.31, any amendments thereto and the regulations thereunder.

SCHEDULE "F"
Purchaser's Certificate of Identity

TO: KPMG INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER OF TARN CONSTRUCTION CORPORATION (the "Receiver") AND IN ITS CAPACITY AS THE COURT-APPOINTED LIQUIDATOR OF TARN FINANCIAL CORPORATION (the "Liquidator")

AND TO: THE GUARANTEE COMPANY OF NORTH AMERICA ("The Guarantee Company")

AND TO: TARION WARRANTY CORPORATION ("Tarion")

AND TO: TARN CONSTRUCTION CORPORATION (the "Vendor")

AND TO: TARN FINANCIAL CORPORATION ("Tarn Financial")

RE: Return of Proven Deposit in the amount of \$ [INSERT AMOUNT] (the "Proven Deposit Monies").

Purchaser: [INSERT NAME OF PURCHASER(S)] (the "Purchaser")

Property: Unit [INSERT UNIT #], Level [INSERT LEVEL #] being Suite [INSERT SUITE #]

1. I _____, on the ____ day of _____, 2018 did either: (a) attend at the Hotel and provide the following documentation as well as true copies thereof to prove my identity to the Receiver in person; or (b) enclose true copies of the following documentation to prove my identity to the Receiver:

(a) Insert the information for one piece of government issued photo identification (that is valid, current and not-expired) that has the first name and surname that matches the first name and surname of the Purchaser as contained in the Purchase Agreement:

ID Type: _____ ID No. _____

Address on ID: _____

AND

(b) Insert the information for a second piece of government issued identification (that is valid, current and not expired) that has the first name and surname that matches the first name and surname of the Purchaser as contained in the Purchase Agreement:

ID Type: _____ ID No. _____

Address on ID: _____

PLEASE NOTE THAT ONE OF THE PIECES OF ID PROVIDED NEEDS TO INCLUDE AN ADDRESS OF THE PURCHASER THAT EITHER MATCHES THE PURCHASER'S ADDRESS ON THE APS OR THE ADDRESS IN THE RECORDS OF THE VENDOR IF THE PURCHASER'S ADDRESS HAS CHANGED.

2. I confirm that true copies of the above noted pieces of identification are attached to this Certificate.
3. I warrant and represent that the above noted pieces of identification are not bogus, forged, tampered with, altered, falsified or counterfeit and confirm that I am one and the same person that has executed the Release Agreement.
4. This Certificate is delivered pursuant to the Deposit Return Procedure set out in the Order of the Ontario Superior Court of Justice dated June 14, 2018 in Court File No. CV-17-11697-00CL.
5. I understand that, upon receipt of the payment from the Receiver of the amount of the Proven Deposit, the Purchaser (including its heirs, executors and assigns) shall be:
 - (a) deemed to absolutely and unconditionally remise, release, acquit and forever discharge the Receiver, the Liquidator, Tarn Construction, Tarn Financial, the Deposit Trustee, Tarion and The Guarantee Company in respect of any Claim including, without limitation, for Deposits in respect of the APS; and
 - (b) forever barred, estoppel and enjoined from making, asserting or enforcing any Claim against the Receiver, the Liquidator, Tarn Construction, Tarn Financial, the Deposit Trustee, Tarion or The Guarantee Company and all such Claims shall be forever extinguished as against all such parties.

6. All capitalized terms not defined herein have the meaning given to such terms in the Deposit Return Procedure Order, a copy of which I confirm I received by email from the Receiver or reviewed on the website at: www.kpmg.com/ca/tarn.

SIGNED, SEALED AND DELIVERED

Dated: _____

Purchaser's Signature

Purchaser's Name (Please Print)

**COPIES OF THE PURCHASER'S IDENTIFICATION REFERENCED IN THIS
CERTIFICATE OF IDENTITY ARE ATTACHED**

SCHEDULE "G"

STATUTORY DECLARATION

CANADA	)	IN THE MATTER OF the proposed
	)	development of a condominium project (the
PROVINCE OF ONTARIO	)	"Development Project") by Tarn
	)	Construction Corporation (the "Vendor")
	)	situated in the City of Toronto on those lands
	)	and premises owned by Tarn Financial
	)	Corporation, set out in PINs 06164-0197 (LT)
	)	and 06164-0509 (LT) and located at 2035
	)	Kennedy Road, Toronto, Ontario (the
TO WIT:	)	"Property")

I, Anamika Gadia, of the City of Toronto, DO SOLEMNLY DECLARE THAT:

1. I am the Senior Vice-President of KPMG Inc. (**"KPMG"**), which has been appointed as Court-appointed receiver and manager of all of the assets, undertakings and properties of the Vendor (in such capacities, the **"Receiver"**) pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended and appointed pursuant to the Order of Justice McEwen dated April 13, 2018, upon the application of KPMG, in its capacity as Court appointed liquidator (in such capacity, the **"Liquidator"**) pursuant to section 207 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended of the effects and estate of Tarn Financial Corporation (**"Tarn Financial"**), and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017, which appointment was effective on September 25, 2017 (**"Winding Up Proceedings"**).
2. All capitalized terms not defined herein have the meaning given to such terms in the Deposit Return Procedure Order.
3. Schedule "A" hereto includes (a) a ledger of the Proven Deposits paid to Purchasers and the Proven Deposits not paid (if any); and (b) a current Deposits determination summary outlining the Proven Deposits and Disputed Deposits pursuant to the Orders made in these proceedings (if applicable).

- 4. All Proven Deposits paid under APSs in respect of Proposed Units of the Development Project as set out in Schedule "A" hereto have been refunded to the respective purchasers of such Proposed Units by the Receiver.
- 5. Attached as Schedule "B" hereto are copies of the corresponding (i) Release Agreements, and (ii) Certificates of Identity.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME in City of)
 Toronto, in the Province of Ontario, this)
 ____ day of ____, 2018.)

 A COMMISSIONER, ETC.

 Name: Anamika Gadia
 Title: Senior Vice-President

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**DEPOSIT RETURN
PROCEDURE ORDER
(DATED JUNE 14 2018)**

MILLER THOMSON LLP

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

Kyla Mahar LSO#: 44182G

Tel: 416.597.4303 / Fax: 416.595.8695

Stephanie De Caria LSO#: 68055L

Tel: 416.597.2652 / Fax: 416.595.8695

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

APPENDIX “D”

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

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

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

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

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

JULY 20, 2018

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I. INTRODUCTION AND SUMMARY OF PROCEEDINGS

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

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

10. On December 6, 2017, the Liquidator brought a motion seeking an order (the “**OMB Appeals Order**”) authorizing, but not obligating, the Liquidator to file two Notices of Appeal with the Ontario Municipal Board in respect of the Real Property. Justice McEwen granted the OMB Appeals Order on the same date.
11. The Liquidator issued its second report to the Court on April 9, 2018 (the “**Second Report**”). As detailed in the Second Report, the Liquidator brought a motion returnable on April 13, 2018 seeking:
 - a. An Order (the “**Claims Procedure Order**”) approving and establishing a procedure for the solicitation, resolution and barring of certain claims against Tarn Financial (the “**Claims Process**”);
 - b. An Order (the “**Receivership Order**”) authorizing the appointment of KPMG as receiver and manager over the properties, assets and undertakings of Tarn Construction (in such capacities, the “**Receiver**”) pursuant to section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43;
 - c. An Order (the “**Deposit Confirmation Procedure Order**”) approving and establishing a procedure for confirming the Deposits (as defined in the Deposit Confirmation Procedure Order) that have been paid to Tarn Construction by purchasers of the pre-sold, unbuilt condominium units at the Development Project (the “**Deposit Confirmation Procedure**”); and
 - d. An Order (the “**April Ancillary Order**”) (i) authorizing an increase in the maximum principal amount of the Borrowings Charge (as defined in the Winding Up Order) by \$1,000,000 (the “**Increased Borrowing Amount**”) from \$2,000,000 to \$3,000,000 and addressing the priority of the Borrowings Charge in respect of the Increased Borrowing Amount; (ii) approving the fees of the Liquidator and the Liquidator’s legal counsel, Miller Thomson LLP (“**Miller Thomson**”) and Bennett Jones LLP (“**Bennett Jones**”), from the date of the Winding Up Order to December 31, 2017; and (iii) approving the First Supplemental Report, the Second Supplemental Report and the Second Report and the activities and conduct of the Liquidator as set out therein.

12. On April 13, 2018, the Court granted the Claims Procedure Order, the Receivership Order, the Deposit Confirmation Procedure Order and the April Ancillary Order. A copy of the Claims Procedure Order, the Receivership Order, the Deposit Confirmation Procedure Order and the April Ancillary Order are attached as **Appendix “B”**, **Appendix “C”**, **Appendix “D”**, and **Appendix “E”**, respectively, to this Fifth Report.
13. The Liquidator issued its third report to the Court and the Receiver issued its first report to the Court on April 24, 2018 (collectively, the “**Third Report**”). A copy of the Third Report, without appendices, is attached as **Appendix “F”** to this Fifth Report. As detailed in the Third Report, the Liquidator and Receiver brought a motion returnable on May 1, 2018 seeking:
 - a. Advice and directions from the Court regarding the Receiver’s ability to terminate the Agreements of Purchase and Sale (the “**APSS**”) entered into by Tarn Construction with purchasers of proposed condominium units in the contemplated Development Project (the “**Purchasers**”) in accordance with the terms of the APSs and, in particular, the condition contained at Appendix A of Schedule E to the APSs entitled “Tarion Warranty Corporation Statement of Critical Dates and Addendum” which states: “Receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged by October 9, 2018” (the “**Construction Financing Early Termination Condition**”);
 - b. An Approval and Vesting Order (the “**Approval and Vesting Order**”), among other things, approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement between Tarn Financial and Sunray Group of Hotels Inc. (“**Sunray**”) date April 20, 2018 (the “**Asset Purchase Agreement**”) and vesting in Sunray Tarn Financial’s right, title and interest in and to the assets described in the Asset Purchase Agreement (the “**Purchased Assets**”);
 - c. An Order (the “**Disputed Deposits Resolution Procedure Order**”), establishing a procedure for the resolution of disputed deposits asserted by Purchasers of proposed condominium units in the contemplated Development Project (the “**Disputed Deposits Resolution Procedure**”); and

- d. An Order (the “**Termination Entitlement Order**”), ordering and declaring, among other things, that the Receiver is entitled to rely upon the Construction Financing Early Termination Condition to terminate the APSs on behalf of Tarn Construction and that the Receiver is authorized to give notice of termination to terminate the APSs at any time after the granting of the Termination Entitlement Order without damages claims arising thereunder.
14. On May 9, 2018, the Court rendered its endorsement granting the Approval and Vesting Order, the Disputed Deposits Resolution Procedure Order, and the Termination Entitlement Order.
 15. The Liquidator issued its fourth report to the Court and the Receiver issued its second report to the Court on June 8, 2018 (collectively, the “**Fourth Report**”). A copy of the Fourth Report, without appendices, is attached as **Appendix “G”** to this Fifth Report. As detailed in the Fourth Report, the Liquidator and Receiver brought a motion returnable on June 14, 2018 seeking an Order (the “**Deposit Return Procedure Order**”) establishing a procedure for the termination of Purchasers’ APSs and the return of Proven Deposits (as defined in the Disputed Deposits Resolution Procedure Order) to Purchasers of proposed condominium, units in the contemplated Development Project (the “**Deposit Return Procedure**”). The Deposit Return Procedure Order:
 - a. Enabled the Receiver to commence the Deposit Return Procedure in order to return Proven Deposits to Purchasers;
 - b. Enabled the Receiver to terminate Purchasers’ APSs in accordance with their terms, as set out in the Termination Entitlement Order, upon being satisfied with (i) an executed Release Agreement, and (ii) properly completed Certificate(s) of Identity attaching copies of two pieces of valid identification from each Purchaser named on the APS;
 - c. Confirmed that interest is not payable on the Proven Deposits pursuant to the *Condominium Act* and its regulations; and
 - d. Released and discharged the Receiver, the Liquidator, Tarn Construction, Tarn Financial, Bennett Jones, in its capacity as Deposit Trustee (the “**Deposit Trustee**”), The Guarantee Company of North America (“**The Guarantee Company**”) and Tarion

Warranty Corporation (“**Tarion**”) from any Claims relating to the Deposits, including interest thereon.

