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

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 KAAN 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 MAY 1, 2018)

DATED: APRIL 24, 2018

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TAB 1

Court File No. CV-17-11697-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN:

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

Applicants

– and –

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

Respondents

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

NOTICE OF MOTION
(Returnable May 1, 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, will make a motion to a Judge presiding over the Commercial List on Tuesday May 1, 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 Approval and Vesting Order (the "**Approval and Vesting Order**") substantially in the form contained at Tab 3 of the Motion Record herein, 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 (the "**Purchased Assets**");

2. An Order (the "**Disputed Deposits Resolution Procedure Order**") substantially in the form contained at Tab 5 of the Motion Record herein, establishing a procedure (the "**Disputed Deposits Resolution Procedure**") for the resolution of disputed deposits ("**Disputed Deposits**") asserted by purchasers of proposed condominium units (the "**Purchasers**") in the contemplated residential condominium development located at 2035 Kennedy Road, Toronto, Ontario, known as the "The Kennedys" (the "**Development Project**"); and

3. An Order (the "**Termination Entitlement Order**") substantially in the form contained at Tab 6 of the Motion Record herein, ordering and declaring, among other things, that the Receiver is entitled to rely upon the Construction Financing Early Termination Condition (as defined below) to terminate the Agreements of Purchase and Sale entered into by Tarn Construction with Purchasers (the "**APSs**") on behalf of Tarn Construction and that the Receiver is hereby 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; and

4. Such further and other relief as this Honourable Court may deem just.

5. **THE GROUNDS FOR THE MOTION ARE**:

Winding Up Order

6. 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;

Sale Process

7. Pursuant to the Sale Process Order of Justice McEwen dated November 29, 2017 (the "**Sale Process Order**"), the Court approved a sale process (the "**Sale Process**") authorizing the Liquidator to retain Colliers Macaulay Nicolls Inc. ("**Colliers**") and to market and solicit interest in and opportunities for a sale of all or part of the assets of Tarn Financial (the "**Assets**");

8. Capitalized terms used in this section of the Notice of Motion and not otherwise defined herein shall have the same meaning ascribed to them in the Sale Process;

9. The Sale Process contemplates a two-phase process, as further described in the Third Report of the Liquidator and the First Report of the Receiver dated April 24, 2018 (the "**Report**"). The Liquidator has undertaken the Sale Process in accordance with its terms;

10. The Phase II Bid Deadline in the Sale Process was March 22, 2018. Given that multiple Phase II Bids were received and the value of same were close in range, in accordance with the Sale Process, the Liquidator and Colliers invited six of the Qualified Phase I Bidders to review their Phase II Bids and provide any final revisions to their submission by April 9, 2018 (the "**Final Phase II Bid**");

The Successful Bid

11. Following its review of the Final Phase II Bids received, the Liquidator and Colliers determined that Sunray is the Successful Bidder in the Sale Process and that Pinnacle International One Lands Inc. ("**Pinnacle**") is the Back-Up Bidder and provided notice to each party on April 13, 2018;

12. The Successful Bid is the highest and/or best Qualified Phase II Bid as determined by the Liquidator and Colliers, taking into account financial and contractual terms and the factors relevant to the Sale Process, including those factors affecting the cost, speed and certainty of consummating the proposed sale and the claims likely to be created by such Bid in relation to other Bids;

13. In the Liquidator's view, the Asset Purchase Agreement represents the highest and best outcome from the Sale Process and maximizes value for Tarn Financial's stakeholders. Accordingly, the Liquidator recommends that the Court grant the Approval and Vesting Order;

Receivership Order

14. On April 13, 2018, upon the application of the Liquidator, the Court issued an Order (the "**Receivership Order**") authorizing the appointment of KPMG as Receiver of all of the assets, undertakings and properties of Tarn Construction pursuant to section 101 of the CJA;

15. The main purpose of the Receivership Order is to allow the Receiver to undertake the Deposit Confirmation Procedure (as defined below) and to deal with the APSs entered into by Tarn Construction with Purchasers in the contemplated Development Project at the real property municipally known as 2035 Kennedy Road, Toronto, Ontario (the "**Real Property**");

Deposit Confirmation Procedure

16. On April 13, 2018, the Court issued 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**");

17. Capitalized terms used in this section of the Notice of Motion and not otherwise defined herein shall have the same meaning ascribed to them in the Deposit Confirmation Procedure Order;

18. As further particularized in the Report, the Deposit Confirmation Procedure contemplates the confirmation and assertion of Deposits in two stages given that Deposits are continuing to be made by Purchasers pursuant to the terms of their APSs;

19. The Receiver is currently undertaking the Deposit Confirmation Procedure;

Disputed Deposits Resolution Procedure

20. Capitalized terms used in this section of the Notice of Motion and not otherwise defined herein shall have the same meaning ascribed to them in the draft Disputed Deposits Resolution Procedure Order contained at Tab 5 of the Motion Record;

21. As further described in the Report, the Disputed Deposits Resolution Procedure sets out a procedure for the Receiver to follow in order to allow for the resolution of Disputed Deposits arising from the Deposit Confirmation Procedure and for the determination of Proven Deposits;

22. The Receiver has sought input from Tarion Warranty Corporation ("**Tarion**") and The Guarantee Company of North America ("**The Guarantee Company**") regarding the proposed Disputed Deposits Resolution Procedure Order given the Tarion warranty bond and the security held by the Guarantee Company;

23. In the Receiver's view, the Disputed Deposits Confirmation Procedure is appropriate and reasonable in the circumstances;

Advice and Direction re: Entitlement to Terminate the APSs

24. Pursuant to paragraph 18 of the Receivership Order, the Receiver may apply to the Court for advice and directions in the discharge of its powers and duties thereunder;

25. The Purchased Assets contemplated in the Asset Purchase Agreement include the Real Property and exclude, among other things, the shares of Tarn Construction and the APSs;

26. The Receiver is seeking the Court's advice and directions with respect to: (i) its ability to terminate the APSs in accordance with the terms of the APSs and, in particular, in accordance with the Construction Financing Early Termination Condition; and (ii) the timing of its ability to terminate the APSs without damages based upon the Construction Financing Early Termination Condition;

27. Schedule E to the APS is entitled "Tarion Warranty Corporation Statement of Critical Dates and Addendum" (the "**Tarion Addendum**"). Section 6(a) of the Tarion Addendum provides that Tarn Construction and the Purchaser may include conditions in the APS that, if not

satisfied, give rise to early termination of the APS provided that such conditions comply with the Early Termination Conditions listed therein (the "**Early Termination Conditions**"). Section 6(b) of the Tarion Addendum limits the types of Early Termination Conditions to those listed in Schedule A to the Tarion Addendum;

28. Schedule "A" to the Tarion Addendum sets out certain of the permitted Early Termination Conditions. Section 1(b)(ii) of Schedule "A" to the Tarion Addendum provides that the Vendor is permitted to make the APSs conditional upon "Receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged by a specified date";

29. The Early Termination Conditions contained in Appendix A to the Tarion Addendum includes the following condition: "Receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged by October 9, 2018." ("**Construction Financing Early Termination Condition**");

30. As further set out in the Report, in the Receiver's view, Tarn Construction has no ability to satisfy the Construction Financing Early Termination Condition as of the date of the Report and it is inevitable and predestined that Tarn Construction will have no ability to satisfy the Construction Financing Early Termination Condition by October 9, 2018;

31. Paragraph 25(a) of Schedule "A" (Additional Provisions) to the APSs provides that in the event that the APS is terminated pursuant to the Tarion Addendum, within 10 days of such termination Tarn Construction must refund all monies paid by the Purchaser including deposit(s) and monies for upgrades and extras, together with interest from the date such monies were paid to Tarn Construction. Interest shall be calculated in accordance with the Condominium Act, 1998 (Ontario);

32. Accordingly, in such circumstances, Tarn Construction's liability to a Purchaser is limited to the paying the amounts described in paragraph 25(a) of Schedule "A to the APSs;

33. In the Receiver's view, the Construction Financing Early Termination Condition cannot be fulfilled as of the date of the Report and it is inevitable that the Construction Financing Early Termination Condition will not be able to be fulfilled by Tarn Construction by October 9, 2018;

34. The Receiver is further of the view that waiting to terminate the APSs after October 9, 2018 negatively impacts the Purchasers that would be entitled to the return of their Deposits in accordance with the terms of their APS;

General

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

36. Section 101 of the CJA;

37. Part XVI of the OBCA; and

38. 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:

39. The Liquidator's Third Report and the Receiver's First Report dated April 24, 2018; and

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

April 24, 2018

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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"

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(as at April 24, 2018)

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ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

NOTICE OF MOTION
(Returnable May 1, 2018)

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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**

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

APRIL 24, 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 Third Report to the Court and the Receiver's (as defined below) First Report to the Court (the "**Third Report**").

3. The business and assets of Tarn Financial include the Delta Toronto East Hotel (the "**Hotel**") and adjoining development lands that were being developed by Tarn Financial, through its wholly-owned subsidiary, Tarn Construction Corporation ("**Tarn Construction**"), as a development known as "The Kennedys" (the "**Development Project**") located at 2035 Kennedy Rd., Scarborough Ontario (the "**Real Property**").

4. On October 6, 2017, Akman and SAMM (collectively, the "**Appellants**") filed a Notice of Appeal (the "**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. A copy of the Sale Process Order is attached as **Appendix "B"** to this Third Report.

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 Notice of Appeals with the Ontario Municipal Board ("**OMB**") in respect of the Real Property. Justice McEwen granted the OMB Appeals Order on the same date.

11. The Liquidator issued its second report to the Court on April 9, 2018 (the "**Second Report**"). As detailed in the Second Report, the Liquidator brought a motion returnable on April 13, 2018 seeking:

    a. An Order (the "**Claims Procedure Order**") approving and establishing a procedure for the solicitation, resolution and barring of certain claims against Tarn Financial (the "**Claims Process**");

    b. An Order (the "**Receivership Order**") authorizing the appointment of KPMG as receiver and manager over the properties, assets and undertakings of Tarn Construction (in such capacities, the "**Receiver**") pursuant to section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43;

    c. An Order (the "**Deposit Confirmation Procedure Order**") approving and establishing a procedure for confirming the Deposits (as defined in the Deposit Confirmation Procedure Order) that have been paid to Tarn Construction by purchasers of the pre-sold, unbuilt condominium units at the Development Project (the "**Deposit Confirmation Procedure**"); and

    d. An Order (the "**April Ancillary Order**") (i) authorizing an increase in the maximum principal amount of the Borrowings Charge (as defined in the Winding Up Order) by $1,000,000 (the "**Increased Borrowing Amount**") from $2,000,000 to $3,000,000 and addressing the priority of the Borrowings Charge in respect of the Increased Borrowing Amount; (ii) approving the fees of the Liquidator and the Liquidator's legal counsel from the date of the Winding Up Order to December 31, 2017; and (iii) approving the First Supplemental Report, the Second Supplemental Report and the Second Report and the activities and conduct of the Liquidator as set out therein.

12. On April 13, 2018, the Court granted the Claims Procedure Order, the Receivership Order, the Deposit Confirmation Procedure Order and the April Ancillary Order. A copy of the

Second Report (without appendices), the Claims Procedure Order, the Receivership Order and the Deposit Confirmation Procedure Order are attached as **Appendix "C"**, **Appendix "D"**, **Appendix "E"** and **Appendix "F"**, respectively, to this Third Report.

13. Capitalized terms not defined herein shall have the meanings set out in the Winding Up Order, the Sale Process Order, the Claims Procedure Order and the Deposit Confirmation Procedure Order.

II. PURPOSE OF THIS THIRD REPORT

14. The purpose of this Third Report is to update this Honourable Court with respect to:

a. The outcome of the Sale Process;

b. The commencement of the Claims Process;

c. The commencement of the Deposit Confirmation Procedure;

d. The advice and directions being sought by the Receiver from the Court in accordance with paragraph 18 of the Receivership Order. The Receiver is seeking advice and directions regarding its 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**"); and

e. To provide the Court with the necessary information to support the following relief:

(i) an Approval and Vesting Order (the "**Approval and Vesting Order**") substantially in the form contained at Tab 3 of the Liquidator and Receiver's Motion Record dated April 24, 2018 (the "**Motion Record**"), 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 (the "**Purchased Assets**");

(ii) an Order (the "**Disputed Deposits Resolution Procedure Order**") substantially in the form contained at Tab 5 of the Motion Record establishing a procedure for the resolution of disputed deposits ("**Disputed Deposits**") asserted by Purchasers of proposed condominium units in the contemplated Development Project (the "**Disputed Deposits Resolution Procedure**") ; and

(iii) an Order (the "**Termination Entitlement Order**") substantially in the form contained at Tab 6 of the Motion Record 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 hereby 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.

15. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

16. The information contained in this Third 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 Third Report.

17. Future oriented financial information reported or relied on in preparing this Third 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. OUTCOME OF THE SALE PROCESS

Details Relating to the Sale Process

18. As set out in the Second Report, on November 29, 2017, the Liquidator sought and received the Court's approval to retain Colliers as the marketing and listing agent and to implement the Sale Process, which established the process pursuant to which the Liquidator, through Colliers, would market the Assets and determine the Successful Bid(s).

19. Capitalized terms used in this section of the Third Report are as defined in the Sale Process Order attached hereto as Appendix "B", unless otherwise defined herein.

20. The Sale Process contemplated a two-phase process with the following initial key milestones:

    (i) Phase I Bid Deadline – January 31, 2018

    (ii) Phase II Bid Deadline – February 23, 2018, and

    (iii) Anticipated Timing for Sale Hearing – March 23, 2018

21. For the reasons set out in the Second Report, the Sale Process was not commenced until January 3, 2018. In light of the delay in commencing the Sale Process and pursuant to paragraph 4 of Sale Process, the key milestone dates were extended by the Liquidator and Colliers to the following:

    (i) Phase I Bid Deadline – February 15, 2018

    (ii) Phase II Bid Deadline – March 9, 2018, and

    (iii) Anticipated Timing for Sale Hearing – April 9, 2018

22. Prior to commencing the Sale Process, Colliers, in consultation with the Liquidator, prepared a list of potential interested parties that were invited to participate in the Sale Process. Colliers also used its worldwide network to ensure that the opportunity was appropriately publicized. Colliers sent out an electronic blast of the Investment Profile, the form of Confidentiality Agreement and the Sale Process Order (collectively the "**Teaser**") to approximately 1,350 parties on January 3, 2018. The Teaser was sent for a second time on January 10, 2018 and a third time on January 29, 2018. Information pertaining to the Sale Process was also posted on Colliers and the Liquidator's websites.

23. In the first phase of the Sale Process, 68 Interested Parties met the preliminary participant requirements set out in the Sale Process (the "**Phase I Participant Requirements**"), which included executing a Confidentiality Agreement and an Acknowledgment of Sale Process. The Interested Parties that met the Phase I Participant Requirements were provided with a Confidential Information Memorandum and access to an electronic data room by Colliers in order to prepare and submit a Phase I Bid by the Phase I Bid Deadline.

24. Commencing on January 9, 2018, the electronic data room was made available to those parties who signed Confidentiality Agreements. In addition, nine Interested Parties requested and were provided with a formal tour of the Hotel with Colliers, the Liquidator and the Hotel general manager and engineer prior to the Phase I Bid Deadline.

25. In order to ensure that all Interested Parties participated in the Sale Process and were provided adequate time to complete their Phase I Bids, following the dismissal of the Appeal that occurred on February 6, 2018, and pursuant to paragraph 4 of the Sale Process, the key milestone dates were further extended by Colliers and the Liquidator. On February 8, 2018, Colliers advised all parties participating in the Sale Process that the milestone dates under the Sale Process were revised as follows:

    (i) Phase I Bid Deadline – February 28, 2018

    (ii) Phase II Bid Deadline – March 22, 2018, and

    (iii) Anticipated Timing for Sale Hearing – April 23, 2018.

    The revised deadlines were also posted to the Liquidator's website.

26. The Sale Process provides that a Phase I Bid, being a Non-Binding APA including a mark-up to the Template APA (which was available to Interested Parties in the data room) identifying the proposed changes to the Template APA, had to be submitted by the Phase I Bid Deadline of noon (Eastern time) on February 28, 2018.

27. Pursuant to the Sale Process, it was recommended that Bidders submit a Phase I Bid for all of the Assets. However, the Sale Process allows for a Phase I Bid to be a Portion Bid for the Hotel Assets or the Development Assets.

28. 13 formal Phase 1 Bids and 1 informal bid were received by the Phase I Bid Deadline. None of the Phase I Bids received were Portion Bids.

29. Following, the Phase I Bid Deadline, the Phase I Bids were reviewed by the Liquidator and Colliers, in consultation with the Secured Lenders, to determine the Qualified Phase I Bidders. 12 Phase I Bidders were deemed to be Qualified Phase I Bidders, and were notified in early March, 2018 of such designation and invited to participate in the second phase of the Sale Process wherein they were given access to an expanded data room by Colliers in order to complete their due diligence prior to submitting a Phase II Bid.

30. Certain Qualified Phase I Bidders who had not previously toured the Hotel also requested and were provided a formal tour of the Hotel with Colliers, the Liquidator and the Hotel general manager and engineer prior to the Phase II Bid Deadline.

31. The Sale Process provides that a Phase II Bid, may not be conditional on obtaining financing, any internal approval or on the outcome or review of due diligence. A Phase II Bid is to include a Binding APA executed by the Qualified Phase I Bidder with a markup showing changes from the Template APA and, among other things, a Good Faith Deposit equal to ten percent of the total purchase price. The Phase II Bids were to be received by the Phase II Bid Deadline of noon (Eastern time) on March 22, 2018.

32. Seven Phase II Bids were received by the Phase II Bid Deadline. The Liquidator and Colliers, in consultation with the Secured Lenders, reviewed the Phase II Bids and the Liquidator and Colliers sought clarification from the Qualified Phase I Bidders on the terms of their Phase II Bids in order to properly consider the value of each Phase II Bid, and to determine the next step in the Sale Process to move towards the selection of a Successful Bid and a Back-Up Bid.

33. The Sale Process provided flexibility in the event that more than one Qualified Phase II Bid was received by the Phase II Bid Deadline, and allowed the Liquidator and Colliers to:

    a. Conduct an auction amongst the Qualified Phase II Bidders, on terms to be determined by the Liquidator, to determine the Successful Bid and the Back-Up Bid;

    b. Negotiate with the Qualified Phase II Bidders and determine the Successful Bid and the Back-Up Bid; or

    c. Determine which of the Qualified Phase II Bids shall be the Successful Bid and which of the Qualified Phase II Bids shall be the Back-Up Bid.

34. Given that multiple Qualified Phase II Bids were received and the value of a number of the Phase II Bids were close in range, in accordance with the Sale Process, Colliers and the Liquidator invited six of the Qualified Phase I Bidders to review their Phase II Bids and provide any final revisions to their submission, including changes to the offer price, terms and supporting documents and to deliver any changes or clarifications to their Phase II Bid in a sealed envelope to Colliers by 3 p.m. (Eastern time) on April 9, 2018 and otherwise to confirm their current Phase II Bid (as clarified or confirmed, a "**Final Phase II Bid**").

35. By the 3 p.m. deadline on April 9, 2018, Colliers received five sealed envelopes from Qualified Phase I Bidders, which the Liquidator and Colliers opened on the morning of April 10, 2018 to review the Final Phase II Bids. The other Qualified Phase I Bidder that was invited to participate in the final phase of the Sale Process did not submit a revised bid but confirmed its Phase II Bid as its Final Phase II Bid.

36. The Successful Bid under the Sale Process is the highest and/or best Qualified Phase II Bid as determined by the Liquidator and Colliers, taking into account financial and contractual terms and the factors relevant to the Sale Process, including those factors affecting the cost, speed and certainty of consummating the proposed sale and the claims likely to be created by such Bid in relation to other Bids.

37. Similarly, the Back-Up Bid under the Sale Process is the next highest and/or best Qualified Phase II Bid as determined by the Liquidator and Colliers, taking into account financial and contractual terms and the factors relevant to the Sale Process, including those factors affecting the cost, speed and certainty of consummating the proposed sale and the claims likely to be created by such Bid in relation to other Bids.

38. Following the review of the Final Phase II Bids, the Liquidator and Colliers determined that Sunray is the Successful Bidder and that Pinnacle International One Lands Inc. ("**Pinnacle**") is the Back-Up Bidder and provided notice to each party on April 13, 2018. A summary of the Bids received in the Sale Process will be provided to the Court as **Confidential Appendix "1"** and a sealing order is being sought by the Liquidator with respect to the Confidential Appendices to this Third Report due to the commercially sensitive information contained within the Confidential Appendices.

39. Prior to issuing this Third Report, the Liquidator advised the Applicants and the Respondents that Sunray was the Successful Bidder. The Liquidator received requests from the shareholders to disclose the purchase price of the Successful Bid to them prior to the Motion. After considering this request, the Liquidator advised the Applicants and the Respondents that the Liquidator would be prepared to provide the information on the basis that it be held in strict confidence until after the closing of the Transaction and that it will remain confidential in the event that the Transaction is not concluded. The Liquidator provided the information to the Respondents after confirming terms of confidentiality. The Applicants declined to receive the information regarding the purchase price to avoid any issues should they wish to participate in a further process in the unlikely event that the Liquidator needed to remarket the Assets.

40. After selection of the Successful Bidder and the Back-Up Bidder, the Liquidator returned the Good Faith Deposits to the other Bidders who submitted a Good Faith Deposit with their Phase II Bids.

The Successful Bid

41. The Liquidator and Sunray finalized the terms of the Successful Bid and executed the Asset Purchase Agreement on April 20, 2018. A copy of the Asset Purchase Agreement redacted to remove commercially sensitive terms is attached as **Appendix "G"** to this Third Report. An unredacted copy of the Asset Purchase Agreement is **Confidential Appendix "2"** and will be filed with the Court separately.

42. The principal terms of the Asset Purchase Agreement are set out below, however, an interested person should review the Asset Purchase Agreement in its entirety. Capitalized terms not defined in this section of the Third Report shall have the meaning ascribed to them in the Asset Purchase Agreement.

43. Sunray will acquire on an "as is, where is basis", the Purchased Assets set out Section 2.01 of the APA, which include:

    a. The Real Property;

    b. All buildings, structures, erections, improvements, appurtenances, fixed machinery, fixed equipment and fixtures situate on or forming part of the Real Property;

c. All other machinery and equipment and all vehicles, tools, handling equipment, furniture, furnishings, computer hardware and peripheral equipment, supplies and accessories of the Business;

d. All Inventories;

e. Subject to Section 2.07 regarding the assumption of Liabilities and to the extent not otherwise included in Purchased Assets, the Assigned Contracts;

f. Subject to Section 2.08(3) regarding Assigned Contracts, all Permits required to carry on the Business in its usual and ordinary course, including the Permits listed in Exhibit "B" of the Asset Purchase Agreement;

g. All Intellectual Property owned by Tarn Financial and belonging to or used in the Business;

h. Subject to Section 2.07 regarding the assumption of Liabilities, all Intellectual Property not owned by Tarn Financial but licenced by Tarn Financial and used in the Business;

i. The goodwill of the Business;

j. All pre-paid expenses and deposits relating to the Purchased Assets (other than deposits paid to suppliers or customers of Tarn Financial) including all pre-paid taxes, local improvement rates and charges, water rates and other operating costs, all pre-paid purchases of gas, oil and hydro, and all pre-paid lease payments;

k. All plans and specifications in Tarn Financial's possession or under its control relating to the buildings, structures, erections, improvements, appurtenances and fixtures situate on or forming part of the Real Property including all such electrical, mechanical and structural drawings related thereto as are in the possession or under the control of Tarn Financial; and

l. The Books and Records.

44. The Excluded Assets are as follows:

a. The cash and cash equivalents, short-term investments, bank account balances, bank deposits, including any deposits posted in respect of letters of credit, and petty cash of Tarn Financial;

b. All Accounts Receivable;

c. All rights of Tarn Financial to tax refunds, credits, rebates or similar benefits relating to the Purchased Assets or the Business;

d. The Excluded Contracts;

e. Shares and other interests or capital of Tarn Financial;

f. The tax records and insurance policies of Tarn Financial;

g. Any Claim of Tarn Financial to reimbursement under any insurance policy applicable to Tarn Financial;

h. Books and Records not pertaining primarily to the Purchased Assets;

i. All funds or deposits held by suppliers, customers or any other person in trust for or on behalf of Tarn Financial;

j. The shares of Tarn Construction and any liabilities in Tarn Construction;

k. The Condo Purchase Agreements; and

l. Any other assets listed in Exhibit "E" of the Asset Purchase Agreement.

45. Assumed Liabilities are as follows:

a. All Liabilities relating to Employees addressed in in the Asset Purchase Agreement;

b. All Liabilities arising from or in connection with the Assigned Contracts or Permits including any Cure Costs;

c. All Liabilities arising from or in connection with any tax, levy, penalty, interest or costs for which Sunray is responsible pursuant to under the Asset Purchase Agreement and any Permitted Encumbrances; and

d. All Liabilities relating to or arising from the Purchased Assets under Environmental Laws.

46. The Purchase Price is being satisfied by way of:

a. Payment of a deposit in the amount of 10% of the cash portion of the Purchase Price (i.e. not taking into account the value of the Assumed Liabilities) which has been paid

to the Liquidator and is being held by the Liquidator in an interest bearing account in accordance with the Sale Process;

b. Payment of the remainder of the Purchase Price by wire transfer at the Time of Closing of immediately available funds to an account specified by Tarn Financial;

c. Paying Adjustments, if any, to the Purchase Price pursuant to the Asset Purchase Agreement, which include, without limitation, adjustments for taxes, utilities, Unopened Food and Beverage Inventory, employee payables and payment of the amount of liquidated damages calculated pursuant to the current Licence Agreement with Delta Hotels Limited; and

d. Sunray assuming the Assumed Liabilities.

47. With respect to the Employees of Tarn Financial, Sunray will, among other things:

a. Effective the opening of business on the Closing Date, offer to employ on and after the Closing Date all of the Employees who are employed by Tarn Financial in the Business who are not Bargaining Unit Employees, on substantially the same terms and conditions of employment as are in effect on the date of the Asset Purchase Agreement;

b. In respect of the Bargaining Unit Employees on the Closing Date, be the successor to Tarn Financial pursuant to the provisions of applicable labour legislation and on and after the Closing Date will be bound by and observe all of the terms, conditions, rights and obligations of Tarn Financial to the Bargaining Unit Employees; and

c. Effective the opening of business on the Closing Date, assume responsibility, statutory and otherwise, for the rights, obligations and Liabilities relating to or arising out of the employment of the Employees and will recognize all past service of Employees with Tarn Financial for all purposes.

48. The Asset Purchase Agreement is subject to the following condition in favour of Sunray: the Condo Purchase Agreements (or APSs, as they are defined in this Third Report) will have been terminated or Sunray will have confirmation that the Condo Purchase Agreements are Excluded Assets and are vested off the Real Property pursuant to the Approval and Vesting Order.

49. The Asset Purchase Agreement contemplates a Closing Date seven (7) Business Days following the date that the Approval and Vesting Order becomes a final, non-appealable Order of the Court or such other date as agreed between Tarn Financial and Sunray. The Asset Purchase Agreement has an Outside Date of July 31, 2018 or such later date as the parties may determine after which either Tarn Financial or Sunray may terminate the Asset Purchase Agreement.

50. In the Liquidator's view, the Asset Purchase Agreement represents the highest and best outcome from the Sale Process and maximizes value for Tarn Financial's stakeholders. The Liquidator is further of the view that the form of Approval and Vesting Order contained at Tab 3 of the Motion Record is appropriate in the circumstances.

The Back-Up Bid

51. As set out above, the Sale Process contemplates the selection and approval of a Back-Up Bid being the next highest and/or best Qualified Phase II Bid after the Successful Bid.

52. The Back-Up Bid selected was submitted by Pinnacle. A copy of the Back-Up Bid redacted to remove commercially sensitive terms is attached as **Appendix "H"** to this Third Report. An unredacted copy of the Back-Up Bid is **Confidential Appendix "3"** and will be filed with the Court separately.

53. The Back-Up Bid does not contemplate the purchase of the shares of Tarn Construction or the assumption of the Condominium Purchase Agreements. The Back-Up Bid is conditional upon, among other conditions, the Business and Real Property being sold free of any liabilities associated with Tarn Construction and any Affiliate of Tarn Financial. Specifically, the form of Approval of Vesting Order annexed to the Back-Up Bid contemplates the following claims being expunged from the Real Property:

    a. All contracts related to Tarn Construction and the Condominium Project contemplated on and in respect of the Development Assets;

    b. All Condo Purchase Agreements;

    c. All Claims related to the Condominium Project;

    d. Any undisclosed claims related to the Condominium Project and or Tarn Construction;

e. All claims for construction liens and Certificates of Action relating thereto; and

f. All registrations not being a Permitted Encumbrance.

54. The Liquidator has received from Pinnacle a deposit in the amount of 10% of the cash portion of the Purchase Price (i.e. not taking into account the value of the Assumed Liabilities), which is being held by the Liquidator in an interest bearing account in accordance with the Sale Process.

55. The Liquidator has not finalized an asset purchase agreement with Pinnacle with respect to the Back-Up Bid given the costs each side would incur negotiating the finalization of same. The Liquidator expects that it would only negotiate the final asset purchase agreement based on the Back-Up Bid in the event that either the Successful Bid is not approved by the Court or the Transaction contemplated by the Asset Purchase Agreement does not close.

56. In the Liquidator's view, the Back-Up Bid represents the second highest and best outcome from the Sale Process. Seeking the Court's approval of the Back-Up Bid in the Approval and Vesting Order is contemplated in the Sale Process and is appropriate in the circumstances.

IV. CLAIMS PROCESS

57. On April 13, 2018, the Court issued the Claims Procedure Order, which approved the Claims Process. Capitalized terms used in this section of the Third Report are as defined in the Claims Procedure Order.

58. In accordance with the Claims Procedure Order, the Liquidator:

a. Posted the Claims Process Notice to the Liquidator's website on April 17, 2018;

b. Published the Claims Process Notice in the Globe and Mail (National Edition) and the Toronto Star on Wednesday April 18, 2018. The Claims Process Notice is scheduled to be published for a second time in those two newspapers on May 2, 2018;

c. Sent the Claims Process Notice and Proof of Claim to:

(i) each party on the service list in the Winding Up Proceedings as at April 18, 2018;

(ii) all known creditors of Tarn Financial as of the Effective Date as evidenced by the Tarn Financial books and records;

(iii) all Persons who have notified the Liquidator or Tarn Financial of a potential Claim; and

(iv) all known creditors of Tarn Construction as of the Effective Date as evidenced by the Tarn Construction books and records,

by prepaid ordinary mail on April 17, 2018 to the address shown per the books and records of Tarn Financial or Tarn Construction.

