

**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**

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

**May 19, 2023**

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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. (“**BA&B**”), Serdar Kocturk and KAAN Holdings Inc. (“**KAAN**”) (collectively, the “**Applicants**”) commenced an application (the “**Application**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 seeking an Order winding up Tarn Financial Corporation (“**Tarn Financial**”) and appointing KPMG Inc. (“**KPMG**”) as liquidator for that purpose. The Applicants are shareholders of Tarn Financial and collectively hold 60% of the common shares of Tarn Financial. The remaining 40% of the common shares of Tarn Financial are held by the Respondent, SAMM Capital Holdings Inc. (“**SAMM**”), a company owned by the Respondent, Ali Akman (“**Akman**”). BA&B, KAAN and SAMM are referred to herein as the “**Shareholders**”.
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 Ninth Report to the Court and the Receiver’s (as defined below) Seventh Report to the Court (the “**Ninth Report**”).
3. The business and assets of Tarn Financial included the Delta Toronto East Hotel (the “**Hotel**”) and adjoining development lands that were being developed by Tarn Financial, through its wholly owned subsidiary, Tarn Construction Corporation (“**Tarn Construction**”), as a development known as “The Kennedys” (the “**Development Project**”) located at 2035 Kennedy Rd., Scarborough, Ontario (the “**Real Property**”). The assets of Tarn Financial were sold pursuant to the Transaction (as defined below) that closed on June 29, 2018 (the “**Closing Date**”).

4. On October 6, 2017, Akman and SAMM filed a Notice of Appeal with the Divisional Court of the Ontario Superior Court of Justice (the “**Divisional Court**”) appealing the Winding Up Order (the “**Appeal**”). The Appeal was heard on January 30, 2018, by the Divisional Court and on February 6, 2018, the Divisional Court dismissed the Appeal.
5. The Liquidator issued its first report to the Court on November 13, 2017 (the “**First Report**”). On November 16, 2017, the Liquidator issued a first supplemental report to the Court (the “**First Supplemental Report**”) and on November 28, 2017, the Liquidator issued a second supplemental report to the First Report (the “**Second Supplemental Report**”).
6. As detailed in the First Report, the First Supplemental Report and the Second Supplemental Report, the Liquidator brought a motion (the “**Sale Process Motion**”) seeking an Order (the “**Sale Process Order**”), among other things: (a) authorizing the Liquidator to enter into and approving a marketing and listing agreement between the Liquidator and CBRE Limited (“**CBRE**”) dated November 10, 2017; (b) approving the sale process (the “**Sale Process**”); and (c) authorizing, but not obligating, the Liquidator to file a consent to sever the Real Property.
7. The Sale Process Motion was scheduled to be heard before the Court on November 17, 2017. The Sale Process Motion was adjourned on an unopposed basis to November 24, 2017, to allow the Applicants, SAMM and Akman time to formalize a settlement that the parties advised the Liquidator had been reached between them in principle.
8. The settlement was not finalized by November 24, 2017, and the Sale Process Motion was heard on that day and was unopposed except for the Order seeking the approval of a marketing and listing agreement between the Liquidator and CBRE. This aspect of the relief sought was opposed by SAMM and Akman. On November 24, 2017, Justice McEwen declined to grant the Order approving the marketing and listing agreement between the Liquidator and CBRE.
9. Justice McEwen directed the Liquidator to retain another marketing and listing agent and adjourned the Sale Process Motion to allow the Liquidator to do so. Thereafter, on November 29, 2017, Justice McEwen granted the Sale Process Order which, among other things: (a) approved the retention by the Liquidator of Colliers Macaulay Nicolls

Inc. to be the marketing and listing agent; and (b) approved the Sale Process including revisions thereto, in order to address the change in the marketing and listing agent.

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

Liquidator as set out therein.

12. On April 13, 2018, the Court granted the Claims Procedure Order, the Receivership Order, the Deposit Confirmation Procedure Order and the April 2018 Ancillary Order. A copy of the Receivership Order is attached as **Appendix “B”** to this Ninth 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 regarding the granting the Approval and Vesting Order, the Disputed Deposits Resolution Procedure Order, and the Termination Entitlement Order.
15. The Liquidator issued its fourth report to the Court and the Receiver issued its second report to the Court on June 8, 2018 (collectively, the “**Fourth Report**”). As detailed in the Fourth Report, the Liquidator and Receiver brought a motion returnable on June 14, 2018, seeking an Order (the “**Deposit Return Procedure Order**”) establishing a procedure for the termination of Purchasers’ APSs and the return of Proven Deposits (as defined in the Disputed Deposits Resolution Procedure Order) to Purchasers of proposed condominium units in the contemplated Development Project (the “**Deposit Return Procedure**”). The Deposit Return Procedure Order:
  - a. Enabled the Receiver to commence the Deposit Return Procedure in order to return Proven Deposits to Purchasers;
  - b. Enabled the Receiver to terminate Purchasers’ APSs in accordance with their terms, as set out in the Termination Entitlement Order, upon being satisfied with (i) an executed Release Agreement, and (ii) properly completed Certificate(s) of Identity attaching copies of two pieces of valid identification from each Purchaser named on the APS;
  - c. Confirmed that interest is not payable on the Proven Deposits pursuant to the *Condominium Act* and its regulations; and
  - d. Released and discharged the Receiver, the Liquidator, Tarn Construction, Tarn Financial, Bennett Jones, in its capacity as Deposit Trustee (the “**Deposit Trustee**”), The Guarantee Company of North America (“**The Guarantee Company**”) and Tarion Warranty Corporation (“**Tarion**”) from any Claims relating to the Deposits, including interest thereon.