16. On June 14, 2018, the Court granted the Deposit Return Procedure Order. A copy of the Deposit Return Procedure Order is attached as **Appendix “H”** to this Fifth Report.
17. Capitalized terms not defined herein shall have the meanings set out in the Winding Up Order, the Claims Procedure Order, the Deposit Confirmation Procedure Order and the Deposit Return Procedure Order.

II. PURPOSE OF THIS FIFTH REPORT

18. The purpose of this Fifth Report is to update the Court with respect to:
 - a. The activities of the Liquidator and the Receiver since the Fourth Report, including, but not limited to:
 - (i) activities relating to Tarn Financial and the Hotel operations;
 - (ii) activities relating to Tarn Construction and the Development Project;
 - (iii) activities relating to the Sale Process; and
 - (iv) other activities in relation to the Winding Up Proceedings;
 - b. The Claims Process;
 - c. The Deposit Return Procedure;
 - d. The Liquidator’s statement of receipts and disbursements since the date of its appointment up to and including July 17, 2018;
 - e. The Receiver’s statement of receipts and disbursements since the date of the Receivership Order up to and including July 17, 2018; and
 - f. To provide the Court with the necessary information to support the following relief:
 - (i) An Order (the “**First Distribution Order**”) substantially in the form contained at Tab 3 of the Motion Record dated July 20, 2018 (the “**Motion Record**”) authorizing and directing the Liquidator to make a distribution:

- (A) first to Meridian Credit Union Limited (“**Meridian**”) to repay in full the indebtedness owed by Tarn Financial to Meridian, which is secured by first ranking security;
 - (B) second to Kingsett Mortgage Corporation (“**Kingsett**”) to repay in full the indebtedness owed by Tarn Financial to Kingsett, which is secured by second ranking security; and
 - (C) subject to establishing a reserve with The Guarantee Company and Tarion in accordance with the terms of the Deposit Return Procedure Order, third to repay in full the borrowings made by the Liquidator under the Borrowings Charge granted pursuant to paragraph 18 of the Winding Up Order, as increased by the April Ancillary Order, and as evidenced by the Liquidator’s Certificates dated December 17, 2017, February 5, 2018, and May 17, 2018 (the “**Liquidator’s Borrowings Certificates**”); and
- (ii) An Order substantially in the form contained at Tab 4 of the Motion Record:
- (A) approving the fees of the Liquidator, the Receiver and the Liquidator and Receiver’s legal counsel, Miller Thomson and Bennett Jones, from January 1, 2018 to April 30, 2018; and
 - (B) approving the Third Report, the Fourth Report and the Fifth Report and the activities and conduct of the Liquidator and Receiver as set out therein.
19. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
20. The information contained in this Fifth Report has been obtained from the books and records and other information of Tarn Financial or Tarn Construction. The accuracy and completeness of the financial information contained herein has not been audited or otherwise verified by the Liquidator or the Receiver, and the Liquidator and the Receiver do not express an opinion or provide any other form of assurance with respect to the

information presented herein or relied upon by the Liquidator or the Receiver in preparing this Fifth Report.

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

III. ACTIVITIES OF THE LIQUIDATOR AND THE RECEIVER SINCE THE FOURTH REPORT

General Activities

22. The Liquidator continued to manage the operations of the Hotel up until the closing of the Transaction on June 29, 2018 when ownership of the Purchased Assets transferred to Sunray.
23. The Liquidator and Receiver have continued to:
 - a. Attend at the corporate and administrative offices of Tarn Financial and Tarn Construction located at the Hotel, as required up to, and including, June 29, 2018 (the "**Closing Date**");
 - b. Review and approve all purchase orders up to, but not including, the Closing Date;
 - c. Review and approve all disbursements before they were made up to, but not including, the Closing Date. The Liquidator will continue to review and approve disbursements to be made by Tarn Financial relating to the period prior to the Closing Date;
 - d. Prepare and update 13-week cash flow projections, including analysis of actual versus forecast results;
 - e. Prepare bank reconciliations;
 - f. Work with Richter LLP ("**Richter**") to prepare the 2016 tax returns and to review the tax consequences of the proposed Transaction with a view to optimizing the after-tax proceeds for distribution by the Liquidator;
 - g. Review what monies were transferred in or out of Tarn Financial utilizing the services of KPMG Forensics Inc.;

- h. Have regular discussions with Meridian and Kingsett regarding the Winding Up Proceedings, including, among other things, the status of the Hotel operations and the Development Project up to the Closing Date, discussions with other stakeholders and the Sale Process;
- i. Have regular discussions with the shareholders' counsel regarding the Winding Up Proceedings and respond to inquiries regarding same;
- j. Respond to inquiries from other stakeholders regarding the Winding Up Proceedings;
- k. Post materials relating to the Winding Up Proceedings including the Deposit Return Procedure on its website (www.kpmg.com/ca/tarn) (the "Website"); and
- l. Maintain 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.

Activities Relating to Tarn Financial and the Hotel Operations

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

Activities Relating to Tarn Construction and the Development Project

25. The Liquidator and Receiver have continued to do the following in respect of the Development Project:

- a. Responded to inquiries from consultants as to the status of the Winding Up Proceedings, the Development Project and the Sale Process and the Claims Process;
- b. Responded to inquiries from Purchasers of the proposed condominium units regarding, among other things, the status of their APSs, deposit monies, the Deposit Return Procedure, and the Sale Process;
- c. Had regular discussions with the Deposit Trustee in connection with the deposits made by the Purchasers pursuant to their APSs, regarding, among other things, the status of deposit monies being held in trust, change of addresses of Purchasers, inquiries regarding APSs, and the process for implementing the Deposit Return Procedure including the transfer of all Deposits to the Receiver;
- d. Updated the books and records of Tarn Construction as further invoices were received;
- e. Responded to inquiries from brokers regarding, among other things, the status of the Winding Up Proceedings, their commissions and the Claims Process; and
- f. Had discussions with The Guarantee Company and Tarion regarding the implementation of the Deposit Return Procedure.

Activities Relating to the Sale Process

26. The Liquidator and its counsel successfully closed the Transaction on June 29, 2018. In accordance with the Sale Process Order and in order to close the Transaction, the Liquidator:
 - a. Attended meetings and teleconferences with Sunray regarding the critical dates under the Asset Purchase Agreement and all issues to prepare for the closing of the Transaction;
 - b. Reviewed all contracts and supplier liabilities and coordinated with Sunray regarding their intentions to either continue with services being provided and assume same or not;
 - c. Reviewed all employee contracts and benefit plans and reviewed employee letters and proposed benefit plans;
 - d. Prepared and compiled information for the initial statement of adjustments;
 - e. Drafted and reviewed closing documents in respect of the Transaction;

- f. Negotiated and entered into a transition services agreement with Sunray, which details the assistance and services Sunray will provide to the Liquidator for the period following the Closing Date, to enable the Liquidator to complete the Winding Up Proceedings and prepare historical financial statements and tax returns;
- g. Assigned, ceased to perform and terminated supplier and customer contracts relating to the Hotel or the Real Property which were in the name of various legal entities and non-existing entities, including in the name of Tarn Financial, Delta Toronto East, S and A Hospitality Corporation, Westmont Hospitality Management Limited (this was the previous owner of the Hotel), Delta Toronto East Hotel, Sann Holding, Kennedy Road Hospitality Operations Toronto Ltd., Kennedy Road Hospitality Operations Inc., Sheraton Toronto East Hotels and Towers, Tarn Financial Services, Toronto East Hotel LP, Toronto East Hotel GP Inc., Delta Hotel, Delta Hotels by Marriott Toronto East, Delta Hotel Toronto East, Delta Hotels Toronto East and Tarn Finance Inc.;
- h. Coordinated the assignment and transfer of various licences and permits including coordinating with the Alcohol and Gaming Commission of Ontario;
- i. Coordinated with Marriott for the termination and release of the franchise agreement upon closing of the Transaction;
- j. Held an employee meeting to advise of the pending Transaction;
- k. Attended inventory and cash float counts prior to the closing of the Transaction;
- l. Returned the deposit to the Back Up Bidder after the closing of the Transaction; and
- m. Paid Colliers in accordance with the terms of the listing and marketing agreement approved by the Court under the Sale Process Order.

Other Activities in Relation to the Winding Up Proceedings

- 27. The Liquidator and the Receiver, with the assistance of its counsel, have also done the following in relation to the Winding Up Proceedings:
 - a. Prepared and delivered the Fourth Report;
 - b. Administered the Claims Process, the details of which are described below;
 - c. Undertaken the Deposit Return Procedure, the details of which are described below;

- d. Attended Court on June 14, 2018; and
- e. Prepared this Fifth Report.

IV. THE CLAMS PROCESS

- 28. On April 13, 2018, the Court issued the Claims Procedure Order, which approved the Claims Process. Capitalized terms used in this section of the Fifth Report are as defined in the Claims Procedure Order.
- 29. The Third Report and Fourth Report set out in detail the activities of the Liquidator in connection with undertaking the Claims Process.
- 30. The Claims Bar Date was 5:00 PM Eastern Standard Time on June 15, 2018 for all Claimants (other than the Non Arms-Length Claimants) to submit a Proof of Claim in respect of their Claims against Tarn Financial, failing which such Claims shall be forever extinguished and barred. The Non Arms-Length Claims Bar Date was 5:00 PM Eastern Standard Time on June 30, 2018.
- 31. As of the date of this Fifth Report, the Liquidator has received 244 Proofs of Claim in the aggregate amount of \$58,905,433.66, inclusive of Claims filed by the Non Arms-Length Claimants. Also included in the amounts above are three Proofs of Claim that the Liquidator received after the Claims Bar Date which the Liquidator intends to accept as properly filed Claims.
- 32. The following table provides a summary of the Claims received:

Claims Summary			
	Number of Claims	Amount of Claim (\$)	Security/Lien Amount (\$)
Priority Claim (Note 1)	1	1.00	
Secured Creditor Claims (Note 2)	4	23,710,062.63	43,930,000.00
Construction Lien Claims (Note 3)	5	2,791,861.33	2,592,525.65
Other Claims Filed as Secured Claims (Note 4)	8	966,931.13	
Wages and Benefits Claims (Note 5)	42	1,073,700.25	
Unsecured Claims (Note 6)	178	8,400,912.97	
Non Arms-Length Claimant Claims (Note7)	6	21,961,964.35	
Total Claims	244	58,905,433.66	46,522,525.65

Note 1: CRA has submitted a placeholder Claim for priority claims including source deductions, harmonized sales tax (HST) and withholding taxes in respect of Tarn Financial and Tarn Construction. The Liquidator has been in contact with CRA to request that audits be completed in order to determine the amounts owing to CRA. To date, the CRA has not completed any audits in respect of Tarn Financial; however, representatives

of CRA are currently completing an HST examination for the fiscal years 2015 to 2017 and on March 3, 2018 completed a payroll examination for Tarn Construction. The Liquidator will continue to work with CRA in order to complete the necessary audits and allow for the determination of the amount of their Claim.