59. In addition, the Liquidator prepared and posted to its website 'Frequently Asked Questions' in respect of the Claims Process (the "**Claims Process FAQ**") to assist parties in preparing the necessary documentation for the Claims Process. A copy of the Claims Process FAQ is attached as **Appendix "I"** to this Third Report.

60. The Claims Bar Date is 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 is 5:00 PM Eastern Standard Time on June 30, 2018. Both dates are subject to such later dates as may be ordered by the Court.

61. Pursuant to the Endorsement of Justice McEwen dated April 13, 2018, the Liquidator will address any late Claims at a future attendance before Justice McEwen, if necessary.

V. DEPOSIT CONFIRMATION PROCEDURE

62. On April 13, 2018, the Court issued the Deposit Confirmation Procedure Order, which approved the Deposit Confirmation Procedure. Capitalized terms used in this section of the Third Report are as defined in the Deposit Confirmation Procedure Order.

63. The Deposit Confirmation Procedure contemplates confirmation and assertion of Deposits in two stages given that Deposits are continuing to be made by Purchasers pursuant to the terms of their APSs. The first stage relates to Known Deposits remitted by Purchasers up to and including March 31, 2018 pursuant to their APSs. The second stage relates to Additional Deposits, if any, made by Purchasers after March 31, 2018 pursuant to their APSs.

64. In accordance with the Deposit Confirmation Procedure Order, the Receiver:

a. Posted the Deposit Confirmation Procedure Order to the website maintained in respect of the Winding Up Proceedings on April 17, 2018;

b. Sent all Purchasers a Deposit Statement by prepaid ordinary mail on April 18, 2018 to the address shown per the books and records of Tarn Construction and/or the Deposit Trustee; and

c. Sent all Purchasers that have remitted an Additional Deposit to the Deposit Trustee as of April 18, 2018 an Amended and Restated Deposit Statement by prepaid ordinary mail on April 23, 2018 to the address shown per the books and records of Tarn Construction and/or the Deposit Trustee.

65. In addition, the Receiver prepared and posted to the website in respect of the Winding Up Proceedings 'Frequently Asked Questions' in respect of the Deposit Confirmation Procedure (the "**Deposit Confirmation Procedure FAQ**") to assist Purchasers in understanding the Deposit Confirmation Procedure including what steps are necessary if they disagree with the amounts set out in the Deposit Statement and/or Amended and Restated Deposit Statement. The Deposit Confirmation Procedure FAQ was included with the mailing enclosing the Deposit Statement sent on April 18, 2018. A copy of the Deposit Confirmation Procedure FAQ is attached as **Appendix "J"** to this Third Report.

66. The Receiver prepared and issued a third letter to the Purchasers on April 17, 2018 (the "**Third Communication to Purchasers**"), which, among other things, provided notice of the Motion being brought by the Liquidator and the Receiver returnable on May 1, 2018 and set out the relief that would be sought as it related to the APSs. The Third Communication to Purchasers was issued to all of the Purchasers by email on April 17, 2018 and was also included in the mailing enclosing the Deposit Statement sent on April 18, 2018. A copy of the Third Communication to Purchasers is attached as **Appendix "K"** to this Third Report.

67. Purchasers that agree with the amounts of the Known Deposit contained on the Deposit Statement they received and/or the Additional Deposit contained on the Amended and Restated Deposit Statement are not required to take any further action and the Deposit of

the Purchaser shall be deemed a Known Deposit and/or Known Additional Deposit, as applicable.

68. Any Purchaser that wishes to dispute the Known Deposit amount contained on the Deposit Statement is required to deliver a Notice of Dispute of Deposit Statement to the Receiver by no later than the Deposit Confirmation Bar Date, being 5:00 PM Eastern Standard Time on May 15, 2018.

69. Any Purchaser that wishes to dispute the Known Additional Deposit amount contained on the Notice of Amended and Restated Deposit Statement is required to deliver a Notice of Dispute of Amended and Restated Deposit Statement to the Receiver by no later than the Deposit Confirmation Bar Date, being thirty (30) calendar days after the date set out on the Amended and Restated Deposit Statement it received.

VI. DISPUTED DEPOSITS RESOLUTION PROCEDURE

70. The Deposit Confirmation Procedure Order provides that the applicable procedures for reviewing and determining Deposits after the procedures set out therein have been implemented will be established by further Order of the Court.

71. The Receiver has sought input from Tarion Warranty Corporation ("**Tarion**") and The Guarantee Company of North America ("**The Guarantee Company**") regarding the proposed Disputed Deposits Resolution Procedure Order given the Tarion warranty bond and the security held by The Guarantee Company over the Real Property.

72. The Receiver seeks the Court's approval to allow the Receiver to implement the Disputed Deposits Resolution Procedure set out in the Disputed Deposits Resolution Procedure Order.

73. Capitalized terms used in this section of the Third Report are as defined in Disputed Deposits Resolution Procedure contained at Tab 5 of the Motion Record.

74. A Disputed Deposit is defined under the Disputed Deposits Resolution Procedure as a Deposit that a Purchaser has disputed for any reason by delivering a Notice of Dispute of Deposit Statement or Notice of Dispute of Amended and Restated Deposit Statement, as applicable, to the Receiver in accordance with the Deposition Confirmation Procedure Order.

75. The Disputed Deposits Resolution Procedure contemplates that a Deposit becomes a Proven Deposit, which is finally determined for all purposes, in any one of the following circumstances:

a. The Receiver has delivered a Deposit Statement or Amended and Restated Deposit Statement to a Purchaser and the applicable time period for filing a Notice of Dispute of Deposit Statement and/or Notice of Dispute of Amended and Restated Deposit Statement under the Deposit Confirmation Procedure Order has expired without such notice being filed by the Purchaser with the Receiver;

b. 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 Deposit Resolution Procedure Order;

c. The Purchaser has failed to bring a motion before the Court, supported by an affidavit setting out the basis for the Purchaser's Disputed Deposit, to be heard no later than 45 calendar days following the applicable Deposit Confirmation Bar Date, to determine the amount and/or validity of a Disputed Deposit that has not been consensually resolved; or

d. 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.

76. Subject to the Court granting the Termination Entitlement Order, the Receiver expects to seek a further Order at a date after the Deposit Confirmation Bar Date of May 15, 2018, once it understands the extent to which there are Disputed Deposits, if any, for the return of the Proven Deposits in accordance with the terms of the APSs and the further Order of the Court.

77. The Receiver is of the view that the Disputed Deposit Resolution Procedure Order provides an appropriate procedure to allow for the resolution of Disputed Deposits and the determination of Proven Deposits.

VII. ENTITLEMENT TO TERMINATE THE APSs WITHOUT DAMAGES

78. In accordance with paragraph 18 of the Receivership Order, the Receiver seeks the Court's advice and direction with respect to: (a) its ability to terminate the APSs in accordance with the terms of the APSs and, in particular, in accordance with the Construction Financing Early Termination Condition; and (b) the timing of its ability to terminate the APSs without damages based upon the Construction Financing Early Termination Condition.

79. For ease of reference, a sample APS (with the Purchaser's name redacted) is attached as **Appendix "L"** to this Third Report.

80. Schedule E to the APS is entitled "Tarion Warranty Corporation Statement of Critical Dates and Addendum" (the "**Tarion Addendum**"). Section 6(a) of the Tarion Addendum provides that Tarn Construction and the Purchaser may include conditions in the APS that, if not satisfied, give rise to early termination of the APS provided that such conditions comply with the Early Termination Conditions listed therein (the "**Early Termination Conditions**"). Section 6(b) of the Tarion Addendum limits the types of Early Termination Conditions to those listed in Schedule A to the Tarion Addendum.

81. Schedule "A" to the Tarion Addendum sets out certain of the permitted Early Termination Conditions. Section 1(b)(ii) of Schedule "A" to the Tarion Addendum provides that Tarn Construction is permitted to make the APS conditional upon "receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged by a specified date."

82. Section 6(d) of the Tarion Addendum provides that the obligation of Tarn Construction to complete the purchase and sale transaction under the APSs is subject to satisfaction of the Early Termination Conditions set out in the Appendix A to the Tarion Addendum.

83. The Early Termination Conditions contained in Appendix A to the Tarion Addendum that are attached to each APS include an Early Termination Condition, which states: "Receipt by the Vendor (in this case Tarn Construction) of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged by October 9, 2018." which has been defined herein as the Construction Financing Early Termination Condition.

84. In this case, Tarn Construction has no ability to satisfy the Construction Financing Early Termination Condition as of the date of this Third Report and in the Receiver's view it is inevitable and predestined that Tarn Construction will have no ability to satisfy the Construction Financing Early Termination Condition by October 9, 2018 for the following reasons:

a. Tarn Construction's (being the Vendor under the APSs) parent company, Tarn Financial, is subject to the Winding Up Order;

b. Pursuant to the Sale Process, the Liquidator by and on behalf of Tarn Financial is selling its assets including the Real Property where the Development Project was to be built;

c. Tarn Construction has significant liabilities and no assets to support financing;

d. From the Receiver's experience, no financial institution will finance Tarn Construction that does not have its own assets, while its parent company, Tarn Financial, is in the process of being liquidated and wound up pursuant to the Winding Up Order; and

e. The passage of time between the date of this Third Report and October 9, 2018 will not change any of the facts set out herein.

85. Paragraph 25(a) of Schedule "A" (Additional Provisions) to the APS provides that in the event that the APS is terminated pursuant to the Tarion Addendum, within 10 days of such termination Tarn Construction must refund all monies paid by the Purchaser including deposit(s) and monies for upgrades and extras, together with interest from the date such monies were paid to Tarn Construction. Interest shall be calculated in accordance with the Condominium Act, 1998 (Ontario).

86. In such circumstances, Tarn Construction's liability to the Purchaser is limited to paying the amounts described above. Paragraph 25(c) of Schedule "A" (Additional Provisions) to the APS provides as follows:

> For greater certainty, in no instance shall the Vendor be liable for any other costs or claims or damages whatsoever, including, without limitation, any loss of bargain, relocation costs, loss of use of deposit monies or any other fees, professional or otherwise, expended in relation to this transaction. The Purchaser acknowledges and agrees that the foregoing may be pleaded by the Vendor as an estoppel to any action brought by the Purchaser.

87. In the Receiver's view, the Construction Financing Early Termination Condition cannot be fulfilled as of the date of this Third Report and it is inevitable that the Construction Financing Early Termination Condition will not be able to be fulfilled by Tarn Construction by October 9, 2018. The Receiver is further of the view that waiting to terminate the APSs after October 9, 2018 negatively impacts the Purchasers that would be entitled to the return of their Deposits in accordance with the terms of their APSs.

88. As a result, the Receiver is seeking the advice and directions of the Court to confirm its ability to rely upon the Construction Financing Early Termination Condition to terminate the APSs on behalf of Tarn Construction without damages (upon the return of deposits in accordance with the terms of the APSs) at any time from the date of the Termination Entitlement Order, subject to further Order of the Court being granted to address the return of Deposits to the Purchasers prior to doing so.

89. The Receiver is further seeking confirmation that termination of the APSs in accordance with the Construction Financing Early Termination Condition only obligates the Receiver thereafter to return Deposits on behalf of Tarn Construction to the Purchasers in accordance with the terms of the APSs and that upon fulfilling such obligation, in no instance thereafter, will Tarn Construction, its parent, Tarn Financial, the Receiver or the Liquidator, be liable to the Purchasers for any other costs or claims or damages whatsoever, including, without limitation, any loss of bargain, relocation costs, loss of use of deposit monies or any other fees, professional or otherwise, expended in relation to the APSs.

90. If the Termination Entitlement Order is granted, the Receiver expects to be in a position to come back to Court a few weeks after the Deposit Confirmation Bar Date to seek an Order to establish a procedure for the return of Proven Deposits in accordance with the APSs.

VIII. CONCLUSION

91. The Liquidator and Receiver submit this Third Report to the Court in support of the Liquidator's and Receiver's Motion for the relief as set out in the Motion Record and recommends that the Court grant the following relief:

    a. The Approval and Vesting Order substantially in the form contained at Tab 3 of the Motion Record approving the Transaction contemplated by the Asset Purchase

Agreement and vesting in Sunray Tarn Financial's right, title and interest in and to the Purchased Assets;

b. The Disputed Deposits Resolution Procedure Order substantially in the form contained at Tab 5 of the Motion Record establishing a procedure for the resolution of Disputed Deposits; and

c. The Termination Entitlement Order substantially in the form contained at Tab 6 of the Motion Record ordering and declaring, among other things, that the Receiver is entitled to rely on the Construction Financing Early Termination Condition to terminate the APSs on behalf of Tarn Construction and that the Receiver and is hereby 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.

All of which is respectfully submitted at Toronto, Ontario this 24th day of April, 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

Anamika Gadia
Senior Vice President

APPENDIX "A"

Court File No. CV-17-11697-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

THE HONOURABLE MR	)	**FRIDAY, THE 15th DAY**
	)	
JUSTICE LEDERMAN	)	**OF SEPTEMBER 2017**

BETWEEN:

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ, BA&B CAPITAL INC., SERDAR KOCTURK and KAAN 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 KPMGr 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-relayed 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.



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

BETWEEN:

BASEGMEZ *et al*	**AND**	**AKMAN *et al***
– Applicants –		**– Respondents –**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)

ORDER

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LAWYERS FOR THE APPLICANTS

APPENDIX "B"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

THE HONOURABLE MR.	)	**WEDNESDAY, THE 29TH DAY**
	)	
JUSTICE MCEWEN	)	**OF NOVEMBER, 2017**

BETWEEN:

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

Applicants

– and –

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

Respondents

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

SALE PROCESS ORDER

THIS MOTION, made by KPMG Inc., in its capacity as court appointed liquidator (the "**Liquidator**") pursuant to section 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial Corporation ("**Tarn**"), for an order: (a) authorizing the Liquidator to enter into and approving the marketing and listing agreement between the Liquidator and Colliers Macaulay Nicolls Inc. ("**Colliers**") substantially in the form attached to the Second Supplemental Report of the Liquidator dated November 28, 2017 (the "**Second Supplemental Report**") (the "**Marketing and Listing Agreement**"); (b) approving the sale process, substantially in the form set out in **Schedule "A"** hereto (the "**Sale Process**"), and (c) authorizing the Liquidator to apply for a consent to sever the real property owned by Tarn and municipally known as 2035 Kennedy Road, Toronto, Ontario (the "**Real Property**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Liquidator dated November 13, 2017 (the "**First Report**"), the Affidavit of Ali Akman sworn on November 16, 2017, the Supplemental Report of the Liquidator dated November 16, 2017 (the "**First Supplemental Report**") and the Second Supplemental Report and on hearing the submissions of counsel for the Liquidator, the Applicants, certain of the Respondents, Meridian Credit Union Limited, Kingsett Mortgage Corporation, Global Hospitality Licensing S.a.r.l. 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 Alina Stoica sworn November 14, 2017, filed:

DEFINITIONS

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

SERVICE

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

MARKETING AND LISTING AGREEMENT

3. **THIS COURT ORDERS** that the Liquidator is authorized to execute and to carry out and perform its obligations under the Marketing and Listing Agreement (including the payment of the amounts due to be paid to Colliers by the Liquidator pursuant to the terms thereof), and such Marketing and Listing Agreement, substantially in the form annexed to the Second Supplemental Report be and is hereby approved.

SALE PROCESS

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

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

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Liquidator either directly or through Colliers, may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of the Assets (the "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Liquidator, or in the alternative destroy all such information. The purchaser of the Assets shall be entitled to continue to use the personal information provided to it, and in a manner which is in all material respects identical to the prior use of such information by the Liquidator and/or Tarn, and shall return all other personal information.

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

AUTHORIZATION TO COMMENCE APPLICATION FOR SEVERANCE

8. **THIS COURT ORDERS** that the Liquidator is hereby empowered and authorized, but not obligated, to apply for a consent to sever the Real Property and to take such steps and to execute such documentation as may be needed to finally sever the lands, including but not limited to the satisfaction of severance conditions and the conveyance of any interests in the

lands to public bodies if required, to allow the Liquidator to preserve the option that the Hotel Assets and the Development Assets may be sold in two parcels as well as together under the Sale Process.

SEALING ORDER

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

GENERAL

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

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Schedule "A" - Sale Process

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

On November 29, 2017, the Court made an order (the "**Sale Process Order**") among other things, (a) approving the marketing and listing agreement between the Liquidator and Colliers Macaulay Nicolls Inc.; (b) approving the Sale Process for the solicitation of offers or proposals (each a "**Bid**") for the acquisition of the Assets; (c) authorizing the Liquidator to apply for consent to sever for the Real Property (the "**Land Severance**"); and (d) granting a sealing order in respect of the Confidential Appendix "1" to the Liquidator's second supplemental report dated November 28, 2017.

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

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

1. Definitions

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

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

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

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

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

"**Back-up Bidder**" means the Bidder submitting the Back-up Bid;

"**Bidder**" means a Qualified Phase I Bidder or a Qualified Phase II Bidder;

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

"**Colliers**" means Colliers Macaulay Nicolls Inc., in its capacity as listing and marketing agent engaged by the Liquidator pursuant to a Marketing and Listing Agreement approved by the Court by Order dated November 29, 2017;

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

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

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

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

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

"**Hotel Assets**" means all of the Assets related to the hotel operations currently branded as the Delta Toronto East Hotel[1];

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

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

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

"**Notice Parties**" means Colliers to the attention of Alam Pirani (alam.pirani@colliers.com), Robin McLuskie (robin.mcluskie@colliers.com), Stephen Ho (stephen.ho@colliers.com) and Russell Beaudry (russell.beaudry@colliers.com), the Liquidator to the attention of Anamika Gadia (agadia@kpmg.ca) and counsel to the Liquidator, Miller Thomson LLP, to the attention of Kyla Mahar (kmahar@millerthomson.com);

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

"**Phase I Bid Deadline**" means noon (Eastern time) on January 31, 2018;

"**Phase I Bidder**" means a bidder submitting a Phase I Bid;

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

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

"**Phase II Bid Deadline**" means noon (Eastern time) on February 23, 2018;

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

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

"**Portion Bidder**" means a bidder submitting a Portion Bid;

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

"**Qualified Phase I Bidder**" means (i) a Phase I Bidder for all of the Assets that delivers the documents described in paragraphs (a) through (d) in Section 7, and that the Liquidator and Colliers, in consultation with the Secured Lenders, determine is reasonably

[1] Continuing the hotel as a Delta branded hotel will require the consent of Global Hospitality Licensing Company, S.a.r.l.

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

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

"**Qualified Phase II Bidder**" means a Bidder submitting a Qualified Phase II Bid;

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

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

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

"**Successful Bidder**" means the Bidder submitting the Successful Bid;

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

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

2. **Assets for Sale**

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

As at the time of commencing the Sale Process, the Real Property containing the Hotel Assets and the Development Assets has not been legally severed. While the Sale Process is being undertaken, the Liquidator has been given the authority to apply for to apply for a consent to sever the Real Property and to take such steps and to execute such documentation as may be needed to finally sever the lands (a "**Land Severance**"), including but not limited to the satisfaction of severance conditions and the conveyance of any interests in the lands to public bodies if required, to allow the Liquidator to preserve the option that the Hotel Assets

and the Development Assets may be sold in two parcels as well as together under the Sale Process. Whether obtaining a Land Severance results in value maximization and whether the Liquidator will be able to obtain a Land Severance is uncertain at this time.

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

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

3. Sale Process Structure and Bidding Deadlines

The Liquidator has engaged Colliers as listing and marketing agent to undertake the marketing and sale aspects of the Sale Process, subject to the oversight of the Liquidator as the statutory representative of Tarn and officer of the Court. Interested Parties wishing to obtain information about the Sale Process, a copy of the Confidentiality Agreement and information in connection with their due diligence, should contact the following representatives of Colliers: Alam Pirani (alam.pirani@colliers.com), Robin McLuskie (robin.mcluskie@colliers.com), Stephen Ho (stephen.ho@colliers.com) and Russell Beaudry (Russell.beaudry@colliers.com).

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

All Phase I Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Process so that they are actually received by each of the Notice Parties no later than the Phase I Bid Deadline. All Phase II Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Process so that they are actually received no later than the Phase II Bid Deadline. In addition, written copies of the Bids shall be delivered by the applicable deadline to the Liquidator and its counsel at the following addresses: (a) the Liquidator, KPMG Inc., Bay Adelaide Centre, 4600 – 333 Bay Street, Toronto, Ontario M5H 2S5 Attn.: Anamika Gadia, agadia@kpmg.ca; and (b) counsel to the Liquidator, Miller Thomson LLP, Scotia Plaza, 5800- 40 King Street West, Toronto, Ontario M5H 3S1, Attn: Kyla Mahar, kmahar@millerthomson.com. A Bid received after the Phase I Bid Deadline shall

not constitute a Phase I Bid and a Phase II Bid received after the Phase II Bid Deadline may be disqualified. A Bid shall be delivered to all Notice Parties at the same time.

4. **Timeline**

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

Milestone	Date
Phase I Bid Deadline	January 31, 2018
Phase II Bid Deadline	February 23, 2018
Anticipated Timing for Sale Hearing	March 23, 2018

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

5. **Access to Due Diligence Materials**

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

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

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

liability with respect to, any information obtained by any party in connection with the sale of the Assets.

6. **Information From Interested Parties**

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

7. **Participant Requirements**

Phase I Participant Requirements.

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

Phase II Participant Requirements.

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

(a) Identification of Phase I Bidder. Identification of the Phase I Bidder and any Principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;

(b) Non-Binding APA. A Non-Binding APA satisfactory to the Liquidator and Colliers that must reasonably identify the contemplated transaction, including whether the Hotel Assets or the Development Assets or all Assets (or such portions thereof) are proposed to be acquired, the proposed purchase price including allocation, if any, and any contingencies, and conditions precedent to closing;

(c) Corporate Authority. Written evidence of the Phase I Bidder's chief executive officer or other appropriate senior executive's approval of the Phase I Bid; provided, however, that, if the Phase I Bidder is an Acquisition Entity, then the Phase I Bidder must furnish written evidence reasonably acceptable to the Liquidator and Colliers of the approval of the Phase I Bid by the Acquisition Entity's Principals; and

(d) Proof of Financial Ability to Perform. Written evidence upon which the Liquidator and Colliers may reasonably conclude that the Phase I Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:

(i) the Phase I Bidder's or, in the case of an Acquisition Entity, the Principals', current financial statements (audited if they exist);

(ii) contact names and numbers for verification of financing sources;

(iii) evidence of the Phase I Bidder's or Principals' internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction; and

(iv) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Liquidator and Colliers demonstrating that such Phase I Bidder has the ability to close the contemplated transaction;

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

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

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

8. Designation as Qualified Bidder

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

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

9. Phase II Bid Requirements

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

(a) Written Submission of Binding APA and Commitment to Close. The Phase II Bid must be submitted by the Phase II Bid Deadline in the form of a Binding APA (together with a blackline of the Binding APA against the Template APA outlining all changes from the Template APA and also a blackline from the Non-Binding APA submitted by the Qualified Phase I Bidder), and a written and binding commitment to close on the terms and conditions set forth therein.

(b) Irrevocable. Include a letter stating that the Phase 2 Bid is irrevocable and open for acceptance until the Successful Bid and the Back-up Bid have been selected by the Liquidator and Colliers;

(c) Contingencies. A Phase II Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other contingencies associated will be considered by the Liquidator and Colliers based on the other Phase II Bids received;

(d) Financing Sources. A Phase II Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Liquidator and Colliers and appropriate contact information for such financing sources must be provided;

(e) No Fees payable to Qualified Phase II Bidder. A Phase II Bid may not request or entitle the Qualified Phase II Bidder to any break-up fee, expense reimbursement or similar type of payment;

(f) Disclosure: Fully disclose the identity of each entity that will be entering into the transaction and that is participating or benefiting by such Bid; and

(g) Good-Faith Deposit. Each Phase II Bid must be accompanied by a Good Faith Deposit that shall be paid to the Liquidator by wire transfer or banker's draft, to be held by the Liquidator in trust in accordance with this Sale Process and which may be adjusted based on the process set out in Section 10.

The Liquidator and Colliers shall be entitled to seek additional information and clarifications from Qualified Phase I Bidders in respect of their Phase II Bids at any time. The Liquidator and Colliers may determine whether to entertain Bids for the Assets that do not

conform to one or more the requirements specified herein and deem such Bids to be Qualified Phase II Bids.

10. **Determination of Successful Bid**

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

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

(a) Conduct an auction amongst the Qualified Phase II Bidders, on terms to be determined by the Liquidator, to determine the Successful Bid and the Back-up Bid;

(b) Negotiate with the Qualified Phase II Bidders and determine the Successful Bid and the Back-up Bid; or

(c) Determine which of the Qualified Phase II Bids shall be the Successful Bid and which of the Qualified Phase II Bids shall be the Back-up Bid.

11. **Acceptance of Successful Bid**

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

12. **"As Is, Where Is"**

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

otherwise, regarding the Assets, or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Process or as set forth in a Binding APA approved by the Court.

13. **Free Of Any And All Encumbrances**

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

14. **Sale Hearing**

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

15. **Return of Good Faith Deposit**

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

16. Reservation of Rights

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

17. Miscellaneous

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

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

Schedule "1"
Acknowledgement of Sale Process

The undersigned hereby acknowledges receipt of the Sale Process approved by the Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) dated November 29, 2017 and that compliance with the terms and provisions of the Sale Process is required in order to participate in the Sale Process and for any Phase I Bid or Phase II Bid to be considered by the Liquidator.

This _____ day of _____.

[NAME]
By:

_____
[Signing Officer]

Volkan Basegmez et al Applicants	and	Ali Akman et al. Respondents	Court File No.: CV-17-11697.00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

SALE PROCESS ORDER
(DATED: NOVEMBER 29, 2017)

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

APPENDIX "C"

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**

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

APRIL 9, 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 (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 Second Report to the Court (the "**Second Report**").

3. The business and assets of Tarn Financial include the Delta Toronto East Hotel (the "**Hotel**") and adjoining development lands that were being developed by Tarn Financial, through its wholly-owned subsidiary, Tarn Construction Corporation ("**Tarn Construction**"), as a development known as "The Kennedys" (the "**Development Project**") located at 2035 Kennedy Rd., Scarborough Ontario (the "**Real Property**").

4. On October 6, 2017, Akman and SAMM (collectively, the "**Appellants**") filed a Notice of Appeal (the "**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**"). A copy of the First Report, the First Supplemental Report and the Second Supplemental Report (each without appendices) are attached as **Appendix "B"**, **Appendix "C"**, and **Appendix "D"**, respectively, to this Second 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 (the "**Land Severance**").

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 as discussed further below. On November 24, 2017, Justice McEwen declined to grant the Order approving the marketing and listing agreement between the Liquidator and CBRE. A copy of Justice McEwen's endorsement dated November 24, 2017 is attached as **Appendix "E"** to this Second Report.

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. A copy of the Sale Process Order is attached as **Appendix "F"** to this Second Report.

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 Notice of Appeals with the Ontario Municipal Board ("**OMB**") in respect of the Real Property (the "**OMB Appeals**"). Justice McEwen granted the OMB Appeals Order on the same date.

11. Capitalized terms not defined herein shall have the meanings set out in the Winding Up Order and the Sale Process Order.

II. PURPOSE OF THIS SECOND REPORT

12. The purpose of this Second Report is to update this Honourable Court with respect to:

a. The outcome of the Appeal;

b. The status of the OMB Appeals and the Land Severance;

c. The status of the review of what monies were transferred in or out of Tarn Financial (the "**Financial Review**") being undertaken by the Liquidator;

d. The other activities of the Liquidator since its First 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; and

(iii) other activities in relation to the Winding Up Proceedings.

e. The Sale Process;

f. The Liquidator's statement of receipts and disbursements since its appointment to March 30, 2018; and

g. To provide the Court with the necessary information to support the following relief:

(i) A Claims Procedure Order (the "**Claims Procedure Order**") substantially in the form contained at Tab 3 of the Liquidator's Motion Record dated April 9, 2018 (the "**Motion Record**") approving and establishing a

procedure for the solicitation, resolution and barring of certain claims against Tarn Financial (the "**Claims Process**");

(ii) An Order (the "**Receivership Order**") substantially in the form contained at Tab 4 of the Motion Record 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 "**CJA**");

(iii) An Order (the "**Deposit Confirmation Procedure Order**") substantially in the form contained at Tab 6 of the Motion Record 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

(iv) An Order substantially in the form contained at Tab 7 of the Motion Record:

(A) 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;

(B) approving the fees of the Liquidator and the Liquidator's legal counsel from the date of the Winding Up Order to December 31, 2017; and

(C) 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.

13. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

14. The information contained in this Second 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, and the Liquidator does not express an opinion or provide any other form of assurance with respect to the information presented herein or relied upon by the Liquidator in preparing this Second Report.

15. Future oriented financial information reported or relied on in preparing this Second 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. APPEAL OF THE WINDING UP ORDER

16. As set out above, on October 6, 2017, the Appellants filed the Notice of Appeal. In their Notice of Appeal, the Appellants sought the following relief:

    a. The order that Tarn Financial be wound up and KPMG appointed as Liquidator of the effects and estate of Tarn Financial should be set aside;

    b. The fair market value of the Applicants' shares in Tarn Financial should be determined by an independent valuation supervised and approved by the Court;

    c. The Appellants should be ordered to purchase the Applicants' shares in Tarn Financial for their fair market value as at the date of the independent valuation; and

    d. A monitor should be appointed to supervise the management of Tarn Financial until such time as the Appellants purchase the Applicants' shares in Tarn Financial.

17. On October 26, 2017, the Appellants sought and obtained an Order expediting the hearing of the Appeal (the "**Expedite Order**"). Pursuant to the Expedite Order, the Appeal was scheduled to be heard on December 22, 2017.

18. On November 16, 2017, the Liquidator's legal counsel, Miller Thomson LLP ("**Miller Thomson**"), was advised by legal counsel to the Appellants, that the parties to the Appeal had reached a settlement in principle.

19. On or about December 8, 2017, Miller Thomson was advised that the settlement had been reached and that it contemplated a purchase of the shares of Tarn Financial by a third-party

purchaser. On December 11, 2017, Miller Thomson was provided with a copy of an executed Share Purchase Agreement ("**SPA**") between a third-party purchaser and the shareholders of Tarn Financial, which contained a due diligence condition. It is the Liquidator's understanding that as a result, on consent by all of the parties to the Appeal, the Appeal was adjourned to a date to be fixed, if so required.