16. On June 14, 2018, the Court granted the Deposit Return Procedure Order.
17. The Liquidator issued its fifth report to the Court and the Receiver issued its third report to the Court on July 20, 2018 (collectively, the “**Fifth Report**”). As detailed in the Fifth Report, the Liquidator and Receiver brought a motion returnable on July 26, 2018, seeking:
  - a. An Order (the “**First Distribution Order**”), subject to the Liquidator either entering into satisfactory reimbursement terms with the following secured creditors relating to potential priority claims or establishing a sufficient reserve to account for potential priority claims, authorizing and directing the Liquidator to make a distribution:
    - (i) First to Meridian Credit Union (“**Meridian**”) to repay in full the indebtedness owed by Tarn Financial to Meridian, which was secured by first ranking security;
    - (ii) Second to Kingsett Mortgage Corporation (“**Kingsett**”) to repay in full the indebtedness owed by Tarn Financial to Kingsett, which was secured by second ranking security; and
    - (iii) Third, subject to establishing a reserve with The Guarantee Company and Tarion in accordance with the terms of the Deposit Return Procedure Order, to repay in full the borrowings made by the Liquidator under the Borrowings Charge; and
  - b. An Order (the “**Fees and Conduct Approval Order**”) approving:
    - (i) The fees of the Liquidator and the Receiver and the Liquidator’s and the Receiver’s legal counsel from January 1, 2018, to April 30, 2018; and
    - (ii) The Third Report, the Fourth Report and the Fifth Report and the activities and conduct of the Liquidator and the Receiver as set out therein.
18. On July 26, 2018, the Court granted the First Distribution Order.
19. The Respondents, SAMM and Akman, requested that the Liquidator and the Receiver adjourn the motion seeking the Fees and Conduct Approval Order in order to provide

SAMM and Akman additional time to review the fees and dockets of the Liquidator, the Receiver and their counsel. The motion was adjourned on consent.

20. On September 14, 2018, counsel for SAMM and Akman advised counsel for the Liquidator and the Receiver that they were not opposing the Fees and Conduct Approval Order. On October 1, 2018, the Court granted the Fees and Conduct Approval Order.
21. The Liquidator issued its sixth report to the Court and the Receiver issued its fourth report to the Court on October 31, 2018 (collectively, the “**Sixth Report**”). As detailed in the Sixth Report, the Liquidator brought a motion returnable on November 6, 2018, seeking an Order (the “**Second Distribution Order**”) authorizing and directing the Liquidator to make a distribution to construction lien Claimants with valid construction liens in the amount of their Proven Claims as determined under the Tarn Financial Claims Process.
22. Returnable on the same date, the Applicants also brought a motion seeking an Order:
  - a. Declaring void and invalid and setting aside *ab initio*, the creation of certain Class B voting shares (the “**Class B Shares**”) and the issuance of the Class B Shares to Akman, and rectifying Tarn Financial’s Articles of Incorporation accordingly; and
  - b. Declaring void and setting aside certain guarantee, security and related agreements Akman caused Tarn Financial to enter into for the benefit of SAMM, which at the time were being relied upon by Akman and SAMM to support a secured claim against Tarn Financial.
23. On November 6, 2018, the Court granted the Second Distribution Order. The Applicants’ motion was adjourned to November 26, 2018.
24. The Applicants and the Respondents resolved the Applicants’ motion and on November 23, 2018, the Court granted a Consent Order:
  - a. Declaring that, on consent, any and all charge/mortgages of land and security interests granted by Tarn Financial in favour of SAMM (the “**SAMM Security**”) are postponed and fully subordinated to the claims of the third-party unrelated creditors of Tarn Financial such that the Liquidator may affect a distribution to all such creditors without regards to, and free and clear of, the SAMM Security;

- b. Ordering that the above declaratory relief is without prejudice to the position of the parties and in this regard, the validity of the SAMM Security as against the Applicants and the relative priority of the claims of the Applicants, which will be determined at the same time as any dispute(s) with respect to the quantum of the claims being asserted against Tarn Financial by SAMM and the Applicants; and
  - c. Declaring that, on consent, the Class B Shares be and are hereby void *ab initio*, and accordingly, the Articles of Incorporation of Tarn Financial be and are hereby amended to remove the Class B Shares.
25. The Liquidator issued its seventh report to the Court and the Receiver issued its fifth report to the Court on April 9, 2019 (collectively, the “**Seventh Report**”). As detailed in the Seventh Report, the Liquidator brought a motion returnable on April 15, 2019, seeking:
- a. Advice and directions from the Court in accordance with paragraphs 27 and 35 of the Claims Procedure Order. The Liquidator sought directions from the Court regarding finally disallowing the Claims filed in the Tarn Financial Claims Process by condominium brokers (the “**Brokers**”) pursuant to Agreements to Cooperate between a Cooperating Brokerage and Tarn Construction in respect of sale commissions for unbuilt condominium units sold by Tarn Construction at the Development Project where such Claimants have objected to the Liquidator’s determination of their Claims and submitted a Notice of Objection in accordance with the Claims Procedure Order;
  - b. An Order (the “**Third Distribution Order**”) authorizing and directing the Liquidator to make a distribution to third-party unsecured Claimants up to the amount of their Proven Claims as determined under the Tarn Financial Claims Process;
  - c. An Order (the “**Tarion Cash Collateral Procedure Order**”) among other things:
    - (i) Directing the Liquidator to pay, within five business days of the granting of the Tarion Cash Collateral Procedure Order, the amount of \$600,000 to Tarion (the “**Tarion Cash Collateral**”), against which amount Tarion may make, and process payments in respect of, Tarion Cash Collateral Claims (as defined in the Tarion Cash Collateral Procedure Order);