- Note 2: Secured creditor claims include contingent Claims filed by The Guarantee Company and Tarion which will be addressed pursuant to the Deposit Return Procedure Order.
- Note 3: In the weeks following the granting of the Winding Up Order, five consultants registered a claim for lien against the Real Property pursuant to the Construction Lien Act ("Lien"). The Liquidator 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 without consent or leave of the Court.
- Note 4: Eight Claimants filed their Proofs of Claim with the Liquidator indicating that their Claims were Secured Claims. Based on the Liquidator's initial review, the Liquidator notes that no security documentation has been provided with respect to these Claims.
- Note 5: 29 Claimants filed their Proofs of Claim with the Liquidator indicating that their Claims were Wages and Benefits Claims. Based on an initial review, none of the Claims are made by employees or former employees of Tarn Financial or Tarn Construction.
- Note 6: The Liquidator has received a large number of Proofs of Claim from Claimants whose contracts are with a contracting party whose name is something other than Tarn Financial. A number of these Claimants have contracts in the name of Tarn Construction. Additionally, a number of the contracting parties are not registered corporations/limited partnerships or business names. The names included are as follows: Delta Toronto East, Samm Holding, Kennedy Road Hospitality Operations Toronto Ltd, Tarn Finance Inc., The Kennedys, SAMM Developments, SAMM Holdings Inc., Delta Toronto East Hotels, Tarn Financial Services, etc. The Liquidator is currently working with its legal counsel to review these Claims.
- Note 7: The Liquidator received Proofs of Claim from each of the three shareholders with respect to their initial advances to Tarn Financial. In addition, SAMM filed three additional Proofs of Claim claiming amounts with respect to cash advances made to Tarn Financial and Tarn Construction, managements fees relating to Tarn Financial and development fees relating to Tarn Construction. All of the Claims filed by SAMM have been filed as Secured Claims.

- 33. Once the Liquidator and its counsel have completed their review of the Claims, the Liquidator will either allow, partially allow/partially disallow or disallow each of the Claims. Additionally, the Liquidator may apply to this Court for advice and directions with respect to the determination of certain Claims.
- 34. Pursuant to the Claims Procedure Order, upon receipt of the Non Arms-Length Claims, the Liquidator delivered the Proofs of Claim to the Applicants and the Respondents. Once the Liquidator is advised by the Applicants and the Respondents whether some or all of the Non Arms-Length Claims are disputed, the Liquidator will coordinate with the Applicants, the Respondents, and the Non Arms-Length Claimants regarding establishing a process for determination of such Claims.

V. THE DEPOSIT RETURN PROCEDURE

- 35. The Receiver has obtained three Orders relating to the Deposits held on behalf of Purchasers of proposed condominium units in the Development Project with the view to determining the amount of Deposits and returning the Deposits to the Purchasers and terminating the APSs. The Receiver sought and obtained the Deposit Confirmation

Procedure Order on April 13, 2018, the Disputed Deposits Resolution Procedure Order on May 9, 2018 and the Deposit Return Procedure Order on June 14, 2018. Capitalized terms used in this section of the Fifth Report are as defined in the Deposit Confirmation Procedure Order or the Deposit Return Procedure Order.

36. In accordance with and in relation to the Deposit Return Procedure Order, the Receiver notified the Deposit Trustee on June 14, 2018 that Purchasers were no longer required to make Additional Deposits under their APSs and that any payments of Additional Deposits made after the date of the Deposit Return Procedure Order were to be returned to Purchasers as soon as practicable.
37. The Receiver received the Deposit Funds from the Deposit Trustee, including post-dated cheques being held by the Deposit Trustee on account of Additional Deposits and the Deposit Trustee's Trust Records relating to Tarn Construction. On June 18, 2018, the Receiver deposited the Deposit Funds into a separate interest bearing bank account held by the Receiver. As of the date of this Fifth Report, the Receiver, with the assistance of the Deposit Trustee, has returned post-dated Additional Deposit cheques to 25 Purchasers.
38. On June 18, 2018, the Receiver delivered to Tarion and The Guarantee Company electronic copies of the Deposit Confirmation Procedure Documentation and provided electronic copies of APSs for all Purchasers that had a Disputed Deposit that were not resolved as at the date of the Deposit Return Procedure Order. The Receiver also provided the Statutory Declaration (Schedule B of the Deposit Return Procedure) from the Receiver to Tarion and The Guarantee Company on the same date.
39. On June 19, 2018, the Receiver received the Statutory Declaration (Schedule A of the Deposit Return Procedure Order) from the Deposit Trustee.
40. The Receiver requested a Statutory Declaration (Schedule C of the Deposit Return Procedure Order) from Ali Akman, the former President of Tarn Financial and Tarn Construction. As of the date of this Fifth Report, the Receiver has not received this Statutory Declaration.

41. The Receiver emailed the fifth communication to Purchasers dated June 19, 2018 (the “**Fifth Communication to Purchasers**”), which is attached to this Fifth Report as **Appendix “I”**.
42. On June 21, 2018, the Receiver mailed the Fifth Communication to Purchasers and packages containing the Release Agreement and the Certificate of Identity to all Purchasers with Proven Deposits (the “**Deposit Return Package**”).
43. After the Deposit Return Packages were sent, the Receiver became aware that certain Deposit Return Packages inadvertently had an error or omission in one or more names of the Purchasers listed on the APS due to the manner in which the records were maintained by the Deposit Trustee. The Receiver corrected these Deposit Return Packages and on June 29, 2018 emailed and mailed by regular mail the amended Deposit Return Packages to affected Purchasers along with an explanation of the error.
44. The Receiver held Proven Deposit return days at the Hotel between the hours of 8:30 a.m. and 8:30 p.m. on Wednesday July 11, 2018 and Saturday July 14, 2018 to allow Purchasers to deliver executed Release Agreements and Certificates of Identity, including two copies of identification, in person in order to receive a cheque in the amount of Purchasers’ Proven Deposits and to facilitate the termination of their APSs.
45. As of July 17, 2018, the Receiver has terminated 551 APSs and returned, either in person or via regular mail, 551 Proven Deposits totaling \$25,963,054.
46. As of July 17, 2018, the Receiver is holding 77 Purchasers’ Proven Deposits totaling \$3,764,194. The Receiver is waiting to receive the appropriate documentation from these Purchasers in order to send, via regular mail, a cheque for their Proven Deposit and to terminate the related APS.
47. As at the date of this Fifth Report, there are four Notices of Dispute of Deposit Statement that are still being reviewed and considered, in consultation with The Guarantee Company and Tarion. All of these are from sales agents that sold the proposed condominium units on behalf of Tam Construction and rather than get paid certain of their commissions they requested that Tam Construction fund Deposits on units that they purchased. The Deposit Trustee did not hold any money with respect to these four Purchasers. These sales agents

have also filed Proofs of Claim for their commissions in the Claims Process. Through counsel, the Receiver and these sales agents have agreed to hold their Disputed Deposits in abeyance until their Proofs of Claim can be determined.

48. Additionally, there were 16 proposed condominium units where no Deposits were received or no APS exists and therefore no Proven Deposits are owing.
49. On July 18, 2018, the Receiver delivered to Tarion and The Guarantee Company the Statutory Declaration (Schedule G of the Deposit Return Procedure Order) including (a) a ledger of the Proven Deposits paid to Purchasers and the Proven Deposits not paid; (b) a current Deposits determination summary outlining the Proven Deposits and Disputed Deposits pursuant to the Orders made in these proceedings (if applicable); and (c) attaching copies of the corresponding Release Agreements and Certificates of Identity.

VI. LIQUIDATOR'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

50. The Liquidator reported on the total receipts and disbursements from the date of the Liquidator's appointment to March 31, 2018 in its Second Report.
51. The following table provides a summary of the total receipts and disbursements from the date of the Liquidator's appointment to July 17, 2018 (the "**R&D Period**"):

Statement of Receipts and Disbursements			
For the period September 25, 2017 to July 17, 2018			
(in CAD)			
	Sep 25, 2017 to Mar 30, 2018	Mar 31, 2018 to July 17, 2018	Sep 25, 2017 to July 17, 2018
Receipts			
Operating receipts	11,461,730	6,353,866	17,815,596
Liquidator's Borrowings	1,977,820	999,985	2,977,805
Net sale proceeds	-	59,303,653	59,303,653
Total receipts	13,439,550	66,657,504	80,097,054
Disbursements			
Operating disbursements	2,495,807	1,070,150	3,565,957
Salaries and wages	3,939,936	2,314,158	6,254,094
Taxes	1,271,097	620,481	1,891,578
Insurance	198,814	51,142	249,956
Utilities	699,760	350,735	1,050,494
Marriott fee	796,937	632,162	1,429,098
Critical Maintenance	239,684	128,362	368,046
Total operating disbursements	9,642,035	5,167,190	14,809,224
Operating cash flow	3,797,515	61,490,314	65,287,830
Loan Facilities and Professional Fees			
Secured lenders - Principal and Interest	1,059,046	745,828	1,804,874
Sales Commission	-	847,500	847,500
Professional fees	1,195,174	1,795,409	2,990,583
Non-operating disbursements	2,254,220	3,388,737	5,642,957
Opening book balance	(70,185)	1,473,111	(70,185)
Net cash flow	1,543,296	58,101,577	59,644,873
Closing book balance	1,473,111	59,574,688	59,574,688

52. Receipts during the R&D Period were \$80,097,054 and consist of: (a) guest room, food and beverage and parking-related revenues of \$17,815,596; (b) funding of \$2,977,805 under the Borrowings Charge; and (c) net sale proceeds of \$59,303,653.
53. Disbursements during the R&D Period total approximately \$20,452,181 and consist of: (a) payroll in the amount of approximately \$6,254,094; (b) operating expenses of \$3,565,957; (c) HST and other tax payments in the amount of \$1,891,578; (d) other expenses, namely insurance, utilities payments to Marriott and maintenance items in the amount of \$3,097,594; (e) principal and interest payments to the Secured Lenders of \$1,804,874, (f) Colliers' commission of \$847,500 and, (g) professional fees and disbursements of \$2,990,583, which consist of the professional fees of the Liquidator and the Receiver, its independent legal counsel, Miller Thomson, and Bennett Jones.