20. On December 19, 2017, the Liquidator and Miller Thomson were advised by the Appellants' legal counsel that the proposed share transaction would not be moving forward as the purchaser had not waived the due diligence condition contained in the SPA.

21. On January 16, 2018, the Appellants sought and obtained an Order re-expediting the hearing of Appeal (the "**Second Expedite Order**"). Pursuant to the Second Expedite Order, the Appeal was scheduled to be heard on January 30, 2018.

22. On January 30, 2018, the Appeal was heard by the Divisional Court and reserved its decision. On February 6, 2018, the Divisional Court issued its decision dismissing the Appeal. A copy of the Divisional Court decision dated February 6, 2018 is attached as **Appendix "G"** to this Second Report.

IV. OMB APPEALS AND LAND SEVERANCE

Background to the Development Project

23. As set out in the First Report, through Tarn Construction, Tarn Financial was developing "The Kennedys", a three-phased development project on the lands adjacent to the Hotel. The first phase of the Development Project contemplates the construction of a 644-unit condominium development encompassing a 32-storey tower and a 30-storey tower, of which substantially all of the units have been pre-sold ("**Phase 1**"). The second phase of the Development Project contemplates a new 40-storey tower where the 4-storey Hotel tower is located which would include 100 new hotel suites (replacing the current 75 located in the 4-storey tower) as well as 400 residential condominium units above. The third phase contemplates an office building in place of a parking structure which is currently adjacent to the Hotel.

24. The Real Property on which the Development Project is to be built is in the name of Tarn Financial and had not been severed from the land the Hotel is situated on at the time of the

Winding Up Order being granted. Tarn Construction is the vendor under the agreements of purchase and sale ("**APSs**" and each an "**APS**") entered into with purchasers of the pre-sold condominium units in Phase 1 (the "**Purchasers**"). Bennett Jones LLP ("**Bennett Jones**") acted as Tarn Financial's development and real estate counsel prior to the Winding Up Order.

25. The Liquidator has continued the retainer of Bennett Jones to, among other things, continue to maintain the trust accounts with respect to deposits received from the Purchasers for Phase 1 and to assist with respect to certain development issues relating to the Development Project.

Overview of Re-zoning and Site Plan Applications

26. As set out in the First Report, as of the date of the Winding Up Order, construction of Phase 1 of the Development Project had not commenced. Further, the application to amend the former City of Scarborough Employment Districts Zoning By-law No. 24982 (the **"Zoning By-law"**), as amended, submitted by Tarn Financial (the "**Application to Amend the Zoning By-law**") was being held pending the resolution by Tarn Financial and Tarn Construction of outstanding engineering issues and Tarn Financial entering into a Section 37 Agreement, pursuant to the *Planning Act* (Ontario), with the City of Toronto (the "**City**").

27. Upon its appointment, the Liquidator undertook a review of the required information and documentation needed in order to make a well-informed decision with respect to the Development Project. During this review process, the Liquidator was advised by Bennett Jones, that once a zoning by-law is amended, essentially no changes or amendments can be made to the zoning by-law for a period of two years. Accordingly, the Liquidator was of the view that it would be prudent to postpone the application for the Zoning By-law, until a Sale Process had been commenced and the Liquidator had the opportunity to understand the interest in the Development Project as contemplated under the Zoning By-Law.

28. At the time of the Liquidator's appointment, the application for site plan approval submitted to the City (the "**Application for Site Plan Approval**") had also not been approved.

Changes to the OMB and Timing to Launch Appeal

29. In late November 2017, the Liquidator was advised by counsel that the Government of Ontario was debating legislation that once passed would replace the OMB with a proposed Local Planning Appeal Tribunal.

30. Based on the draft legislation posted as Bill 139 on the Legislative Assembly of Ontario's website as of December 1, 2017, the intent of the new legislation, among other things, is to change the nature of appeals for zoning applications and to limit the powers of the new Local Planning Appeal Tribunal as compared to the current rights to appeal to the OMB and the broad powers of the OMB on the hearing of appeals.

31. On November 30, 2017, the Liquidator met with Colliers, Miller Thomson and Bennett Jones to discuss the sales and marketing strategy. The Liquidator and Colliers arrived at the view that the Real Property would be the most marketable if it can be marketed with as many options as possible. These options included the ability to market the Real Property with the opportunity to vary components of the development approvals relating to the Real Property including changes to the current draft Zoning By-law and site plan.

The OMB Appeals

32. The Application to Amend the Zoning By-law was submitted to the City on June 3, 2015 and the Application for Site Plan Approval was submitted to the City on March 29, 2016.

33. The Application to Amend the Zoning By-law is intended to implement an approved Official Plan amendment for the Real Property by re-zoning to allow a mixed use development of the Real Property that will include new residential, retail, and office uses, a hotel and new public spaces.

34. The Application for Site Plan Approval is intended to allow a mixed use development of the Real Property that will include new residential, retail and office uses, as well as a hotel and new public spaces.

35. Tarn Financial is entitled to file a Notice of Appeal with the OMB pursuant to subsection 34(11) of the *Planning Act* (Ontario) with respect to the Application to Amend the Zoning By-law and pursuant to subsection 114(15) of the *City of Toronto Act, 2006* with respect to the Application for Site Plan Approval.

36. Based on the proposed changes to the legislation, the Liquidator's counsel recommended that, if marketing the Real Property with as many options as possible is desirable for the Sale Process, then the OMB Appeals should be filed at the earliest possible opportunity given the imminent adoption of new legislation and also because it would shorten the time within which a purchaser could have their desired development designs finally approved by starting the OMB appeal process for them.

37. As a result, the Liquidator sought and obtained the OMB Appeals Order on December 6, 2018. Immediately thereafter, Bennett Jones filed the OMB Appeals on behalf of the Liquidator. On December 20, 2017 the City's Clerk Office acknowledge receipt of the OMB Appeals.

38. On March 28, 2018, Bennett Jones received notices from the OMB advising of a July 24, 2018 pre-hearing date for the OMB Appeals. Once a Successful Bidder is selected under the Sale Process (as discussed below), the Liquidator will work cooperatively with the Successful Bidder to determine what is required to be prepared for the pre-hearing date.

Authorization for Land Severance

39. As of the date of the Winding Up Order, the Real Property had not been legally severed.

40. In conjunction with obtaining authorization to undertake the Sale Process, the Liquidator sought and received the Court's authorization, but not the obligation, to apply for a consent to sever the Real Property and to take such steps and to execute such documentation as may be needed to finally sever the lands including, but not limited to, the satisfaction of severance conditions and the conveyance of any interests in the lands to public bodies if required, to allow the Liquidator to preserve the option that the lands containing the Hotel and Phase 1 of the Development Project may be sold in two parcels as well as together under the Sale Process.

41. In consultation with its legal counsel, the Liquidator engaged the services of two former consultants of Tarn Construction to assist the Liquidator in preparing the necessary documents for the Land Severance, which contemplates severing the Real Property into two lots based on a proposed severance line.

42. The severance plan that the Liquidator had prepared for filing with the City of Toronto Committee of Adjustment ("**CTCA**") is based upon the current development proposal for the site. The Liquidator has been advised by its advisors that most alternatives to the current development proposal would require an alternative severance line than the one currently being contemplated.

43. During the planning and preparation to submit the Land Severance, Bennett Jones undertook preliminary discussions with a member of the CTCA about the consent. In these discussions, the CTCA advised that in their view any Land Severance for the Real Property to be premature until the Sale Process had progressed further given the current uncertainty regarding the development of the Real Property.

44. As a result, the Liquidator, in consultation with Colliers and its advisors, determined that the Land Severance should not be submitted at this time.

V. FINANCIAL REVIEW

45. Pursuant to paragraph 2(h) of the Winding Up Order, the Liquidator was directed to conduct a review of what monies were transferred in and out of Tarn Financial.

46. The Liquidator has commenced its review of what monies were transferred in or out of Tarn Financial utilizing the services of KPMG Forensic Inc. ("**KPMG Forensic**").

47. The period covered by the Financial Review is July 7, 2014, the date on which Tarn Financial was incorporated, and September 24, 2017.

48. Due to a concern raised by the former counsel to one of the shareholders regarding the potential privilege of certain documents, the Liquidator has undertaken its review in two phases. The first phase of the review has been limited to reviewing the bank statements, accounting records and other financial records of Tarn Financial and Tarn Construction.

49. The Liquidator has attended various meetings and participated in numerous communications between KPMG Forensic, Tarn Financial's financial institutions and management of Tarn Financial, in order to address KPMG Forensic's information requests to date.

50. Based on its work to date, the Liquidator has identified a number of transactions which require further investigation, including the review of additional documentation. While the

Liquidator completes the first phase of the Financial Review, it has had discussions with counsel to the shareholders to discuss the need for a protocol to be put in place to allow the Liquidator to review non-financial documents and set up safeguards regarding any potential solicitor client privilege issues.

51. The Liquidator is optimistic that a protocol can be agreed between the shareholders and the Liquidator. However, in the event that the parties are unable to agree on such a protocol, the Liquidator will seek advice and directions from the Court.

VI. ACTIVITIES OF THE LIQUIDATOR SINCE THE FIRST REPORT

General Activities

52. The Liquidator continues to manage the operations of the Hotel and continues to preserve the assets of Tarn Financial.

53. Since November 13, 2017, the date of the First Report, the Liquidator has continued to:

a. Attend the corporate and administrative offices of Tarn Financial and Tarn Construction located at the Hotel, as required;

b. Review and approve all purchase orders;

c. Review and approve all disbursements before they are made;

d. Prepare and update 13-week cash flow projections, including analysis of actual versus forecast results;

e. Prepare daily bank reconciliations;

f. Have regular discussions with Tarn Financial's secured lenders (the "**Secured Lenders**") regarding the Winding Up Proceedings, including, among other things, the status of the Hotel operations and the Development Project, discussions with other stakeholders, liquidity requirements, and the Sale Process;

g. Have regular discussions with the shareholders' counsel regarding the Winding Up Proceedings and respond to inquiries regarding same;

h. Post materials relating to the Winding Up Proceedings and the Sale Process on its website (www.kpmg.com/ca/tarn);

i. 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; and

j. Respond to inquiries from other stakeholders regarding the Winding Up Proceedings

Activities Relating to Tarn Financial and the Hotel Operations

54. In addition to the activities described above, the Liquidator has done the following specifically in respect of the Hotel operations:

a. Had regular update meetings with Hotel management and staff;

b. Filed and paid all source deductions, HST and withholding tax owing to Canada Revenue Agency (the "**CRA**") since the date of the Winding Up Order and made the necessary workplace safety insurance board filings and payments;

c. Had regular discussions with representatives of Marriott (as defined below) regarding the status of the Hotel operations, the Property Improvement Plan (the "**PIP**"), and the Sale Process;

d. Exchanged correspondence with the Unite Here Local 75 union (the "**Union**") regarding the collective agreement in force from February 1, 2014 to January 31, 2018 (the "**CBA**") and pending collective bargaining negotiations;

e. Engaged a third-party accounting firm to provide bookkeeping assistance in order to assist Tarn Financial in inputting financial entries for the 2017 fiscal year and preparing its year-end financial statements as at December 31, 2017 as a result of there being no general ledger for 2017 at the time of the Liquidator's appointment;

f. Undertaken certain critical maintenance items urgently required at the Hotel and implemented items required to comply with Marriott brand standards; and

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

Marriott

55. As stated in the Liquidator's First Report, the Hotel is branded a Delta. There is a Hotel License Agreement in place between Tarn Financial and Delta Hotels Limited (or any successor or assignee of its interest) ("**Marriott**") dated November 13, 2014 (the "**License**

Agreement"). Pursuant to the License Agreement, Tarn Financial is responsible for royalty, licensing, and marketing fees, which are to be paid on or before the tenth day of the month in respect of the preceding month. In addition to the License Agreement, on May 5, 2016, Tarn Financial entered into a Consent to Development of Premises and Amendment to Hotel License Agreement (the "**Consent**") with Marriott.

56. As set out in the First Report, on October 5, 2017, Marriot issued two default notices to Tarn Financial. The first default notice (the "**First Notice**") advised Tarn Financial that it was in default of the License Agreement for non-payment of fees and other amounts due and owing pursuant to the License Agreement. The First Notice indicated that as at October 4, 2017, at least $481,992.77 was due and owing, all of which the Liquidator understands pre-dates the Winding Up Order. The First Notice indicates that Marriott issued previous notices of breach to Tarn Financial on May 12, 2017 and June 30, 2017. The second default notice (the "**Second Notice**") advised Tarn Financial that it was in default under the License Agreement and Consent for failure to comply with certain PIP deadlines. The Second Notice indicates that Marriott issued previous notices of breach to Tarn on April 5, 2017, May 19, 2017 and June 30, 2017.

57. Since the date of the First Report, the Liquidator has continued to have regular discussions and meetings with representatives of Marriott and its counsel regarding the status of the Hotel operations and the Development Project, the PIP, the outstanding amounts owing to Marriott and the Sale Process.

58. From the date of its appointment, the Liquidator has been working with Marriott to address items identified as critical issues by Marriott. Between November 13, 2017 and January 3, 2018, the Liquidator removed 50 guestrooms from inventory, as they were not in compliance with the System Standards of Marriott (the "**Non-compliant Guestrooms**"). For each Non-Compliant Guestroom, the Hotel management prepared a list of deficiencies and a remediation plan, including the estimated timeline to remedy, which was agreed to by Marriott.

59. The remediation work was completed in stages and the Non-compliant Guestrooms were added back into inventory once the remediation was completed, with the final room added

back to inventory on January 17, 2018. In addition, the Liquidator has continued to remedy additional critical maintenance issues identified by the Liquidator or Marriott and implement necessary brand standard requirements, as cash flow has permitted, in order to ensure that Tarn Financial's obligations under the License Agreement from and after the date of the Liquidator's appointment are being met.

60. In January, 2018, representatives of Marriott met with the Liquidator, in order for Marriott to prepare a Property Improvement Plan with Fire and Life Safety Audit, as applicable, (collectively, the "**Revised PIP**"). On January 24, 2018, the Liquidator received the Revised PIP report from Marriott, which outlined a significant number of items that needed to be improved by the Hotel, in order to meet the Delta Hotels Design Standards. The Liquidator continues to work diligently with Marriott in order to address their concerns.

61. The Revised PIP was also posted to the electronic data room for the Sale Process upon receipt.

62. Within approximately six weeks of KPMG being appointed Liquidator and again on March 13, 2018, Marriott completed a Delta Brand Standard Audit. The results of these two audits as compared to previous audits, indicate that the scores of the Hotel have been increasing during the Liquidation. A copy of the Delta BSA Analysis setting out the scores achieved for the Hotel is attached as **Appendix "H"** to this Second Report.

Union

63. As discussed in the Liquidator's First Report, Tarn Financial has approximately 179 employees that work at the Hotel and are represented by the Union pursuant to the CBA. The current CBA expired on January 31, 2018.

64. On January 4, 2018, the Liquidator received notice that the Union would like to bargain a new collective agreement.

65. Given that the CBA has an automatic one-year extension clause in the event that bargaining does not occur, on January 9, 2018, the Liquidator sent a letter to the Union advising the Union that the Liquidator was attempting to find a purchaser for the Hotel and proposing that the parties agree to delay the bargaining process for some period of time until the

completion of the Sale Process, so that the new owner could participate in the negotiations of a new collective agreement. In the meantime, the terms of the current CBA would continue to be in full force and effect but the one-year extension clause would not be invoked.

66. On January 16, 2018, the Liquidator received a notice that a request for the appointment of a Conciliation Officer was made by the Union pursuant to the CBA. On January 24, 2018, the Liquidator received a further notice from the Ministry of Labour stating that a Conciliation Officer had been appointed.

67. On January 30, 2018, the Liquidator sent another letter to the Union, again advising the Union that the Liquidator was attempting to find a purchaser for the Hotel and proposing that the parties agree to delay the bargaining process for some period of time.

68. The Liquidator has received no further correspondence from the Union other than an acknowledgement of receipt of the Liquidator's letters. The terms of the CBA continue in force in the usual manner.

Activities Relating to Tarn Construction and the Development Project

69. Upon being appointed, the Liquidator worked closely with the contract accountant and the contract administrative officer for Tarn Construction to reconcile the outstanding liabilities of Tarn Construction. At the time of being appointed, Tarn Construction's books and records were not up to date and there were a large number of invoices which had not been entered into the company's accounting system. In addition, there were a number of invoices in the system that appeared to have been paid but in fact had not been paid as cheques had been issued (resulting in those invoices appearing in the system as paid) however the cheques were never released and were sitting in the offices of Tarn Construction.

70. In addition to the activities described above, the Liquidator has done the following specifically 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;

b. Responded to inquiries from Purchasers of the Phase 1 condominium units regarding, among other things, the status of their APSs, deposit monies, and the Sale Process;

c. Had regular discussions with Bennett Jones regarding, among other things, the status of deposit monies being held in trust, change of addresses, and inquiries regarding APSs;

d. Updated the books and records of Tarn Construction as further invoices are received;

e. Responded to inquiries from brokers regarding, among other things, the status of the Winding Up Proceedings, their commissions and the status of the Sale Process;

f. Had discussions with The Guarantee Company of North America (the "**Guarantee Company**") in respect of the insurance coverage and premiums owed for the Tarion warranty bond on the Development Project; and

g. Had discussions with Tarion Warranty Corporation ("**Tarion**") and the Guarantee Company regarding confirming the amount of deposit monies held and the proper process to undertake to do same in these circumstances.

Activities Relating to the Sale Process

71. As set out in detail below, pursuant to the Sale Process Order, the Liquidator and Colliers commenced the Sale Process on January 3, 2018. A more detailed update on the status of the Sale Process is set out in the next section of this Second Report. In conjunction with the Sale Process, the Liquidator and its counsel:

a. Reviewed and commented on the Investment Profile prepared by Colliers;

b. Reviewed and commented on the Confidential Information Memorandum prepared by Colliers;

c. Prepared the form of Confidentiality Agreement and reviewed mark ups of the form of Confidentiality Agreement received from Interested Parties;

d. Prepared the due diligence materials and information relating to the Assets for the electronic data room, including reviewing and redacting information where appropriate;

e. Engaged Watters Environmental Group Inc., to prepare a Phase I ESA report and a Property Condition Assessment report with respect to the Hotel and the Real Property;

f. Prepared the template Asset Purchase Agreement;

g. Attended tours of the Hotel with Colliers and Interested Parties;

h. Attended regular meetings and teleconferences with Colliers regarding the status of the Sale Process;

i. Had meetings and discussions with the key stakeholders, including the Secured Lenders, Marriott, Tarion and the Guarantee Company regarding the status of the Sale Process and the bids received; and

j. Reviewed and clarified Phase I Bids and Phase II Bids.

Activities Relating to Tax Matters

72. The Liquidator continues to ensure that all filings and payments are made with respect to source deductions, HST, workplace safety insurance and withholding taxes.

73. On January 25, 2018, the Liquidator was advised that the CRA wanted to complete an audit for the period from January 1, 2017 to January 31, 2018 with respect to the payroll records of Tarn Construction. On March 2, 2018, the CRA attended the offices of Tarn Construction and completed the audit. The Liquidator has not heard any further from the CRA with respect to the outcome of its audit.

74. At the time of the Liquidator's appointment, the Liquidator was advised that the 2016 income tax filings for both Tarn Financial and Tarn Construction had not been completed or filed. On February 26, 2018, the Liquidator met with Tarn Financial's 2016 auditor, Richter LLP ("**Richter**"), to discuss the completion of the 2016 tax returns.

75. On March 7, 2018, the Liquidator engaged Richter to complete an overall tax review of Tarn Financial for its 2014 and 2015 taxation years and Tarn Construction for its 2015 taxation year in order to prepare the corporate income tax returns for Tarn Financial for the 2016 taxation year.

76. In addition, the Liquidator has also engaged Richter to review the potential options available for the structuring of the proposed sale of the Assets of Tarn Financial for the purposes of optimizing the after-tax proceeds for distribution by the Liquidator.

77. On March 16, 2018, the Liquidator wrote to the CRA to request that the CRA attend Tarn Financial's premises and complete: (a) an HST audit; and (b) a payroll audit, for remittances due up to and including December 31, 2017, with the view of obtaining a clearance certificate up to the period noted above. The Liquidator is waiting to hear from the CRA with respect to its request.

Other Activities in Relation to the Winding Up Proceedings

78. In addition to the activities described above, the Liquidator, with the assistance of its counsel, has done the following in relation to the Winding Up Proceedings:

a. Completed the sale of a vehicle pursuant to paragraph 2 of the Court Order of Justice McEwen dated November 24, 2017;

b. Prepared and delivered the:

(i) First Report;

(ii) First Supplemental Report; and

(iii) Second Supplemental Report; and

c. Attended at Court appearances on November 17, 2017, November 24, 2017, November 29, 2017, December 6, 2017, December 13, 2017 and April 4, 2018.

VII. SALE PROCESS

79. As set out above, the Sale Process Motion was initially scheduled to be heard before the Court on November 17, 2017, and was adjourned on an unopposed basis to November 24, 2017, to allow the shareholders of Tarn Financial to formalize a settlement that had been reached between them in principle.

80. On November 24, 2017, the Sale Process Motion was heard and was unopposed except for the Order seeking the approval of a marketing and listing agreement between the Liquidator and CBRE, which was opposed by the Respondents, SAMM and Akman. Their opposition

was based upon the potential for bias or prejudice that could be asserted by CBRE against Akman. The potential for bias or prejudice was the result of ongoing litigation CBRE had with one of Akman's other companies, S and A Hospitality Corporation, for damages for breach of contract regarding alleged unpaid real estate commissions given that the shareholders (including Akman) anticipated participation in the Sale Process. Justice McEwen declined to approve the marketing and listing agreement between the Liquidator and CBRE due to the potential apprehension of bias that could be perceived in the event that the Sale Process was undertaken by CBRE.

81. As a result, the Liquidator negotiated a marketing and listing agreement with Colliers and sought Court approval of Colliers as the marketing and listing agent.

82. On November 29, 2017, the Liquidator sought and received the Court's approval to retain Colliers as the marketing and listing agent and to implement the Sale Process, which established the process pursuant to which the Liquidator, through Colliers, would market the Assets and determine the Successful Bid(s).

83. The Sale Process contemplated a two-phase process with the following initial key milestones:

    (i) Phase I Bid Deadline – January 31, 2018

    (ii) Phase II Bid Deadline – February 23, 2018, and

    (iii) Anticipated Timing for Sale Hearing – March 23, 2018

84. Following the issuance of the Sale Process Order, Colliers, working with the Liquidator, began preparing the marketing materials and buyers list in respect of the Sale Process, with a view to commencing the Sale Process in the second week of December, 2017.

85. As set out above, on or about December 8, 2017, Miller Thomson was advised that a settlement had been reached among the shareholders and that it contemplated a purchase of the shares of Tarn Financial by a third-party purchaser. On December 11, 2017, Miller Thomson was provided with a copy of the SPA between a third-party purchaser and the shareholders of Tarn Financial, which contained a due diligence condition.

86. Upon receipt of the SPA, the Liquidator and its counsel discussed the impact of the SPA on the Sale Process with counsel for the shareholders, the Secured Lenders and Marriott.

The Liquidator determined that it would prudent to delay the commencement of the Sale Process until after the expiry of the due diligence period of the SPA on December 19, 2017 and attended Court on December 13, 2017 to update the Court on the situation.

87. As set out above, on December 19, 2017, the Liquidator was informed that the purchaser under the SPA would not be moving forward with the transaction contemplated under the SPA.

88. Due to the timing of the termination of the SPA and the impending commencement of the holiday season, Colliers and the Liquidator determined that Sale Process should not commence until January. Accordingly, the Sale Process commenced on January 3, 2018.

89. In light of the delay in commencing the Sale Process and pursuant to paragraph 4 of Sale Process, the key milestone dates were extended by the Liquidator and Colliers to the following:

    (i) Phase I Bid Deadline – February 15, 2018

    (ii) Phase II Bid Deadline – March 9, 2018, and

    (iii) Anticipated Timing for Sale Hearing – April 9, 2018

90. Colliers, in consultation with the Liquidator, prepared a list of potential interested parties that were invited to participate in the Sale Process. Colliers also used its worldwide network to ensure that the opportunity was appropriately publicized. Colliers sent out an electronic blast of the Investment Profile, the form of Confidentiality Agreement and the Sale Process Order (collectively the "**Teaser**") to approximately 1,350 parties on January 3, 2018. The Teaser reflected the revised Sale Process milestone dates set out above. The Teaser was sent for a second time on January 10, 2018 and a third time on January 29, 2018. Information pertaining to the Sale Process was also posted on Colliers and the Liquidator's websites.

91. In the first phase, Interested Parties that met the preliminary participant requirements set out in the Sale Process, which included executing a Confidentiality Agreement, were provided with a Confidential Information Memorandum and access to an electronic data room by Colliers in order to prepare and submit a Phase I Bid by the Phase I Bid Deadline.

92. Commencing on January 9, 2018, the electronic data room was made available to those parties who signed Confidentiality Agreements.

93. Colliers was informed by a number of Interested Parties, that due to the uncertainty surrounding the Appeal (discussed above), that Interested Parties would be waiting to decide whether to participate in the Sale Process and complete their Phase I Bids until the outcome of the Appeal was known. Moreover, Colliers was advised by several Interested Parties that the Appellant shareholder had advised them that they would be successful on the Appeal and that there would be no sale.

94. In order to ensure that all Interested Parties participated in the Sale Process and were provided adequate time to complete their Phase I Bids, following the dismissal of the Appeal that occurred on February 6, 2018, and pursuant to paragraph 4 of the Sale Process, the key milestone dates were further extended by Colliers and the Liquidator. On February 8, 2018, Colliers advised all parties participating in the Sale Process that the revised milestone dates were as follows:

    (i) Phase I Bid Deadline – February 28, 2018

    (ii) Phase II Bid Deadline – March 22, 2018, and

    (iii) Anticipated Timing for Sale Hearing – April 23, 2018

    The revised deadlines were also posted to the Liquidator's website.

95. The Sale Process provides that a Phase I Bid, being a Non-Binding APA including a mark-up to the Template APA (which was available to Interested Parties in the data room) identifying the proposed changes to the Template APA, must be submitted by the Phase I Deadline of noon (Eastern time) on February 28, 2018.

96. Following the Phase I Bid Deadline, the Phase I Bids were reviewed by the Liquidator and Colliers, in consultation with the Secured Lenders, to determine the Qualified Phase I Bidders. Bidders deemed to be Qualified Phase I Bidders were notified in early March, 2018, and invited to participate in the second phase of the Sale Process wherein they were given access to an expanded data room by Colliers in order to complete their due diligence prior to submitting a Phase II Bid.

97. The Sale Process provides that a Phase II Bid, may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. A Phase II Bid is to include a Binding APA executed by the Qualified Phase I Bidder with a markup showing changes from the Template APA and, among other things, a Good Faith Deposit equal to ten percent of the total purchase price. The Phase II Bids were to be received by the Phase II Bid Deadline of noon (Eastern time) on March 22, 2018.

98. Since the Phase II Bid Deadline, the Liquidator and Colliers, in consultation with the Secured Lenders, have been reviewing the Phase II Bids that were received and clarifying the Phase II Bids in order to determine the next step in the Sale Process to move towards the selection of a Successful Bid and a Back Up Bid.

99. In the event that more than one Qualified Phase II Bid is received by the Phase II Bid Deadline, the Liquidator and Colliers have the option under the Sale Process to:

    a. Conduct an auction amongst the Qualified Phase II Bidders, on terms to be determined by the Liquidator, to determine the Successful Bid and the Back-up Bid;

    b. Negotiate with the Qualified Phase II Bidders and determine the Successful Bid and the Back-up Bid; or

    c. Determine which of the Qualified Phase II Bids shall be the Successful Bid and which of the Qualified Phase II Bids shall be the Back-up Bid.

100. Given that multiple Qualified Phase II Bids were received, in accordance with the Sale Process, Colliers and the Liquidator invited the Bidders to review their Phase II Bids and provide any final revisions to their submission, including changes to the offer price, terms and supporting documents and to deliver any changes or clarifications to the Phase II Bid in a sealed envelope to Colliers by 3 p.m. on April 9, 2018.

101. Following the determination of the Successful Bid and the Back-up Bid, the Liquidator shall seek Court approval in the form of an Approval and Vesting Order to consummate the transaction provided for in the Successful Bid.

VIII. CLAIMS PROCESS

102. The Liquidator is of the view that it is the proper time to commence the Claims Process to determine the Claims against Tarn Financial given the expected approval of a Successful

Bid under the Sale Process within the next month. Once the Assets are sold, the Liquidator will be in a position to consider distributions to creditors of Tarn Financial and in order to do so has to undertake the Claims Process.

103. Capitalized terms used in this section of the Second Report are as defined in the Claims Procedure Order contained at Tab 3 of the Motion Record, unless otherwise defined herein.

104. The Liquidator seeks the Court's approval to implement the Claims Process, which if approved, establishes the procedure for the solicitation, resolution and barring of Claims against Tarn Financial as at September 25, 2017, being the effective date of the Liquidator's appointment pursuant to the Winding Up Order.

105. The Claims Process provides that within five (5) Business Days after the granting of the Claims Procedure Order, the Liquidator will publish the Claims Process Notice on the Liquidator's website at www.kpmg.com/ca/tarn. The Liquidator will also take all reasonable steps to have the Claims Process Notice published twice in each of the Globe and Mail (National Edition) and the Toronto Star.

106. Within five (5) Business Days after the granting of the Claims Procedure Order, the Liquidator will deliver the Claims Process Notice and Proof of Claim to: (a) each party on the service list in the Winding Up Proceedings; (b) all known creditors of Tarn Financial as of the Effective Date as evidenced by Tarn Financial's books and records; and (c) all Persons who have notified the Liquidator or Tarn Financial of a potential Claim.

107. Given that the books and records of Tarn Financial and Tarn Construction were not fully up to date when the Liquidator was appointed and the fact that certain parties who have claims against Tarn Construction may also have Claims against Tarn Financial, the Liquidator intends to also send the Claims Process Notice and Proof of Claim to all known creditors of Tarn Construction as of the Effective Date as evidenced by the Tarn Construction books and records as well as all Persons who have notified the Liquidator or Tarn Construction of a potential Claim.

108. The Claims Process contemplates a Claims Bar Date of 5:00 PM Eastern Standard Time on June 15, 2018 for all Claimants to submit a Proof of Claim in respect of their Claim against Tarn Financial, failing which such Claims shall be forever extinguished and barred.