- (ii) Upon Tarion's receipt of the Tarion Cash Collateral, directing the delivery to The Guarantee Company of the Tarion Bonds (as defined in the Tarion Cash Collateral Procedure Order) for immediate cancellation;
  - (iii) Declaring that the Receiver shall no longer be required to comply with the requirement under the Deposit Return Procedure Order to deliver a Statutory Declaration to Tarion and The Guarantee Company every two weeks;
  - (iv) Authorizing the process through which Tarion is to report on and use the Tarion Cash Collateral to pay any Tarion Cash Collateral Claims; and
  - (v) Directing the Liquidator to make a distribution to The Guarantee Company in full and final satisfaction of all amounts owing by Tarn Financial to The Guarantee Company in accordance with the Claims Procedure Order; and
- d. An Order (the "**April 2019 Ancillary Order**") among other relief;
- (i) Declaring that the Claims of the Brokers, which have filed Notices of Objection in the Tarn Financial Claims Process, are forever extinguished, barred, discharged and released as against Tarn Financial and the Liquidator;
  - (ii) Approving the fees of the Liquidator and the Receiver and the Liquidator's and the Receiver's legal counsel from May 1, 2018, to December 31, 2018; and
  - (iii) Approving the Sixth Report and the Seventh Report and the activities and conduct of the Liquidator and the Receiver as set out therein.
26. On April 15, 2019, the Court granted the Third Distribution Order, the Tarion Cash Collateral Procedure Order and the April 2019 Ancillary Order.
27. On April 23, 2019, the Applicants served a motion returnable April 30, 2019, for an Order authorizing and directing the Liquidator to make an interim distribution to the Applicants in an amount equal to 85 percent of the amount of the Applicants' claim as

set out in the Sources and Uses Report (as defined below). The Applicants' motion was initially opposed by the Respondents.

28. Thereafter, the Applicants and the Respondents agreed to an interim distribution in an amount equal to 75 percent of the shareholder loan claims in the amount of \$3,000,000 and \$6,000,000, for KAAN and BA&B, respectively, submitted by the Applicants in the Tarn Financial Claims Process and 75 percent of \$2,570,000 to SAMM (being the amount the parties agreed to base the distribution on and not the amount of the shareholder loan claim filed by SAMM). The above amounts are each an "**Eligible Shareholder Loan Claim**".
29. Accordingly, on April 30, 2019, the Court granted an Order (the "**Fourth Distribution Order**"), authorizing and directing the Liquidator to make interim distributions to: (a) KAAN in the amount of \$2,250,000; (b) BA&B in the amount of \$4,500,000; and (c) SAMM in the amount of \$1,927,500. A copy of the Fourth Distribution Order is attached as **Appendix "C"** to this Ninth Report.
30. A trial to determine the disputed Non Arms-Length Claims (as defined in the Claims Procedure Order) was originally scheduled to be heard on June 3, 4 and 7, 2019. On April 30, 2019, those dates were vacated, and the trial was scheduled for September 16, 17 and 18, 2019. Those dates were subsequently vacated at an attendance before Justice McEwen on July 12, 2019.
31. On January 29, 2020, a new trial date was set by Justice McEwen for October 5, 6 and 7, 2020 to determine the disputed Non Arms-Length Claims. A pre-trial conference before Justice Hainey was scheduled for August 25, 2020, and a trial management meeting before Justice McEwen was scheduled for September 15, 2020.
32. The Liquidator issued its eighth report to the Court and the Receiver issued its sixth report to the Court on March 9, 2020 (collectively, the "**Eighth Report**"). A copy of the Eighth Report, without exhibits, is attached as **Appendix "D"** to this Ninth Report. As detailed in the Eighth Report, the Liquidator brought a motion returnable on March 13, 2020, seeking an Order (the "**Fifth Distribution Order**"):

- a. Authorizing and directing the Liquidator to make a further five percent (5%) interim distribution to the Applicants and Respondents in respect of their Non Arms-Length Claims (the “**Fifth Distribution Order**”); and
  - b. Approving the Eighth Report and the activities and conduct of the Liquidator and Receiver as set out therein.
33. On March 13, 2020, the Court granted the Fifth Distribution Order. A copy of the Fifth Distribution Order is attached as **Appendix “E”** to this Ninth Report.
34. Capitalized terms not defined herein shall have the meanings set out in the Winding Up Order and the Claims Procedure Order.

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

35. The purpose of this Ninth Report is to update the Court with respect to:
- a. The trial to determine the disputed Non Arms-Length Claims, the related reasons for judgement and cost endorsement and the Applicant’s request for an allocation of certain of the fees of the Liquidator and its counsel incurred during these Winding Up Proceedings;
  - b. The distributions to the Shareholders made by the Liquidator since the date of the Eighth Report;
  - c. The Liquidator’s statement of receipts and disbursement since the date of its appointment up to and including May 19, 2023;
  - d. The activities of the Liquidator and the Receiver since the Eighth Report;
  - e. The fees and disbursements of the Liquidator and the Receiver and of the Liquidator and Receiver’s counsel for the period January 1, 2019, to April 30, 2023, and the estimated fees to completion of the Winding Up Proceedings and the Receivership Proceedings;
  - f. The proposed bankruptcy of Tarn Construction;
  - g. The remaining activities to conclude the Winding Up Proceedings and the Receivership Proceedings; and

- h. To provide the Court with the necessary information to support the granting of an Order (the “**Discharge Order**”) substantially in the form contained at Tab 3 of the Motion Record dated May 19, 2023 (the “**Motion Record**”):
- (i) Approving the activities and conduct of the Liquidator and Receiver as set out in the Ninth Report;
  - (ii) Approving the fees and disbursements of the Liquidator and the Receiver, and the legal fees and disbursements of the Liquidator’s and Receiver’s counsel, Miller Thomson LLP (“**Miller Thomson**”) for the period January 1, 2019, to April 30, 2023, as well as an accrual for the estimated fees and disbursements of the Liquidator and the Receiver and the Liquidator’s and the Receiver’s counsel to be incurred to the completion of the Winding Up Proceedings and the Receivership Proceedings;
  - (iii) Granting leave to and authorizing the Receiver to assign Tarn Construction into bankruptcy, and authorizing KPMG to act as trustee in bankruptcy of Tarn Construction (the “**Trustee in Bankruptcy**”);
  - (iv) Discharging KPMG as Receiver of Tarn Construction effective upon the Receiver’s filing of a certificate with the Court, substantially in the form attached as Schedule “A” to the proposed Discharge Order (the “**Receiver's Discharge Certificate**”), certifying that all matters to be attended to in connection with the receivership of Tarn Construction have been completed to the satisfaction of the Receiver;
  - (v) Ordering that upon the filing of the Receiver’s Discharge Certificate, KPMG shall be discharged from any and all liability that KPMG now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KPMG while acting in its capacity as Receiver of Tarn Construction, save and except for any gross negligence or willful misconduct on the Receiver’s part;
  - (vi) Approving, *nunc pro tunc*, the following distributions made by the Liquidator from the proceeds in the estate of Tarn Financial to the