Future Disbursements

54. The Asset Purchase Agreement in section 6.02 contemplates that there will be adjustments made to the estimated amounts in the statement of adjustments after the Closing Date as

necessary within sixty (60) days after the Closing Date. As such, the final amount of the net proceeds from the Transaction is expected to change and will not be known until the expiration of the 60 day period.

55. The Liquidator is responsible for the payment of all goods and/or services rendered to the Hotel between the period September 25, 2018 up to and including June 28, 2018 (the “**Service Period**”). On July 6, 2018, the Liquidator sent a notice to all suppliers requesting that suppliers issue invoices for the Service Period to the Liquidator by no later than August 15, 2018 so that the Liquidator may process these invoices and make payment for all goods and/or services rendered during the Service Period. The final amount owing will not be known until all invoices are received.
56. As detailed in the Liquidator’s previous reports to Court, the Borrowings Charge pursuant to paragraph 18 of the Winding Up Order, as amended by the April Ancillary Order, may not exceed a principal amount of \$3,000,000 at any time. The Property (as defined in the Winding Up Order) of Tam Financial is charged as security for payment of the monies borrowed in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person but subordinate in priority to (a) 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, Tam Financial; and (b) the Liquidator’s Charge (as defined in the Winding Up Order).
57. The Liquidator has borrowed money from two parties under the Borrowings Charge as evidenced by the Liquidator’s Borrowings Certificates attached hereto as **Appendix “J”**.
58. The initial funding was provided by one of the Applicants, Volkan Basegmez (“**Volkan**”), in two tranches with interest payable at a rate of 12% per annum. The interest is payable as follows: 6% to be cash paid monthly and 6% PIK interest. It was agreed that the first tranche of funding would be provided on or around December 15, 2017 and the second tranche on or around January 15, 2018. As at June 30, 2018, \$2,026,168.90 was owing to Volkan on account of the advances made by him under the Borrowing’s Charge.
59. The Increased Borrowing Amount was provided by another one of the Applicants, KAAN Holdings Inc. (“**KAAN**”), in one tranche on May 1, 2018 with an interest of 12% per

annum which interest is also paid as follows: 6% in cash paid monthly and 6% PIK interest. As at June 30, 2018, \$1,005,095.89 was owing to KAAN.

60. Neither Volkan nor KAAN were required to file a Proof of Claim for the borrowings they advanced under the Liquidator’s Borrowings Certificates. The Liquidator is seeking the ability to repay the amounts owing under the Liquidator’s Borrowings Certificates as discussed below.
61. The Liquidator has been working closely with Richter in order to complete the outstanding tax returns for Tarn Financial and to also estimate the amount of capital gains taxes owing with respect to the Transaction. At this time, it is estimated that up to approximately \$6 million may be owing in respect of capital gains taxes. The exact amount owing to CRA will not be known until the finalization of the 2018 tax position.

VII. RECEIVER’S STATEMENT OF RECEIPTS AND DISBURSEMENTS

62. The following table provides a summary of the total receipts and disbursements from the date of the appointment of the Receiver on April 13, 2018 to July 17, 2018 in the Receiver’s trust account (the “Receiver’s R&D Period”).

Statement of Receipts and Disbursements For the period April 13, 2018 to July 17, 2018 (in CAD)		Apr 13, 2018 to July 17, 2018
Receipts		
Deposit funds received and held in trust		30,094,631
Interest		17,678
Total receipts		30,112,308
Disbursements		
Proven Deposits returned to Purchasers		25,963,056
Bank charges		2
Total disbursements		25,963,057
Opening book balance		-
Net cash flow		4,149,251
Ending book balance		4,149,251

63. Receipts during the Receiver’s R&D Period were \$30,112,308 and consist of (a) Deposit Funds of \$30,094,631 from the Deposit Trustee and (b) interest of \$17,678 earned since the Deposit Funds were deposited into the Receiver’s trust account on June 18, 2018.

64. Disbursements during the Receiver's R&D Period total approximately \$25,963,056 and consist of payments to Purchasers of their Proven Deposits pursuant to the Deposit Return Procedure.

VIII. DISTRIBUTION TO SECURED CREDITORS

65. The Liquidator is seeking the First Distribution Order to allow it to repay in full the first and second ranking secured creditors and, subject to establishing a reserve with The Guarantee Company and Tarion in accordance with the terms of the Deposit Return Procedure Order that addresses The Guarantee Company's third ranking secured position, to repay in full the borrowings made by the Liquidator under the Borrowings Charge.
66. Meridian holds, among other security, a first registered charge/mortgage of land in the principal amount of \$19,800,000 and a general security agreement from Tarn Financial (collectively, the "**Meridian Security**").
67. Based on Meridian's Proof of Claim it is owed approximately \$17,603,247.93. The Liquidator has asked for an updated payout statement from Meridian as at July 26, 2018.
68. Kingsett holds, among other security, a third registered charge/mortgage of land in the principal amount of \$11,250,000 (the "**Kingsett Mortgage**") and a general security agreement from Tarn Financial (collectively, the "**Kingsett Security**").
69. Kingsett filed a Proof of Claim in the amount of \$6,079,972.07. The Liquidator has requested and received an updated payout statement from Kingsett indicating that it is owed \$6,297,782.65 as at July 26, 2018 with a per diem of \$1,489.67.
70. The Liquidator has received an opinion from its independent counsel, Miller Thomson that the Meridian Security and the Kingsett Security are valid and enforceable in accordance with their terms. The Kingsett Security has second priority pursuant to a Priority Agreement between, among others, Kingsett and The Guarantee Company dated December 22, 2016 pursuant to which The Guarantee Company agreed to postpone and subordinate its second registered charge/mortgage of land registered June 9, 2016, as amended by an Agreement Amending Charge registered July 15, 2016 in the principal amount of

\$12,880,000 granted by the Borrower to The Guarantee Company to the Kingsett Mortgage.

71. Given that the Liquidator is proposing to make distributions to secured creditors prior to the Liquidator knowing the amount of the CRA's placeholder priority claim or obtaining clearance certificates from CRA and the other taxing authorities, the Liquidator has requested that Meridian and Kingsett enter into a Reimbursement Agreement with the Liquidator to address any claims that rank in priority to the Meridian Security and the Kingsett Security.
72. Subject to this Court's approval and the Liquidator being satisfied that there are arrangements in place to address reimbursement for priority claims with Meridian and Kingsett, the Liquidator anticipates repaying Meridian and Kingsett immediately following Court approval.
73. As set out above, as of June 30, 2018, Volkan is owed \$2,026,168.90 on account of the advances made by him under the Liquidator's Borrowings Certificates he holds. As of June 30, 2018, KAAN is owed \$1,005,095.89 on account of the advances made by it under the Liquidator's Borrowings Certificate it holds.
74. Prior to being in a position to repay the amounts owing under the Liquidator's Borrowings Certificates, the Liquidator has to work with The Guarantee Company and Tarion to establish a reserve in accordance with the terms of the Deposit Return Procedure Order. Once a reserve is established, the Liquidator will request that Volkan and KAAN enter into a Reimbursement Agreement with the Liquidator to address any claims that rank in priority to the Borrowings Charge. Upon the Liquidator being satisfied that there are arrangements in place to address reimbursement for priority claims with Volkan and KAAN and a sufficient reserve in accordance with the Deposit Return Procedure Order has been established, the Liquidator will repay the amounts owing under the Liquidator's Borrowings Certificates to Volkan and KAAN.

IX. APPROVAL OF PROFESSIONAL FEES TO APRIL 30, 2018

75. The fees and disbursements of the Liquidator and its legal counsel, Miller Thomson and Bennett Jones, for the period from the date of the Winding Up Order to December 31, 2018

were set out in the Second Report and were approved by the Court in the April Ancillary Order.

76. The Liquidator, the Receiver and the Liquidator's and the Receiver's counsel, Miller Thomson and Bennett Jones, have maintained detailed records of their professional time and costs from January 1, 2018 up to and including April 30, 2018 (the "**Fee Period**"), as detailed in the Fee Affidavit of Anamika Gadia of KPMG sworn July 19, 2018, the Fee Affidavit of Gregory Azeff of Miller Thomson sworn July 19, 2018 and the Fee Affidavit of Andrew Jeanrie of Bennett Jones sworn July 19, 2018 (collectively, the "**Fee Affidavits**"). Copies of the Fee Affidavits are attached as **Appendix "K"**, **Appendix "L"** and **Appendix "M"**, respectively.
77. Pursuant to paragraphs 16 and 17 of the Winding Up Order, the Liquidator and its counsel, shall be paid their reasonable fees and disbursements and shall pass their accounts before this Court. In addition, pursuant to paragraph 15 of the Winding Up Order, the Liquidator and its counsel were granted the Liquidator's Charge as security for their fees and disbursements.
78. Pursuant to paragraphs 16 and 17 of the Receivership Order, the Liquidator is directed to pay the reasonable fees and disbursements of the Receiver and its counsel and KPMG and its legal counsel are not required to maintain separate accounts in their capacity as Receiver and counsel to the Receiver. In addition, pursuant to paragraph 15 of the Receivership Order, the Receiver and its counsel were granted the Receiver's Charge as security for their fees and disbursements.
79. The total fees and disbursements (including Harmonized Sales Tax) of the Liquidator and the Receiver during the Fee Period amount to \$1,151,380.85. The details of the time spent and the services provided by the Liquidator and the Receiver are more particularly described in the Fee Affidavit of Anamika Gadia.
80. The total fees and disbursements (including Harmonized Sales Tax) of Miller Thomson during the Fee Period amount to \$358,531.79. The details of the time spent and the services provided by Miller Thomson are more particularly described in the Fee Affidavit of Gregory Azeff.

81. The total fees and disbursements (including Harmonized Sales Tax) of Bennett Jones during the Fee Period amount to \$18,693.44. The details of the time spent and the services provided by Bennett Jones are more particularly described in the Fee Affidavit of Andrew Jeanrie.
82. The Liquidator and the Receiver have reviewed the accounts of its counsel and believe that the accounts of the Liquidator, the Receiver, Miller Thomson and Bennett Jones are reasonable in the circumstances and respectfully requests that the Court approve the Liquidator's and the Receiver's fees and disbursements and those of its counsel.