109. The Claims Process provides that upon collecting Proofs of Claim by the Claims Bar Date, the Liquidator will review and determine either to allow, partially allow/partially disallow or disallow the Claims. In this regard, the Liquidator will provide each Claimant with a Notice of Determination of Claim setting out its determination of such Claimant's Claim.

110. Claimants that wish to object to the Liquidator's Notice of Determination of Claim are required to deliver a Notice of Objection no later than 5:00 PM on the day which is fourteen (14) days after the date the Notice of Determination of Claim is deemed to be received, in accordance with the Claim Process.

111. If a Claimant does not provide the Liquidator with a Notice of Objection within the timeframe required, it shall be deemed to have agreed with the Notice of Determination of Claim. Any portion of a Claim that is disallowed in respect of which no Notice of Objection is received by the Liquidator, shall be forever extinguished, barred, discharged and release as against Tarn Financial and the Liquidator.

112. The Claims Process allows the Liquidator to attempt to settle any dispute with a Claimant directly, and if unsuccessful, the Liquidator may either direct the dispute to a claims officer (as may be appointed by the Court on application of the Liquidator), or may seek directions from the Court with respect to an appropriate process for the determination of such Claims.

113. The Claims Process contemplates a separate procedure for determining Claims filed by Non Arms-Length Claimants, which is defined to include the shareholders of Tarn Financial as of the Effective Date and all Persons related to such Non Arms-Length Claimants 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.

114. The Liquidator is not required to determine the Claims of Non Arms-Length Claimants and is not required to issue a Notice of Determination of Claim in respect of any Proof of Claim filed by a Non Arms-Length Claimant. Rather, the Liquidator shall deliver the Proofs of the 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.

115. The Liquidator is of the view that the proposed Claims Process provides sufficient notice and time for Claimants to file Proofs of Claim and have their Claims determined.

IX. APPOINTMENT OF A RECEIVER OVER TARN CONSTRUCTION

116. As noted above, Tarn Construction is the wholly-owned subsidiary of Tarn Financial. As such, the Liquidator effectively took possession of Tarn Construction on its appointment. Pursuant to the Order of Justice McEwen dated November 24, 2017, the Winding Up Order was amended, *nunc pro tunc*, to include the following paragraph as 8(a) of the Winding Up Order to, among other things, confirm the stay of proceedings over Tarn Construction:

> **NO EXERCISE OF RIGHTS OR REMEDIES**
>
> 8(a). **THIS COURT ORDERS** that all rights and remedies against Tarn including against its wholly owned subsidiary, Tarn Construction Corporation, the Liquidator, or affecting the Property, existing as at the date of the Winding Up Order are hereby stayed and suspended except with the written consent of the Liquidator or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act*, and further provided that nothing in this paragraph shall (i) empower the Liquidator in the name of Tarn to carry on any business which Tarn is not lawfully entitled to carry on, (ii) exempt the Liquidator or Tarn from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

117. While there is a stay of proceeding in place over Tarn Construction under the Winding Up Order, KPMG is not the Liquidator of Tarn Construction.

118. Prior to the appointment of the Liquidator, Tarn Financial had been undertaking the Development Project through Tarn Construction. As set out above, Phase 1 of the Development Project contemplates the construction of a 644-unit condominium development encompassing a 32-storey tower and a 30-storey tower.

119. Tarn Construction is the vendor under the APSs entered into with the Purchasers of the pre-sold condominium units in Phase 1. Tarn Construction has not commenced construction of Phase 1 of the Development Project.

120. According to the books and records of Tarn Construction, it has significant liabilities relating to the Development Project.

121. Tarn Construction has been paid significant deposits by Purchasers under the APSs. Pursuant to a Deposit Trust Agreement dated June 7, 2016 between Tarn Construction, the Guarantee Company, and Bennett Jones, Bennett Jones is the Escrow Agent in connection with the deposits made by the Purchasers pursuant to their APSs (in such capacity, the "**Deposit Trustee**").

122. As set out in the First Report, on October 11, 2017, the Liquidator issued a letter to the Purchasers advising of the Winding Up Proceedings and confirming that amounts the Liquidator has been advised have been paid in respect of deposit funds under the APSs continue to be held in trust by Bennett Jones, under the oversight of the Liquidator. Additionally, the Liquidator advised that it temporarily ceased processing assignments under the APSs until the Liquidator determined the appropriate sale process to market the Assets.

123. On October 13, 2017, the Liquidator issued a second letter to the Purchasers confirming that their APSs remain in full force and effect, that all payments due in accordance with the terms of their APS should continue to be made and that these payments would be held in trust with the Deposit Trustee, under the oversight of the Liquidator. The letter also advised that the Development Project has been placed on hold and that the Liquidator was determining the appropriate Sale Process to market the Assets.

124. As set out in the First Report, at the time of the Liquidator's appointment there were a number of Purchasers that had not made all of the deposits that were required under their respective APSs prior to the appointment of the Liquidator. Since the date of the Liquidator's appointment most Purchasers have continued to make their deposits, however, there are other Purchasers that have failed to make all of the deposits that were required under their APSs since the appointment of the Liquidator.

125. Given that the Sale Process is nearing its conclusion and it is expected that a Successful Bid will be brought forward by the Liquidator for Court approval within the next month, the Liquidator is seeking to appoint itself as Receiver, without security, of all of the assets, undertakings and properties of Tarn Construction, acquired for, or used in relation to the business carried on by Tarn Construction, pursuant to section 101 of the CJA.

126. The main purpose for the appointment of the Receiver is to allow the Receiver, once appointed to undertake the Deposit Confirmation Procedure discussed below to determine if there are any missing deposits. There are two possible outcomes from the Sale Process. The first is that the APSs will be transferred to a Successful Bidder and the second is that they will not be transferred and will remain with Tarn Construction and will be terminated in accordance with their terms. In either circumstance, the Liquidator has to determine whether there are any issues with the deposits held by the Deposit Trustee.

127. In addition, the appointment of the Receiver will allow an Approval and Vesting Order to be sought to transfer of any property that comprises the Assets that may be considered property of Tarn Construction.

128. In the Liquidator's view, the appointment of the Receiver is the most just and convenient way to deal with the properties, assets and undertakings of Tarn Construction including determining the deposits held by the Deposit Trustee.

X. DEPOSIT CONFIRMATION PROCEDURE

129. The Liquidator seeks the Court's approval to allow the Receiver, upon its appointment, to implement the Deposit Confirmation Procedure, which if approved, establishes the procedure for confirming Deposits remitted by Purchasers to Tarn Construction as indicated by the books and records of Tarn Construction and/or the Deposit Trustee.

130. Capitalized terms used in this section of the Second Report are as defined in Deposit Confirmation Procedure Order contained at Tab 6 of the Motion Record.

131. The Deposit Confirmation Procedure contemplates confirmation and assertion of Deposits in two stages given that Deposits are continuing to be made by Purchasers pursuant to the terms of their APSs. The first stage relates to Known Deposits remitted by Purchasers up to and including March 31, 2018 pursuant to their APSs. The second stage relates to Additional Deposits, if any, made by Purchasers after March 31, 2018 pursuant to their APSs.

132. The Deposit Confirmation Procedure provides that within five (5) Business Days after the granting of the Deposit Confirmation Procedure Order, the Receiver will post a copy of the

Deposit Confirmation Procedure Order on the website maintained in respect of the Winding Up Proceedings at www.kpmg.com/ca/tarn.

Known Deposits

133. The Deposit Confirmation Procedure contemplates that no later than five (5) Business Days after the date of the Deposit Confirmation Procedure Order, the Receiver will deliver a Deposit Statement to each Purchaser. The Deposit Statement shall specify the classification, amount and nature of the Known Deposit remitted by a Purchaser up to and including March 31, 2018.

134. If the Purchaser does not dispute the Known Deposit, then it is not required to take any further action and the Deposit of the Purchaser shall be deemed to be the Known Deposit.

135. Any Purchaser that wishes to dispute the Known Deposit amount contained on the Deposit Statement is required to deliver a Notice of Dispute of Deposit Statement to the Receiver by no later than the Deposit Confirmation Bar Date, being 5:00 PM Eastern Standard Time on May 15, 2018.

Known Additional Deposits

136. The Deposit Confirmation Procedure contemplates that no later than ten (10) Business Days after the Deposit Trustee receives an Additional Deposit from a Purchaser, the Receiver will deliver an Amended and Restated Deposit Statement to such Purchaser. The Amended and Restated Deposit Statement shall restate the Known Deposit, and specify the classification, amount and nature of the Additional Deposit remitted by a Purchaser after March 31, 2018.

137. If the Purchaser does not dispute the Known Additional Deposit, then it is not required to take any further action and the Additional Deposit of the Purchaser shall be deemed to be the Known Additional Deposit.

138. Any Purchaser that wishes to dispute the Known Additional Deposit amount contained on the Notice of Amended and Restated Deposit Statement is required to deliver a Notice of Dispute of Amended and Restated Deposit Statement to the Receiver by no later than the Deposit Confirmation Bar Date, being thirty (30) calendar days after the date set out on the Amended and Restated Deposit Statement it received.

139. The Deposit Confirmation Procedure provides that the applicable procedures for reviewing and determining Deposits after the above procedures have been implemented shall be established by further Order of the Court.

140. The Liquidator intends to seek input from Tarion and the Guarantee Company regarding any further Order of the Court relating to the determination of the Deposits given the Tarion warranty bond and the security held by the Guarantee Company over the Real Property.

141. The Liquidator is of the view that the Deposit Confirmation Procedure Order provides an appropriate procedure to allow Purchasers to confirm their Deposits.

XI. LIQUIDATOR'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

142. The following table provides a summary of total receipts and disbursements from the date of the Winding Up Order to March 30, 2018 (the "**R&D Period**").

Statement of Receipts and Disbursements For the period September 25, 2017 to March 30, 2018 (in CAD)	First Report Total Sep 25, 2017 to Nov 10, 2017	Second Report Total Nov 11, 2017 to Mar 30, 2018	Consolidated Total Sep 25, 2017 to Mar 30, 2018
Receipts			
Receipts	3,421,670	8,040,060	11,461,730
Liquidator's Borrowings	-	1,977,820	1,977,820
Total receipts	3,421,670	10,017,880	13,439,550
Disbursements			
Operating disbursements	775,186	1,745,619	2,520,805
Salaries and wages	967,527	2,972,409	3,939,936
Taxes to be remitted	425,296	845,801	1,271,097
Insurance	16,957	181,857	198,814
Utilities	161,168	538,591	699,760
Marriott fee	153,188	643,749	796,937
Critical Maintenance	-	239,684	239,684
Other, inclusive of cancelled cheques	205	(25,203)	(24,998)
Total operating disbursements	2,499,527	7,142,508	9,642,035
Operating cash flow	922,143	2,875,372	3,797,515
Loan Facilities and Professional Fees			
Secured lenders - Principal and Interest	217,336	831,539	1,048,875
Professional fees	186,809	1,018,535	1,205,344
Non-operating disbursememts	404,145	1,850,074	2,254,220
Opening book balance	(70,185)	447,813	(70,185)
Net cash flow	517,998	1,025,298	1,543,296
Closing book balance	**447,813**	**1,473,111**	**1,473,111**

143. Actual receipts for the R&D Period were $13,439,550 and consist of (a) guest room, food and beverage and parking-related revenues; and (b) funding of $1,977,820 under the Borrowings Charge.

144. Actual disbursements for the R&D Period total approximately $11,896,255 and consist of: (a) payroll in the amount of approximately $3,939,936; (b) operating expenses of $2,520,805; (c) HST payments of $1,271,097; (d) other expenses, namely insurance, utilities and payments to Marriott of $1,910,196; (e) principal and interest payments to the Secured Lenders of $1,048,875; and (f) professional fees of $1,205,344, which consist of the professional fees of the Liquidator, its independent legal counsel, Miller Thomson, and Bennett Jones.

XII. INCREASE IN THE AMOUNT OF THE BORROWINGS CHARGE

145. Pursuant to paragraph 18 of the Winding Up Order, the Liquidator has the ability to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $2,000,000 at any time. The Property (as defined in the Winding Up Order) of Tarn Financial is charged (the "**Borrowings Charge**") 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 (i) any valid and enforceable security interest registered against the Property in favour of persons not related to, or not dealing at arm's length with, Tarn Financial; and (ii) the Liquidator's Charge (as defined in the Winding Up Order).

146. As set out in the First Report, based on the Liquidator's initial projected cash flow forecast, the Liquidator was of the view that the full $2,000,000 was required by the Liquidator under the Borrowings Charge. One of the Applicants, Volkan Basegmez ("**Volkan**"), agreed to provide the funding under the Borrowings Charge on the following terms:

a. Funding would be made personally by Volkan using his personal resources;

b. U.S. dollar denominated lending equal to the Canadian ("**CAD**") dollar equivalent of CAD$2.0 million principal amount. The principal amount would be provided in U.S. dollars in a single tranche: equivalent to CAD$2.0 million on or about November 15,

2017. The principal amount of the loan will be repaid in U.S. dollars advanced (the currency risk on the principal amount rests with the Liquidator, however Volkan is willing to take CAD on the interest portion on the basis of CAD$2.0 million);

c. The advance will be secured by the Borrowings Charge behind the Secured Lenders, which have outstanding indebtedness collectively of approximately $25 million; and

d. Interest on the loan would accrue at 12% per annum, with interest payable monthly in advance, in CAD.

147. Subsequent to the date of the First Report, the Liquidator finalized the terms of the borrowings under the Borrowings Charge with Volkan consistent with terms set out above with the only changes being that the funding would be provided in two equal tranches and the interest of 12% per annum would be 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.

148. On December 15, 2017, the Liquidator received the first tranche of funding under the Borrowings Charge of US$784,000, which was converted on the same date to CAD$1,004,774.40. On December 21, 2017, the Liquidator returned to Volkan the overpayment of CAD$4,774.40.

149. On January 24, 2018, the Liquidator received a second tranche under the Borrowings Charge of US$799,983.36, which was converted as of the same date to CAD$977,819.66. In accordance with the Winding Up Order, the Liquidator has borrowed a total principal amount of $1,977,819.66 under the Borrowings Charge as at March 31, 2018.

150. Based on the Liquidator's updated cash flow projections, the Liquidator is of the view that an additional CAD$1 million will be required under the Borrowings Charge. As a result, in order to ensure continued operations of the Hotel without disruption, the completion of the Sale Process and payment of various suppliers and professionals, the Liquidator is seeking to increase the Borrowings Charge by the Increased Borrowing Amount being CAD$1 million.

151. The reasons for the increase are as follows: (a) the period from January through March is a quiet time for the Hotel and as such lower occupancy rates and room revenues have occurred during this period, (b) unforeseen expenditures and maintenance have been required at the Hotel including the renovations of the Non-compliant Guestrooms discussed above, which had not been previously forecast by the Liquidator, and (c) due to the extensions of the key milestones dates in the Sale Process for the reasons set out earlier in this Second Report, the completion of the Sale Process has taken longer than originally anticipated.

152. Subject to the approval of Court, the Liquidator will approach the shareholders to determine whether they would be willing to fund the Increased Borrowing Amount under the Borrowings Charge. If so funded by one of the shareholders, the proposed Order contemplates that the additional amounts borrowed under the Borrowings Charge would rank on a *pari passu* basis with other amounts already advanced under the Borrowings Charge. If the shareholders are unwilling to advance the Increased Borrowing Amount, then the proposed Order elevates the priority of the Borrowings Charge in respect of the Increased Borrowing Amount such that it will rank in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour or any person to allow the Liquidator to seek funding from other sources including the Secured Lenders.

XIII. APPROVAL OF PROFESSIONAL FEES TO DECEMBER 31, 2017

153. The Liquidator and its counsel have maintained detailed records of their professional time and costs since the commencement of the Winding Up Proceedings up to an including December 31, 2017 (the **"Fee Period"**), as detailed in the Fee Affidavit of Anamika Gadia of KPMG to be sworn April 10, 2018, the Fee Affidavit of Gregory Azeff of Miller Thomson sworn April 6, 2018 and the Fee Affidavit of Andrew Jeanrie of Bennett Jones sworn April 6, 2018 (collectively, the "**Fee Affidavits**"). Copies of the Fee Affidavits are attached as **Appendix "I"**, **Appendix "J"** and **Appendix "K"**, respectively.

154. 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.

155. The total fees and disbursements (including Harmonized Sales Tax) of the Liquidator during the Fee Period amount to $1,014,639.94. The details of the time spent and the services provided by the Liquidator are more particularly described in the Fee Affidavit of Anamika Gadia.

156. The total fees and disbursements (including Harmonized Sales Tax) of Miller Thomson during the Fee Period amount to $284,344.47. The details of the time spent and the services provided by Miller Thomson are more particularly described in the Fee Affidavit of Gregory Azeff.

157. The total fees and disbursements (including Harmonized Sales Tax) of Bennett Jones during the Fee Period amount to $36,269.27. The details of the time spent and the services provided by Bennett Jones are more particularly described in the Fee Affidavit of Andrew Jeanrie.

158. The Liquidator has reviewed the accounts of its counsel and believes that the accounts of the Liquidator, Miller Thomson and Bennett Jones are reasonable in the circumstances and respectfully requests that the Court approve the Liquidator's fees and disbursements and those of its counsel.

XIV. CONCLUSION

159. The Liquidator submits this Second Report to the Court in support of the Liquidator's Motion for the relief as set out in the Motion Record and recommends that the Court grant the following relief:

(i) A Claims Procedure Order substantially in the form contained at Tab 3 of the Motion Record approving and establishing the Claims Process;

(ii) A Receivership Order substantially in the form contained at Tab 4 of the Motion Record appointing KPMG as the Receiver over the properties, assets and undertakings of Tarn Construction;

(iii) A Deposit Confirmation Procedure Order substantially in the form contained at Tab 6 of the Motion Record approving and establishing the Deposit Confirmation Procedure; and

(iv) An Order substantially in the form contained at Tab 7 of the Motion Record:

(A) authorizing the Increased Borrowing Amount and addressing the priority of the Borrowings Charge in respect of the Increased Borrowing Amount;

(B) approving the fees of the Liquidator and the Liquidator's legal counsel from the date of the Winding Up Order to December 31, 2017; and

(C) 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.

All of which is respectfully submitted at Toronto, Ontario this 9th day of April, 2018.

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

Per: Anamika Gadia
Anamika Gadia
Senior Vice President

APPENDIX "D"

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

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 KAAN 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
$ _____		☐ Wages & Benefits Claim
$ _____		☐ Secured Claim
$ _____		☐ 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

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

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 "E"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

THE HONOURABLE MR.	)	FRIDAY, THE 13th
	)	
JUSTICE MCEWEN	)	DAY OF APRIL, 2018

BETWEEN:

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

Applicants

– and –

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

Respondents

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

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

ORDER
(appointing Receiver)

THIS MOTION made by KPMG Inc. ("**KPMG**"), in its capacity as court-appointed liquidator (in such capacity, the "**Liquidator**") pursuant to section 207 of the *Business Corporations Act* of the effects and estate of Tarn Financial Corporation ("**Tarn Financial**") and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the "**Winding Up Order**"), which appointment was effective on September 25, 2017, for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KPMG as receiver and manager (in such capacities, the "**Receiver**") without security,

of all of the assets, undertakings and properties of Tarn Construction Corporation ("**Tarn Construction**") acquired for, or used in relation to a business carried on by Tarn Construction, was heard this day at 330 University Avenue, Toronto, Ontario.

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

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

(a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the

relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate, and carry on the business of Tarn Construction, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of Tarn Construction;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of Tarn Construction or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to Tarn Construction and to exercise all remedies of Tarn Construction in collecting such monies, including, without limitation, to enforce any security held by Tarn Construction;

(g) to take steps to commence a process to confirm the deposit amounts being held by Tarn Construction pursuant to Agreements of Purchase and Sale between Tarn Construction as vendor and purchasers for pre-sold condominium units for the contemplated development project known as "The Kennedy's";

(h) to settle, extend or compromise any indebtedness owing to Tarn Construction;

(i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of Tarn Construction, for any purpose pursuant to this Order;

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to Tarn Construction, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(k) to apply to the Court for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(m) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of Tarn Construction;

(n) to exercise any shareholder, partnership, joint venture or other rights which Tarn Construction may have; and

(o) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of Tarn Construction, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST TARN CONSTRUCTION OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

PIPEDA

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

identical to the prior use of such information by Tarn Construction, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

14. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS AND FUNDING OF THE RECEIVERSHIP

15. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as

security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

GENERAL

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

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

20. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

APR 13 2018

PER / PAR:

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

RECEIVERSHIP ORDER
(Re: Tarn Construction Corporation)
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 Liquidator
of Tarn Financial Corporation

APPENDIX "F"

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

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 KAAN HOLDINGS INC.

Applicants

– and –

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

Respondents

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

DEPOSIT CONFIRMATION PROCEDURE ORDER

THIS MOTION, made by KPMG Inc. ("**KPMG**"), in its capacity as court-appointed liquidator (in such capacity, the "**Liquidator**") pursuant to section 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial Corporation ("**Tarn Financial**"), and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the "**Winding Up Order**") which appointment was effective on September 25, 2017, for an order approving and establishing a procedure for confirming deposits, was heard contemporaneously with a motion by the Liquidator seeking to appoint KPMG as receiver and manager (in such capacities, the "**Receiver**") of all of the assets, undertakings and properties of Tarn Construction Corporation ("**Tarn Construction**") pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended ("**CJA**"), this day at 330 University Avenue, Toronto, Ontario.

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

SERVICE

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

DEFINITIONS AND INTERPRETATION

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

(a) "**Additional Deposit**" means a Deposit paid after March 31, 2018;

(b) "**Amended and Restated Deposit Statement**" means the document restating the Deposit remitted by a Purchaser up to and including March 31, 2018 and setting out any Additional Deposit remitted by a Purchaser, as prepared by the Receiver, with the assistance of the Deposit Trustee, in the form substantially attached as **Schedule "B"** to this Order;

(c) "**APS**" means an agreement of purchase and sale between Tarn Construction and a Purchaser for the sale and purchase of a Proposed Unit at the contemplated Development Project;

(d) "**Business Day**" means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;

(e) "**Court**" means the Ontario Superior Court of Justice, Commercial List;

(f) "**Deposit**" means any monies including, without limitation, deposit monies and monies on account of extras and upgrades paid by a Purchaser pursuant to an APS for a Proposed Unit at the Development Project;

(g) "**Deposit Confirmation Bar Date**" means 5:00 PM Eastern Standard Time on May 15, 2018 with respect to the Deposits set out on the Deposit Statement and thirty (30) calendar days after the date set out on the Amended and Restated Deposit Statement with respect to the Additional Deposits, or such later date as may be ordered by this Court;

(h) "**Deposit Confirmation Procedure**" means the procedure outlined in this Order in connection with the confirmation and assertion of Deposits remitted to Tarn Construction, as amended or supplemented by further Order of the Court;

(i) "**Deposit Statement**" means the document setting out the Deposit remitted by a Purchaser up to and including March 31, 2018, as prepared by the Receiver, with the assistance of the Deposit Trustee, in the form substantially attached as **Schedule "A"** to this Order;

(j) "**Deposit Trustee**" means Bennett Jones LLP;

(k) "**Development Project**" means the contemplated residential condominium development located at 2035 Kennedy Road, Toronto, Ontario, known as the "The Kennedys";

(l) "**Known Additional Deposit**" has the meaning set forth in paragraph 17 of this Order;

(m) "**Known Deposit**" has the meaning set forth in paragraph 13 of this Order;

(n) "**Notice of Dispute of Amended and Restated Deposit Statement**" means a notice disputing the Amended and Restated Deposit Statement, substantially in the form attached as **Schedule "D"** to this Order;

(o) "**Notice of Dispute of Deposit Statement**" means a notice disputing the Deposit Statement, substantially the form attached as **Schedule "C"** to this Order;

(p) "**Proposed Unit**" means a residential condominium unit at the Development Project;

(q) "**Purchaser**" means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity, that has entered into an APS and/or has paid a Deposit, as indicated by the books and records of Tarn Construction and/or the Deposit Trustee;

(r) "**Receiver**" means KPMG, in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of Tarn Construction pursuant to the Receivership Order; and

(s) "**Receivership Order**" means the Order appointing KPMG as Receiver pursuant to section 101 of the CJA granted on April 13, 2018 by the Court in these proceedings.

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

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

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

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

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

ROLE OF THE RECEIVER

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

NOTICE REQUIREMENTS

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

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

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

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

DEPOSIT STATEMENT

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

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

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

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

AMENDED AND RESTATED DEPOSIT STATEMENT

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

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

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

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

DETERMINATION OF DEPOSITS

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

SERVICE AND NOTICE

22. **THIS COURT ORDERS** that, except as set out in this Order, any Deposit Statement or Amended and Restated Deposit Statement to be given under this Order by the Receiver to a Purchaser shall be in writing and may be delivered by prepaid ordinary mail, by courier, by delivery, by facsimile transmission or electronic mail to the Purchaser to such address, facsimile number or e-mail address, as applicable, for such Purchaser as shown on the books of Tarn Construction or the Deposit Trustee. Any such service and delivery shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario) and the tenth Business

Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

23. **THIS COURT ORDERS** that any Notice of Dispute of Deposit Statement and/or Notice of Dispute of Amended and Restated Deposit Statement required to be delivered to the Receiver under this Order shall be in writing and, where applicable, substantially in the form provided for in this Order, and will be sufficiently delivered only if delivered to:

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

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

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

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

GENERAL PROVISIONS

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

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

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

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

APR 13 2018

PER / PAR:

SCHEDULE "A"

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

Date:	[Insert Date of Issuance]
Deposit Reference Number:	[Insert Deposit Reference Number]
To:	[Insert Name of Purchaser] (the "**Purchaser**") [Insert Address of Purchaser]
Regarding:	Agreement of Purchase and Sale between Tarn Construction Corporation and the Purchaser dated [Insert signing date of Agreement of Purchase and Sale] (the "**APS**")
Proposed Unit:	[Unit [•], Level [•], TSCP, City of Toronto] [Suite [•], 2035 Kennedy Road, Toronto, Ontario, M1T 3G2] (the "**Proposed Unit**")

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

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

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

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

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

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

KNOWN DEPOSIT AS AT MARCH 31, 2018

Payment Type	**Deposit Date**	**Deposit Amount**	**Deposit Classification** (*APS Deposit or Upgrades*)
Total			

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

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

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

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

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

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

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

DATED the _____ day of _____ 2018.

SCHEDULE "B"

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

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

Date:	[Insert Date of Issuance]
Deposit Reference Number:	[Insert Deposit Reference Number]
To:	[Insert Name of Purchaser] (the "**Purchaser**") [Insert Address of Purchaser]
Regarding:	Agreement of Purchase and Sale between Tarn Construction Corporation and the Purchaser dated [Insert signing date of Agreement of Purchase and Sale] (the "**APS**")
Proposed Unit:	[Unit [•], Level [•], TSCP, City of Toronto] [Suite [•], 2035 Kennedy Road, Toronto, Ontario, M1T 3G2] (the "**Proposed Unit**")

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

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

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

RESTATED KNOWN DEPOSIT AS AT MARCH 31, 2018

Payment Type	Deposit Date	Deposit Amount	Deposit Classification (*APS Deposit or Upgrades*)
Total			

KNOWN ADDITIONAL DEPOSIT MADE AFTER MARCH 31, 2018

Payment Type	Deposit Date	Deposit Amount	Deposit Classification (*APS Deposit or Upgrades*)
Total			

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

The Deposit Confirmation Procedure Order provides that if you disagree with the Known Additional Deposit set forth in this Amended and Restated Deposit Statement, you must deliver to the Receiver a completed Notice of Dispute of Amended and Restated Deposit Statement before **5:00 PM Eastern Standard Time thirty (30) calendar days after the date of this Amended**

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

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

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

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

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

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

DATED the _____ day of _____ 2018.

SCHEDULE "C"

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

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

I. PARTICULARS OF PURCHASER

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

Full Legal Name of Purchaser _____

Full Mailing Address of Purchaser _____

_____

Telephone Number _____

Email Address _____

Attention (Contact Person) _____

II. DISPUTE OF KNOWN DEPOSIT SET OUT IN DEPOSIT STATEMENT

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

KNOWN DEPOSIT AS AT MARCH 31, 2018

Payment Type	**Deposit Date**	**Deposit Amount**	**Deposit Classification** (*APS Deposit or Upgrades*)

Total			

III. REASONS FOR DISPUTE

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

_____

_____

_____

_____

_____

_____

_____

_____

Dated at _____ this _____ day of _____, 2018.

_____

Signature of Purchaser or its
Authorized Signatory

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

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

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

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

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

SCHEDULE "D"

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

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

I. PARTICULARS OF PURCHASER

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

Full Legal Name of Purchaser _____

Full Mailing Address of Purchaser _____

_____

Telephone Number _____

Email Address _____

Attention (Contact Person) _____

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

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

KNOWN ADDITIONAL DEPOSIT MADE AFTER MARCH 31, 2018

Payment Type	**Deposit Date**	**Deposit Amount**	**Deposit Classification** (*APS Deposit or Upgrades*)
Total			

III. REASONS FOR DISPUTE

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

_____

_____

_____

_____

_____

_____

_____

_____

Dated at _____ this _____ day of _____, 2018.

_____

Signature of Purchaser or its
Authorized Signatory

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

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

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

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

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 CONFIRMATION PROCEDURE ORDER (DATED APRIL 13, 2018)

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

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

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

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

APPENDIX "G"

ASSET PURCHASE AGREEMENT

BETWEEN

TARN FINANCIAL CORPORATION

AND

SUNRAY GROUP OF HOTELS INC.

MADE AS OF

APRIL 20, 2018

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of April 20, 2018

BETWEEN

SUNRAY GROUP OF HOTELS INC., a corporation incorporated under the laws of the Province of Ontario (the "**Purchaser**"),

- and -

TARN FINANCIAL CORPORATION, a corporation incorporated under the laws of the Province of Ontario (the "**Vendor**").

WHEREAS pursuant to the 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 of the Vendor, effective September 25, 2017, (in such capacity, the "**Liquidator**") under sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended;

AND WHEREAS pursuant to the Winding Up Order, the Liquidator is authorized to market the assets, property and undertaking of the Vendor for sale and, subject to approval of the Court, negotiate such terms and conditions of sale as the Liquidator in its discretion may deem appropriate;

AND WHEREAS pursuant to the Order of the Honourable Mr. Justice McEwen of the Court dated November 29, 2017 (the "**Sale Process Order**"), the Liquidator was authorized to conduct a sale process (the "**Sale Process**") as set out in Schedule "A" to the Sale Process Order;

AND WHEREAS the Vendor desires to sell and assign and the Purchaser desires to purchase and assume the Purchased Assets and Assumed Liabilities upon and subject to the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the covenants and agreements herein contained, the parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.01 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith, capitalized terms shall be as defined in the Sale Process Order (including the Sale Process) unless otherwise defined below or elsewhere herein:

"**Accounts Receivable**" means the accounts receivable recorded as such in the Books and Records of the Vendor relating to the Business.