Shareholders;

- A. The amount of \$2,653,507 distributed on or about November 2, 2023, in full and final repayment of each of the Shareholders' outstanding shareholder loans; and
  - B. The amount of \$7,000,000 distributed on or about December 22, 2022, rateably according to each of the Shareholders' rights and interests in Tarn Financial, being 40% to BA&B, 40% to SAMM and 20% to KAAN (the "**Shareholders' Rights and Interests in Tarn Financial**");
- (vii) Authorizing and directing the Liquidator to establish a reserve fund (the "**Reserve**") as described in the Ninth Report;
  - (viii) Authorizing the Liquidator to distribute the remaining proceeds available in the estate of Tarn Financial to the Shareholders rateably according to the Shareholders' Rights and Interests in Tarn Financial, with such distribution to be made after: (A) the Liquidator and Receiver's fees and disbursements and Miller Thomson's fees and disbursements are paid; and (b) the setting aside and holding of the Reserve in trust, to be used to fund the amounts as described in the Ninth Report, if and when due;
  - (ix) Authorizing the Liquidator to distribute any amounts remaining in the Reserve after the Liquidator has fully and finally addressed all matters to be addressed as set out in the Ninth Report, with such distribution to be made to the Shareholders rateably according to the Shareholders' Rights and Interests in Tarn Financial;
  - (x) Dissolving Tarn Financial effective upon the Liquidator's filing of a certificate with the Court, substantially in the form attached as Schedule "B" to the proposed Discharge Order (the "**Dissolution Certificate**");
  - (xi) Authorizing the Liquidator to dispose of any books and records of Tarn Financial that are not required to be retained, and ordering the Liquidator to retain custody of the Tarn Financial accounting books and records for



a minimum period of five (5) years from the date of Tarn Financial's dissolution;

- (xii) Discharging KPMG as Liquidator of the estate and effects of Tarn Financial effective upon the Liquidator filing a certificate with the Court, substantially in the form attached as Schedule "C" to the proposed Discharge Order (the "**Liquidator's Discharge Certificate**"), certifying that all matters to be attended to in connection with the winding-up of Tarn Financial have been completed to the satisfaction of the Liquidator; and
- (xiii) Ordering that upon the filing the Liquidator's Discharge Certificate, KPMG shall be discharged from any and all liability that KPMG now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KPMG while acting in its capacity as Liquidator of Tarn Financial, save and except for any gross negligence or willful misconduct on the Liquidator's part.

- 36. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
- 37. The information contained in this Ninth 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 Ninth Report.
- 38. Future oriented financial information reported or relied on in preparing this Ninth Report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.

### III. THE TRIAL AND RELATED MATTERS

39. As of the date of the Eighth Report, the Non Arms-Length Claims filed by the Respondents were being disputed by the Applicants and a trial date of October 5, 6 and 7, 2020 had been set by Justice McEwan.
40. For a number of reasons, including the Court's availability during the COVID-19 pandemic, the trial was rescheduled several times and ultimately the trial was held on November 15 to 19 and 22 to 25, 2021, April 22, 2022, and May 31, 2022, before Justice Koehnen (the "**Trial**"). His Honour issued his reasons for judgement on August 9, 2022 (the "**Reasons**") and invited the parties to make submissions on costs. A copy of the Reasons is attached as **Appendix "F"** to this Ninth Report.
41. In the Reasons, Justice Koehnen found that: (a) the Respondents were not entitled to charge a development fee or a hotel management fee and that any amounts paid by Tarn Financial and/or Tarn Construction in respect of these fees should be treated as repayments against SAMM's shareholder loan; (b) claims for reimbursement of the contested expenses should be dealt with as set out in the Reasons; and (c) the calculation of the amounts owing on account of SAMM's shareholder loan should include amounts that Akman advanced to Tarn Construction either personally or through his personal corporations.
42. The Applicants and the Respondents made cost submissions to Justice Koehnen and on January 13, 2023, his Honour issued his cost endorsement (the "**Cost Endorsement**"). A copy of the Cost Endorsement is attached as **Appendix "G"** to this Ninth Report. In the Cost Endorsement, his Honour awarded costs of the Trial to the Applicants other than their costs associated with the *res judicata* motion that was heard by Justice McEwen. The Respondents were awarded the costs of the *res judicata* motion.
43. In addition, in the Cost Endorsement Justice Koehnen addressed the issue of the allocation of the Liquidator's fees and determined that it would be inappropriate for His Honour to weigh in on the allocation of Liquidator's fees given that he did not have any information on that issue. Rather, Justice Koehnen indicated that, in his view, any ruling on the allocation of the Liquidator's fees should be made at the hearing to approve those fees.