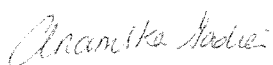
X. CONCLUSION

83. The Liquidator and the Receiver submit this Fifth Report to the Court in support of the Liquidator's and the Receiver's Motion for the relief as set out in the Motion Record and recommends that the Court grant the following relief:
 - a. The First Distribution Order substantially in the form contained at Tab 3 of the Motion Record authorizing and directing the Liquidator to make a distribution:
 - (i) first to Meridian to repay in full the indebtedness owed by Tarn Financial to Meridian, which is secured by first ranking security;
 - (ii) second to Kingsett to repay in full the indebtedness owed by Tarn Financial to Kingsett, which is secured by second ranking security; and
 - (iii) subject to establishing a reserve with The Guarantee Company and Tarion in accordance with the terms of the Deposit Return Procedure Order , third to repay in full the borrowings made by the Liquidator under the Borrowings Charge granted pursuant to paragraph 18 of the Winding Up Order, as increased by the April Ancillary Order, and as evidenced by the Liquidator's Borrowings Certificates; and
 - b. An Order substantially in the form contained at Tab 4 of the Motion Record:
 - (i) approving the fees and disbursements of the Liquidator, the Receiver and the Liquidator's and Receiver's legal counsel, Miller Thomson and Bennett Jones, from January 1, 2018 to April 30, 2018; and

- (ii) approving the Third Report, the Fourth Report and the Fifth Report and the activities and conduct of the Liquidator and Receiver as set out therein.

All of which is respectfully submitted at Toronto, Ontario this 20th day of July, 2018.

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



Per:

Anamika Gadia
Senior Vice President

APPENDIX “E”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THURSDAY

THE HONOURABLE
JUSTICE MCEWEN

)
)
)

~~WEDNESDAY~~, THE 26TH
DAY OF JULY, 2018

BETWEEN:

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



Applicants

- and -

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

Respondents

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

FIRST DISTRIBUTION ORDER

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

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

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

SERVICE AND GENERAL

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

DISTRIBUTIONS TO SECURED CREDITORS

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

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

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

GENERAL PROVISION

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



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

JUL 26 2018

PER / PAR: *RW*

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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

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

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

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

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

APPENDIX “F”

[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 stake holders 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.

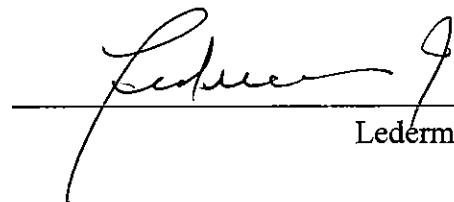
[50] A liquidator has wide powers to take control of the property, including all bank accounts and records of the company and can utilize accountants and appraisers, and other professionals to provide valuations and financial statements and for stability and an orderly liquidation.

[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 KAAAN
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 “G”

Name Search Results

Search for : **Corporations And Business Entities**
 Name Searched : **tarn**
 Jurisdictions Searched : **FED, ON, QC, BC, AB, MB, SK, NS, NB, NL, PE, NT, YT, NU**
 Results Returned : **62**
 Timestamp (E.S.T.) : **2018/10/31 11:48**

Entity Name	Type	Jur.	Number	Reg./Inc. Date	Status	Other
TARANTEK INC.	Ont. Business Corp.	ON	001432774	2000/09/13	Vol. Diss. (Ont.)	
TARN FOOT CARE	SI_Prpsph	ON	250240462	2015/03/10	Active	
TARN TRANSPORT	SoleProp	BC	FM0339564	2003/01/31	Active	
TARN AUTO SALES	TradeName	AB	TN16678765	2012/03/27	Active	
TARN DRYWALL CO.	SoleProp	BC	FM0652172	2015/02/02	Active	
TARN MECHANICAL	TradeName	AB	TN6261192	1994/10/04	Dissolved	
TARN MECHANICAL	TradeName	AB	TN7417801	1997/06/09	Active	
TARN ENERGY LTD.	Bus_Corp	AB	206542458	1995/05/11	Active	
TARN ENTERPRISES	TradeName	AB	CRY065237	1982/07/07	Active	
TARNEET SHOES INC.	Ont. Business Corp.	ON	002375277	2013/05/30	Active	
TARN HOLDINGS LTD.	Bus_Corp	AB	201205762	1978/06/23	Historic	
TARN DRILLING LTD.	ULC	BC	0730832	2005/07/25	Name_Chg	
TARN DRILLING ULC	ULC	BC	0730832	2005/07/25	Active	
TARN DRYWALL HOMES	Partner	MB	7040245	2014/12/10	Active	
TARN LAKE NETWORKS	TradeName	AB	TN6504674	1995/04/13	Active	
TARN MARKETING LTD.	Bus_Corp	AB	207915653	1998/07/03	Dissolved	
TARN RESOURCES LTD.	Bus_Corp	AB	202477907	1980/07/14	Dissolved	
TARN MANAGEMENT INC.	Ont. Business Corp.	ON	000306764	1975/05/28	Canc. By C.B.	
TARNEJA HOLDINGS LTD.	Ont. Business Corp.	ON	000329052	1976/01/19	Active	
TARN HEALTHDESIGN INC.	Federal Corp with Share	ON	003015953	2005/09/30	Amalg.	
Tarn Healthdesign Inc.	CBCA	CA	6456227	2005/09/30	Amlgmtg	



Entity Name	Type	Jur.	Number	Reg./Inc. Date	Status	Other
TARNFELD HOLDINGS INC.	Ont. Business Corp.	ON	000389226	1978/06/30	Active	
TARNJOT TRANSPORT LTD.	Ont. Business Corp.	ON	002041863	2004/02/27	Active	
TARNOPOL HOLDINGS LTD.	Ont. Business Corp.	ON	000370535	1977/11/22	Canc. By C.T.	
TARNA DISTRIBUTION INC.	Federal Corp with Share	ON	003164188	2017/10/12	Active	
TARNEL ENTERPRISES INC.	Ont. Business Corp.	ON	000914988	1990/12/20	Canc. By C.B.	
TARNOWSKI HOLDINGS INC.	Federal Corp with Share	ON	000457983	1980/08/06	Final Removal (All E.P. CORPS)	
TARNEJA INVESTMENTS INC.	Ont. Business Corp.	ON	000543371	1983/03/11	Amalg.	
TARNER DEVELOPMENTS INC.	Ont. Business Corp.	ON	000481101	1981/05/25	Canc. By C.T.	
TARNOVIA COMPANY LIMITED	Ont. Business Corp.	ON	000401184	1978/11/20	Active	
TARNOVIA MEAT & DELI,LTD.	Ont. Business Corp.	ON	001546087	2002/10/22	Vol. Diss. (Ont.)	
TARN TARAN TRANSPORT INC.	MBSHare	MB	7124831	2015/05/05	Active	
TARNAWSKI ENTERPRISES INC.	Ont. Business Corp.	ON	001150742	1995/12/06	Vol. Diss. (Ont.)	
TARN DHILLON HOLDINGS LTD.	Corp	BC	1181442	2018/10/01	Active	
TARN FINANCIAL CORPORATION	Ont. Business Corp.	ON	002425409	2014/07/07	Active	
TARNE GRODD INVESTMENT INC.	Ont. Business Corp.	ON	001909661	2014/01/22	Active	
TARN MITCHELL HOLDINGS LTD.	Corp	BC	1140645	2017/11/08	Active	
TARN HEALTH INVESTMENTS INC.	Federal Corp with Share	ON	001341242	1999/01/29	Amalg.	
TARN HEALTH INVESTMENTS INC.	CBCA	CA	3582850	1999/01/29	Amlgmtg	
TARNOR HOLDINGS INCORPORATED	Ont. Business Corp.	ON	000294274	1974/09/06	Canc. By C.T.	
TARN CONSTRUCTION CORPORATION	Ont. Business Corp.	ON	002471249	2015/06/17	Active	
TARNOW LINTON PRODUCTIONS INC.	Ont. Business Corp.	ON	000582405	1984/03/30	Canc. By C.T.	
TARN CRAGS INVESTMENTS LIMITED	Ont. Business Corp.	ON	000609213	1984/12/21	Amalg.	NC



Entity Name	Type	Jur.	Number	Reg./Inc. Date	Status	Other
TARN CRAGS INVESTMENTS LIMITED		ON	609213	1984/12/21	CorpNmChg	
TARNOW-BERSCH CONSTRUCTION LIMITED	Other	ON	000052134		Unknown	TC
TARNOWSKY, G.L. PROFESSIONAL CORPORATION	EP Domestic with Share	ON	001507041	1998/12/21	Active	
TARNOWECKY LAW PROFESSIONAL CORPORATION	Ont. Business Corp.	ON	001923620	2015/03/10	Active	
TARNO'S SILVER BLADES CYCLE & SPORTS LTD.	Ont. Business Corp.	ON	000568740	1983/10/31	Canc. By C.B.	NC
J. TARNOW COMPANY LIMITED	Ont. Business Corp.	ON	000079242	1955/09/30	Amalg.	
J. TARNOW COMPANY LIMITED	Ont. Business Corp.	ON	001456696	2000/12/29	Active	
MARK TARNOPOLSKY MEDICINE PROFESSIONAL CORPORATION	Ont. Business Corp.	ON	002300963	2011/10/03	Active	
THE TARNOY GROUP INCORPORATED	Ont. Business Corp.	ON	001386290	1999/12/21	Canc. By C.T.	NC
TOBY TARNOY PRODUCTIONS LIMITED	Ont. Business Corp.	ON	000210152	1968/02/29	Canc. By C.B.	
BLACK TARN HOLDINGS	SoleProp	BC	FM0554634	2011/04/14	Active	
AGGIE TARNOY CONSULTING INC.	Ont. Business Corp.	ON	002476333	2015/07/24	Active	
MOUNTAIN TARN ASSOCIATES LTD.	Ont. Business Corp.	ON	002051197	2004/07/26	Active	
RADHA SOAMI DERA BABA BAGGA SINGH TARN TARAN SOCIETY	CCA_Pt2	CA	3340813	1997/01/27	Dissolved	
HUNDAL, TARN TEJ SINGH	Individual	QC	2241082777	1994/09/13	Ex officio cancellation	
VICTOR TARNOY ARCHITECT INC.	Ont. Business Corp.	ON	000796038	1988/09/19	Canc. By C.B.	
DR. TARN DHILLON DENTAL CORP.	Corp	BC	1042256	2015/07/09	Amlgmt	
DR. TARN DHILLON DENTAL CORP.	Corp	BC	1095115	2016/11/01	Active	