"**Adjustments**" has the meaning set out in Section 6.01.

"**Affiliates**" means, with respect to any Person, any other Person that controls or is controlled by or is under common control with the referent Person.

"**Agreement**" means this agreement, including its recitals and schedules, as amended from time to time.

"**Applicable Law**" means:

(i) any applicable domestic or foreign law including any statute, subordinate legislation or treaty, as well as the common law; and

(ii) any applicable and enforceable rule, requirement, order, judgment, injunction, award or decree of a Governmental Authority.

"**Approval and Vesting Order**" means a final, non-appealable order of the Court substantially in the form attached hereto as **Exhibit "A"**, that has not been stayed, vacated, or stayed pending appeal: (i) approving the sale of the Purchased Assets and assignment of the Assigned Contracts by the Vendor to the Purchaser pursuant to the terms of this Agreement; and (ii) providing for the vesting of the right, title, benefit and interest of the Vendor in and to the Purchased Assets in and to the Purchaser, free and clear of all Liens other than the Permitted Encumbrances.

"**Assigned Contracts**" means those Contracts and Permits set out in **Exhibit "B"**.

"**Assignment and Assumption Agreement**" means an agreement pursuant to which the Vendor will assign the Assigned Contracts to the Purchaser and the Purchaser will assume the Assumed Liabilities at the Time of Closing, substantially in the form of the document set out in **Exhibit "C"**.

"**Assumed Liabilities**" has the meaning set out in Section 2.07.

"**Back-Up Bid**" is as defined in the Sale Process.

"**Bargaining Unit Employees**" means all Employees represented by Unite Here.

"**Books and Records**" means all personnel records, inspection records, financial records, and other records, books, documents and data bases recorded or stored by means of any device, including in electronic form, relating to the Business, the Purchased Assets and the Employees as are in the possession or under the control of the Vendor.

"**Business**" means the business activities and operations of the Vendor associated with the Delta Toronto East hotel located at 2035 Kennedy Road in Scarborough, Ontario.

"**Business Day**" means a day other than a Saturday, Sunday, statutory or civic holiday in Toronto, Ontario.

"**Claim**" means any actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, suit, investigation, assessment, reassessment or proceeding and any loss, claim or demand relating thereto or resulting therefrom, or any other claim or demand of whatever nature or kind.

"**Closing Date**" means seven (7) Business Days following the date of the Approval and Vesting Order, or such other date as may be agreed in writing between the parties hereto.

"Collective Agreement" means the collective agreement between Delta Toronto East and Unite Here Local 75 in respect of the term between February 1, 2014 and January 31, 2018.

"**Condo Purchase Agreements**" means all agreements entered into by Tarn Construction and third party purchasers of proposed units in the Condominium Project.

"**Condominium Project**" means the proposed condominium towers to comprise Phase 1 of the "The Kennedys" condominium project.

"**Contract**" means any contract, agreement, license, instrument or commitment recognized at law or equity, whether express or implied, or arising by a course of conduct or usage of trade.

"**Court**" means the Ontario Superior Court of Justice (Commercial List).

"**Cure Costs**" means the amount of all monetary defaults, if any, existing in respect of any Assigned Contracts or Permits that are required to be paid in order to obtain the consent necessary to permit an assignment of an Assigned Contract.

"**Employees**" means all persons employed by the Vendor in connection with the Business as at the Time of Closing and includes any person who was on an approved leave of absence, layoff or disability on the date immediately prior to the Closing Date, and for greater certainty, includes all Bargaining Unit Employees.

"**Environmental Law**" means any Applicable Law relating to the natural or indoor environment including those pertaining to (i) reporting, licensing, permitting, investigating, remediating or controlling the presence or Release or threatened Release of Hazardous Substances, or (ii) the use, treatment, storage, disposal, transport, handling and the like of Hazardous Substances, including, for greater certainty, any such Applicable Law pertaining to occupational health and safety.

"**Excluded Assets**" has the meaning set out in Section 2.02.

"**Excluded Contracts**" means any Contracts disclaimed by the Vendor in the Winding Up Proceeding, any Contracts that are not assignable as contemplated in Section 2.08(3), and any other Contracts that are not Assigned Contracts.

"**Governmental Authority**" means any domestic or foreign legislative, executive, judicial or administrative body or person having jurisdiction in the relevant circumstances.

"**Hazardous Substance**" means any substance, material or emission whose storage, handling, use, transportation or Release is prohibited, controlled or regulated by any Governmental Authority having jurisdiction pursuant to Environmental Laws, including any contaminant or pollutant as defined in the *Environmental Protection Act* (Ontario).

"**Intellectual Property**" means intellectual property of any nature and kind including all domestic and foreign trade-marks, business names, trade names, domain names, trading styles, patents, websites, telephone and fax numbers, trade secrets, confidential information, Software, industrial designs and copyrights, whether registered or unregistered, and all applications for registration thereof, and inventions, formulae, recipes, product formulations and chemistries, processes and processing methods, technology and techniques and know-how.

"**Inventories**" means all inventories of operating supplies, food, beverages and other consumable items used in the operation of the Business, including Unopened Food and Beverage Inventory;

"**Liabilities**" means all costs, expenses, charges, debts, liabilities, commitments and obligations of any nature or kind, whether accrued or fixed, actual, absolute, contingent, latent or otherwise, matured or unmatured or determined or undeterminable, including those arising under any Applicable Law or Claim and those arising under any Contract or undertaking or otherwise, including any tax liability or tort liability of the Vendor.

"**License Agreement**" means the licence agreement between Tarn Financial and Delta Hotels Limited (or any successor or any signee of its interest) dated November 13, 2014.

"**Liens**" means any lien (statutory or otherwise), mortgage, pledge, security interest (whether contractual, statutory or otherwise), hypothecation, trust or deemed trust (whether contractual, statutory, or otherwise), execution, levy, charge, encumbrance, interest in property, or other financial or monetary claim which, in each case, in substance, secures payment or performance of an obligation, or similar charge of any kind.

"**Liquidator**" has the meaning set out in the recitals hereto.

"**Liquidator's Certificate**" means a certificate signed by the Liquidator substantially in the form attached as Schedule A to the Approval and Vesting Order confirming that (i) the Purchaser has paid, and the Vendor has received payment of, the Purchase Price in relation to the purchase by the Purchaser of the Purchased Assets; and (ii) the conditions to be complied with at or prior to the Time of Closing as set out in Sections 5.01 and 5.02, respectively, have been satisfied or waived by the Vendor or the Purchaser, as applicable, pursuant to Section 5.03.

"**Non-Disclosure Agreement**" means the confidentiality agreement dated January 5, 2018 between the Purchaser and Vendor.

"**Outside Date**" has the meaning set out in Section 5.04(b).

"**Permits**" means all permits, licences, certificates, approvals, authorizations, and registrations, or any item with a similar effect, issued or granted by any Governmental Authority.

"**Permitted Encumbrances**" means only those Liens related to the Purchased Assets set forth on **Exhibit "D"**.

"**Person**" means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or other entity.

"**Personal Information**" means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.

"**Proceeds**" has the meaning set out in Section 7.07(1)(b)(i).

"**Purchase Price**" has the meaning set out in Section 2.03.

"**Purchased Assets**" has the meaning set out in Section 2.01.

"**Real Property**" means the real property described in PINs 06164-0197 (LT) and 06164-0509 (LT) and more particularly described at **Exhibit "G"**.

"**Release**" means any release or discharge of any Hazardous Substance including any discharge, spray, injection, inoculation, abandonment, deposit, spillage, leakage, seepage, pouring, emission, emptying, throwing, dumping, placing, exhausting, escape, leach, migration, dispersal, dispensing or disposal.

"**Sale Process**" has the meaning set out in the recitals hereto.

"**Sale Process Order**" has the meaning set out in the recitals hereto.

"**Software**" means all software relating to the Business including all versions thereof, and all related documentation, manuals, source code and object code, program files, data files, computer related data, field and data definitions and relationships, data definition specifications, data models, program and system logic, interfaces, program modules, routines, sub-routines, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts, and all other material related to such software.

"**Successful Bid**" is as defined in the Sale Process.

"**Tarn Construction**" means Tarn Construction Corporation, a wholly-owned subsidiary of Tarn Financial Corporation.

"**Tax Act**" means the *Income Tax Act* (Canada).

"**Time of Closing**" means 5:00 p.m. (Toronto Time) on the Closing Date.

"**Transfer Taxes**" has the meaning set out in Section 2.06.

"**Unite Here**" means the labour union known as Unite Here Local 75, which is the certified bargaining agent for the Employees in the bargaining unit at the Business.

"Unopened Food and Beverage Inventory" means food and beverages used in the operation of the Business that are unopened on the Closing Date.

"**Utilities**" means all water, gas and electric utilities supplied to the Business.

"**Winding Up Order**" means the order obtained from the Court on September 15, 2017, as amended and/or amended and restated, commencing the Winding Up Proceeding.

"**Winding Up Proceeding**" means the proceeding commenced by the Winding Up Order.

1.02 **Headings**

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Exhibits are to Articles and Sections of and Exhibits to this Agreement.

1.03 **Extended Meanings**

In this Agreement words importing the singular number include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and Governmental Authorities. The term "including" means "including without limiting the generality of the foregoing" and the term "third party" means any Person other than the Vendor and the Purchaser.

1.04 **Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

1.05 **Currency**

All references to currency herein are to lawful money of Canada.

1.06 **Exhibits**

The following are the Exhibits to this Agreement:

Exhibit "A" - Form of Approval and Vesting Order
Exhibit "B" - Assigned Contracts and Permits

Exhibit "C" - Form of Assignment and Assumption Agreement
Exhibit "D" - Permitted Encumbrances
Exhibit "E" - Other Excluded Assets
Exhibit "F" - Allocation of Purchase Price
Exhibit "G" – Real Property

ARTICLE 2 - SALE AND PURCHASE

2.01 **Assets to be Sold and Purchased**

Upon and subject to the terms and conditions hereof, the Vendor will sell to the Purchaser and the Purchaser will purchase from the Vendor, as of and with effect from the Time of Closing, all of the right, title, benefit and interest of the Vendor in and to the following Assets (collectively, the "**Purchased Assets**"):

(a) the Real Property;

(b) all buildings, structures, erections, improvements, appurtenances, fixed machinery, fixed equipment and fixtures situate on or forming part of the Real Property;

(c) all other machinery and equipment and all vehicles, tools, handling equipment, furniture, furnishings, computer hardware and peripheral equipment, supplies and accessories of the Business;

(d) all Inventories;

(e) subject to Section 2.07 and to the extent not otherwise included in this Section 2.01, the Assigned Contracts;

(f) subject to Section 2.08(3), all Permits required to carry on the Business in its usual and ordinary course, including the Permits listed in Exhibit "B";

(g) all Intellectual Property owned by the Vendor and belonging to or used in the Business;

(h) subject to Section 2.07, all Intellectual Property not owned by the Vendor but licenced by the Vendor and used in the Business;

(i) the goodwill of the Business;

(j) all pre-paid expenses and deposits relating to the Purchased Assets (other than deposits paid to suppliers or customers of the Vendor) including all pre-paid taxes, local improvement rates and charges, water rates and other operating costs, all pre-paid purchases of gas, oil and hydro, and all pre-paid lease payments;

(k) all plans and specifications in the Vendor's possession or under its control relating to the buildings, structures, erections, improvements, appurtenances and fixtures

situate on or forming part of the Real Property including all such electrical, mechanical and structural drawings related thereto as are in the possession or under the control of the Vendor; and

(l) the Books and Records,

but excluding, for greater certainty, in each and every case the Excluded Assets (as hereinafter defined).

2.02 **Excluded Assets**

Notwithstanding Section 2.01 or any other provision in this Agreement to the contrary, the Vendor will retain its right, title, benefit and interest in and to, and the Purchaser will have no rights with respect to the right, title, benefit and interest of the Vendor in and to the following assets (collectively, the "**Excluded Assets**"):

(a) the cash and cash equivalents, short-term investments, bank account balances, bank deposits, including any deposits posted in respect of letters of credit, and petty cash of the Vendor;

(b) all Accounts Receivable;

(c) all rights of the Vendor to tax refunds, credits, rebates or similar benefits relating to the Purchased Assets or the Business;

(d) the Excluded Contracts;

(e) shares and other interests or capital of the Vendor;

(f) the tax records and insurance policies of the Vendor;

(g) any Claim of the Vendor to reimbursement under any insurance policy applicable to the Vendor;

(h) Books and Records not pertaining primarily to the Purchased Assets;

(i) all funds or deposits held by suppliers, customers or any other person in trust for or on behalf of the Vendor;

(j) the shares of Tarn Construction and any liabilities in Tarn Construction;

(k) Condo Purchase Agreements; and

(l) any other assets listed in **Exhibit "E"**.

2.03 **Purchase Price**

The aggregate purchase price payable by the Purchaser to the Vendor for the Purchased Assets excluding all applicable taxes (such amount being hereinafter referred to as the "**Purchase Price**") is an amount equal to a sum of the following, subject to the Adjustments:

(a) the amount of [redacted] and

(b) the amount of the Assumed Liabilities.

2.04 **Allocation of Purchase Price**

The Purchase Price will be allocated among the Purchased Assets as set out in **Exhibit "F"**. The Vendor and Purchaser will make and file all tax returns and filings on a basis which is consistent with the amount and allocation of the Purchase Price.

2.05 **Elections**

(1) The Vendor and the Purchaser will on or before the Time of Closing jointly execute an election, in the prescribed form and containing the prescribed information, to have subsection 167(1.1) of the *Excise Tax Act* (Canada) apply to the sale and purchase of the Purchased Assets hereunder. The Purchaser will file such election with the Minister of National Revenue within the time prescribed by the *Excise Tax Act* (Canada).

(2) The Vendor and the Purchaser acknowledge that the Vendor is transferring Purchased Assets to the Purchaser with a value equal to the amount set out in Section 2.03 partially in consideration for the Purchaser assuming prepaid obligations of the Vendor to deliver goods or provide services in the future. The Vendor and the Purchaser will execute and file, on a timely basis and using any prescribed form, a joint election under subsection 20(24) of the Tax Act as to such assumption hereunder, and prepare their respective tax returns in a manner consistent with such joint election.

2.06 **Transfer Taxes**

(1) The Purchaser will be liable for and, subject to Section 2.05, will pay, or will cause to be paid, all transfer, land transfer, value added, *ad-valorem*, excise, sales, use, consumption, goods or services, harmonized sales, retail sales, social services, or other similar taxes or duties (collectively, "**Transfer Taxes**") payable under any Applicable Law on or with respect to the sale and purchase of the Purchased Assets under this Agreement. The Purchaser will prepare and file any affidavits or returns required in connection with the foregoing at its own cost and expense.

(2) The Purchaser shall indemnify and save harmless the Vendor and its employees, advisors and agents from all Claims incurred, suffered or sustained as a result of a failure by the Purchaser:

(a) to pay or remit any Transfer Taxes payable by the Purchaser; and/or

(b) to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Purchaser with any federal, provincial or other taxing authorities in connection with the conveyance or transfer of the Purchased Assets.

2.07 **Assumption of Liabilities**

(1) At the Time of Closing, the Purchaser will assume and thereafter fulfil, perform and discharge when due the following Liabilities of the Vendor outstanding as at the Closing Date (collectively, the "**Assumed Liabilities**"):

(a) all Liabilities relating to Employees as set out in Section 4.03(a), (b) and (c);

(b) all Liabilities arising from or in connection with the Assigned Contracts or Permits including any Cure Costs;

(c) all Liabilities arising from or in connection with any tax, levy, penalty, interest or costs for which the Purchaser is responsible pursuant to Sections 2.05 and 2.06 and any Permitted Encumbrances; and

(d) all Liabilities relating to or arising from the Purchased Assets under Environmental Laws.

For further clarity, the Purchaser will only be responsible for the above Assumed Liabilities relating to the business of the Vendor and shall have no responsibility for any liabilities of Tarn Construction:

(2) In addition to any other provision for indemnification by the Purchaser contained in this Agreement, the Purchaser will, on and after the Closing Date, indemnify and save harmless the Vendor on its own behalf and as trustee for its Affiliates and its and their current and former directors and officers, employees, agents, advisors and representatives (including the Liquidator) (collectively, the "**Indemnitees**") from and against all Claims asserted against any of the Indemnitees in any way directly or indirectly arising from, relating to or in connection with any of the Assumed Liabilities.

2.08 **Assigned Contracts**

(1) The Purchaser shall have sole responsibility for verifying the assignability of any Contract and for obtaining any consent required for assignment thereof. Subject to Sections 2.08(2) and 2.08(3), the Purchaser, with the Vendor's consent, will request any consents necessary to permit the assignment to the Purchaser of the Assigned Contracts. The Vendor will provide its reasonable cooperation to assist the Purchaser to obtain such consents, including providing financial and other information of the Vendor requested by the Purchaser or party to such Assigned Contract.

(2) The Purchaser will be responsible for all Cure Costs in respect of any Assigned Contracts. For further clarity, the Purchaser will only be responsible for Cure Costs relating to contracts it wishes to have assigned to it as of the Closing Date.

(3) Nothing in this Agreement will constitute an agreement to assign or an attempted assignment of any non-assignable rights or any Contract or Permit for which any requisite consent or approval has not been obtained or which as a matter of Applicable Law or by its terms is not assignable.

2.09 **Payment of Purchase Price**

(1) The Purchase Price will be satisfied by the Purchaser as follows:

(a) an amount equal to 10% of the cash portion of the Purchase Price being [redacted] forthwith upon the Purchaser submitting a Binding APA (as defined in the Sale Process), by wire transfer of immediately available funds to an account specified by the Liquidator, in trust, as a deposit to be held in a bank account at a Canadian chartered bank and paid as provided in Section 2.09(2);

(b) [redacted] by wire transfer at the Time of Closing of immediately available funds to an account specified by the Vendor;

(c) by paying Adjustments, if any, to the Purchase Price pursuant to Section 6.01; and

(d) by the Purchaser assuming the Assumed Liabilities.

(2) The deposit paid to the Liquidator by the Purchaser pursuant to Section 2.09(1)(a) will be paid by the Liquidator:

(a) to the Vendor at the Time of Closing, with any interest that has been paid by the applicable bank thereon being paid to the Purchaser, in each case net of any applicable bank fees or charges, if the sale and purchase of the Purchased Assets provided for herein is completed in accordance with the terms and conditions hereof;

(b) to the Vendor on or after the fifth Business Day after the date of termination of this Agreement, together with any interest that has been paid by the applicable bank thereon (net of any applicable bank fees or charges), if this Agreement is terminated by the Vendor pursuant to Section 5.04(a), Section 5.04(c) (unless with respect to a condition in Section 5.02(c) or (d)), or Section 5.04(e) (where the Purchaser has failed to comply with its obligations under this Agreement); or

(c) to the Purchaser on or after the fifth Business Day after the date of termination of this Agreement, together with any interest that has been paid by the applicable bank thereon (net of any applicable bank fees or

charges), if this Agreement is terminated by the Purchaser pursuant to Section 5.04(a) or Section 5.04(b), or by the Vendor pursuant to Section 5.04(c) (solely with respect to a condition in Section 5.02(c) or (d)) or Section 5.04(e) (unless the Purchaser has failed to comply with its obligations under this Agreement),

provided that if the sale and purchase of the Purchased Assets provided for herein is not completed in accordance with the terms and conditions hereof and, prior to 10:00 a.m. on the fifth Business Day referred to in Section 2.09(2)(b) or (c), as the case may be, written notice is given by either the Vendor or the Purchaser to the Liquidator that such party in good faith disputes that the other is entitled to receive the deposit and/or any accrued interest thereon, then such deposit and all accrued interest thereon may, at the option of the Liquidator, be paid into Court as soon as reasonably possible (net of any applicable bank fees or charges), and further provided that the Liquidator shall be entitled to seek the direction of the Court at any time in respect of any matter relating to the deposit, including the payment thereof to any Person.

2.10 **Delivery of Purchased Assets**

At the Time of Closing, the Purchaser will take possession of the Purchased Assets where situated. The Purchaser acknowledges that the Vendor has no obligation to deliver possession of the Purchased Assets to the Purchaser at any location other than the Vendor's premises.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

3.01 **Vendor's Representations and Warranties**

The Vendor represents and warrants to the Purchaser that, as at the date hereof and as of the Closing Date:

(a) the Vendor is a corporation duly incorporated, organized and existing under the laws of the Province of Ontario;

(b) subject to the entry of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated herein, the Vendor has the power, authority and right to enter into and deliver this Agreement and to carry out its obligations hereunder;

(c) subject to the entry of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated herein, this Agreement constitutes a valid and legally binding obligation of the Vendor, enforceable against the Vendor in accordance with its terms;

(d) the Vendor is registered under Part IX of the *Excise Tax Act* (Canada) with registration number 80522 1975 RT0001; and

(e) the Vendor is not a non-resident of Canada within the meaning of section 116 of the Tax Act.

3.02 **Purchaser's Representations and Warranties**

The Purchaser represents and warrants to the Vendor that:

(a) the Purchaser is a corporation duly incorporated, organized and existing under the laws of Ontario;

(b) the Purchaser has the power, authority and right to enter into and deliver this Agreement and to carry out its obligations hereunder;

(c) this Agreement constitutes a valid and legally binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms;

(d) the Purchaser has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement and completion of the transactions contemplated herein and the entering into of this Agreement in completion of the transactions contemplated herein will not breach its constating documents, any agreement binding on the Purchaser, or Applicable Laws relating to the Purchaser;

(e) there are no orders of or proceedings before or pending before any Governmental Authority, or threatened to be brought by or before any Governmental Authority by or against the Purchaser affecting the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby by the Purchaser;

(f) no authorizations, consents or approvals of, or filing with or notice to, any Governmental Authority is required in connection with the execution, delivery or performance of this Agreement;

(g) except for the Approval and Vesting Order, no consent, waiver, authorization or approval of any Person and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Purchaser of this Agreement;

(h) the Purchaser has available, or prior to the delivery of the Binding APA (as defined in the Sale Process) and at the Time of Closing will have, sufficient funding to enable the Purchaser to consummate the purchase of the Purchased Assets from the Vendor on the terms set forth herein and otherwise to perform all of the Purchaser's obligations under this Agreement;

(i) the Purchaser is able to perform all obligations under the Assigned Contracts and pay all Cure Costs as required by this Agreement;

(j) the Purchaser is registered under Part IX of the *Excise Tax Act* (Canada) with registration number 82521 0446 RT001; and

(k) the Purchaser is not a non-resident of Canada within the meaning of section 116 of the Tax Act.

3.03 **"As Is, Where Is"**

(1) The Purchaser acknowledges and agrees that it is purchasing the Purchased Assets on an "as is, where is" basis and on the basis that the Purchaser has conducted to its satisfaction an independent inspection, investigation and verification of the Purchased Assets (including a review of title), Business, Assumed Liabilities and all other relevant matters and has determined to proceed with the transaction contemplated herein and will accept the same at the Time of Closing in their then current state, condition, location, and amounts, subject to all Permitted Encumbrances.

(2) Except as otherwise expressly provided in Section 3.01, no representation, warranty or condition whether statutory (including under the *Sale of Goods Act* (Ontario), the *International Sale of Goods Contracts Convention Act* (Canada) and the *International Sale of Goods Act* (Ontario) or any international equivalent act which may be applicable to the subject matter pursuant to the provisions of this Agreement, including but not limited to the *United Nations Convention on Contracts for the International Sale of Goods*), or express or implied, oral or written, legal, equitable, conventional, collateral, arising by custom or usage of trade, or otherwise is or will be given including as to title, outstanding liens or encumbrances, description, fitness for purpose, merchantability, merchantable quality, quantity, condition (including physical and environmental condition), suitability, durability, assignability, or marketability thereof or any other matter or thing whatsoever, and all of the same are expressly excluded and disclaimed and any rights pursuant to such statutes have been waived by the Purchaser. The Purchaser acknowledges and agrees that it has relied entirely and solely on its own investigations as to the matters set out above and in determining to purchase the Purchased Assets and assume the Assumed Liabilities pursuant to this Agreement.

(3) The description of the Purchased Assets, Business, and Assumed Liabilities contained herein is for the purpose of identification only and the inclusion of any item in such description does not confirm the existence of any such items or that any such item is owned by the Vendor. Except as otherwise explicitly set forth in Section 3.01, no representation, warranty or condition has been given by the Vendor concerning the completeness or accuracy of such descriptions and the Purchaser acknowledges and agrees that any other representation, warranty, statements of any kind or nature, express or implied, (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Vendor or the quality, quantity or condition of the Purchased Assets) are specifically disclaimed by the Vendor.

(4) Any documents, materials and information provided by or on behalf of the Vendor to the Purchaser with respect to the Purchased Assets, the Business or Assumed Liabilities (including any confidential information memorandums, management presentations, or material made available in the electronic data room) have been provided to the Purchaser solely to assist the Purchaser in undertaking its own due diligence, and the Vendor has not made and is not making any representations or warranties, implied or otherwise, to or for the benefit of the Purchaser as to the accuracy and completeness of any such documents, materials or information

or the achievability of any valuations, estimates or projections. The Purchaser acknowledges that it has not and will not rely upon any such documents, materials or information in any manner, whether as a substitute for or supplementary to its own due diligence, searches, inspections and evaluations. The Vendor, the Liquidator and their respective affiliates, directors, officers, employees, agents and advisors shall not be liable for any inaccuracy, incompleteness or subsequent changes to any such documents, materials or information.

ARTICLE 4 - COVENANTS

4.01 Covenants of the Vendor

(1) The Vendor covenants that, from the date of this Agreement until the Time of Closing, subject to any limitation imposed as a result of being subject to the Winding Up Proceeding, the terms of any Court-approved financing arrangements or any order of the Court, and except as: (i) otherwise contemplated by this Agreement, (ii) consented to in writing by the Purchaser, (iii) required by Applicable Law, or (iv) relates solely to Excluded Assets, the Vendor will:

(a) carry on the Business in the usual and ordinary course, consistent with past practice, and use commercially reasonable efforts to maintain, preserve and protect the Purchased Assets in the condition in which they exist on the date hereof; and

(b) refrain from disclaiming any Assigned Contracts without the prior written consent of the Purchaser.

(2) The Vendor will ensure that the representations and warranties of the Vendor set out in Section 3.01 are true and correct in all material respects at the Time of Closing and use reasonable commercial efforts to ensure that the conditions of closing for the benefit of the Purchaser set out in Section 5.01 over which it has reasonable control have been performed or complied with in all material respects by the Time of Closing.

(3) The Vendor shall file with the Court, as soon as practicable after its execution and delivery of this Agreement, a motion seeking the Court's issuance of the Approval and Vesting Order.

4.02 Covenants of the Purchaser

(1) The Purchaser will ensure that the representations and warranties of the Purchaser set out in Section 3.02 are true and correct in all material respects at the Time of Closing and use reasonable commercial efforts to ensure that the conditions of closing for the benefit of the Vendor set out in Section 5.02 over which it has reasonable control have been performed or complied with in all material respects by the Time of Closing.

(2) The Purchaser will provide to the Vendor all information within its possession or control that the Vendor may reasonably request to assist the Vendor in obtaining the Approval and Vesting Order.

(3) The Purchaser will preserve the Books and Records delivered to it at the Time of Closing for such other period as is required by any Applicable Law, and will permit the Vendor and the Liquidator and their respective authorized representatives reasonable access thereto in connection with the affairs of the Vendor, and the right to make copies thereof at their expense.

(4) The Purchaser shall make the necessary arrangements to replace the following letters of credit or other security deposits posted by the Vendor, or any other Person on their behalf, with any counterparty, on or prior to Closing:

(i) Enbridge Consumers Gas - $60,700.00 and

(ii) Toronto Hydro - $71,480.00

(5) The Purchaser will comply with the *Personal Information Protection and Electronic Documents Act* (Canada) and other similar Applicable Laws relating to privacy and the protection of Personal Information in respect of the books and records, Contracts and any other business and financial records related to the Purchased Assets and the Business.

4.03 **Employee Matters**

The Purchaser:

(a) will, effective the opening of business on the Closing Date, offer to employ on and after the Closing Date all of the Employees who are employed by the Vendor in the Business who are not Bargaining Unit Employees, on substantially the same terms and conditions of employment as are in effect on the date hereof;

(b) in respect of the Bargaining Unit Employees on the Closing Date, will be the successor to the Vendor pursuant to the provisions of applicable labour legislation and on and after the Closing Date will be bound by and observe all of the terms, conditions, rights and obligations of the Vendor to the Bargaining Unit Employees;

(c) will, effective the opening of business on the Closing Date, assume responsibility, statutory and otherwise, for the rights, obligations and Liabilities relating to or arising out of the employment of the Employees and will recognize all past service of the Employees with the Vendor for all purposes; and

(d) in addition to any other provision for indemnification by the Purchaser contained in this Agreement, will indemnify the Vendor and its employees and agents, and save each of them fully harmless against any Claims arising out of, as a result of, or relating in any manner whatsoever to the assumption by the Purchaser of the responsibilities, rights, obligations and liabilities as set out in this Section 4.03.

ARTICLE 5 - CONDITIONS AND TERMINATION

5.01 Conditions for the Benefit of the Purchaser

The sale by the Vendor and the purchase by the Purchaser of the Purchased Assets is subject to the following conditions, which are for the exclusive benefit of the Purchaser and which are to be performed or complied with at or prior to the Time of Closing:

(a) the representations and warranties of the Vendor set forth in this Agreement will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;

(b) the Vendor will have performed or complied in all material respects with all of the obligations and covenants of this Agreement to be performed or complied with by the Vendor at or prior to the Time of Closing;

(c) no action or proceeding in Canada will be pending by any third party to enjoin or prohibit the sale and purchase of the Purchased Assets;

(d) the Approval and Vesting Order will have been granted by the Court and such order will not have been stayed, varied in any material respect, set aside or appealed (or any such appeal shall have been dismissed with no further appeal therefrom); and

(e) the Condo Purchase Agreements will have been terminated or the Purchaser will have confirmation that the Condo Purchase Agreements are Excluded Assets and are vested off the Real Property pursuant to the Approval and Vesting Order.

