

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

THE HONOURABLE) WEDNESDAY, THE 9TH
JUSTICE MCEWEN)
DAY OF MAY, 2018

BETWEEN:

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

Applicants

- and -

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

Respondents

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by KPMG Inc. (“**KPMG**”), in its capacity as Court-appointed Liquidator (in such capacity, the “**Liquidator**”) pursuant to section 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial Corporation (“**Tarn Financial**”), and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the “**Winding Up Order**”) which appointment was effective on September 25, 2017, for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Asset Purchase Agreement**”) between Tarn Financial (the “**Vendor**”) and Sunray Group of Hotels Inc. or its nominee, The Kennedy Hotel Inc. (collectively, the “**Purchaser**”) dated April 20, 2018 and vesting in the Purchaser the Vendor’s right, title and interest in and to the assets



described in the Asset Purchase Agreement (the “**Purchased Assets**”), was heard May 1, 2018 at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report of the Liquidator and the First Report of the Receiver dated April 24, 2018 (the “**Third 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 April 25, 2018 filed:

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 unless otherwise defined herein or the context otherwise requires, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.

3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Asset Purchase Agreement by the Vendor is hereby authorized and approved, with such minor amendments as the Vendor may deem necessary. The Vendor is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

4. **THIS COURT ORDERS** that in the event that the Transaction contemplated by the Asset Purchase Agreement cannot be consummated, the Back-Up Bid (as defined in the Third Report) be and is hereby approved and the execution of an asset purchase agreement pursuant to the Back-Up Bid by the Vendor is hereby authorized and approved, with such changes as may be approved by the Liquidator that do not affect the net value of the Back-Up Bid, and the Vendor shall be authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Back-Up Bid transaction and for the conveyance of the Vendor’s right, title and interest in and to the purchased assets described in the Back-Up Bid.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Liquidator's certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the "**Liquidator's Certificate**"), all of the Vendor's right, title, benefit and interest in and to the Purchased Assets described in the Asset Purchase Agreement including the lands legally described in **Schedule B** hereto (the "**Real Property**") shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Winding Up Order, as amended; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule C** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Metropolitan Toronto Land Registry No. 66 of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

7. **THIS COURT ORDERS** that, without in any way limiting the efficacy of paragraph 5 of this Order, the Purchaser shall not assume or be deemed to assume any obligations in respect of or pursuant to the Excluded Assets, no rights in or in respect of the Excluded Assets are or have been assigned to the Purchaser, all Excluded Assets are hereby terminated in all respects against the Real Property and the Purchaser, and no party to any Excluded Asset shall have any right, interest or claim thereunder as against the Real Property or the Purchaser.

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead

of the Purchased Assets, and that from and after the delivery of the Liquidator's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

9. **THIS COURT ORDERS AND DIRECTS** that after receipt by the Liquidator from each of the Vendor and the Purchaser of the written confirmations set out in section 7.05(1) of the Asset Purchase Agreement that the conditions to closing of the Transaction as set out in the Asset Purchase Agreement have been satisfied or waived and funds in respect of the Purchase Price have been received by the Vendor in accordance with section 2.09 of the Asset Purchase Agreement, the Liquidator shall be and is hereby authorized and directed to deliver and file the Liquidator's Certificate in accordance with section 7.05 of Asset Purchase Agreement. In preparing and filing the Liquidator's Certificate, the Liquidator shall be entitled to rely, without any further investigation, confirmation or enquiry by the Liquidator, upon the representations made to it by the Purchaser that all necessary conditions to closing have been satisfied or waived and the Liquidator shall have no liability for any misstatement, error or omission made by the Purchaser in connection therewith.

10. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Vendor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Vendor's records pertaining to the Vendor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendor.

11. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Vendor and any bankruptcy order issued pursuant to any such applications; and

- (c) any assignment in bankruptcy made in respect of the Vendor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Vendor and shall not be void or voidable by creditors of the Vendor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

12. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Retail Sales Act* (Ontario).