## Allocation of Fees

44. Thereafter, the Applicants requested that the Liquidator provide an allocation of the fees incurred by the Liquidator, its counsel and other third parties in connection with: (a) the Trial and trial preparation; (b) the work undertaken in order to prepare the report on the sources and uses of monies during the period July 7, 2014 to September 30, 2017 pursuant to section 2(h) of the Winding Up Order; and (c) accounting, bookkeeping and tax matters.
45. In order to allocate its fees to the three categories, the Liquidator reviewed and searched its time dockets for certain key words associated with each category. Where a time docket contained details on several areas of work, the Liquidator used its judgement to allocate time accordingly. A copy of the Liquidator's fee allocation analysis is attached as **Appendix "H"** to this Ninth Report. A summary of the Liquidator's fees across the three categories is as follows:
  - a. *Trial and Trial Preparation*: The Liquidator searched its time dockets for the key words "trial" and "interrogatories". The professional fees of the Liquidator relating to this category are \$210,683.98 inclusive of HST (\$186,466 + \$24,237.98 of HST);
  - b. *Forensic*: The Liquidator searched its time dockets for the key words "sources & uses" and "forensic". In addition, the Liquidator included all time dockets incurred by the KPMG forensic team and the time incurred in relation to creating a back-up of the financial information of Tarn Financial which was required in order for the Liquidator to be able to undertake the forensic work. The professional fees of the Liquidator relating to this category are \$777,874.77 inclusive of HST (\$688,384.75 + \$89,490.02 of HST); and
  - c. *Accounting, Bookkeeping and Tax*: The Liquidator searched its time dockets for the key words "tax", "financial statements", "BDO", "Thas", and "misnomer". The Liquidator notes that the Applicants also requested information regarding fees relating to additional work that would have been done in respect of the Tarn Financial Claims Process as a result of the state of the books and records of Tarn Financial. However, other than specific time that was incurred as a result of the contracts being in various non-legal entities or other misnomers, the Liquidator was unable to

specifically identify time in this manner. Any time relating to the above is included in this category. The professional fees of the Liquidator relating to this category are \$133,422.21 inclusive of HST (\$118,072.75 + \$15,349.46 of HST).

46. The fees of the Liquidator's counsel, Miller Thomson, were allocated to the three categories using a similar methodology as the Liquidator. A copy of Miller Thomson's fee allocation analysis is attached as **Appendix "I"** to this Ninth Report. A summary of Miller Thomson's fees across the three categories is as follows:
  - a. *Trial and Trial preparation*: Miller Thomson searched its time docket for the key words "trial", "interrogatories", "experts" "expert reports", "Justice Koehnen", "timetable", "submissions" and "joint brief". The professional fees of Miller Thomson relating to this category are \$203,725.10 inclusive of HST (\$180,287.80 + \$24,437.40 of HST);
  - b. *Forensic*: Miller Thomson searched its time docket for the key words "sources", "uses", "forensic report" and "forensics team". The professional fees of Miller Thomson relating to this category are \$29,277.17 inclusive of HST (\$25,909.00 + \$3,368.17 of HST); and
  - c. *Accounting, Bookkeeping and Tax*: Miller Thomson searched its time docket for the key words "tax", "Misnomer" and "CCPC". The professional fees of Miller Thomson relating to this category are \$28,382.78 inclusive of HST (\$25,117.50 + \$3,265.28 of HST).
47. In addition to the fees of the Liquidator and its counsel, Tarn Financial incurred fees from third parties who assisted Tarn Financial and/or the Liquidator with certain accounting, bookkeeping and tax matters as follows:
  - a. *Richter LLP*: Work undertaken including to prepare financial statements and income tax returns for Tarn Financial. The professional fees and expenses of Richter LLP total \$372,849.59 inclusive of HST;
  - b. *BDO Canada LLP*: Work done to recreate the financial records of Tarn Financial. The professional fees of BDO Canada LLP total \$129,566.03; and
  - c. *Thas Thambapillai (controller of Tarn Financial)*: Work done to complete the

financial statements of Tarn Financial, provide the Liquidator with CRA audit assistance and other accounting records after the conclusion of the Transaction. The fees of Thas Thambapillai total \$44,635.00.

#### **IV. DISTRIBUTIONS TO THE SHAREHOLDERS SINCE THE EIGHTH REPORT**

##### **Fifth Distribution Order**

48. The Fifth Distribution Order authorized a further five percent (5%) interim distribution to the Shareholders in respect of their Eligible Shareholder Loan Claims. Prior to the Fifth Distribution Order, the Shareholders had received a distribution in the amount of 75% of their Eligible Loan Claims in accordance with the Fourth Distribution Order.
49. In accordance with the Fifth Distribution Order, on March 18, 2020, the Liquidator made a further interim distribution to the Shareholders as follows: (a) \$300,000 to BA&B (5% of \$6,000,000); (b) \$150,000 to KAAN (5% of \$3,000,000); and (c) \$128,500 to SAMM (5% of \$2,570,000).

##### **Distribution of the Remaining Shareholder Loans**

50. Following the issuance of the Reasons, the Shareholders advised the Liquidator that they had reached an agreement on the amount of the remaining shareholder loan owing to SAMM, taking into account Justice Koehnen's findings in the Reasons. The Shareholders provided the Liquidator with an executed direction dated October 26, 2022 (the "**Direction**") requesting a distribution of the remaining amounts owing under the shareholder loans prior to the Liquidator obtaining Court approval of the distribution. A copy of the Direction is attached as **Appendix "J"** to this Ninth Report.
51. After confirming with the parties that the Liquidator would seek approval from the Court of the distribution requested *nunc pro tunc* at the next motion, the Liquidator agreed to make the distribution. In accordance with the Direction, on November 2, 2022, the Liquidator made a final distribution to the Shareholders in relation to the shareholders loans as follows: (a) \$1,200,000 to BA&B (20% of \$6,000,000) (b) \$600,000 to KAAN (20% of \$3,000,000); and (c) \$853,507 to SAMM (the amount that was agreed amongst the Shareholders).

### **Distribution of the Shareholders' Rights and Interests in Tarn Financial**

52. In December 2022, the Shareholders requested that the Liquidator make an aggregate interim distribution of \$7 million to the Shareholders rateably according to the Shareholders' Rights and Interests in Tarn Financial prior to seeking Court approval of the distribution. The Liquidator agreed to make a distribution subject to the parties entering into a reimbursement agreement with the Liquidator and confirming that the Liquidator would seek approval from the Court in respect of the distribution, *nunc pro tunc*, at the next motion. The parties entered into a reimbursement agreement dated December 21, 2022 (the "**Reimbursement Agreement**"). A copy of the Reimbursement Agreement is attached as **Appendix "K"** to this Ninth Report.
53. In accordance with the Reimbursement Agreement, on December 22, 2022, the Liquidator made an interim distribution to the Shareholders in respect of the Shareholders' Rights and Interests in Tarn Financial as follows: (a) \$2,800,000 to BA&B (40% of \$7,000,000); (b) \$1,400,000 to KAAN (20% of \$7,000,000); and (c) \$2,800,000 to SAMM.