5.02 Conditions for the Benefit of the Vendor

The sale by the Vendor and the purchase by the Purchaser of the Purchased Assets is subject to the following conditions, which are for the exclusive benefit of the Vendor and which are to be performed or complied with at or prior to the Time of Closing:

(a) the representations and warranties of the Purchaser set forth in this Agreement will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;

(b) the Purchaser will have performed or complied in all material respects with all of the obligations and covenants of this Agreement to be performed or complied with by the Purchaser at or prior to the Time of Closing;

(c) no action or proceeding in Canada will be pending by any third party to enjoin or prohibit the purchase and sale of the Purchased Assets;

(d) the Approval and Vesting Order will have been granted by the Court and such order will not have been stayed, varied in any material respect, set aside or

appealed (or any such appeal shall have been dismissed with no further appeal therefrom); and

(e) the Purchaser will have paid or will have made arrangements, satisfactory to the Vendor, to pay all Cure Costs pursuant to Section 2.08(2).

5.03 **Waiver of Condition**

The Purchaser, in the case of a condition set out in Section 5.01, and the Vendor, in the case of a condition set out in Section 5.02 (other than Section 5.02(d)), will have the exclusive right to waive the performance or compliance of such condition in whole or in part and on such terms as may be agreed upon without prejudice to any of its rights in the event of non-performance of or non-compliance with any other condition in whole or in part. Any such waiver will not constitute a waiver of any other conditions in favour of the waiving party. Such waiving party will retain the right to complete the purchase and sale of the Purchased Assets herein contemplated.

5.04 **Termination**

This Agreement may be terminated, by notice given prior to or on the Closing Date:

(a) by the Vendor or the Purchaser if a material breach of any representation, warranty, covenant, obligation or other provision of this Agreement has been committed by the other party and such breach has not been waived or cured within five days following the date on which the non-breaching party notifies the other party of such breach;

(b) by the Purchaser if a condition in Section 5.01 becomes impossible to satisfy prior to July 31, 2018 or such later date as the parties may determine (the "**Outside Date**") (other than through the failure of the Purchaser to comply with its obligations under this Agreement) and the Purchaser has not waived such condition;

(c) by the Vendor if a condition in Section 5.02 becomes impossible to satisfy prior to the Outside Date (other than through the failure of the Vendor to comply with its obligations under this Agreement) and the Vendor has not waived such condition;

(d) by written agreement of the Purchaser and the Vendor; or

(e) by the Vendor or the Purchaser if the completion of the sale of Purchased Assets herein contemplated has not occurred (other than through the failure of the party seeking termination to comply with its obligations under this Agreement) on or before the Outside Date.

5.05 **Effect of Termination**

Each party's right of termination under Section 5.04 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 5.04, all further obligations of the parties under this Agreement will terminate, except that the obligations in Sections 2.09(2), 7.04, 9.03 and 9.04 will survive; provided, however, that if this Agreement is terminated by a party because of a material breach of a representation or warranty, covenant, obligation or other provision of this Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies with respect to such breach will survive such termination unimpaired.

ARTICLE 6 - CLOSING ADJUSTMENTS

6.01 **Closing Adjustments**

The following adjustments ("**Adjustments**") shall be made to the Purchase Price on Closing:

(a) Taxes. All real estate taxes, personal property taxes, school taxes, hotel taxes and other assessments, whether special or general, (including water and sewer service charges and other charges for governmental services) shall be the responsibility of the Vendor up to the Closing Date and the responsibility of the Purchaser on and after the Closing Date, such that the Purchaser shall receive a credit for any such taxes attributable to the period prior to the Closing Date that are unpaid as at the Closing Date, and the Vendor shall receive a credit for any such taxes that were prepaid by the Vendor in respect of the period beginning on the Closing Date;

(b) Room Rents. The Vendor shall receive a credit for hotel room rents and other charges of transient guests owing to the Closing Date. Room rents and other such charges from and including the Closing Date shall be credited to the Purchaser. Notwithstanding the foregoing, room rentals for the night before the Closing Date shall be shared between the Vendor as to 50% and Purchaser as to 50%;

(c) Utilities. All Utilities consumed by the Business up to, but excluding the Closing Date shall be the responsibility of the Vendor. Accrued and unpaid charges for Utilities and governmental services (if any) representing goods and services supplied to the Vendor prior to the Closing Date shall be credited to the Purchaser and the Purchaser shall assume liability for paying such charges after Closing;

(d) Inventory. The Vendor shall receive a credit for the actual cost of all Unopened Food and Beverage Inventory;

(e) Contracts. All amounts accrued and payable by the Vendor under the Contracts prior to the Closing Date and remaining unpaid on the Closing Date for goods or services consumed by the Vendor prior to the Closing Date shall be credited to the

Purchaser and the Purchaser shall undertake to pay such amounts in accordance with the terms of the applicable Contracts after Closing. All amounts prepaid under the Contracts in respect of goods or services to be consumed on or after the Closing Date shall be credited to the Vendor;

(f) Leases. The Purchaser shall receive a credit for prepaid rents, if any, held by the Vendor and not previously applied in payment of rent. Rent received for the month of the Closing Date shall be adjusted between the Vendor and the Purchaser;

(g) Liquidated Damages. In the event that the Purchaser does not enter into a licence agreement to continue to brand the hotel a Delta from and after the Closing Date, then the Purchaser shall pay to the Vendor the liquidated damages as calculated pursuant to the Licence Agreement;

(h) Employee Payables. Without limiting the generality of Sections 4.03 and 6.01(d), amounts payable in connection with Employees for, or in respect of, services provided prior to the Closing Date which remain unpaid on the Closing Date shall be credited to the Purchaser and the Purchaser shall undertake to pay such amounts on or before their respective due dates. All amounts prepaid by the Vendor in respect of the Closing Date or period thereafter shall be credited to the Vendor; and

(i) Other Items. Any other amount to be adjusted in accordance with this Agreement and any other item reasonably capable and, subject to any specific provisions of this Agreement, properly or typically the subject of adjustment in connection with the Asset shall be adjusted as at the Closing Date.

The Vendor shall deliver to the Purchaser a draft statement of Adjustments at least three (3) Business Days prior to Closing

6.02 **Readjustment**

The Parties hereby agree to readjust all errors, omissions or estimated amounts in the statement of Adjustments after the Closing Date as necessary within sixty (60) days after the Closing Date. No claim for readjustment shall be made by either the Purchaser or Vendor after the expiry of such sixty (60) day period.

6.03 **No Adjustment**

There shall be no adjustment for Accounts Receivable relating to the operation of the Business prior to Closing, all of which shall remain the property of the Vendor. Upon receipt of any such amounts after the Closing Date, the Purchaser will forthwith forward such amounts to the Vendor.

ARTICLE 7 - CLOSING ARRANGEMENTS

7.01 Closing

The sale and purchase of the Purchased Assets will be completed at the Time of Closing at the offices of Miller Thomson LLP, 40 King Street West, Suite 5800, Scotia Plaza, Toronto, Ontario M5H 3S1.

7.02 Vendor's Closing Deliveries

On or before the Time of Closing, the Vendor will deliver or cause to be delivered to the Purchaser the following:

(a) a certificate executed by the Vendor confirming that the representations and warranties of the Vendor in this Agreement are true and correct in all material respects as of the Time of Closing and that the obligations of the Vendor to be performed prior to the Time of Closing have been performed in all material respects;

(b) a copy of the issued and entered Approval and Vesting Order;

(c) if available, the tax election as contemplated by Section 2.05(1) executed by the Vendor;

(d) if available, the tax election as contemplated by Section 2.05(2) executed by the Vendor, if the information necessary to complete such election is available at the Time of Closing;

(e) a bill of sale, duly executed by the Vendor, if necessary;

(f) the Assignment and Assumption Agreement executed by the Vendor;

(g) if required, a direction of the Liquidator as to the payment of the Purchase Price; and

(h) such other documents or instruments as contemplated or required to be delivered by the Vendor pursuant to this Agreement, all of which shall be in form and substance satisfactory to the parties, acting reasonably.

7.03 Purchaser's Closing Deliveries

On or before the Time of Closing, the Purchaser will deliver or cause to be delivered to the Vendor the following:

(a) payment of the Purchase Price to the Vendor as contemplated by Section 2.09(1)(b);

(b) evidence, satisfactory to the Vendor, of the payment of or arrangements to pay all Cure Costs as contemplated by Section 2.08(2) to the extent there are Assigned Contracts;

(c) a certificate executed by a senior officer of the Purchaser confirming that the representations and warranties of the Purchaser in this Agreement are true and correct in all material respects as of the Time of Closing and that the obligations of the Purchaser to be performed prior to the Time of Closing have been performed in all material respects;

(d) if available, the tax election as contemplated by Section 2.05(1) executed by the Purchaser;

(e) if available, the tax election as contemplated by Section 2.05(2) executed by the Purchaser, if the information necessary to complete such election is available at the Time of Closing;

(f) the Assignment and Assumption Agreement executed by the Purchaser;

(g) if required, a land transfer tax affidavit; and

(h) such other documents or instruments as contemplated or required to be delivered by the Purchaser pursuant to this Agreement, all of which shall be in form and substance satisfactory to the parties, acting reasonably.

7.04 **Confidentiality**

Subject to the terms of the Non-Disclosure Agreement, both prior to the Closing Date and, if the sale and purchase of the Purchased Assets hereunder fails to occur for whatever reason thereafter, the Purchaser will not disclose to anyone or use for its own or for any purpose other than the purpose contemplated by this Agreement any confidential information concerning the Vendor or the Business obtained by the Purchaser pursuant hereto, and will hold all such information in the strictest confidence and, if the sale and purchase of the Purchased Assets hereunder fails to occur for whatever reason, will return all documents, records and all other information or data relating to the Vendor or to the Business which the Purchaser obtained pursuant to this Agreement.

7.05 **Delivery of Liquidator's Certificate**

(1) When each party has advised the other that it is satisfied with the documents delivered to it at or before the Time of Closing, the Purchaser and Vendor will each deliver to the Liquidator written confirmation that the conditions set out in Section 5.01 and Section 5.02, as applicable, have been satisfied or waived following which the Liquidator will deliver an executed copy of the Liquidator's Certificate to the Purchaser's counsel in escrow upon the sole condition of receipt by the Vendor of the amounts referred to in Section 2.09(1). All of the foregoing amounts will then be paid by the Purchaser, by wire transfer of immediately available funds to an account designated in writing by the Vendor for this purpose pursuant to Section 2.09(1) hereof. Following written confirmation of receipt by the Vendor of such funds

(or such person directed by the Vendor to receive such funds), the Liquidator's Certificate will be released from escrow to the Purchaser. Upon such delivery, the closing will be deemed to have occurred at the Time of Closing. The Liquidator will file a copy of the Liquidator's Certificate with the Court on the next Business Day following the Closing Date and provide evidence of such filing to the Purchaser.

(2) 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 and the Vendor 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 or the Vendor in connection therewith.

7.06 **Planning Act**

This Agreement is subject to compliance with the *Planning Act* (Ontario). The parties agree that compliance with the *Planning Act* (Ontario) shall be the responsibility of the Purchaser at its costs. The Vendor agrees to execute all documents reasonably requested by the Purchaser in respect thereof.

7.07 **Risk of Loss**

(1) Until the Time of Closing, the Purchased Assets will remain at the risk of the Vendor. If any destruction or damage in excess of $10 million occurs to the Purchased Assets on or before the Time of Closing or if any or all of the Purchased Assets are appropriated, expropriated or seized by governmental or other lawful authority on or before the Time of Closing:

(a) the Vendor will forthwith give notice thereof to the Purchaser, and

(b) the Purchaser will have the option, exercisable by notice to the Vendor on or before the Time of Closing:

(i) to reduce the Purchase Price by an amount equal to the proceeds of insurance (and, if any such policy provided for a deductible amount, by an amount equal to such deductible amount) or compensation for destruction or damage or appropriation, expropriation or seizure and business interruption with respect thereto (in this Section 7.07 referred to as the "**Proceeds**"), and to complete the purchase; or

(ii) to complete the purchase without reduction of the Purchase Price, in which event all Proceeds will be payable to the Purchaser and all Claims of the Vendor to any such amounts not paid by the Closing Date will be assigned to the Purchaser.

(2) If the Purchaser elects to reduce the Purchase Price pursuant to Section 7.07(1)(b)(i), the Vendor will at the Time of Closing determine the amount of the reduction to the extent that it is then determinable and will undertake to adjust such amount after the Closing Date, if necessary.

ARTICLE 8 - SURVIVAL

8.01 **Survival**

No covenants, representations and warranties of each party contained in this Agreement will survive the completion of the sale and purchase of the Purchased Assets and assumption of the Assumed Liabilities hereunder, except for the covenants that by their terms are to be satisfied or survive after the Time of Closing (including Sections 2.06, 2.07(2), 2.09(2), 4.02(3), 9.03, 9.04, and 9.16), which covenants will continue in full force and effect in accordance with their terms.

ARTICLE 9 - GENERAL

9.01 **Further Assurances**

Each of the Vendor and the Purchaser will from time to time at the request and expense of the other execute and deliver all such further documents and instruments and do all acts and things as the other party may, either before or after the Closing Date, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

9.02 **Time of the Essence**

Time is of the essence of this Agreement.

9.03 **Fees, Commissions and other Costs and Expenses**

Each of the Vendor and the Purchaser will pay its respective legal and accounting costs and expenses and any real estate or other commissions incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement and any other costs and expenses whatsoever and howsoever incurred and will indemnify and save harmless the other from and against any Claim resulting from any broker's, finder's or placement fee or commission alleged to have been incurred as a result of any action by it in connection with the transactions under this Agreement.

9.04 **Public Announcements**

Except as required by Applicable Law, no public announcement or press release concerning the sale and purchase of the Purchased Assets may be made by the Vendor or the Purchaser without the prior consent and joint approval of the Vendor and the Purchaser.

9.05 **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the successors and permitted assigns of the parties.

9.06 **Entire Agreement**

This Agreement (including the agreements contemplated hereby) and the Non-Disclosure Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and such agreements cancel and supersede any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement (including the agreements contemplated hereby) or in the Non-Disclosure Agreement.

9.07 **Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by both of the parties. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

9.08 **Assignment**

This Agreement may not be assigned by the Vendor or the Purchaser without the written consent of the other provided that the Purchaser may assign this Agreement without the consent of the Vendor to an Affiliate of the Purchaser provided that: (i) such Affiliate enters into a written agreement with the Vendor to be bound by the provisions of this Agreement in all respects and to the same extent as the Purchaser is bound, (ii) that the Purchaser will continue to be bound by all the obligations hereunder as if such assignment had not occurred and perform such obligations to the extent that such Affiliate fails to do so, and (iii) such assignment occur prior to the issuance of the Approval and Vesting Order.

9.09 **Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery or by electronic means of communication addressed to the recipient as follows:

To the Vendor:

Tarn Financial Corporation
c/o KPMG Inc.
Bay Adelaide Centre
Suite 4600, 333 Bay Street
Toronto, ON M5H 2S5

Fax No.: 416-777-3364

Attention: Anamika Gadia

With copies to (which will not constitute notice)

Miller Thomson LLP
Scotia Plaza,
Suite 5800, 40 King Street West,
Toronto, ON, M5H 3S1

Fax No: 416-595-8695

Attention: Kyla Mahar

To the Purchaser:

Sunray Group of Hotels Inc.
515 Consumers Rd., Suite 701
Toronto, ON, M2J 4Z2

Fax No.: 647-794-2040

Attention: Kenny Gibson

With copies to (which will not constitute notice)

Shapiro Real Estate and Business Lawyers
333 Sheppard Avenue East, Suite 201
Toronto, ON, M2N 3B3

Fax No.: 416-224-0818

Attention: Garry Shapiro

or to such other street address, individual or electronic communication number or address as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

9.10 **Remedies Cumulative**

The right and remedies of the parties under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

9.11 **No Third Party Beneficiaries**

This Agreement is solely for the benefit of:

(a) the Vendor, and its successors and permitted assigns, with respect to the obligations of the Purchaser under this Agreement, and

(b) the Purchaser, and its successors and permitted assigns, with respect to the obligations of the Vendor under this Agreement,

and this Agreement will not be deemed to confer upon or give to any other person any Claim or other right or remedy.

9.12 **Governing Law**

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

9.13 **Attornment**

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The Vendor and the Purchaser each attorns to the jurisdiction of the courts of the Province of Ontario.

9.14 **Appointment of Agent for Service**

The Purchaser nominates, constitutes and appoints Garry Shapiro, Barristers and Solicitors, of the City of Toronto its true and lawful agent to accept service of process and to receive all lawful notices in respect of any action arising under this Agreement (other than any notice that is to be given by one party to another pursuant to Section 9.09). Until due and lawful notice of the appointment of another and subsequent agent in the Province of Ontario has been given to and accepted by the Vendor, service of process or of papers and such notices upon Garry Shapiro will be accepted by the Purchaser as sufficient service.

9.15 **Severability**

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect.

9.16 **No Registration of Agreement**

The Purchaser agrees that it will not register or cause or permit to be registered this Agreement and that no reference to or notice of it or any caution, certificate of pending litigation or other similar court process in respect thereof shall be registered on title to the Real Property and/or any part thereof. The Purchaser shall indemnify and save the Vendor harmless from and

against any and all Claims whatsoever arising from or with respect to any such registration. This Section shall survive the expiration and/or termination of this Agreement for any reason.

9.17 **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

9.18 **Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

ARTICLE 10 - IRREVOCABILITY

10.01 **Irrevocability**

The Purchaser hereby acknowledges and agrees that the offer contained herein shall be irrevocable and open for acceptance by the Vendor until the date upon which the Successful Bid and the Back-Up Bid have been selected by the Liquidator and Colliers.

[Remainder of Page Intentionally Left Blank – Signature Page to follow]

IN WITNESS WHEREOF the parties have executed this Agreement.

SUNRAY GROUP OF HOTELS INC.

Per: Ray Gupta

I have authority to bind the corporation

TARN FINANCIAL CORPORATION, by its authorized signatory, KPMG Inc. in its capacity as Liquidator and without personal liability

Per: Anamika Gadia
Senior Vice President

IN WITNESS WHEREOF the parties have executed this Agreement.

SUNRAY GROUP OF HOTELS INC.

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I have authority to bind the corporation

TARN FINANCIAL CORPORATION, by its authorized signatory, KPMG Inc. in its capacity as Liquidator and without personal liability

Per: Anamika Gadia
Senior Vice President

EXHIBIT "A"

Form of Approval and Vesting Order

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	TUESDAY, THE 1ST
	)	
JUSTICE MCEWEN	)	DAY OF MAY, 2018

BETWEEN:

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

Applicants

- and –

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

Respondents

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. in its capacity as liquidator (the "**Liquidator**") of Tarn Financial Corporation ("**Tarn**") for an order approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement (the "**Asset Purchase Agreement**") between Tarn (the "**Vendor**") and • (the "**Purchaser**") dated •, 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 this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of • sworn •, 2018 and the • Report of the Liquidator dated •, 2018 (the "**• Report**"), and on hearing the submissions of counsel for the Liquidator, the Vendor, the Purchaser, 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 • sworn •, 2018 filed:

1. **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.

2. **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.

3. **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 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 Order of the Honourable Mr. Justice Lederman dated September 15, 2017; (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 B** 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 C**) 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.

4. **THIS COURT ORDERS** that upon the registration in the applicable land registry office or land titles office of a Transfer/Deed of Land or equivalent document, or of an application for registration of this Order in the applicable prescribed form, the applicable land registrar or equivalent official is hereby directed to enter the Purchaser as the owner of the subject 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 B hereto.

5. **THIS COURT ORDERS** that, without in any way limited the efficacy of paragraph 3 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 Property and the Purchaser, and no party to any Excluded Asset shall have any right, interest or claim thereunder as against the Property or the Purchaser.

6. **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.

7. **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 **[6.05(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 **[2.11]** 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 **[6.05]** 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 and the Vendor 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 or the Vendor in connection therewith.

8. **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 Company's records pertaining to the Debtor'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.

9. **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.

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

11. **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**

12. **THIS COURT ORDERS that the Confidential Appendix to the • 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.**]

Schedule A – Form of Liquidator's Certificate

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

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

Applicants

- and –

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

Respondents

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 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 •, 2018, the Court approved the agreement of purchase and sale made as of •, 2018 (the "**Asset Purchase Agreement**") between the Respondent (the "**Vendor**") and • (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].

KPMG Inc., in its capacity as Court-appointed Liquidator, and not in its personal capacity

Per: _____

Name:

Title:

Schedule B – 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 A T4242765.

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 lnc.

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 lnc. perfected by Certificate Instrument Number AT4731272 registered November 14, 2017.

PIN 06164-0509 (LT)

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

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

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

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

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

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

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

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

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

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

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

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

30. Construction Lien AT4701329 registered October 6. 2017, registered by GFL lnfrastructure Group lnc. perfected by Certificate Instrument Number AT4731272 registered November 14, 2017.

31. Construction Lien AT4714314 registered October 24, 2017, registered by The Fence People Limited.

32. Construction Lien AT4726307 registered November 6. 2017, registered by The Fence People Limited perfected by Certificate lnstrument Number AT4745670 registered November 29, 2017.

Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants 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

5. Site Plan Agreement Instrument Number SC618244 registered June 18, 1981.

6. Agreement Amending Site Plan Agreement instrument Number TB966207 registered March 3, 1995.

7. Reference Plan 66R28554 registered March 17, 2016.

8. Application for Absolute Title Instrument Number AT4169525 registered March 17, 2016.

9. Reference Plan 66R29568 registered September 17, 2016.

General Permitted Encumbrances

1. Any subsisting reservations, limitations, provisos, conditions or exceptions contained in the original grant of title to the Property from the Crown.

2. All reference plans, plans of subdivision and expropriation plans, as well as all certificates under the *Expropriations Act,* R.S.O. 1990, c. E.26, and all rights and interests conferred thereunder.

3. The exceptions and qualifications of Subsection 44(1) of the Land Titles Act, and/or as set out on any one or more of the parcel registers for the lands comprising the Property, and any amendments thereto.

4. All laws, orders in council, rules, regulations, by-laws, ordinances, development agreements, subdivision agreements, site plan agreements, notices and/or building restrictions and/or other requirements of the relevant governmental and/or municipal authorities of general application governing, restricting and/or prohibiting the alienation, construction, occupancy and/or use of Property and/or creating statutory liens thereon.

5. Any easements, servitudes, rights-of-way, licences, restrictions that run with the Property or any portion thereof, and other encumbrances and/or agreements with respect thereto

(including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables).

EXHIBIT "B"

ASSIGNED CONTRACTS AND PERMITS

1. [To be completed prior to closing]

.

EXHIBIT "C"

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS AGREEMENT is made as of [date], 2018

BETWEEN

SUNRAY GROUP OF HOTELS INC., a corporation incorporated under the laws of Ontario (the "**Purchaser**"),

- and -

TARN FINANCIAL CORPORATION, a corporation incorporated under the laws of the Province of Ontario (the "**Vendor**").

WHEREAS the parties hereto have entered into an asset purchase agreement dated as of March 20, 2018 (the "**Asset Purchase Agreement**"), pursuant to which the Vendor has agreed to assign all of its right, title, benefit and interest in and to the Assigned Contracts to the Purchaser, and the Purchaser has agreed to assume, perform and indemnify and hold harmless the Vendor from the Assumed Liabilities, upon the terms and conditions set forth therein;

AND WHEREAS pursuant to Sections 7.02(f) and 7.03(f) of the Asset Purchase Agreement, the Vendor and Purchaser are required to enter into and deliver this Agreement at the Time of Closing;

NOW THEREFORE in conjunction with and in consideration of the completion of the transactions to be effected at the Time of Closing as contemplated by the Asset Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vendor and the Purchaser agree as follows:

ARTICLE 1 - INTERPRETATION

1.01 Definitions

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

1.02 Headings

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless

something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles and Sections of, and Schedules to, this Agreement.

1.03 **Extended Meanings**

In this Agreement words importing the singular number include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and Governmental Authorities. The term "including" means "including without limiting the generality of the foregoing".

ARTICLE 2 – ASSIGNMENT AND ASSUMPTION

2.01 **Assignment by the Purchaser**

Upon and subject to the terms of the Asset Purchase Agreement, effective at the Time of Closing, the Vendor hereby assigns and transfers to the Purchaser all of the Vendor's right, title, benefit and interest under or in respect of the Assigned Contracts.

2.02 **Assumption by the Purchaser**

Upon and subject to the terms of the Asset Purchase Agreement, effective at the Time of Closing, the Purchaser hereby assumes and agrees to fulfill, perform and discharge the Assumed Liabilities.

2.03 **Release by the Purchaser**

The Purchaser hereby: (i) unconditionally and irrevocably fully releases and discharges the Vendor from any Claim that occurs after the Closing Date which the Purchaser may now or hereafter have against the Vendor by reason of any matter or thing arising out of, or resulting from, any of the Assumed Liabilities, and (ii) agrees that the Purchaser will not make or take any Claim with respect to any matter released and discharged in this Section 2.03 which may result in any Claim against the Vendor for contribution or indemnity or other relief.

2.04 **Indemnity by the Purchaser**

The Purchaser hereby indemnifies and saves harmless the Vendor on its own behalf and as trustee for its Affiliates and its and their current and former directors and officers, employees, agents, advisors, and representatives (including the Liquidator) (collectively, the "**Indemnitees**") from and against all Claims asserted against any of the Indemnitees in any way directly or indirectly arising from, relating to or in connection with any of the Assumed Liabilities. The Purchaser appoints the Vendor as the trustee for the Indemnitees of the covenants of indemnification of the Purchaser with respect to such Indemnitees specified in this Section 2.04 and the Vendor accepts such appointment.

ARTICLE 3 - GENERAL

3.01 Further Assurances

The Vendor and the Purchaser will from time to time execute and deliver all such further documents and instruments and do all acts and things as any of the other parties may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

3.02 Time of the Essence

Time is of the essence of this Agreement.

3.03 Benefit of the Agreement

This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

3.04 Amendments and Waivers

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by each of the parties. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

3.05 Assignment

This Agreement may not be assigned by the Vendor or by the Purchaser without the consent of: (i) in the case of an assignment by the Vendor, the Purchaser; and (ii) in the case of an assignment by the Purchaser, the Vendor.

3.06 Notices

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and in accordance with Section 9.09 of the Asset Purchase Agreement.

3.07 Governing Law

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

3.08 Attornment

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The Vendor and the Purchaser each attorns to the jurisdiction of the courts of the Province of Ontario.

3.09 **Appointment of Agent for Service**

The Purchaser nominates, constitutes and appoints Garry Shapiro, Barrister and Solicitor, of the City of Toronto its true and lawful agent to accept service of process and to receive all lawful notices in respect of any action arising under this Agreement (other than any notice that is to be given by one party to another pursuant to Section 3.06). Until due and lawful notice of the appointment of another and subsequent agent in the Province of Ontario has been given to and accepted by the Vendor, service of process or of papers and such notices upon Garry Shapiro, Barrister and Solicitor will be accepted by the Purchaser as sufficient service.

3.10 **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

3.11 **Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

3.12 **Severability**

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any of the parties.

[The balance of this page has been intentionally left blank]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

SUNRAY GROUP OF HOTELS INC.

Per: _____
Ray Gupta

Per: _____

TARN FINANCIAL CORPORATION, by its authorized signatory, KPMG Inc. in its capacity as Liquidator and without personal liability

Per: _____

EXHIBIT "D"

PERMITTED ENCUMBRANCES

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

5. Site Plan Agreement lnstrument Number SC618244 registered June 18, 1981.
6. Agreement Amending Site Plan Agreement instrument Number TB966207 registered March 3, 1995.
7. Reference Plan 66R28554 registered March 17, 2016.
8. Application for Absolute Title Instrument Number AT4169525 registered March 17, 2016.
9. Reference Plan 66R29568 registered September 17, 2016.

General Permitted Encumbrances

10. Any subsisting reservations, limitations, provisos, conditions or exceptions contained in the original grant of title to the Property from the Crown.
11. All reference plans, plans of subdivision and expropriation plans, as well as all certificates under the *Expropriations Act,* R.S.O. 1990, c. E.26, and all rights and interests conferred thereunder.
12. The exceptions and qualifications of Subsection 44(1) of the Land Titles Act, and/or as set out on any one or more of the parcel registers for the lands comprising the Property, and any amendments thereto.
13. All laws, orders in council, rules, regulations, by-laws, ordinances, development agreements, subdivision agreements, site plan agreements, notices and/or building restrictions and/or other requirements of the relevant governmental and/or municipal authorities of general application governing, restricting and/or prohibiting the alienation, construction, occupancy and/or use of Property and/or creating statutory liens thereon.
14. Any easements, servitudes, rights-of-way, licences, restrictions that run with the Property or any portion thereof, and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and

agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables).

EXHIBIT "E"

OTHER EXCLUDED ASSETS

To be completed prior to the Closing Date

EXHIBIT "F"

ALLOCATION OF PURCHASE PRICE

[The Purchase Price allocation will be determined by the Purchaser and the Vendor prior to the Closing Date]

EXHIBIT "G"

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

APPENDIX "H"

PINNACLE
INTERNATIONAL

April 9, 2018

KPMG Inc
Bay Adelaide Centre
Suite 4600 – 333 Bay Street
Toronto, Ontario, M5H 3S1

Collier International Inc.
Brookfield Place
Suite 1400 – 181 Bay Street
Toronto, Ontario, M5J 2V1

Dear Sir/ Madam,

Re: 2035 Kennedy Road, Toronto
Delta Toronto East and Development Lands

Attached is our final bid of $[redacted] for the above property (pages attached).

Pinnacle International is ready, willing and able to close the transaction on a "as is where is basis ". Bank of Nova Scotia letter was provided to you with our previous submission.

Pinnacle has a long term working relationship with Marriott International. (Marriott is the present manager for our Marriott Pinnacle Hotel in Vancouver). It is probable that Marriott will be the potential manager for the hotel at Pinnacle One Yonge in Toronto.

We are confident for a smooth transition for the Delta Toronto East - The Pinnacle team is familiar with hotel renovation (P.I.P.), the dealing with Marriott Hotel Management Contracts (retaining or the buyout of existing management contracts).

We look forward to be selected as the successful bidder.

Sincerely,
Pinnacle International One Lands Inc.

Mike De Gotlis
President

ASSET PURCHASE AGREEMENT

BETWEEN

TARN FINANCIAL CORPORATION

AND

PINNACLE INTERNATIONAL ONE LANDS INC.

MADE AS OF

March 22, 2018

Miller Thomson LLP

J. John O'Donoghue PC

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of March 22, 2018

BETWEEN

PINNACLE INTERNATIONAL ONE LANDS INC., a corporation incorporated under the laws of British Columbia (the "**Purchaser**"),

- and -

TARN FINANCIAL CORPORATION, a corporation incorporated under the laws of the Province of Ontario (the "**Vendor**").