13. **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 Vendor or 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 Vendor or the Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Vendor or the Liquidator and its agents in carrying out the terms of this Order.

SEALING

14. **THIS COURT ORDERS** that the Confidential Appendices 1, 2 and 3 to the Third Report shall be sealed, kept confidential and not form part of the public record, but shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further order of the Court.



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

MAY 10 2018

PER / PAR:



Schedule A – Form of Liquidator’s Certificate

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

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

LIQUIDATOR’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Lederman of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 15, 2017 (the “**Winding Up Order**”), KPMG Inc. was appointed as liquidator (in such capacity, the “**Liquidator**”) of the effects and estate of Tarn Financial Corporation (the “**Vendor**”) under sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended.

B. Pursuant to an Order of the Court dated May 1, 2018, the Court approved the asset purchase agreement made as of April 20, 2018 (the “**Asset Purchase Agreement**”) between the Vendor and Sunray Group of Hotels Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Vendor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Liquidator to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets, (ii) that the conditions to closing as set out in the Asset Purchase Agreement have been

satisfied or waived by the Vendor and the Purchaser, and (iii) the Transaction has been completed to the satisfaction of the Liquidator.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Asset Purchase Agreement.

THE LIQUIDATOR CERTIFIES, based upon the written representations made to the Liquidator by each of the Purchaser and the Vendor pursuant to section 7.05 of the Asset Purchase Agreement and without any further investigation, confirmation or enquiry by the Liquidator, the following:

1. The Purchaser has paid and the Vendor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;
2. The conditions to closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Vendor and the Purchaser, respectively; and
3. The Transaction has been completed to the satisfaction of the Liquidator.
4. This Certificate was delivered by the Liquidator at _____ [TIME] on _____ [DATE], 2018.

KPMG Inc., in its capacity as Court-appointed Liquidator of Tarn Financial Corporation, and not in its personal capacity

Per: _____
Name:
Title:

Schedule B – Real Property

PIN: 06164-0197 (LT)

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

PIN: 06164-0509 (LT)

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

Schedule C

Claims to be deleted and expunged from title to Real Property

PIN 06164-0197 (LT)

1. Notice of Lease Instrument Number E236074 registered March 23, 1999 in favour of Microcell Conexions Inc.
2. Transfer of title instrument Number AT3740675 registered November 14, 2014 in favour of Tam Financial Corporation.
3. Charge instrument Number AT3740682 registered November 14, 2014 in favour of Meridian Credit Union Limited.
4. General Assignment of Rents instrument Number AT3740683 registered November 14, 2014, in support of Charge AT3740682 in favour of Meridian Credit Union Limited.
5. Charge Instrument Number AT4242765 registered June 9, 2016, in favour of The Guarantee Company of North America.
6. Notice Instrument Number AT4280809 registered July 15, 2016, in favour of The Guarantee Company of North America referencing Instrument Number AT4242765.
7. Charge Instrument Number AT4443337 registered December 23, 2016, in favour of Kingsett Mortgage Corporation.
8. General Assignment of Rents Instrument Number AT4443338 registered December 23, 2016, in support or Charge AT4443337 in favour of Kingsett Mortgage Corporation.
9. Charge instrument Number AT4623337 registered July 11, 2017, in favour of Samm Capital Holdings Inc.
10. General Assignment of Rents Instrument Number AT4623338 registered July 11, 2017, in support of Charge AT4623337 in favour of Samm Capital Holdings Inc.
11. Notice of Agreement Instrument Number AT4657388 registered August 17, 2017 in favour of Samm Capital Holdings Inc. pertaining to Charge AT4623337.
12. Construction Lien AT4693066 registered September 28, 2017, registered by Roni Excavating limited perfected by Certificate Instrument Number AT4730846 registered November 10, 2017.
13. Construction Lien AT4694989 registered September 29, 2017, registered by MCW Consultants Ltd. perfected by Certificate instrument Number AT4734146 registered November 16, 2017.