### **Order Sought**

54. The Liquidator respectfully requests that the Court approve, *nun pro tunc*: (a) the final distribution to Shareholders in respect of the shareholder loans made on November 2, 2022, out of the proceeds in the estate of Tarn Financial; and (b) the interim distribution to Shareholders in respect of the Shareholders' Rights and Interests in Tarn Financial made on December 22, 2022, out of the proceeds in the estate of Tarn Financial.

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

55. The Liquidator reported on the total receipts and disbursements from the date of the Liquidator's appointment to March 6, 2020, in the Eighth Report.
56. The following table provides a summary of the total receipts and disbursements from the date of the Liquidator's appointment to May 19, 2023 (the "**R&D Period**):

<b>Statement of Receipts and Disbursements</b>			
<b>For the period September 25, 2017 to May 19, 2023</b>			
<b>(in CAD)</b>			
	<b>Sep 25, 2017 to Mar 6, 2020</b>	<b>Mar 7, 2020 to May 19, 2023</b>	<b>Sep 25, 2017 to May 19, 2023</b>
<b>Receipts</b>			
Operating receipts	18,244,496	61,766	18,306,263
Liquidator's Borrowings	2,977,805	-	2,977,805
GIC Interest	454,036	470,049	924,086
Collected on behalf of Sunray Hotels Inc.	203,249	-	203,249
Net sale proceeds	59,303,653	-	59,303,653
<b>Total receipts</b>	<b>81,183,239</b>	<b>531,816</b>	<b>81,715,055</b>
<b>Disbursements</b>			
Operating disbursements	4,081,240	26,301	4,107,542
Salaries and wages	6,269,111	-	6,269,111
Taxes	4,976,814	(1,021,590)	3,955,224
Accounting and tax costs	254,970	-	254,970
Insurance	260,709	-	260,709
Utilities	1,050,494	-	1,050,494
Marriott fee	1,481,145	-	1,481,145
Critical Maintenance	368,046	-	368,046
Collected on behalf of Sunray Hotels Inc.	203,249	-	203,249
<b>Total operating disbursements</b>	<b>18,945,779</b>	<b>(995,288)</b>	<b>17,950,491</b>
<b>Operating cash flow</b>	<b>62,237,460</b>	<b>1,527,104</b>	<b>63,764,564</b>
<b>Loan Facilities and Professional Fees</b>			
Secured lenders - Principal and Interest	1,957,768	-	1,957,768
Sales Commission	847,500	-	847,500
Professional fees	4,738,817	1,233,308	5,972,125
<b>Non-operating disbursements</b>	<b>7,544,085</b>	<b>1,233,308</b>	<b>8,777,394</b>
<b>Distributions</b>			
Meridian Credit Union	17,494,362	-	17,494,362
Kingsett Mortgage Corporation	6,094,523	-	6,094,523
Liquidator's Borrowing Charge	3,179,364	-	3,179,364
Lien Claimants	2,549,681	-	2,549,681
Tarion Warranty Corporation	600,000	-	600,000
Unsecured Creditors	2,142,923	398,790	2,541,714
Shareholders in Respect of Loans	8,677,500	3,232,007	11,909,507
Shareholders in Respect of Equity	-	7,000,000	7,000,000
<b>Total distributions</b>	<b>40,738,353</b>	<b>10,630,797</b>	<b>51,369,150</b>
Opening book balance	(70,185)	13,884,837	(70,185)
<b>Net cash flow</b>	<b>13,955,022</b>	<b>(10,337,002)</b>	<b>3,618,021</b>
<b>Closing book balance</b>	<b>13,884,837</b>	<b>3,547,836</b>	<b>3,547,836</b>

57. Receipts during the R&D Period were \$81,715,055 and consist of: (a) guest room, food and beverage and parking-related revenues of \$18,306,263; (b) funding of \$2,977,805 under the Borrowings Charge; (c) net sale proceeds of \$59,303,653; (d) amounts collected on behalf of Sunray after the Closing Date of \$203,249; and (e) interest earned on invested funds of \$924,086;

58. Disbursements and distributions during the R&D Period were \$78,097,035 and include: (a) salaries and wages in the amount of \$6,269,111; (b) operating expenses of \$4,107,542; (c) HST and other tax payments, including the capital gains taxes payable on the Transaction, in the amount of \$3,955,224; (d) principal and interest payments to secured creditors of \$1,957,768; (e) professional fees and disbursements inclusive of HST of \$5,972,195 which consists of the professional fees of the Liquidator and the Receiver, their independent legal counsel, Miller Thomson, and Bennett Jones; (f) distributions pursuant to the First Distribution Order in the amount of \$26,768,248; (g) distributions pursuant to the Second Distribution Order in the amount of \$2,549,681; (h) distributions pursuant to the Third Distribution Order in the amount of \$2,541,714; (i) distributions pursuant to the Tarion Cash Collateral Procedure Order in the amount of \$600,000; (j) distributions pursuant to the Fourth Distribution Order in the amount of \$8,677,500; (k) distributions pursuant to the Fifth Distribution Order in the amount of \$578,500; (l) a final distribution to Shareholders on their shareholder loans in the amount of \$2,653,507; and (m) an interim distribution to Shareholders on their Shareholders' Rights and Interests in Tarn Financial in the amount of \$7,000,000.