WHEREAS pursuant to the Order of the Honourable Mr. Justice Lederman of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated September 15, 2017 and effective September 25, 2017 (the "**Winding Up Order**"), KPMG Inc. was appointed as liquidator of the Vendor (in such capacity, the "**Liquidator**") under sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended;

AND WHEREAS pursuant to the Winding Up Order, the Liquidator is authorized to market the assets, property and undertaking of the Vendor for sale and, subject to approval of the Court, negotiate such terms and conditions of sale as the Liquidator in its discretion may deem appropriate;

AND WHEREAS pursuant to the Order of the Honourable Mr. Justice McEwen of the Court dated November 29, 2017 (the "**Sale Process Order**"), the Liquidator was authorized to conduct a sale process (the "**Sale Process**") as set out in Schedule "A" to the Sale Process Order;

AND WHEREAS the Vendor desires to sell and assign and the Purchaser desires to purchase and assume the Purchased Assets and Assumed Liabilities upon and subject to the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the covenants and agreements herein contained, the parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.01 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith, capitalized terms shall be as defined in the Sales Process Order (including the Sales Process) unless otherwise defined below or elsewhere herein:

"**Accounts Receivable**" means the accounts receivable recorded as such in the Books and Records of the Vendor relating to the Business.

"**Adjustments**" has the meaning set out in Section 6.01.

"**Affiliates**" means, with respect to any Person, any other Person that controls or is controlled by or is under common control with the referent Person.

"**Agreement**" means this agreement, including its recitals and schedules, as amended from time to time.

"**Applicable Law**" means:

(i) any applicable domestic or foreign law including any statute, subordinate legislation or treaty, as well as the common law; and

(ii) any applicable and enforceable rule, requirement, order, judgment, injunction, award or decree of a Governmental Authority.

"**Approval and Vesting Order**" means a final, non-appealable order of the Court substantially in the form attached hereto as **Exhibit "A"**, that has not been stayed, vacated, or stayed pending appeal: (i) approving the sale of the Purchased Assets and assignment of the Assigned Contracts by the Vendor to the Purchaser pursuant to the terms of this Agreement; and (ii) providing for the vesting of the right, title, benefit and interest of the Vendor in and to the Purchased Assets in and to the Purchaser, free and clear of all Liens other than the Permitted Encumbrances.

"**Assets**" includes all of the assets, property and undertaking of the Vendor and for greater certainty includes the Hotel Assets and the Development Assets.

"**Assigned Contracts**" means those Contracts and Permits set out in **Exhibit "B"**.

"**Assignment and Assumption Agreement**" means an agreement pursuant to which the Vendor will assign the Assigned Contracts to the Purchaser and the Purchaser will assume the Assumed Liabilities at the Time of Closing, substantially in the form of the document set out in **Exhibit "C"**.

"**Assumed Liabilities**" has the meaning set out in Section 2.07.

"**Back-Up Bid**" is as defined in the Sales Process.

"**Bargaining Unit Employees**" means all Employees represented by Unite Here.

"**Books and Records**" means all personnel records, inspection records, financial records, and other records, books, documents and data bases recorded or stored by means of any device, including in electronic form, relating to the Business, the Purchased Assets and the Employees as are in the possession or under the control of the Vendor.

"**Business**" means the business activities and operations of the Vendor associated with the Delta Hotel Toronto East located at 2035 Kennedy Road in Scarborough, Ontario.

"**Business Day**" means a day other than a Saturday, Sunday, statutory or civic holiday in Toronto, Ontario.

"**Claim**" means any actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, suit, investigation or proceeding and any Loss, claim or demand relating thereto or resulting therefrom, or any other claim or demand of whatever nature or kind.

"**Closing Date**" means seven (7) Business Days following the date of the Approval and Vesting Order, or such other date as may be agreed in writing between the parties hereto.

"Collective Agreement" means the collective agreement between Delta Toronto East and Unite Here Local 75 in respect of the term between February 1, 2014 and January 31, 2018.

"**Condo Purchase Agreements**" means all agreements entered into by Tarn Construction and third party purchasers of proposed units in the Condominium Project.

"**Condominium Project**" means the proposed condominium towers to comprise Phase 1 of the "The Kennedys Condominium Project".

"**Contract**" means any contract, agreement, license, instrument or commitment recognized at law or equity, whether express or implied, or arising by a course of conduct or usage of trade.

"**Court**" means the Ontario Superior Court of Justice (Commercial List).

"**Cure Costs**" means the amount of all monetary defaults, if any, existing in respect of any Assigned Contracts or Permits that are required to be paid in order to obtain the consent necessary to permit an assignment of an Assigned Contract.

"**Current Assets**" means the (i) Inventories, (ii) Accounts Receivable, and (iii) pre-paid expenses of the Business as at the Closing Date.

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

"**Due Diligence Condition**" has the meaning set out in 5.01.

"**Employees**" means all persons employed by the Vendor in connection with the Business as at the Time of Closing and includes any person who was on an approved leave of absence, layoff or disability on the date immediately prior to the Closing Date, and for greater certainty, includes all Bargaining Unit Employees.

"**Environmental Law**" means any Applicable Law relating to the natural or indoor environment including those pertaining to (i) reporting, licensing, permitting, investigating, remediating or controlling the presence or Release or threatened Release of Hazardous Substances, or (ii) the use, treatment, storage, disposal, transport, handling and the like of Hazardous Substances, including, for greater certainty, any such Applicable Law pertaining to occupational health and safety.

"**Excluded Assets**" has the meaning set out in Section 2.02.

"**Excluded Contracts**" means any Contracts disclaimed by the Vendor in the Winding Up Proceeding, any Contracts that are not assignable as contemplated in Section 2.08(3), and any other Contracts that are not Assigned Contracts, and including without limitation any contracts, agreements or arrangements between the Vendor and any Affiliate.

"**Governmental Authority**" means any domestic or foreign legislative, executive, judicial or administrative body or person having jurisdiction in the relevant circumstances.

"**Hazardous Substance**" means any substance, material or emission whose storage, handling, use, transportation or Release is prohibited, controlled or regulated by any Governmental Authority having jurisdiction pursuant to Environmental Laws, including any contaminant or pollutant as defined in the *Environmental Protection Act* (Ontario).

"**Hotel Assets**" means all of the Assets related to the Hotel operations.

"**Hotel**" means the hotel currently branded as the Delta Toronto East Hotel located at 2035 Kennedy Road in Scarborough, Ontario,

"**Intellectual Property**" means intellectual property of any nature and kind including all domestic and foreign trade-marks, business names, trade names, domain names, trading styles, patents, trade secrets, confidential information, Software, industrial designs and copyrights, whether registered or unregistered, and all applications for registration thereof, and inventions, formulae, recipes, product formulations and chemistries, processes and processing methods, technology and techniques and know-how.

"**Inventories**" means all inventories owned by and in possession of the Vendor including all supplies, goods, work in progress, raw materials and spare parts.

"**Liabilities**" means all costs, expenses, charges, debts, liabilities, commitments and obligations of any nature or kind, whether accrued or fixed, actual, absolute, contingent, latent or otherwise, matured or unmatured or determined or undeterminable, including those arising under any Applicable Law or Claim and those arising under any Contract or undertaking or otherwise, including any tax liability or tort liability of the Vendor.

"**Liens**" means any lien (statutory or otherwise), mortgage, pledge, security interest (whether contractual, statutory or otherwise), hypothecation, trust or deemed trust (whether contractual, statutory, or otherwise), execution, levy, charge, encumbrance, interest in property, or other financial or monetary claim which, in each case, in substance, secures payment or performance of an obligation, or similar charge of any kind.

"**Liquidator**" has the meaning set out in the recitals hereto.

"**Liquidator's Certificate**" means a certificate signed by the Liquidator substantially in the form attached as Schedule A to the Approval and Vesting Order confirming that (i) the Purchaser has paid, and the Vendor has received payment of, the Purchase Price in relation to the purchase by the Purchaser of the Purchased Assets; and (ii) the conditions to be complied with at or prior to the Time of Closing as set out in Sections 5.02 and 5.03, respectively, have been satisfied or waived by the Vendor or the Purchaser, as applicable, pursuant to Section 5.04.

"**Non-Disclosure Agreement**" means the confidentiality agreement dated January 16, 2018 between the Purchaser and Vendor.

"**Outside Date**" has the meaning set out in Section 5.05(b).

"**Permits**" means all permits, licences, certificates, approvals, authorizations, and registrations, or any item with a similar effect, issued or granted by any Governmental Authority.

"**Permitted Encumbrances**" means only those Liens and registrations related to the Purchased Assets set forth on **Exhibit "D"**.

"**Person**" means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or other entity.

"**Personal Information**" means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.

"**Proceeds**" has the meaning set out in Section 1.01(b)(i).

"**Purchase Price**" has the meaning set out in Section 2.03.

"**Purchased Assets**" has the meaning set out in Section 2.01.

"**Real Property**" means the real property described in PINs 06164-0197 (LT) and 06164-0509 (LT) and set out at **Exhibit "G"**.

"**Release**" means any release or discharge of any Hazardous Substance including any discharge, spray, injection, inoculation, abandonment, deposit, spillage, leakage, seepage, pouring, emission, emptying, throwing, dumping, placing, exhausting, escape, leach, migration, dispersal, dispensing or disposal.

"**Sale Process**" means the sale process approved by the Sale Process Order.

"**Sale Process Order**" has the meaning set out in the recitals hereto.

"**Software**" means all software relating to the Business including all versions thereof, and all related documentation, manuals, source code and object code, program files, data files, computer related data, field and data definitions and relationships, data definition specifications, data models, program and system logic, interfaces, program modules, routines, sub-routines, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts, and all other material related to such software.

"**Subsidiary Assets**" means the property, assets and undertakings of Tarn Construction and for greater certainty includes the Condo Purchase Agreements.

"**Successful Bid**" is as defined in the Sales Process.

"**Tarn Construction**" means Tarn Construction Corporation, a wholly-owned subsidiary of Tarn Financial Corporation.

"**Tax Act**" means the *Income Tax Act* (Canada).

"**Time of Closing**" means 9:00 a.m. (Toronto Time) on the Closing Date.

"**Transfer Taxes**" has the meaning set out in Section 2.06.

"**Transition Services**" means such third-party services as the Liquidator may agree to arrange on behalf of the Purchaser in order to facilitate the transition of the Business from the Vendor to the Purchaser.

"**Transition Services Agreement**" means an agreement between the Liquidator and the Purchaser pursuant to which Transition Services may be provided.

"**Unite Here**" means the labour union known as Unite Here, which is the certified bargaining agent for the Employees in the bargaining unit at the Business.

"**Utilities**" means all water, gas and electric utilities supplied to the Business.

"**Winding Up Order**" means the order obtained from the Court on September 15, 2017, as amended and/or amended and restated, commencing the Liquidation Proceeding and as may be further amended.

"**Winding Up Proceeding**" means the proceeding commenced by the Winding Up Order.

1.02 **Headings**

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Exhibits are to Articles and Sections of and Exhibits to this Agreement.

1.03 **Extended Meanings**

In this Agreement words importing the singular number include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and Governmental Authorities. The term "including" means "including without limiting the generality of the foregoing" and the term "third party" means any Person other than the Vendor and the Purchaser.

1.04 **Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

1.05 **Currency**

All references to currency herein are to lawful money of Canada.

1.06 **Exhibits**

The following are the Exhibits to this Agreement:

Exhibit "A" - Form of Approval and Vesting Order
Exhibit "B" - Assigned Contracts and Permits
Exhibit "C" - Form of Assignment and Assumption Agreement
Exhibit "D" - Permitted Encumbrances
Exhibit "E" - Other Excluded Assets
Exhibit "F" - Allocation of Purchase Price
Exhibit "G" – Real Property

ARTICLE 2 - SALE AND PURCHASE

2.01 **Assets to be Sold and Purchased**

Upon and subject to the terms and conditions hereof, the Vendor will sell to the Purchaser and the Purchaser will purchase from the Vendor, as of and with effect from the Time of Closing, all of the right, title, benefit and interest of the Vendor in and to the following Assets (collectively, the "**Purchased Assets**"):

(a) the Real Property;

(b) all buildings, structures, erections, improvements, appurtenances, fixed machinery, fixed equipment and fixtures situate on or forming part of the Real Property;

(c) all other machinery and equipment and all vehicles, tools, handling equipment, furniture, furnishings, computer hardware and peripheral equipment, supplies and accessories of the Business;

(d) all Inventories;

(e) subject to Section 2.07 and to the extent not otherwise included in this Section 2.01, the Assigned Contracts;

(f) subject to Section 2.08(3), all Permits required to carry on the Business in its usual and ordinary course, including the Permits listed in Exhibit "B";

(g) all Intellectual Property owned by the Vendor and belonging to or used in the Business;

(h) subject to Section 2.07, all Intellectual Property not owned by the Vendor but licenced by the Vendor and used in the Business;

(i) the goodwill of the Business;

(j) all pre-paid expenses and deposits relating to the Purchased Assets (other than deposits paid to suppliers or customers of the Vendor) including all pre-paid taxes, local improvement rates and charges, water rates and other operating costs, all pre-paid purchases of gas, oil and hydro, and all pre-paid lease payments;

(k) all consultants' reports, investigation and inspection results, test results, applications, plans and specifications in the Vendor's possession or under its control relating to the buildings, structures, erections, improvements, appurtenances and fixtures situate on or forming part of the Real Property including all such electrical, mechanical and structural drawings related thereto as are in the possession or under the control of the Vendor; and

(l) the Books and Records;

but excluding, for greater certainty, in each and every case the Excluded Assets (as hereinafter defined).

2.02 **Excluded Assets**

Notwithstanding Section 2.01 or any other provision in this Agreement to the contrary, the Vendor will retain its right, title, benefit and interest in and to, and the Purchaser will have no rights with respect to the right, title, benefit and interest of the Vendor in and to the following assets (collectively, the "**Excluded Assets**"):

(a) the cash and cash equivalents, short-term investments, bank account balances, bank deposits, including any deposits posted in respect of letters of credit, and petty cash of the Vendor;

(b) all Accounts Receivable;

(c) all rights of the Vendor to tax refunds, credits, rebates or similar benefits relating to the Purchased Assets or the Business;

(d) the Excluded Contracts;

(e) shares and other interests or capital of the Vendor;

(f) the tax records and insurance policies of the Vendor;

(g) any Claim of the Vendor to reimbursement under any insurance policy applicable to the Vendor;

(h) Books and Records not pertaining primarily to the Purchased Assets;

(i) all funds or deposits held by suppliers, customers or any other person in trust for or on behalf of the Vendor; and

(j) any other assets listed in **Exhibit "E"**.[1]

2.03 **Purchase Price**

The aggregate purchase price payable by the Purchaser to the Vendor for the Purchased Assets excluding all applicable Taxes (such amount being hereinafter referred to as the "**Purchase Price**") is an amount equal to a sum of the following, subject to the Adjustments:

(a) the amount of [redacted]

(b) the amount of the Assumed Liabilities.

2.04 **Allocation of Purchase Price**

The Purchase Price will be allocated among the Purchased Assets as set out in **Exhibit "F"**. The Vendor and Purchaser will make and file all tax returns and filings on a basis which is consistent with the amount and allocation of the Purchase Price.

2.05 **Elections**

(1) The Vendor and the Purchaser will on or before the Time of Closing jointly execute an election, in the prescribed form and containing the prescribed information, to have subsection 167(1.1) of the *Excise Tax Act* (Canada) apply to the sale and purchase of the Purchased Assets hereunder so that no tax is payable in respect of such sale and purchase under Part IX of the *Excise Tax Act* (Canada). The Purchaser will file such election with the Minister of National Revenue within the time prescribed by the *Excise Tax Act* (Canada).

(2) The Vendor and the Purchaser acknowledge that the Vendor is transferring Purchased Assets to the Purchaser with a value equal to the amount set out in Section 2.03 in consideration, inter alia, for the Purchaser assuming prepaid obligations of the Vendor to deliver goods or provide services in the future. The Vendor and the Purchaser will execute and file, on a timely basis and using any prescribed form, a joint election under subsection 20(24) of the Tax Act as to such assumption hereunder, and prepare their respective tax returns in a manner consistent with such joint election.

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[1] The Purchaser should specify any additional assets it will be excluding on the Other Excluded Assets Exhibit appended as Exhibit "E" to this Agreement.

2.06 **Transfer Taxes**

(1) The Purchaser will be liable for and, subject to Section 2.05, will pay, or will cause to be paid, all transfer, land transfer, value added, *ad-valorem*, excise, sales, use, consumption, goods or services, harmonized sales, retail sales, social services, or other similar taxes or duties (collectively, "**Transfer Taxes**") payable under any Applicable Law on or with respect to the sale and purchase of the Purchased Assets under this Agreement. The Purchaser will prepare and file any affidavits or returns required in connection with the foregoing at its own cost and expense.

(2) The Purchaser shall indemnify and save harmless the Vendor and its employees, advisors and agents from all Claims incurred, suffered or sustained as a result of a failure by the Purchaser:

(a) to pay any Transfer Taxes payable by the Purchaser; and/or

(b) to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Purchaser with any federal, provincial or other taxing authorities in connection with the conveyance or transfer of the Purchased Assets.

2.07 **Assumption of Liabilities**

(1) At the Time of Closing, the Purchaser will assume and thereafter fulfil, perform and discharge when due the following Liabilities of the Vendor outstanding as at the Closing Date (collectively, the "**Assumed Liabilities**")

(a) all Liabilities relating to Employees as set out in Section 4.03(a), (b) and (c);

(b) all Liabilities arising from or in connection with the Assigned Contracts or Permits including any Cure Costs;

(c) all Liabilities arising from or in connection with any tax, levy, penalty, interest or costs for which the Purchaser is responsible pursuant to Sections 2.05 and 2.06 and any Permitted Encumbrances; and

(d) all Liabilities relating to or arising from the Purchased Assets under Environmental Laws.

(2) In addition to any other provision for indemnification by the Purchaser contained in this Agreement, the Purchaser will, on and after the Closing Date, indemnify and save harmless the Vendor on its own behalf and as trustee for its Affiliates and its and their current and former directors and officers, employees, agents, advisors and representatives (including the Liquidator) (collectively, the "**Indemnitees**") from and against all Claims asserted against any of the Indemnitees in any way directly or indirectly arising from, relating to or in connection with any of the Assumed Liabilities.

2.08 **Assigned Contracts**

(1) The Purchaser shall have sole responsibility for verifying the assignability of any Contract and for obtaining any consent required for assignment thereof. Subject to Sections 2.08(2) and 2.08(2), the Purchaser, with the Vendor's consent, will request any consents necessary to permit the assignment to the Purchaser of the Assigned Contracts. The Vendor will provide its reasonable cooperation to assist the Purchaser to obtain such consents, including providing financial and other information of the Vendor requested by the Purchaser or party to such Assigned Contract.

(2) The Purchaser will be responsible for all Cure Costs in respect of any Assigned Contracts.

(3) Nothing in this Agreement will constitute an agreement to assign or an attempted assignment of any non-assignable rights or any Contract or Permit for which any requisite consent or approval has not been obtained or which as a matter of Applicable Law or by its terms is not assignable.

2.09 **Payment of Purchase Price**

(1) The Purchase Price will be satisfied by the Purchaser as follows:

(a) an amount equal to 10% of the Purchase Price (being 10% of the hard cost of [redacted] forthwith upon the Purchaser submitting a Binding APA (as defined in the Sales Process), by wire transfer of immediately available funds to an account specified by the Liquidator, in trust, as a deposit to be held in a bank account at a Canadian chartered bank and paid as provided in Section 2.09(2);

(b) [redacted] wire transfer at the Time of Closing of immediately available funds to an account specified by the Vendor;

(c) by paying Adjustments, if any, to the Purchase Price pursuant to Section 6.01; and

(d) by the Purchaser assuming the Assumed Liabilities.

(2) The deposit paid to the Liquidator by the Purchaser pursuant to Section 2.09(1)(a) will be paid by the Liquidator:

(a) to the Vendor at the Time of Closing, with any interest that has been paid by the applicable bank thereon being paid to the Purchaser, in each case net of any applicable bank fees or charges, if the sale and purchase of the Purchased Assets provided for herein is completed in accordance with the terms and conditions hereof;

(b) to the Vendor on or after the fifth Business Day after the date of termination of this Agreement, together with any interest that has been paid by the applicable bank thereon (net of any applicable bank fees or charges), if this

Agreement is terminated by the Vendor pursuant to Section 5.05(a), Section 5.05(c) (unless with respect to a condition in Section 5.03(c) or (d)), or Section 5.05(f) (where the Purchaser has failed to comply with its obligations under this Agreement); or

(c) to the Purchaser on or after the fifth Business Day after the date of termination of this Agreement, together with any interest that has been paid by the applicable bank thereon (net of any applicable bank fees or charges), if this Agreement is terminated by the Purchaser pursuant to Section 5.05(a) or Section 5.05(b), or by the Vendor pursuant to Section 5.05(c) (solely with respect to a condition in Section 5.03(c) or (d)) or Section 5.05(f) (unless the Purchaser has failed to comply with its obligations under this Agreement),

provided that if the sale and purchase of the Purchased Assets provided for herein is not completed in accordance with the terms and conditions hereof and, prior to 10:00 a.m. on the fifth Business Day referred to in Section 2.09(2)(b) or (c), as the case may be, written notice is given by either the Vendor or the Purchaser to the Liquidator that such party in good faith disputes that the other is entitled to receive the deposit and/or any accrued interest thereon, then such deposit and all accrued interest thereon may, at the option of the Liquidator, be paid into Court as soon as reasonably possible (net of any applicable bank fees or charges), and further provided that the Liquidator shall be entitled to seek the direction of the Court at any time in respect of any matter relating to the deposit, including the payment thereof to any Person.

2.10 **Delivery of Purchased Assets**

At the Time of Closing, the Purchaser will take possession of the Purchased Assets where situated. The Purchaser acknowledges that the Vendor has no obligation to deliver possession of the Purchased Assets to the Purchaser at any location other than the Vendor's premises.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

3.01 **Vendor's Representations and Warranties**

The Vendor represents and warrants to the Purchaser that, as at the date hereof and as of the Closing Date:

(a) the Vendor is a corporation duly incorporated, organized and existing under the laws of the Province of Ontario;

(b) subject to the entry of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated herein, the Vendor has the power, authority and right to enter into and deliver this Agreement and to carry out its obligations hereunder;

(c) subject to the entry of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated herein, this Agreement

constitutes a valid and legally binding obligation of the Vendor, enforceable against the Vendor in accordance with its terms;

(d) the Vendor is registered under Part IX of the *Excise Tax Act* (Canada) with registration number ; and

(e) the Vendor is not a non-resident of Canada within the meaning of section 116 of the Tax Act.

3.02 **Purchaser's Representations and Warranties**

The Purchaser represents and warrants to the Vendor that:

(a) the Purchaser is a corporation duly incorporated, organized and existing under the laws of British Columbia, Canada;

(b) the Purchaser has the power, authority and right to enter into and deliver this Agreement and to carry out its obligations hereunder;

(c) this Agreement constitutes a valid and legally binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms;

(d) the Purchaser has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement and completion of the transactions contemplated herein and the entering into of this Agreement in completion of the transactions contemplated herein will not breach its constating documents, any agreement binding on the Purchaser, or Applicable Laws relating to the Purchaser;

(e) there are no orders of or proceedings before or pending before any Governmental Authority, or threatened to be brought by or before any Governmental Authority by or against the Purchaser affecting the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby by the Purchaser;

(f) no authorizations, consents or approvals of, or filing with or notice to, any Governmental Authority is required in connection with the execution, delivery or performance of this Agreement;

(g) except for the Approval and Vesting Order, no consent, waiver, authorization or approval of any Person and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Purchaser of this Agreement;

(h) the Purchaser has available, or prior to the delivery of the Binding APA (as defined in the Sale Process) and at the Time of Closing will have, sufficient funding to enable the Purchaser to consummate the purchase of the Purchased Assets from the Vendor on the terms set forth herein and otherwise to perform all of the Purchaser's obligations under this Agreement;

(i) the Purchaser is able to perform all obligations under the Assigned Contracts and pay all Cure Costs as required by this Agreement;

(j) the Purchaser is registered under Part IX of the *Excise Tax Act* (Canada) with registration number 74137-1926; and

(k) the Purchaser is not a non-resident of Canada within the meaning of section 116 of the Tax Act.

3.03 **"As Is, Where Is"**

(1) The Purchaser acknowledges and agrees that it is purchasing the Purchased Assets on an "as is, where is" basis and on the basis that the Purchaser has conducted to its satisfaction an independent inspection, investigation and verification of the Purchased Assets (including a review of title), Business, Assumed Liabilities and all other relevant matters and has determined to proceed with the transaction contemplated herein and will accept the same at the Time of Closing in their then current state, condition, location, and amounts, subject to all Permitted Encumbrances.

(2) Except as otherwise expressly provided in Section 3.01, no representation, warranty or condition whether statutory (including under the *Sale of Goods Act* (Ontario), the *International Sale of Goods Contracts Convention Act* (Canada) and the *International Sale of Goods Act* (Ontario) or any international equivalent act which may be applicable to the subject matter pursuant to the provisions of this Agreement, including but not limited to the *United Nations Convention on Contracts for the International Sale of Goods*), or express or implied, oral or written, legal, equitable, conventional, collateral, arising by custom or usage of trade, or otherwise is or will be given including as to title, outstanding liens or encumbrances, description, fitness for purpose, merchantability, merchantable quality, quantity, condition (including physical and environmental condition), suitability, durability, assignability, or marketability thereof or any other matter or thing whatsoever, and all of the same are expressly excluded and disclaimed and any rights pursuant to such statutes have been waived by the Purchaser. The Purchaser acknowledges and agrees that it has relied entirely and solely on its own investigations as to the matters set out above and in determining to purchase the Purchased Assets and assume the Assumed Liabilities pursuant to this Agreement.

(3) The description of the Purchased Assets, Business, and Assumed Liabilities contained herein is for the purpose of identification only and the inclusion of any item in such description does not confirm the existence of any such items or that any such item is owned by the Vendor. Except as otherwise explicitly set forth in Section 3.01, no representation, warranty or condition has been given by the Vendor concerning the completeness or accuracy of such descriptions and the Purchaser acknowledges and agrees that any other representation, warranty, statements of any kind or nature, express or implied, (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Vendor or the quality, quantity or condition of the Purchased Assets) are specifically disclaimed by the Vendor.

(4) Any documents, materials and information provided by or on behalf of the Vendor to the Purchaser with respect to the Purchased Assets, the Business or Assumed Liabilities (including any confidential information memorandums, management presentations, or material made available in the electronic data room) have been provided to the Purchaser solely to assist the Purchaser in

undertaking its own due diligence, and the Vendor has not made and is not making any representations or warranties, implied or otherwise, to or for the benefit of the Purchaser as to the accuracy and completeness of any such documents, materials or information or the achievability of any valuations, estimates or projections. The Purchaser acknowledges that it has not and will not rely upon any such documents, materials or information in any manner, whether as a substitute for or supplementary to its own due diligence, searches, inspections and evaluations. The Vendor, the Liquidator and their respective affiliates, directors, officers, employees, agents and advisors shall not be liable for any inaccuracy, incompleteness or subsequent changes to any such documents, materials or information.

ARTICLE 4 - COVENANTS

4.01 Covenants of the Vendor

(1) The Vendor covenants that, from the date of this Agreement until the Time of Closing, subject to any limitation imposed as a result of being subject to the Winding Up Proceeding, the terms of any Court-approved financing arrangements or any order of the Court, and except as: (i) otherwise contemplated by this Agreement, (ii) consented to in writing by the Purchaser, (iii) required by Applicable Law, or (iv) relates solely to Excluded Assets, the Vendor will:

(a) carry on the Business in the usual and ordinary course, consistent with past practice, and use commercially reasonable efforts to maintain, preserve and protect the Purchased Assets in the condition in which they exist on the date hereof; and

(b) refrain from disclaiming any Assigned Contracts without the prior written consent of the Purchaser.

(2) The Vendor will ensure that the representations and warranties of the Vendor set out in Section 3.01 are true and correct in all material respects at the Time of Closing and use reasonable commercial efforts to ensure that the conditions of closing for the benefit of the Purchaser set out in Section 5.02 over which it has reasonable control have been performed or complied with in all material respects by the Time of Closing.

(3) The Vendor shall file with the Court, as soon as practicable after its execution and delivery of this Agreement, a motion seeking the Court's issuance of the Approval and Vesting Order.

4.02 Covenants of the Purchaser

(1) The Purchaser will ensure that the representations and warranties of the Purchaser set out in Section 3.02 are true and correct in all material respects at the Time of Closing and use reasonable commercial efforts to ensure that the conditions of closing for the benefit of the Vendor set out in Section 5.03 over which it has reasonable control have been performed or complied with in all material respects by the Time of Closing.

(2) The Purchaser will provide to the Vendor all information within its possession or control that the Vendor may reasonably request to assist the Vendor in obtaining the Approval and Vesting Order.

(3) The Purchaser will preserve the books and records delivered to it at the Time of Closing for a period of six years from the Closing Date, or for such other period as is required by any Applicable Law, and will permit the Vendor and the Liquidator and their respective authorized representatives reasonable access thereto in connection with the affairs of the Vendor, and the right to make copies thereof at their expense.

(4) The Purchaser shall make the necessary arrangements to replace any letters of credit or other security deposits posted by the Vendor, or any other Person on their behalf, with any counterparty, on or prior to Closing.

(5) The Purchaser will comply with the *Personal Information Protection and Electronic Documents Act* (Canada) and other similar Applicable Laws relating to privacy and the protection of Personal Information in respect of the books and records, Contracts and any other business and financial records related to the Purchased Assets and the Business.

4.03 **Employee Matters**[2]

The Purchaser:

(a) will, effective the opening of business on the Closing Date, offer to employ on and after the Closing Date all of the Employees who are employed by the Vendor in the Business who are not Bargaining Unit Employees, on substantially the same terms and conditions of employment as are in effect on the date hereof;

(b) in respect of the Bargaining Unit Employees on the Closing Date, will be the successor to the Vendor pursuant to the provisions of applicable labour legislation and on and after the Closing Date will be bound by and observe all of the terms, conditions, rights and obligations of the Vendor to the Bargaining Unit Employees;

(c) will, effective the opening of business on the Closing Date, assume responsibility, statutory and otherwise, for the rights, obligations and Liabilities relating to or arising out of the employment of the Employees and will recognize all past service of the Employees with the Vendor for all purposes; and

(d) in addition to any other provision for indemnification by the Purchaser contained in this Agreement, will indemnify the Vendor its employees and agents, and save each of them fully harmless against any Claims arising out of, as a result of, or relating in any manner whatsoever to the assumption by the Purchaser of the responsibilities, rights, obligations and liabilities as set out in this Section 4.03.