2018-10-31

Corporate name/Dénomination sociale: Tarn*

Search within/Chercher dans: Search all/Sélectionner tout

COMPANY NAME / NOM DE L'ENTREPRISE						
JUR	NO.	DATE	CITY/VILLE	TYPE	STATUS/STATUT	STAT.DATE/DATE STAT.
BUS./ACT.						
AGGIE TARNOY CONSULTING						
ON	240648691	2014-07-02	ST. CATHARINES	SI_Prpsph	Active	2014-07-02
AGGIE TARNOY CONSULTING INC.						
ON	2476333	2015-07-24	ST. CATHARINES	Bus_Corp	Active	2015-07-24
ANDREW R. TARNAWSKY PROFESSIONAL CORPORATION						
AB	203583281	1986-12-18	ST. ALBERT	Bus_Corp	Active	
BEN E. TARNOW LAW CORPORATION						
BC	1038528	2015-06-03	Richmond	Corp	Active	2015-06-03
BLACK TARN HOLDINGS						
BC	FM0554634	2011-04-14		SoleProp	Active	
DAVID C. TARNOW PERSONAL LAW CORPORATION						
BC	0420753	1992-02-21	Richmond	Corp	Active	2004-03-04
DR. TARN DHILLON DENTAL CORP.						
BC	1042256	2015-07-09	Surrey	Corp	Amlgmtd	2016-11-01
DR. TARN DHILLON DENTAL CORP.						
BC	1095115	2016-11-01	Surrey	Corp	Active	2016-11-01
GREG TARNOWSKI PROFESSIONAL CORPORATION						
AB	2015743491	2010-12-07	CALGARY	Bus_Corp	Active	
J. TARNOV CO. (1993)						
ON	240385906	2014-04-17	TORONTO	AsmdBusNm	Active	2014-04-17
J. TARNOV COMPANY (1993)						
ON	240392076	2014-04-22	TORONTO	AsmdBusNm	Active	2014-04-22
J. TARNOV COMPANY LIMITED						
ON	1456696	2000-12-29	TORONTO	Bus_Corp	Active	2000-12-29
J. TARNOV COMPANY LIMITED						
ON	79242	1955-09-30	TORONTO	Bus_Corp	Amlgmtd	2000-12-29
JASON D. TARNOV LAW CORPORATION						
BC	1016562	2014-10-17	Richmond	Corp	Active	2014-10-17
LUSTRE AND TARNISH						
ON	250876497	2015-09-04	BLOOMFIELD	SI_Prpsph	Active	2015-09-04
MARK TARNOPOLSKY MEDICINE PROFESSIONAL CORPORATION						
ON	2300963	2011-10-03	HAMILTON	Bus_Corp	Active	2011-10-03
MOUNTAIN TARN ASSOCIATES LTD.						
ON	2051197	2004-07-26	MANOTICK	Bus_Corp	Active	2004-07-26

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2018-10-31

Corporate name/Dénomination sociale: Tarn*

Search within/Chercher dans: Search all/Sélectionner tout

COMPANY NAME / NOM DE L'ENTREPRISE						
JUR	NO.	DATE	CITY/VILLE	TYPE	STATUS/STATUT	STAT.DATE/DATE STAT.
BUS./ACT.						
RADHA SOAMI DERA BABA BAGGA SINGH TARN TARAN SOCIETY						
CD	3340813	1997-01-27	BRAMPTON	CCA_Pt2	Dissolved	2015-05-16
RHONDA RAE TARNEY CONSULTING INC.						
AB	203311188	1985-06-03	RIMBEY	Bus_Corp	Active	2013-07-12
SENT TARNG MUAY THAI CAMP						
AB	TN7979909	1998-08-31		TradeName	Active	
Sydlike Tarn Wines						
CD	120551882	2018-09-14			Prop.CANADA	
TAR-NIK HOLDINGS LTD.						
BC	0217143	1980-09-30	COQUITLAM	Corp	Active	2003-10-20
TAR-NORTH MASONRY LTD.						
NB	15997	1977-12-13	Newcastle	Dmd_Cntd	DslvdCncl	1998-04-22
TARN AUTO SALES						
AB	TN16678765	2012-03-27		TradeName	Active	
TARN CONSTRUCTION CORPORATION						
ON	2471249	2015-06-17	TORONTO	Bus_Corp	Active	2015-06-17
TARN CRAGS INVESTMENTS LIMITED						
ON	609213	1984-12-21			CorpNmChg	1985-04-30
TARN DHILLON HOLDINGS LTD.						
BC	1181442	2018-10-01	LANGLEY	Corp	Active	2018-10-01
TARN DRILLING LTD.						
BC	0730832	2005-07-25	North Vancouver	ULC	Name_Chg	2018-08-22
TARN DRILLING ULC						
BC	0730832	2005-07-25	North Vancouver	ULC	Active	2005-07-25
TARN DRYWALL CO.						
BC	FM0652172	2015-02-02		SoleProp	Active	
TARN DRYWALL HOMES						
MB	7040245	2014-12-10	WINNIPEG	Partner	Active	2014-12-10
Building Finishing Contractors						
TARN ENERGY LTD.						
AB	206542458	1995-05-11	CALGARY	Bus_Corp	Active	1996-08-16
TARN ENERGY LTD.						
AB	206542458	1995-05-11	CALGARY	Bus_Corp	Active	1996-08-16
TARN ENTERPRISES						
AB	CRY065237	1982-07-07		TradeName	Active	

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2018-10-31

Corporate name/Dénomination sociale: Tarn*

Search within/Chercher dans: Search all/Sélectionner tout

COMPANY NAME / NOM DE L'ENTREPRISE							
JUR	NO.	DATE	CITY/VILLE	TYPE	STATUS/STATUT	STAT.DATE/DATE STAT.	BUS./ACT.
TARN FINANCIAL CORPORATION							
ON	2425409	2014-07-07	TORONTO	Bus_Corp	Active	2014-07-07	
TARN FOOT CARE							
ON	250240462	2015-03-10	BRAMPTON	SI_Prpsph	Active	2015-03-10	
TARN HEALTH INVESTMENTS INC.							
CD	3582850	1999-01-29	TORONTO	CBCA	Amlgmtg	2009-01-01	
TARN HEALTH INVESTMENTS INC.							
ON	1341242	1999-01-29	TORONTO	FD_Share	Amlgmtd	2009-06-05	
Tarn Healthdesign Inc.							
CD	6456227	2005-09-30	Toronto	CBCA	Amlgmtg	2009-01-01	
TARN HEALTHDESIGN INC.							
ON	3015953	2005-09-30	TORONTO	FD_Share	Amlgmtd	2009-06-05	
TARN HOLDINGS LTD.							
AB	201205762	1978-06-23		Bus_Corp	Historic	1979-08-20	
TARN LAKE NETWORKS							
AB	TN6504674	1995-04-13		TradeName	Active		
TARN MANAGEMENT INC.							
ON	306764	1975-05-28	SARNIA	Bus_Corp	CncCPPSB	1995-01-07	
TARN MARKETING LTD.							
AB	207915653	1998-07-03	EDMONTON	Bus_Corp	Dissolved	2014-08-14	
TARN MECHANICAL							
AB	TN6261192	1994-10-04		TradeName	Dissolved	1996-04-01	
TARN MECHANICAL							
AB	TN7417801	1997-06-09		TradeName	Active		
TARN MITCHELL HOLDINGS LTD.							
BC	1140645	2017-11-08	Surrey	Corp	Active	2017-11-08	
TARN RESOURCES LTD.							
AB	202477907	1980-07-14	CALGARY	Bus_Corp	Dissolved	2016-07-26	
TARN TARAN TRANSPORT INC.							
MB	7124831	2015-05-05	WINNIPEG	MBSHare	Active	2015-05-05	
Truck Transportation							
TARN TRANSPORT							
BC	FM0339564	2003-01-31		SoleProp	Active		
TARNA CARPENTRY							
AB	CRY038181	1980-03-13		TradeName	Active		

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2018-10-31

Corporate name/Dénomination sociale: Tarn*

Search within/Chercher dans: Search all/Sélectionner tout

COMPANY NAME / NOM DE L'ENTREPRISE						
JUR	NO.	DATE	CITY/VILLE	TYPE	STATUS/STATUT	STAT.DATE/DATE STAT.
BUS./ACT.						
TARNA CARPENTRY LTD.						
AB	202466132	1980-07-15	EDMONTON	Bus_Corp	Struck	1992-01-01
TARNA DAL HARIAN BELAN GATKA AKHARA INC.						
MB	10017076	2018-04-23	WEST ST PAUL	MBNShare	Active	2018-04-23
Amusement, Gambling and Recreat...						
Tarna Distribution Inc.						
CD	10445037	2017-10-12	Toronto	CBCA	Active	2017-10-12
TARNA DISTRIBUTION INC.						
ON	3164188	2017-10-12	TORONTO	FD_Share	Active	2017-10-17
TARNA MARKETING CONSULTANTS						
AB	PT4387544	1989-03-14		Ptnrshp	Active	
TARNACK ENTERPRISES						
AB	TN15517279	2010-08-06		TradeName	Active	
TARNAI CONSULTING						
BC	FM0227912	1997-10-06		SoleProp	Active	
TARNAPOL PRODUCERS CO-OPERATIVE ASSOCIATION						
SK	0000400347	1939-04-25		Rsctd_Vw	Inactive	1947-01-27
TARNASKY CONSTRUCTION LTD.						
AB	202160164	1979-08-28	ROCKY MOUNTAIN HOUSE	Bus_Corp	Struck	2004-02-02
TARNAT VENTURE CORPORATION						
BC	0284531	1984-11-01	NORTH VANCOUVER	Corp	Dslvd_FTF	2018-04-16
TARNATION						
AB	TN12211652	2006-02-06		TradeName	Dissolved	2006-02-28
TARNATION						
AB	PT12257523	2006-02-28		Ptnrshp	Dissolved	2009-12-22
TARNATION						
AB	TN15082670	2009-12-22		TradeName	Active	
TARNATION TRANSPORTATION LTD.						
AB	2020660318	2017-08-31	BELLIS	Bus_Corp	Active	
TARNAVA AND FARRELL PROPERTIES LTD.						
AB	2121479469	2018-10-09	LETHBRIDGE	EP_Corp	Active	
TARNAVA AND FARRELL PROPERTIES LTD.						
AB	120567517	2018-10-05			Prop.DURHAM2	
TARNAVA AND FARRELL PROPERTIES LTD.						
BC	1182231	2018-10-09	Vancouver	Corp	Active	2018-10-09

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2018-10-31

Corporate name/Dénomination sociale: Tarn*

Search within/Chercher dans: Search all/Sélectionner tout

COMPANY NAME / NOM DE L'ENTREPRISE						
JUR	NO.	DATE	CITY/VILLE	TYPE	STATUS/STATUT	STAT.DATE/DATE STAT.
BUS./ACT.						
TARNAVA COMMERCIAL SERVICES LTD						
AB	200586246	1971-07-21		Bus_Corp	Struck	1985-01-01
TARNAVA MARKETING						
BC	FM0407002	2005-09-20		SoleProp	Active	
TARNAWAI PETROLEUM CONSULTING INC.						
AB	2012120735	2005-12-22	CALGARY	Bus_Corp	Active	2018-04-24
TARNAWSKI ENTERPRISES INC.						
ON	1150742	1995-12-06	BURLINGTON	Bus_Corp	Vol_Dsltn	2005-11-25
TARNDDEEP ATHWAL PROFESSIONAL CORPORATION						
AB	2019178777	2015-08-31	CALGARY	Bus_Corp	Active	
TARNE GRODD INVESTMENT INC.						
ON	1909661	2014-01-22	TORONTO	Bus_Corp	Active	2014-01-22
TARNEET SHOES INC.						
ON	2375277	2013-05-30	BRAMPTON	Bus_Corp	Active	2013-05-30
TARNEJA HOLDINGS LTD.						
ON	329052	1976-01-19	TORONTO	Bus_Corp	Active	2005-08-31
TARNEJA INVESTMENTS INC.						
ON	543371	1983-03-11		Bus_Corp	Amlgmtd	1992-06-27
TARNEL ENTERPRISES INC.						
ON	914988	1990-12-20	HAMILTON	Bus_Corp	CnclCPPSB	1994-09-03
TARNEL MANUFACTURING LTD.						
SK	0101044355	2003-05-09	WINKLER	Bus_Corp	StruckOff	2004-06-30
TARNEL MANUFACTURING LTD.						
AB	2110453202	2003-05-06	WINKLER	EP_Corp	Struck	2006-11-02
TARNER DEVELOPMENTS INC.						
ON	481101	1981-05-25		Bus_Corp	Cncl_CT	1992-06-27
TARNES ELECTRIC LTD.						
SK	0000530711	1972-08-22	KINDERSLEY	Bus_Corp	Active	1999-09-10
TARNES ELECTRIC LTD.						
AB	216623587	1995-07-28	CALGARY	EP_Corp	Active	
TARNES FARMES LTD.						
SK	0101052156	2004-01-09	REGINA	Bus_Corp	Active	2004-01-09
TARNES HOLDINGS LTD.						
SK	0101044012	2003-04-11	ESTEVAN	Bus_Corp	Active	2003-04-11