**VI. ACTIVITIES OF THE LIQUIDATOR AND THE RECEIVER SINCE THE EIGHTH REPORT**

59. Since the date of the Eighth Report, the Liquidator and Receiver and its counsel have done the following:
- a. Attended Court for the purposes of obtaining the Fifth Distribution Order;
  - b. Made distributions pursuant to the Fifth Distribution Order;
  - c. Undertook the Deposit Return Procedure with respect to the remaining Proven Deposit and submitted the final Statutory Declaration;
  - d. Collected the post-closing amounts from Sunray and made payment of the amounts owing under the transition services agreement to Sunray;
  - e. Made distributions pursuant to the Third Distribution Order;
  - f. Completed the professional fee tax deductibility analysis for 2018 for purposes of the corporate tax returns;



- g. With the assistance of Richter LLP (“**Richter**”), finalized the 2018 financial statements and corporate tax returns;
- h. With the assistance of Richter, addressed inquiries from the Canada Revenue Agency;
- i. Continued to make all filings of Harmonized Sales Tax (“**HST**”) and other statutory remittances, as required;
- j. Confirmed with counsel to The Guarantee Company that The Guarantee Company does not have any remaining secured claims and released the associated reserve;
- k. Prepared distribution analyses requested by the Applicants’ and Respondents’ counsel;
- l. Reviewed materials filed in relation to the pre-trial conference and considered and prepared various settlement scenarios for Justice Hainey;
- m. Attended pre-trial settlement conference;
- n. Reviewed materials filed in relation to case conferences and attend several case conferences;
- o. Reviewed materials filed in relation to the *res judicata* motion and attend *res judicata* motion;
- p. Had numerous discussions with the Applicants’ counsel and the Respondents’ counsel regarding matters related to the Trial and responded to several requests for information;
- q. Reviewed materials filed in relation to the *voire dire* and attend *voire dire*;
- r. Reviewed materials filed in relation to the Trial and responded to several rounds of written interrogatories from the Applicants’ and Respondents’ counsel;
- s. Attended the Trial;
- t. Responded to inquiries and requests for information from Justice Koehnen following the Trial;
- u. Reviewed the Reasons;

- v. Had discussions with the Shareholders' counsel regarding the final distribution in respect of the shareholder loans;
  - w. Reviewed and considered the Direction and made the final distribution to the Shareholders in respect of their Shareholder Loans;
  - x. Coordinated the preparation of the 2019, 2020, 2021 and 2022 tax returns by Richter;
  - y. Had discussions with the Shareholders' counsel regarding an interim distribution in respect of the Shareholders' Rights and Interests in Tarn Financial;
  - z. Prepared and reviewed the Reimbursement Agreement and made an interim distribution to the Shareholders in respect of the Shareholders' Rights and Interests in Tarn Financial;
  - aa. Reviewed the Cost Endorsement and had discussions with Shareholder's counsel regarding request for allocation of fees;
  - bb. Prepared a fee allocation analysis;
  - cc. Had regular discussions with the Shareholders' counsel regarding the Winding Up Proceedings and responded to inquiries from the Shareholders regarding same;
  - dd. Posted materials related to the Winding Up Proceedings on its website ([www.kpmg.com/ca/tarn](http://www.kpmg.com/ca/tarn));
  - ee. Maintained a telephone hotline at 416-649-7623 or 1-855-222-8083 and email address at [tarn@kpmg.ca](mailto:tarn@kpmg.ca) for inquiries regarding the Winding Up Proceedings; and
  - ff. Prepared and delivered the Ninth Report
60. The Liquidator and Receiver respectfully request that the Court approve the activities and conduct of the Liquidator and Receiver set out herein.

**VII. APPROVAL OF PROFESSIONAL FEES TO APRIL 30, 2023**

61. The fees and disbursements of the Liquidator and its legal counsel, Miller Thomson and Bennett Jones LLP ("**Bennet Jones**"), for the period from the date of the Winding Up Order to December 31, 2017, were set out in the Second Report and were approved by the Court in the April 2018 Ancillary Order.

62. The fees and disbursements of the Liquidator, the Receiver and the Liquidator's and the Receiver's counsel, Miller Thomson and Bennett Jones, for the period from January 1, 2018, to April 30, 2018, were set out in the Fifth Report and were approved by the Court in the Fees and Conduct Approval Order.
63. The fees and disbursements of the Liquidator, the Receiver and the Liquidator's and the Receiver's counsel, Miller Thomson and Bennett Jones, for the period from May 1, 2018, to December 30, 2018, were set out in the Seventh Report and were approved by the Court in the April 2019 Ancillary Order.
64. The Liquidator and Miller Thomson have maintained detailed records of their professional time and costs from January 1, 2019, to April 30, 2023 (the "**Fee Period**"), as detailed in the Fee Affidavit of Anamika Gadia of KPMG sworn May 18, 2023 (the "**KPMG Fee Affidavit**") and the Fee Affidavit of Stephanie De Caria of Miller Thomson sworn May 19, 2023 (the "**Miller Thomson Fee Affidavit**" and together with the KPMG Fee Affidavit, the "**Fee Affidavits**"). Copies of the Fee Affidavits are attached as **Appendix "L"** and **Appendix "M"**, respectively.
65. Pursuant to paragraphs 16 and 17 of the Winding Up Order, the Liquidator and its counsel, shall be paid their reasonable fees and disbursements and shall pass their accounts before this Court. In addition, pursuant to paragraph 15 of the Winding Up Order, the Liquidator and its counsel were granted a charge on the Property (as defined in the Winding Up Order) of Tarn Financial (the "**Liquidator's Charge**") as security for their fees and disbursements.
66. The total fees and disbursements (including HST) of the Liquidator and the Receiver during the Fee Period amount to \$896,442,07. The details of the time spent, and the services provided by the Liquidator are more particularly described in the KPMG Fee Affidavit.
67. The total fees and disbursements (including HST) of Miller Thomson during the Fee Period amount to \$443,332.28. The details of the time spent, and the services provided by Miller Thomson are more particularly described in the Miller Thomson Fee Affidavit.