14. Construction Lien AT4698119 registered October 4, 2017, registered by Skygrid Construction Ltd. perfected by Certificate Instrument Number AT4731269 registered November 14, 2017.

15. Construction Lien AT4701329 registered October 6, 2017, registered by GFL Infrastructure Group Inc. perfected by Certificate Instrument Number AT4731272 registered November 14, 2017.

PIN 06164-0509 (LT)

1. Notice or Lease Instrument Number TR39151 registered March 23, 1999, in favour of Microcell Connexions Inc.

2. Transfer of title Instrument Number AT3740675 registered November 14, 2014, in favour of Tam Financial Corporation.

3. Charge Instrument Number AT3740682 registered November 14, 2014 in favour of Meridian Credit Union Limited.

4. General Assignment or Rents Instrument Number A T3740683 registered November 14, 2014, in support of Charge AT3740682 in favour or Meridian Credit Union Limited.

5. Charge Instrument Number AT4242765 registered June 9, 2016, in favour of The Guarantee Company of North America.

6. Notice Instrument Number AT4280809 registered July 15, 2016, in favour of The Guarantee Company of North America referencing Instrument Number AT4242765.

7. Charge instrument Number AT4443337 registered December 23, 2016, in favour of Kingsett Mortgage Corporation.

8. General Assignment of Rents Instrument Number AT4443338 registered December 23, 2016, in support of Charge AT4443337 in favour of Kingsett Mortgage Corporation.

9. Charge Instrument Number AT4623337 registered July 11, 2017, in favour of Samm Capital Holdings Inc.

10. General Assignment of Rents Instrument Number AT4623338 registered July 11, 2017 in support of Charge AT4623337 in favour of Samm Capital Holdings Inc.

11. Notice or Agreement Instrument Number AT4657388 registered August 17, 2017 in favour of Samm Capital Holdings Inc. pertaining to Charge AT4623337.

12. Construction Lien AT4693066 registered September 28, 2017, registered by Roni Excavating Limited perfected by Certificate Instrument Number AT4730846 registered November 10, 2017.

13. Construction Lien AT4694989 registered September 29, 2017, registered by MCW Consultants Ltd. perfected by Certificate Instrument Number AT4734146 registered November 16, 2017.
14. Construction Lien AT4698119 registered October 4, 2017, registered by Skygrid Construction Ltd. perfected by Certificate Instrument Number AT4731269 registered November 14, 2017.
15. Construction Lien AT4701329 registered October 6, 2017, registered by GFL Infrastructure Group Inc. perfected by Certificate Instrument Number AT4731272 registered November 14, 2017.
16. Construction Lien AT4714314 registered October 24, 2017, registered by The Fence People Limited.
17. Construction Lien AT4726307 registered November 6, 2017, registered by The Fence People Limited perfected by Certificate Instrument Number AT4745670 registered November 29, 2017.

Schedule D – Permitted Encumbrances related to the Real Property
(unaffected by the Vesting Order)

PIN 06164-0197

1. By-Law Instrument Number SC72205 registered April 23, 1984.
2. Notice of Agreement Instrument Number A90238 registered April 6, 1962.
3. Notice or Agreement Instrument Number A927533 registered June 19, 1981.
4. Notice of Agreement Instrument Number C938338 registered March 3, 1995.

PIN 06164-0509

1. Site Plan Agreement Instrument Number SC618244 registered June 18, 1981.
2. Agreement Amending Site Plan Agreement instrument Number TB966207 registered March 3, 1995.
3. Reference Plan 66R28554 registered March 17, 2016.
4. Application for Absolute Title Instrument Number AT4169525 registered March 17, 2016.
5. Reference Plan 66R29568 registered September 17, 2016.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER
DATED MAY 9, 2018**

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