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2018-10-31

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Search within/Chercher dans: Search all/Sélectionner tout

COMPANY NAME / NOM DE L'ENTREPRISE						
JUR	NO.	DATE	CITY/VILLE	TYPE	STATUS/STATUT	STAT.DATE/DATE STAT.
BUS./ACT.						
TARNES INVESTMENTS LTD.						
SK	0101064957	2004-12-16	SASKATOON	Bus_Corp	Dissolved	2014-02-03
TARNEX GEOSERVICES						
BC	FM0069135	1986-05-02		SoleProp	Active	
TARNEX GEOSERVICES LTD.						
BC	0333446	1987-09-18	Kamloops	Corp	Active	2004-01-09
TARNEY'S ROAD & LEASE MAINTENANCE						
BC	FM0063935	1985-09-23		SoleProp	Active	
TARNFELD HOLDINGS INC.						
ON	389226	1978-06-30	TORONTO	Bus_Corp	Active	1992-06-27
TARNIK TRANSPORTATION LTD.						
BC	1092671	2016-10-11	Abbotsford	Corp	Active	2016-10-11
TARNILLEX						
AB	CRY151695	1988-02-29		TradeName	Active	
TARNISH & LUSTRE						
AB	TN17807967	2013-10-25		TradeName	Active	
TARNISHED CHIVALRY Inc.						
CD	9597719	2016-02-07	Toronto	CBCA	Active	2016-02-07
TARNISHED TIARA DESIGNS						
ON	270364102	2017-03-31	BOWMANVILLE	SI_PrpsHP	Active	2017-03-31
TARNISHED TIMBER RENTAL CO						
AB	PT20954517	2018-01-29		Ptnrshp	Active	
TARNJIT SAHOTA PROFESSIONAL CORPORATION						
AB	2020340994	2017-04-01	CALGARY	Bus_Corp	Historic	2018-08-06
TARNJIT SAHOTA PROFESSIONAL CORPORATION						
AB	2015547355	2010-08-24	CALGARY	Bus_Corp	Amlgmt	2017-04-01
TARNJOT TRANSPORT LTD.						
ON	2041863	2004-02-27	BRAMPTON	Bus_Corp	Active	2004-02-27
TARNO ENTERPRISES LTD.						
BC	0201593	1979-12-14	COURTENAY	Corp	Active	2003-12-23
TARNO'S SILVER BLADES CYCLE & SPORTS LTD.						
ON	568740	1983-10-31	NIAGARA FALLS	Bus_Corp	CorpNmChg	1993-05-25
TARNOACK FLOATING PRODUCTS LTD.						
CD	0611018	1958-09-30	MONTREAL	CCA1_Prvt	Dissolved	1979-03-24

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Search within/Chercher dans: Search all/Sélectionner tout

COMPANY NAME / NOM DE L'ENTREPRISE						
JUR	NO.	DATE	CITY/VILLE	TYPE	STATUS/STATUT	STAT.DATE/DATE STAT.
BUS./ACT.						
TARNOPOL HOLDINGS LTD.						
ON	370535	1977-11-22	GLOUCESTER	Bus_Corp	Cncl_CT	2006-04-08
TARNOR HOLDINGS INCORPORATED						
ON	294274	1974-09-06		Bus_Corp	Cncl_CT	1992-06-27
TARNOVIA COMPANY LIMITED						
ON	401184	1978-11-20	TORONTO	Bus_Corp	Active	1992-06-27
TARNOVIA MEAT & DELI, LTD.						
ON	1546087	2002-10-22	MISSISSAUGA	Bus_Corp	Vol_Dsltn	2008-02-15
TARNOW BROS. MOBILE HOMES LTD.						
BC	A0031359	1990-05-02	VICTORIA	EP	Active	2003-07-02
TARNOW BROS. MOBILE HOMES LTD.						
AB	203523089	1986-08-08	GRANDE PRAIRIE	Bus_Corp	Active	2009-01-26
TARNOW ENTERPRISES LTD.						
AB	202380341	1980-03-13	EDMONTON	Bus_Corp	Struck	2014-05-02
TARNOW LINTON PRODUCTIONS INC.						
ON	582405	1984-03-30		Bus_Corp	Cncl_CT	1992-06-27
TARNOW TRUCKING LTD.						
AB	205358039	1992-07-20		Bus_Corp	Amlgmt	1996-08-21
TARNOW-BERSCH CONSTRUCTION LIMITED						
ON	52134				Trsfrd	
TARNOWECKY LAW PROFESSIONAL CORPORATION						
ON	1923620	2015-03-10	KINGSTON	Bus_Corp	Active	2015-03-10
TARNOWECKY PARTNERSHIP						
ON	251213997	2015-12-21	KINGSTON	GnrlPrtnr	Active	2015-12-21
TARNOWETSKI MID-WEST BUILDERS LIMITED						
AB	203007034	1983-05-25	CALGARY	Bus_Corp	Dissolved	2013-05-23
TARNOWETZKI HOLDINGS LTD.						
SK	0000608776	1994-10-03	TUFFNELL	Bus_Corp	StruckOff	2005-03-31
TARNOWSKI AND ASSOCIATES						
AB	TN7665474	1998-01-26		TradeName	Active	
TARNOWSKI HOLDINGS INC.						
CD	0678392	1980-08-06	OTTAWA	CBCA	Dissolved	1984-12-04
TARNOWSKI HOLDINGS INC.						
ON	457983	1980-08-06		FD_Share	Removed	1992-06-27

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2018-10-31

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Search within/Chercher dans: Search all/Sélectionner tout

COMPANY NAME / NOM DE L'ENTREPRISE						
JUR	NO.	DATE	CITY/VILLE	TYPE	STATUS/STATUT	STAT.DATE/DATE STAT.
BUS./ACT.						
TARNOWSKI WELDING & MECHANICAL INC.						
BC	1130052	2017-08-11	Vancouver	Corp	Active	2017-08-11
TARNOWSKY COMMERCIAL CLEANING						
AB	TN14570758	2009-03-10		TradeName	Active	
TARNOWSKY, G.L. PROFESSIONAL CORPORATION						
AB	208110056	1998-12-21	CALGARY	Bus_Corp	Active	
TARNOWSKY, G.L. PROFESSIONAL CORPORATION						
ON	1507041	1998-12-21	CALGARY	EPDomShar	Active	2001-12-19
TARNPURE NORTH AMERICA INC.						
AB	207727561	1998-02-24	EDMONTON	Bus_Corp	Struck	2000-08-01
TARNS HAIR STUDIO						
ON	260025895	2016-01-08	ETOBICOKE	AsmdBusNm	Active	2016-01-08
TARNSMAN ENTERPRISES						
AB	CRY065921	1982-07-30		TradeName	Active	
TARNEK INC.						
ON	1432774	2000-09-13	OAKVILLE	Bus_Corp	Vol_Dsltn	2017-05-18
TARNWOOD DEVELOPMENTS LTD.						
AB	201193042	1978-06-01	EDMONTON	Bus_Corp	Struck	1988-12-01
TARNWOOD'S THE WHEATGRINDERS						
BC	FM0020156	1976-02-11		SoleProp	Active	
THE TARNOPOL UKRAINIAN NATIONAL HOME ASSOCIATION						
SK	0000008030			Rsctd_Vw	Inactive	1948-09-02
THE TARNOY GROUP INCORPORATED						
ON	1386290	1999-12-21	NIAGARA FALLS	Bus_Corp	CorpNmChg	2001-10-30
TIMBER & TARNISH						
MB	7312581	2016-03-30	WINNIPEG	Partner	Active	2016-03-30
Wholesale Electronic Markets, a...						
TOBY TARNOW PRODUCTIONS LIMITED						
ON	210152	1968-02-29	TORONTO	Bus_Corp	CnclCPPSB	1994-10-29
VICTOR TARNOY ARCHITECT INC.						
ON	796038	1988-09-19	TORONTO	Bus_Corp	CnclCPPSB	1994-06-25
YEAN-JING-TARNG INVESTMENTS INC.						
BC	0348702	1988-07-18	Vancouver	Corp	Active	2003-09-03

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2018-10-31

Corporate name/Dénomination sociale: Tarn*

Search within/Chercher dans: Search all/Sélectionner tout

TRADEMARK / MARQUE DE COMMERCE				OWNER / PROPRIÉTAIRE
AP. NO. / NO. AP.	REG. NO. / NO. ENR.	REG. DATE / DATE. ENR.	STATUS / STATUT	CLASSES
GOODS/PRODUITS				
CAREFREE TOTAL TARNISH PROTECTION & DESIGN 0596078 Hollow-ware.	TMA0354733	1989-04-21	Expunged	LEVINTER INDUSTRIES LIM 8
D-TARNISH 0371141 Cleaner for silverware.	TMA0203481	1974-11-29	Registered	Diversey IP Internation 3
NO DRIPS! NO TARNISH! NO WORRIES! DESIGN 0864933 Plumbing fittings and fixtures, namely, faucets, showerheads, handles,...	TMA0539195	2001-01-05	Expunged	Spectrum Brands, Inc. 11
TARN AWAY 0455933 Tarnish remover.	TMA0293921	1984-08-10	Expunged	LES PROMOTIONS ATLANTIQU 3
TARN AWAY 0344752 Tarnish remover.	TMA0193751	1973-08-31	Expunged	RONCO TELEPRODUCTS INC. 3
TARN OFF 0455934 Tarnish remover.	TMA0287783	1984-02-10	Expunged	LES PROMOTIONS ATLANTIQU 3
TARN TOWERS 1719932 Management, administration, financing, development, leasing and...	TMA		Aband40-3	Samm Capital Holdings I 35,36,37,43
TARN-EX 0418033 Liquid tarnish remover.	TMA		Abandoned	FEATURE PRODUCTS INC., 3
TARN-I-SHIELD 0274766 A tarnish preventative and cleaner.	TMA0133785	1963-12-13	Registered	3M Company (a Delaware 3
TARN-X 0418034 Liquid tarnish remover.	TMA		Abandoned	FEATURE PRODUCTS INC. 3
TARN-X 0422316 Tarnish remover for silver, platinum, copper, brass gold and diamonds.	TMA0242595	1980-04-11	Registered	Jelmar, LLC an Illinois 3,6,14
TARN-X Design 1542488 Tarnish remover for use on surfaces made of metals, precious metals,...	TMA0841267	2013-01-28	Registered	Jelmar, LLC, an Illinois 3
TARN-X PRO 1539383 Tarnish remover for use on surfaces made of metals, precious metals,...	TMA0844386	2013-02-22	Registered	Jelmar, LLC (an Illinois 3
TARN-X PRO & Design 1539384 Tarnish remover for use on surfaces made of metals, precious metals,...	TMA0844385	2013-02-22	Registered	Jelmar, LLC (an Illinois 3
Tarnick 0985040	PBRA0004041		Granted	Agriculture & Agri-Food 31
TARNISH 1369197 Apparel and fashion accessories, namely, slacks, skirts, sweatpants,...	TMA		Aband40-3	Nordstrom, Inc. 16,18,25
TARNISH MAGNET 0487081 Detarnishing tool, namely, a chemically active strip, for silver,...	TMA0282468	1983-08-19	Expunged	BREAKTHRU, INC., 8