68. In addition to the above fees, the Liquidator and Miller Thomson estimate their fees from May 1, 2023, to the completion of the Winding Up Proceedings and the Receivership Proceedings to be \$75,000 and \$50,000, respectively, plus HST (the “**Fee Accrual**”).
69. The Liquidator and the Receiver have reviewed the accounts of their counsel and believe that the accounts of the Liquidator, the Receiver and Miller Thomson are reasonable in the circumstances and respectfully request that the Court approve the Liquidator’s and the Receiver’s fees and disbursements and those of the Liquidator’s and the Receiver’s counsel to April 30, 2023, as well as the Fee Accrual for the estimate of fees and disbursements to the completion of the Winding Up Proceedings and the Receivership Proceedings.

#### **VIII. TARN CONSTRUCTION BANKRUPTCY**

70. As discussed above, Tarn Construction is a wholly owned subsidiary of Tarn Financial. Through Tarn Construction, Tarn Financial was pursuing the Development Project on lands adjacent to the Hotel owned by Tarn Financial.
71. KPMG was appointed as Receiver of Tarn Construction on April 13, 2018 pursuant to the Receivership Order.
72. Tarn Construction did not have any assets as the financing for the Development Project had not been secured at the time of the Liquidator’s appointment and the lands were owned by Tarn Financial. The only funding historically available to Tarn Construction was through intercompany loans from Tarn Financial. Based on the Liquidator’s and Receiver’s review of the limited books and records available for Tarn Construction, there are significant amounts outstanding to development and construction vendors in relation to the Development Project at the time of the Liquidator’s appointment. In addition, condominium brokers are potentially owed commission amounts by Tarn Construction, representing either the first, second or final commission payment for unit sales on behalf of Tarn Construction.
73. The amounts potentially owing to vendors and brokers have not been quantified by the Liquidator or Receiver but based on claims against Tarn Construction in the Tarn

Financial Claims Process, the potential liabilities of Tarn Construction are in the millions of dollars.

74. Given that Tarn Construction has no assets and significant liabilities, Tarn Construction is insolvent. In order to wind down the corporation in an orderly manner, the Liquidator and Receiver believe the best course of action is for the Receiver to assign Tarn Construction into bankruptcy and have KPMG act as Trustee in Bankruptcy.
75. In addition, Tarn Construction claimed input tax credits (“ITC”) to recover the HST amount on invoices rendered by vendors of the Development Project prior to the Winding Up Order. Many of these invoices were not paid, accordingly, these ITCs could be reversed by the CRA. If reversed, this would create a priority claim for the CRA. Since Tarn Construction does not have any assets to deal with such claims, a bankruptcy to reverse the priority of the CRA’s HST claim is prudent in the circumstances.
76. As discussed above, the Receiver has already dealt with the third-party property held by Tarn Construction by completing the Deposit Return Procedure whereby the Receiver returned, either in person or via regular mail, 626 Proven Deposits totaling \$29,751,544. Accordingly, as there is no property to deal with, the Receiver does not foresee that the Trustee in Bankruptcy will need to complete any activities other than those that are statutorily required.
77. The fees and disbursements for administering the bankruptcy of Tarn Construction are estimated to be \$25,000 plus HST (the “Trustee Fees”) and the Receiver has had discussions with the Shareholders’ counsel as to the amount of these fees and the Shareholders have agreed that these fees can be set aside from the proceeds of the estate of Tarn Financial.
78. The Receiver respectfully requests that the Court grant leave and authorize the Receiver to assign Tarn Construction into bankruptcy and authorize KPMG to act as Trustee in Bankruptcy.

#### **IX. REMAINING MATTERS AND DISCHARGE**

79. Assuming that the Discharge Order is granted, the Liquidator and Receiver will then complete the remaining matters in the Winding Up Proceedings and the Receivership

Proceedings namely:

- a. The Receiver will assign Tarn Construction into bankruptcy and thereafter will file the Receiver's Discharge Certificate with the Court;
- b. The Liquidator will work with Richter to prepare and file the corporate tax returns for 2019, 2020, 2021 and 2022;
- c. The Liquidator will establish the Reserve in the amount of \$1,028,250, which amount has been calculated based upon the high-end estimate of the taxes payable by Tarn Financial to the date of dissolution based upon the Reasons and interest income earned during the Winding Up Proceedings, the estimated fees of Richter to prepare the corporate tax returns from 2019 to the date of dissolution and the Trustee Fees;
- d. The Liquidator will hold back the amount of the Fee Accrual, which is based upon the estimated fees of the Liquidator, the Receiver and Miller Thomson from May 1, 2023, to the completion of the Winding Up Proceedings and the Receivership Proceedings;
- e. The Liquidator will distribute the remaining proceeds in the estate of Tarn Financial, net of the Fee Accrual holdback and the Reserve, to the Shareholders rateably according to the Shareholders' Rights and Interests in Tarn Financial;
- f. The Liquidator will file the Dissolution Certificate with the Court;
- g. The Liquidator will work with Richter to prepare and file the corporate tax returns for 2023 to the date of dissolution of Tarn Financial;
- h. The Liquidator will work with Richter to address any CRA inquiries relating the corporate tax returns filed for the period from 2019 to the date of dissolution and will pay the income taxes owing from the Reserve;
- i. The Liquidator will thereafter distribute any remaining proceeds in the estate of Tarn Financial including any remaining in the Reserve after payments set out herein to the Shareholders rateably according to the Shareholders' Rights and Interests in Tarn Financial; and
- j. Once all of the matters above are complete and there are no remaining matters to be

addressed, the Liquidator will file the Liquidator's Discharge Certificate with the Court.

**X. CONCLUSION**

80. The Liquidator and the Receiver submit this Ninth Report to the Court in support of the Liquidator's and the Receiver's Motion and recommends that the Court grant the Discharge Order.

All of which is respectfully submitted at Toronto, Ontario this 19<sup>th</sup> day of May 2023.

**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