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2018-10-31

Corporate name/Dénomination sociale: Tarn*

Search within/Chercher dans: Search all/Sélectionner tout

TRADEMARK / MARQUE DE COMMERCE				OWNER / PROPRIÉTAIRE
AP. NO. / NO. AP.	REG. NO. / NO. ENR.	REG. DATE / DATE. ENR.	STATUS / STATUT	CLASSES
GOODS/PRODUITS				
TARNO 0136492	| TMDA0042742	| 1927-10-31	| Registerd	| Hu-Friedy Mfg. Co., LLC | 10
Dental instruments				
TARNO 0215255	| UCA0042271	| 1952-05-31	| Expunged	| THE PROCTER & GAMBLE CO | 1,3,5,10
A tissue which is impregnated with a chemical which reacts with...				
TARNOW 0545821	| TMA0315834	| 1986-06-27	| Expunged	| MINEX FOREIGN TRADE ENT | 21,34
Table glassware, tableware of crystal, punchbowls, candy boxes, jugs,...				
TARNX PRO 1539385	| TMA0844384	| 2013-02-22	| Registerd	| Jelmar, LLC (an Illinois) | 3
Tarnish remover for use on surfaces made of metals, precious metals,...				
TARNX PRO & Design 1539390	| TMA0844383	| 2013-02-22	| Registerd	| Jelmar, LLC an Illinois | 3
Tarnish remover for use on surfaces made of metals, precious metals,...				
WODKA TARNOWSKI & DESSIN 0289897	TMA0149031	1967-01-27	Expunged	SOCIETE ST-RAPHAEL, SOC 30,32,33
Vins, vins mousseux, cidres, apéritifs, alcools et eaux-de-vie,...				

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Corporate name/Dénomination sociale: Tam*

Search within/Chercher dans: Search all/Sélectionner tout

Data provider information / Information concernant les fournisseurs des données

Data provider / Fournisseur des données	Data Available / Données disponibles	Update intervals / Intervalle de mise à jour	Latest update dates / Dernière mise à jour YYYY/MM/DD	Reference / Référence
Nova Scotia / Nouvelle-Écosse	Corporate and trade names/Dénominations de société et noms commerciaux	Daily/Quotidien	2018-10-30	http://www.gov.ns.ca/snsmr/rjsc
Saskatchewan / Saskatchewan	Corporate and trade names/Dénominations de société et noms commerciaux	Monthly/Mensuel	2018-10-01	http://www.isc.ca
British Columbia / Colombie-Britannique	Corporate names/Dénominations de société	Daily/Quotidien	2018-10-30	http://www.bcregistry.ca
Northwest Territories / Territoires du Nord-Ouest	Trade names/Noms commerciaux	Weekly/Hebdomadaire	2018-10-30	http://www.gov.nt.ca
Federal / Fédéral	Corporate names/Dénominations de société	Weekly/Hebdomadaire	2018-10-24	http://www.corporationscanada.ic.gc.ca
Ontario / Ontario	Trade names/Noms commerciaux	Weekly/Hebdomadaire	2018-10-28	http://www.ontario.ca/business
Nunavut / Nunavut	Corporate names/Dénominations de société	Weekly/Hebdomadaire	2018-10-30	http://www.gov.nu.ca/business
Prince Edward Island / Île-du-Prince-Édouard	Corporate and trade names/Dénominations de société et noms commerciaux	Weekly/Hebdomadaire	2018-10-25	http://www.gov.pe.ca/corporations
Trademarks / Marques de commerce	All registrations and applications, seeds, sections 9/ Tout les enregistrements et demandes, semences et section 9	Weekly/Hebdomadaire	2018-10-30	http://www.cipo.ic.gc.ca
Alberta / Alberta	Trade names/Noms commerciaux	Weekly/Hebdomadaire	2018-10-29	http://www.servicealberta.ca
British Columbia / Colombie-Britannique	Trade names/Noms commerciaux	Weekly/Hebdomadaire	2018-10-31	http://www.bcregistry.ca
Manitoba / Manitoba	Corporate and trade names/Dénominations de société et noms commerciaux	Monthly/Mensuel	2018-10-23	http://www.gov.mb.ca
New Brunswick / Nouveau-Brunswick	Corporate and trade names/Dénominations de société et noms commerciaux	Monthly/Mensuel	2018-10-04	http://www.snb.ca
Alberta / Alberta	Corporate names/Dénominations de société	Weekly/Hebdomadaire	2018-10-22	http://www.servicealberta.ca
Northwest Territories / Territoires du Nord-Ouest	Corporate names/Dénominations de société	Weekly/Hebdomadaire	2018-10-30	http://www.gov.nt.ca
Yukon / Yukon	Corporate names/Dénominations de société	Monthly/Mensuel	2018-10-01	http://www.community.gov.yk.ca/corp
Newfoundland and Labrador / Terre-Neuve-et-Labrador	Corporate and trade names/Dénominations de société et noms commerciaux	Monthly/Mensuel	2018-10-03	http://www.gs.gov.nl.ca/registries
Ontario / Ontario	Corporate names/Dénominations de société	Weekly/Hebdomadaire	2018-10-27	http://www.ontario.ca/business
Nunavut / Nunavut	Trade names/Noms commerciaux	Weekly/Hebdomadaire	2018-10-30	http://www.gov.nu.ca/business
Yukon / Yukon	Trade names/Noms commerciaux	Monthly/Mensuel	2018-10-01	http://www.community.gov.yk.ca/corp
Office of the Superintendent of Financial Institutions / Bureau du surintendant des institutions financières	Corporate names/Dénominations de société	Other/Autre	2016-05-24	http://www.osfi-bsif.gc.ca

Abbreviation terminology and description / Description et terminologie des abréviations

Abbreviation/Abréviation	English Term	Terme français	Description
Pre-search report / Rapport de prérecherche			
Names / Dénominations			
JUR.	Jurisdiction Code	Code d'autorité législative	Place where company or trade name is incorporated or registered / Lieu où l'entreprise ou la dénomination commerciale est constituée ou enregistrée
NO.	Company Number	Numéro de l'entreprise	I.D. number attributed by the authority / Numéro d'identification assigné par l'autorité
DATE	Creation Date	Date de création	Creation date of the company / Date de création de l'entreprise
CITY/VILLE	City	Ville	Place where registered office is situated / Lieu où le siège social est situé
EP	Extra-Provincial Code	Code extra-provincial	Place where the company originates from / Lieu d'origine de l'entreprise
TYPE	Company Type	Type d'entreprise	Business structure of the company / Structure de l'entreprise
STATUS/STATUT	Legal Status	Statut Légal	Current state of the company / État actuel de l'entreprise
STAT. DATE/DATE STAT.	Status Date	Date du statut	Date when status took effect / Date d'entrée en vigueur du statut
BUS./ACT.	Business activity	Secteur d'activité de l'entreprise	Business activity of the company / Secteur d'activité de l'entreprise
Trademark / Marque de commerce			
AP.NO./NO.AP.	Application Number	Numéro d'application	I.D. number attributed by the authority / Numéro d'identification assigné par l'autorité
REG.NO./NO.ENR.	Registration Number	Numéro d'enregistrement	I.D. number attributed by the authority / Numéro d'identification assigné par l'autorité
STATUS/STATUT	Status	Statut	Current state of the trademark / État actuel de la marque de commerce
OWNER / PROPRIÉTAIRE	Owner name	Propriétaire	Name of trademark owner / Nom du propriétaire de la marque de commerce
GOODS/PRODUITS	Goods and Services	Produits et services	Goods and services associated with a trademark / Produits et services associés à une marque de commerce
CLASSES	Nice Class Codes	Codes des classes Nice	Classification codes / Codes de classification
REG.DATE/DATE.ENR	Registration Date	Date d'enregistrement	Date on which a trademark is registered / Date à laquelle la marque de commerce est enregistrée

Reference / Référence

Reference / Référence	
Nuans home page / Page d'accueil de Nuans : http://www.nuans.com	Nuans report codes / codes des rapports Nuans : https://www.ic.gc.ca/eic/site/075.nsf/eng/00015.html
NAICS codes / codes SCIAN : http://www.naics.com/search/ (in English only/en anglais seulement)	Office of the Superintendent of Financial Institutions / Bureau du surintendant des institutions financières : http://www.osfi-bsif.gc.ca
Nice class codes / codes classification Nice : English: http://www.wipo.int/classifications/nice/en/index.html French: http://www.wipo.int/classifications/nice/fr/index.html	Registraire des entreprises du Québec : English: http://www.registreentreprises.gouv.qc.ca/en French: http://www.registreentreprises.gouv.qc.ca/

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Volkan Basegmez et al.
Applicants

And Ali Akman et al.
Respondents

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

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

Proceeding commenced at Toronto

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

MILLER THOMSON LLP

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

Kyla Mahar LSO#: 44182G

Tel: 416.597.4303 / Fax: 416.595.8695

Stephanie De Caria LSO#: 68055L

Tel: 416.595.2652 / Fax: 416.595.8695

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

TAB 3

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

THE HONOURABLE) TUESDAY, THE 6TH
)
JUSTICE MCEWEN) DAY OF NOVEMBER, 2018
)

BETWEEN:

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

Applicants

- and -

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

Respondents

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

SECOND DISTRIBUTION ORDER

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

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

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

SERVICE AND GENERAL

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

SECOND DISTRIBUTIONS

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

GENERAL PROVISION

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

SECOND DISTRIBUTION ORDER
DATED NOVEMBER 6, 2018

MILLER THOMSON LLP

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

Kyla Mahar LSO#: 44182G

Tel: 416.597.4303 / Fax: 416.595.8695

Stephanie De Caria LSO#: 68055L

Tel: 416.597.2652 / Fax: 416.595.8695

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

Volkan Basegmez et al.
Applicants

and Ali Akman et al.
Respondents

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

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

Proceeding commenced at Toronto

**MOTION RECORD
(NOVEMBER 6, 2018)**

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Kyla Mahar LSUC#: 44182G

Tel: 416.597.4303 / Fax: 416.595.8695

Stephanie De Caria LSUC#: 68055L

Tel: 416.595.2652 / Fax: 416.595.8695

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