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[2] The Purchaser should clearly specify which employee obligations it intends to assume and which it does not, and provide detailed particulars of any alternative proposal.

ARTICLE 5 - CONDITIONS AND TERMINATION

5.01 Due Diligence Condition – Non-Binding APA

The sale by the Vendor and the purchase by the Purchaser of the Purchased Assets is subject to the following condition:

(a) the Purchaser and its representatives shall have completed their due diligence in respect of the Purchased Assets, the Business and the Assumed Liabilities and the Purchaser shall be satisfied in its sole discretion with such due diligence on or prior to the Phase II Bid Deadline (as defined in the Sale Process).

(collectively, the "**Due Diligence Condition**").

The Due Diligence Condition is for the exclusive benefit of the Purchaser and is to be performed, waived or complied with at or prior to the earlier of: (i) the submission of a Binding APA (as defined in the Sale Process), or (ii) the Phase II Bid Deadline.

5.02 Conditions for the Benefit of the Purchaser

The sale by the Vendor and the purchase by the Purchaser of the Purchased Assets is subject to the following conditions, which are for the exclusive benefit of the Purchaser and which are to be performed or complied with at or prior to the Time of Closing:

(a) the representations and warranties of the Vendor set forth in this Agreement will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;

(b) the Vendor will have performed or complied in all material respects with all of the obligations and covenants of this Agreement to be performed or complied with by the Vendor at or prior to the Time of Closing;

(c) no action or proceeding in Canada will be pending by any third party to enjoin or prohibit the sale and purchase of the Purchased Assets;

(d) the Approval and Vesting Order will have been granted by the Court and such order will not have been stayed, varied in any material respect, set aside or appealed (or any such appeal shall have been dismissed with no further appeal therefrom);

(e) the Purchaser shall have received approval from the Liquor Licence Board of Ontario to the transfer of the Liquor Licence(s) for the Hotel;

(f) the Business and Real Property will be sold together free of any liabilities associated with Tarn Construction and any Affiliate of the Vendor, not accepted by the Purchaser pursuant to Section 2.07 of this Agreement;

(g) the Purchaser reserves the right to accept the assignment of any contracts related to the Purchased Assets at the Purchaser's request, and all associated documentation and work arising thereout and therefrom;

(h) the Purchaser will receive all work and materials associated with the Hotel and Development Assets, including but not limited to architectural plans, construction plans, development plans, reports, inspection results, operational information, internal research, sales information, and existing contracts (except Excluded Contracts), owned or under the control of the Vendor. The Purchaser shall be entitled to request reliance letters from consultants which the Vendor shall request from such consultants as identified by the Purchaser, and if there is an associated cost, such cost shall be paid by the Purchaser.

5.03 **Conditions for the Benefit of the Vendor**

The sale by the Vendor and the purchase by the Purchaser of the Purchased Assets is subject to the following conditions, which are for the exclusive benefit of the Vendor and which are to be performed or complied with at or prior to the Time of Closing:

(a) the representations and warranties of the Purchaser set forth in this Agreement will be true and correct in all material respects at the Time of Closing with the same force and effect as if made at and as of such time;

(b) the Purchaser will have performed or complied in all material respects with all of the obligations and covenants of this Agreement to be performed or complied with by the Purchaser at or prior to the Time of Closing;

(c) no action or proceeding in Canada will be pending by any third party to enjoin or prohibit the purchase and sale of the Purchased Assets;

(d) the Approval and Vesting Order will have been granted by the Court and such order will not have been stayed, varied in any material respect, set aside or appealed (or any such appeal shall have been dismissed with no further appeal therefrom).

5.04 **Waiver of Condition**

The Purchaser, in the case of a condition set out in Section 5.02, and the Vendor, in the case of a condition set out in Section 5.03 (other than Section 5.03(d)), will have the exclusive right to waive the performance or compliance of such condition in whole or in part and on such terms as may be agreed upon without prejudice to any of its rights in the event of non-performance of or non-compliance with any other condition in whole or in part. Any such waiver will not constitute a waiver of any other conditions in favour of the waiving party. Such waiving party will retain the right to complete the purchase and sale of the Purchased Assets herein contemplated.

5.05 **Termination**

This Agreement may be terminated, by notice given prior to or on the Closing Date:

(a) by the Vendor or the Purchaser if a material breach of any representation, warranty, covenant, obligation or other provision of this Agreement has been committed by the other party and such breach has not been waived or cured within five days following the date on which the non-breaching party notifies the other party of such breach;

(b) by the Purchaser if a condition in Section 5.02 becomes impossible to satisfy prior to July 16, 2018 or such later date as the parties may determine (the "**Outside Date**") (other than through the failure of the Purchaser to comply with its obligations under this Agreement) and the Purchaser has not waived such condition;

(c) by the Vendor if a condition in Section 5.03 becomes impossible to satisfy prior to the Outside Date (other than through the failure of the Vendor to comply with its obligations under this Agreement) and the Vendor has not waived such condition;

(d) by the Vendor pursuant to Section 6.07(1)(a);

(e) by written agreement of the Purchaser and the Vendor; or

(f) by the Vendor or the Purchaser if the completion of the sale of Purchased Assets herein contemplated has not occurred (other than through the failure of the party seeking termination to comply with its obligations under this Agreement) on or before the Outside Date.

5.06 **Effect of Termination**

Each party's right of termination under Section 5.05 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 5.05, all further obligations of the parties under this Agreement will terminate, except that the obligations in Sections 2.09(2), 7.04, 9.03 and 9.04 will survive; provided, however, that if this Agreement is terminated by a party because of a material breach of a representation or warranty, covenant, obligation or other provision of this Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies with respect to such breach will survive such termination unimpaired.

ARTICLE 6 - CLOSING ADJUSTMENTS

6.01 Closing Adjustments

The following adjustments ("**Adjustments**") shall be made to the Purchase Price on Closing:

(a) Taxes. All real estate taxes, personal property taxes, school taxes, hotel taxes and other assessments, whether special or general, (including water and sewer service charges and other charges for governmental services) shall be the responsibility of the Vendor to the Closing Date and the responsibility of the Purchaser on and after the Closing Date, such that the Purchaser shall receive a credit for any such taxes attributable to the period prior to the Closing Date that are unpaid as at the Closing Date, and the Vendor shall receive a credit for any such taxes that were prepaid by the Vendor prior to the Closing Date in respect of the period beginning on the Closing Date;

(b) Room Rents. The Vendor shall receive a credit for hotel room rents and other charges of transient guests owing to the Closing Date. Room rents and other such charges from and including the Closing Date shall be credited to the Purchaser. Notwithstanding the foregoing, room rentals for the night before the Closing Date shall be shared between the Vendor as to 50% and Purchaser as to 50%;

(c) Utilities. All Utilities consumed by the Business up to, but excluding the Closing Date shall be the responsibility of the Vendor. Accrued and unpaid charges for Utilities and governmental services (if any) representing goods and services supplied to the Vendor prior to the Closing Date shall be credited to the Purchaser and the Purchaser shall assume liability for paying such charges after Closing;

(d) Inventory. The Vendor shall receive a credit for the actual cost of all Inventory consisting of unopened containers of food, liquor (if permitted by law), and all new and unused inventories of china, glassware, silverware, linens and other consumable supplies in unbroken packages transferred to the Purchaser on Closing;

(e) Contracts. All amounts accrued and payable by the Vendor under the Contracts prior to the Closing Date and remaining unpaid on Closing for goods or services consumed by the Vendor prior to the Closing Date shall be credited to the Purchaser and the Purchaser shall undertake to pay such amounts in accordance with the terms of the applicable Contracts after Closing. All amounts prepaid under the Contracts in respect of goods or services to be consumed on or after the Closing Date shall be credited to the Vendor;

(f) Leases. The Purchaser shall receive a credit for prepaid rents, if any, held by the Vendor and not previously applied in payment of rent. Rent received for the month of Closing shall be adjusted between the Vendor and the Purchaser;

(g) Employee Payables. Without limiting the generality of Sections 4.03 and 6.01(e), amounts payable in connection with Employees for, or in respect of, services provided prior to the Closing Date which remain unpaid on Closing shall be credited

to the Purchaser and the Purchaser shall undertake to pay such amounts on or before their respective due dates. All amounts prepaid by the Vendor in respect of the Closing Date or period thereafter shall be credited to the Vendor; and

(h) Other Items. Any other amount to be adjusted in accordance with this Agreement and any other item reasonably capable and, subject to any specific provisions of this Agreement, properly or typically the subject of adjustment in connection with the Asset shall be adjusted as at the Closing Date.

The Vendor shall deliver to the Purchaser a draft statement of Adjustments at least three (3) Business Days prior to Closing

6.02 **Readjustment**

The Parties hereby agree to readjust all errors, omissions or estimated amounts in the statement of Adjustments after Closing as necessary within sixty (60) days after the Closing Date. No claim for readjustment shall be made by either the Purchaser or Vendor after the expiry of such sixty (60) day period.

6.03 **No Adjustment**

There shall be no adjustment for accounts receivable relating to the operation of the Business prior to Closing, all of which shall remain the property of the Vendor. Upon receipt of any such amounts after Closing, the Purchaser will forthwith forward such amounts to the Vendor.

ARTICLE 7 - CLOSING ARRANGEMENTS

7.01 **Closing**

The sale and purchase of the Purchased Assets will be completed at the Time of Closing at the offices of Miller Thomson LLP, 40 King Street West, Suite 5800, Scotia Plaza, Toronto, Ontario M5H 3S1.

7.02 **Vendor's Closing Deliveries**

On or before the Time of Closing, the Vendor will deliver or cause to be delivered to the Purchaser the following:

(a) a certificate executed by the Vendor confirming that the representations and warranties of the Vendor in this Agreement are true and correct in all material respects as of the Time of Closing and that the obligations of the Vendor to be performed prior to the Time of Closing have been performed in all material respects;

(b) a copy of the issued and entered Approval and Vesting Order;

(c) if available, the tax election as contemplated by Section 2.05(1) executed by the Vendor;

(d) if available, the tax election as contemplated by Section 2.05(2) executed by the Vendor, if the information necessary to complete such election is available at the Time of Closing;

(e) a bill of sale, duly executed by the Vendor, if necessary;

(f) the Assignment and Assumption Agreement executed by the Vendor;

(g) if required, a direction of the Liquidator as to the payment of the Purchase Price;

(h) a document registration agreement in form and substance satisfactory to the parties, acting reasonably; and

(i) such other documents or instruments as contemplated or required to be delivered by the Vendor pursuant to this Agreement, all of which shall be in form and substance satisfactory to the parties, acting reasonably.

7.03 **Purchaser's Closing Deliveries**

On or before the Time of Closing, the Purchaser will deliver or cause to be delivered to the Vendor the following:

(a) payment of the Purchase Price to the Vendor as contemplated by Section 2.09(1)(b);

(b) deleted;

(c) a certificate executed by a senior officer of the Purchaser confirming that the representations and warranties of the Purchaser in this Agreement are true and correct in all material respects as of the Time of Closing and that the obligations of the Purchaser to be performed prior to the Time of Closing have been performed in all material respects;

(d) if available, the tax election as contemplated by Section 2.05(1) executed by the Purchaser;

(e) if available, the tax election as contemplated by Section 2.05(2) executed by the Purchaser, if the information necessary to complete such election is available at the Time of Closing;

(f) the Assignment and Assumption Agreement executed by the Purchaser;

(g) if required, a land transfer tax affidavit;

(h) a document registration agreement in form and substance satisfactory to the parties, acting reasonably; and

(i) such other documents or instruments as contemplated or required to be delivered by the Purchaser pursuant to this Agreement, all of which shall be in form and substance satisfactory to the parties, acting reasonably.

7.04 **Confidentiality**

Subject to the terms of the Non-Disclosure Agreement, both prior to the Closing Date and, if the sale and purchase of the Purchased Assets hereunder fails to occur for whatever reason thereafter, the Purchaser will not disclose to anyone or use for its own or for any purpose other than the purpose contemplated by this Agreement any confidential information concerning the Vendor or the Business obtained by the Purchaser pursuant hereto, and will hold all such information in the strictest confidence and, if the sale and purchase of the Purchased Assets hereunder fails to occur for whatever reason, will return all documents, records and all other information or data relating to the Vendor or to the Business which the Purchaser obtained pursuant to this Agreement.

7.05 **Delivery of Liquidator's Certificate**

(1) When each party has advised the other that it is satisfied with the documents delivered to it at or before the Time of Closing, the Purchaser and Vendor will each deliver to the Liquidator written confirmation that the conditions set out in Section 5.02 and Section 5.03, as applicable, have been satisfied or waived following which the Liquidator will deliver an executed copy of the Liquidator's Certificate to the Purchaser's counsel in escrow upon the sole condition of receipt by the Vendor of the amounts referred to in Section 2.09(1). All of the foregoing amounts will then be paid by the Purchaser (or released if previously delivered in escrow), by wire transfer of immediately available funds to an account designated in writing by the Vendor for this purpose pursuant to Section 2.09(1) hereof. Following written confirmation of receipt by the Vendor of such funds (or such person directed by the Vendor to receive such funds), the Liquidator's Certificate will be released from escrow to the Purchaser. Upon such delivery, the closing will be deemed to have occurred at the Time of Closing subject to the appropriate registrations in respect of title transfer occurring. The Liquidator will file a copy of the Liquidator's Certificate with the Court on the next Business Day following the Closing Date and provide evidence of such filing to the Purchaser.

(2) 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 and the Vendor 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 or the Vendor in connection therewith.

7.06 **Planning Act**

This Agreement is subject to compliance with the *Planning Act* (Ontario). The parties agree that compliance with the *Planning Act* (Ontario) shall be the responsibility of the Purchaser at its costs. The Vendor agrees to execute all documents reasonably requested by the Purchaser in respect thereof.

7.07 **Risk of Loss**

(1) Until the Time of Closing, the Purchased Assets will remain at the risk of the Vendor. If any destruction or damage in excess of $10 million occurs to the Purchased Assets on or before the Time of Closing or if any or all of the Purchased Assets are appropriated, expropriated or seized by governmental or other lawful authority on or before the Time of Closing:

(a) the Vendor will forthwith give notice thereof to the Purchaser, and the Vendor shall have the right to terminate this Agreement prior to the Time of Closing and shall notify the Purchaser in a reasonable period of time whether it is exercising this right; and

(b) in the event the Vendor does not exercise its right of termination under Section 6.07(1)(a), the Purchaser will have the option, exercisable by notice to the Vendor on or before the Time of Closing:

(i) to reduce the Purchase Price by an amount equal to the proceeds of insurance (and, if any such policy provided for a deductible amount, by an amount equal to such deductible amount) or compensation for destruction or damage or appropriation, expropriation or seizure and business interruption with respect thereto (in this Section 6.07 referred to as the "**Proceeds**"), and to complete the purchase; or

(ii) to complete the purchase without reduction of the Purchase Price, in which event all Proceeds will be payable to the Purchaser and all Claims of the Vendor to any such amounts not paid by the Closing Date will be assigned to the Purchaser.

(2) If the Purchaser elects to reduce the Purchase Price pursuant to Section 1.01(b)(i)(i), the Vendor will at the Time of Closing determine the amount of the reduction to the extent that it is then determinable and will undertake to adjust such amount after the Closing Date, if necessary.

ARTICLE 8 - SURVIVAL

8.01 Survival

No covenants, representations and warranties of each party contained in this Agreement will survive the completion of the sale and purchase of the Purchased Assets and assumption of the Assumed Liabilities hereunder, except for the covenants that by their terms are to be satisfied or survive after the Time of Closing (including Sections 2.06, 2.09(2), 4.02(3), 9.03, 9.04, and 9.16), which covenants will continue in full force and effect in accordance with their terms.

ARTICLE 9 - GENERAL

9.01 Further Assurances

Each of the Vendor and the Purchaser will from time to time at the request and expense of the other execute and deliver all such further documents and instruments and do all acts and things as the other party may, either before or after the Closing Date, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

9.02 **Time of the Essence**

Time is of the essence of this Agreement.

9.03 **Fees, Commissions and other Costs and Expenses**

Each of the Vendor and the Purchaser will pay its respective legal and accounting costs and expenses and any real estate or other commissions incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement and any other costs and expenses whatsoever and howsoever incurred and will indemnify and save harmless the other from and against any Claim resulting from any broker's, finder's or placement fee or commission alleged to have been incurred as a result of any action by it in connection with the transactions under this Agreement.

9.04 **Public Announcements**

Except as required by Applicable Law, no public announcement or press release concerning the sale and purchase of the Purchased Assets may be made by the Vendor or the Purchaser without the prior consent and joint approval of the Vendor and the Purchaser.

9.05 **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the successors and permitted assigns of the parties.

9.06 **Entire Agreement**

This Agreement (including the agreements contemplated hereby) and the Non-Disclosure Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and such agreements cancel and supersede any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement (including the agreements contemplated hereby) or in the Non-Disclosure Agreement.

9.07 **Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by both of the parties. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

9.08 **Assignment**

This Agreement may not be assigned by the Vendor or the Purchaser without the written consent of the other provided that the Purchaser may assign this Agreement without the consent of the Vendor to an Affiliate of the Purchaser provided that: (i) such Affiliate enters into a written agreement with the Vendor to be bound by the provisions of this Agreement in all respects and to the

same extent as the Purchaser is bound, (ii) that the Purchaser will continue to be bound by all the obligations hereunder as if such assignment had not occurred and perform such obligations to the extent that such Affiliate fails to do so, and (iii) such assignment occurs prior to the issuance of the Approval and Vesting Order.

9.09 **Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery or by electronic means of communication addressed to the recipient as follows:

To the Vendor:

Tarn Financial Corporation
c/o KPMG Inc.
Bay Adelaide Centre
Suite 4600
333 Bay Street
Toronto, Ontario
M5H 3S1

Fax No.: 416-●

Attention: Anamika Gadia

With copies to (which will not constitute notice)

Miller Thomson LLP
Suite 5800
Scotia Plaza,
40 King Street West,
Toronto, Ontario
M5H 3S1
Fax No: 416-863-1716

Attention: Kyla Mahar

To the Liquidator:

KPMG Inc.
Bay Adelaide Centre
Suite 4600
333 Bay Street
Toronto, Ontario

M5H 3S1

Fax No.: 416-●

Attention: Anamika Gadia

With copies to (which will not constitute notice)

Miller Thomson LLP
Suite 5800
Scotia Plaza,
40 King Street West,
Toronto, Ontario
M5H 3S1
Fax No: 416-863-1716

Attention: Kyla Mahar

To the Purchaser:

PINNACLE INTERNATIONAL ONE LANDS INC.
#300 - 911 Homer Street
Vancouver, BC V6B 2W6
Tel: 604 602-7747
Fax: 604 688-7749

Attention: Michele DeCotiis

With copies to:

John O'Donoghue
J. John O'Donoghue PC
2200 Yonge Street
suite 1301,
Toronto, Ontario
M5S 2C6

Tel: 416-932-4945
Fax: 416-481-0618

or to such other street address, individual or electronic communication number or address as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if given

during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day.

9.10 **Remedies Cumulative**

The right and remedies of the parties under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

9.11 **No Third Party Beneficiaries**

This Agreement is solely for the benefit of:

(a) the Vendor, and its successors and permitted assigns, with respect to the obligations of the Purchaser under this Agreement, and

(b) the Purchaser, and its successors and permitted assigns, with respect to the obligations of the Vendor under this Agreement,

and this Agreement will not be deemed to confer upon or give to any other person any Claim or other right or remedy.

9.12 **Governing Law**

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

9.13 **Attornment**

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The Vendor and the Purchaser each attorns to the jurisdiction of the courts of the Province of Ontario.

9.14 **Appointment of Agent for Service**

The Purchaser nominates, constitutes and appoints John O'Donoghue, Barrister and Solicitor, of the City of Toronto its true and lawful agent to accept service of process and to receive all lawful notices in respect of any action arising under this Agreement (other than any notice that is to be given by one party to another pursuant to Section 9.09). Until due and lawful notice of the appointment of another and subsequent agent in the Province of Ontario has been given to and accepted by the Vendor, service of process or of papers and such notices upon John O'Donoghue will be accepted by the Purchaser as sufficient service.

9.15 **Severability**

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect.

9.16 **No Registration of Agreement**

The Purchaser agrees that it will not register or cause or permit to be registered this Agreement and that no reference to or notice of it or any caution, certificate of pending litigation or other similar court process in respect thereof shall be registered on title to the Real Property and/or any part thereof. The Purchaser shall indemnify and save the Vendor harmless from and against any and all Claims whatsoever arising from or with respect to any such registration. This Section shall survive the expiration and/or termination of this Agreement for any reason.

9.17 **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

9.18 **Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

ARTICLE 10 - IRREVOCABILITY

10.01 **Irrevocability**

The Purchaser hereby acknowledges and agrees that the offer contained herein shall be irrevocable and open for acceptance by the Vendor until the date upon which the Successful Bid and the Back-Up Bid have been selected by the Liquidator and Colliers.

[The balance of this page has been intentionally left blank]

IN WITNESS WHEREOF the parties have executed this Agreement.

PINNACLE INTERNATIONAL ONE LANDS INC.
Per:

_____
Mike DeCotiis, President

I have authority to bind the Corporation

_____

TARN FINANCIAL CORPORATION, by its authorized signatory, KPMG Inc. in its capacity as Liquidator and without personal liability
Per:

_____
Name:
Title:
Per:

_____
Name:
Title:
We have authority to bind the Corporation

EXHIBIT "A"

Form of Approval and Vesting Order

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE •	)	•, THE •
	)	
JUSTICE •	)	DAY OF •, 2018

BETWEEN:

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

Applicants

- and –

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

Respondents

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. in its capacity as liquidator (the "**Liquidator**") of Tarn Financial Corporation ("**Tarn**") for an order approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement (the "**Asset Purchase Agreement**") between Tarn (the "**Vendor**") and **PINNACLE INTERNATIONAL ONE LANDS INC.** (the "**Purchaser**") dated March , 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 this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of • sworn •, 2018 and the • Report of the Liquidator dated •, 2018 (the "**• Report**"), and on hearing the submissions of counsel for the Liquidator, the Vendor, the Purchaser, 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 • sworn •, 2018 filed:

1. **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.

2. **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.

3. **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 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 Order of the Honourable Mr. Justice Lederman dated September 15, 2017; (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 B** 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 C**) 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.

4. **THIS COURT ORDERS** that upon the registration in the applicable land registry office or land titles office of a Transfer/Deed of Land or equivalent document, or of an application for registration of this Order in the applicable prescribed form, the applicable land registrar or equivalent official is hereby directed to enter the Purchaser as the owner of the subject 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 B hereto.

5. **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.

6. **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 **[6.05(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 **[2.11]** 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 **[6.05]** 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 and the Vendor 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 or the Vendor in connection therewith.

7. **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 Company's

records pertaining to the Debtor'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.

8. **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.

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

10. **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

11. **THIS COURT ORDERS that the Confidential Appendix to the • 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.]**

Schedule A – Form of Liquidator's Certificate

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

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

Applicants

- and –

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

Respondents

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 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 •, 2018, the Court approved the agreement of purchase and sale made as of March 22, 2018 (the "**Asset Purchase Agreement**") between the Respondent (the "**Vendor**") and **PINNACLE INTERNATIONAL ONE LANDS 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].

KPMG Inc., in its capacity as Liquidator, and not in its personal capacity

Per: _____

Name:

Title:

Schedule B – Claims to be deleted and expunged from title to Real Property

All contracts related to Tarn Construction and the Condominium Project contemplated on and in respect of the Development Assets

All Condo Purchase Agreements

All Claims related to Condominium Project

Any undisclosed claims related to the Condominium Project and or Tarn Construction

All claims for construction lien and Certificates of Action relating thereto

All registrations not being a Permitted Encumbrance

Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property

(unaffected by the Vesting Order)

-Items related to Delta Hotel, the Business, and its operation, leases, and employees

PIN 06164-0197(LT):

1. Instrument No. SC72205 registered April 23, 1948 being By-law 3861 - part lot control

2. Instrument No. A90238 registered April 6, 1962 being Notice of Agreement re By-law No. 10372 – to expropriate permanent easement for sewers and drains. Note: the description is in metes and bounds and needs to be plotted to determine location based on current reference plans as it runs along the south side of Village Green Square formerly Sufferance Road; it could also be shown on reference plans not currently on hand although it appears to be in the same area as Part 2 on Plan 66R-12484

3. Instrument No. A927533 registered June 19, 1981 being Notice of Agreement with The Corporation of the City of Scarborough re buildings not specified

4. Instrument No. C938338 registered March 3, 1995 being Notice of Site Plan Control Amending Agreement with The Corporation of the City of Scarborough re Agreement SC618244 & A927533

5. Instrument No. E236074 registered March 23, 1999 being Notice of Lease with Microcell Connexions Inc. Note: this may be a roof top cell tower lease (the documents states that it could also be in an equipment room or basement) which may or may not still be in existence and if the lease term has expired it will have to be removed from title. If it is still current the purchaser will have to assume it. The original term was 5 years from November 1, 1968 with 1 5 year option to renew, but the parties could have continued to extend the term and not registered anything on title.

PIN 06164-0509(LT):

1. Instrument No. SC618244 registered June 18, 1981 being Notice of Site Plan Agreement with The Corporation of the Borough of Scarborough re buildings not specified

2. Instrument No. TB966207 registered March 3, 1995 being Notice of Site Plan Control Amending Agreement with The Corporation of the City of Scarborough re Agreement SC618244 & A927533

3. Instrument No. TR39151 registered March 23, 1999 being Notice of Lease with Microcell Connexions Inc. Note: this may be a roof top cell tower lease (the documents

states that it could also be in an equipment room or basement) which may or may not still be in existence and if the lease term has expired it will have to be removed from title. If it is still current the purchaser will have to assume it. The original term was 5 years from November 1, 1968 with 1 5 year option to renew, but the parties could have continued to extend the term and not registered anything on title.

EXHIBIT "B"

ASSIGNED CONTRACTS AND PERMITS

Delta Hotel, the Business, contracts (Leases, Service Agreements, Flag, CBA, Liquor Licence, and Employees)

Collective Bargaining Agreement for Hotel Employees

Applications for Official Plan (if applicable), re-zoning, Section 37 Planning Act (or Section 16 city of Toronto Act) agreement, Site Plan agreement, and all development/re-development applications

EXHIBIT "C"

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS AGREEMENT is made as of , 2018

BETWEEN

PINNACLE INTERNATIONAL ONE LANDS INC., a corporation incorporated under the laws of British Columbia (the "**Purchaser**"),

- and -

TARN FINANCIAL CORPORATION, a corporation incorporated under the laws of the Province of Ontario (the "**Vendor**").

WHEREAS the parties hereto have entered into an asset purchase agreement dated as of March 22, 2018 (the "**Asset Purchase Agreement**"), pursuant to which the Vendor has agreed to assign all of its right, title, benefit and interest in and to the Assigned Contracts to the Purchaser as listed in Schedule A to this Agreement, and the Purchaser has agreed to assume, perform and indemnify and hold harmless the Vendor from the Assumed Liabilities as listed in Schedule B to this Agreement, upon the terms and conditions set forth therein;

AND WHEREAS pursuant to Sections 7.02(f) and 7.03(f) of the Asset Purchase Agreement, the Vendor and Purchaser are required to enter into and deliver this Agreement at the Time of Closing;

NOW THEREFORE in conjunction with and in consideration of the completion of the transactions to be effected at the Time of Closing as contemplated by the Asset Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vendor and the Purchaser agree as follows:

ARTICLE 1 - INTERPRETATION

1.01 Definitions

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

1.02 Headings

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or

interpretation of this Agreement. The terms "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles and Sections of, and Schedules to, this Agreement.

1.03 **Extended Meanings**

In this Agreement words importing the singular number include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and Governmental Authorities. The term "including" means "including without limiting the generality of the foregoing".

ARTICLE 2 – ASSIGNMENT AND ASSUMPTION

2.01 **Assignment by the Purchaser**

Upon and subject to the terms of the Asset Purchase Agreement, effective at the Time of Closing, the Vendor hereby assigns and transfers to the Purchaser all of the Vendor's right, title, benefit and interest under or in respect of the Assigned Contracts.

2.02 **Assumption by the Purchaser**

Upon and subject to the terms of the Asset Purchase Agreement, effective at the Time of Closing, the Purchaser hereby assumes and agrees to fulfill, perform and discharge the Assumed Liabilities.

2.03 **Release by the Purchaser**

The Purchaser hereby: (i) unconditionally and irrevocably fully releases and discharges the Vendor from any Claim which the Purchaser may now or hereafter have against the Vendor by reason of any matter or thing arising out of, or resulting from, any of the Assumed Liabilities, and (ii) agrees that the Purchaser will not make or take any Claim with respect to any matter released and discharged in this Section 2.03 which may result in any Claim against the Vendor for contribution or indemnity or other relief.

2.04 **Indemnity by the Purchaser**

The Purchaser hereby indemnifies and saves harmless the Vendor on its own behalf and as trustee for its Affiliates and its and their current and former directors and officers, employees, agents, advisors, and representatives (including the Liquidator) (collectively, the "**Indemnitees**") from and against all Claims asserted against any of the Indemnitees in any way directly or indirectly arising from, relating to or in connection with any of the Assumed Liabilities. The Purchaser appoints the Vendor as the trustee for the Indemnitees of the covenants of indemnification of the Purchaser with respect to such Indemnitees specified in this Section 2.04 and the Vendor accepts such appointment.

ARTICLE 3 - GENERAL

3.01 Further Assurances

The Vendor and the Purchaser will from time to time execute and deliver all such further documents and instruments and do all acts and things as any of the other parties may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

3.02 Time of the Essence

Time is of the essence of this Agreement.

3.03 Benefit of the Agreement

This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

3.04 Amendments and Waivers

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by each of the parties. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

3.05 Assignment

This Agreement may not be assigned by the Vendor or by the Purchaser without the consent of: (i) in the case of an assignment by the Vendor, the Purchaser; and (ii) in the case of an assignment by the Purchaser, the Vendor.

3.06 Notices

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and in accordance with Section 9.09 of the Asset Purchase Agreement.

3.07 Governing Law

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

3.08 Attornment

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The Vendor and the Purchaser each attorns to the jurisdiction of the courts of the Province of Ontario.

3.09 **Appointment of Agent for Service**

The Purchaser nominates, constitutes and appoints John O'Donoghue, Barrister and Solicitor, of the City of Toronto its true and lawful agent to accept service of process and to receive all lawful notices in respect of any action arising under this Agreement (other than any notice that is to be given by one party to another pursuant to Section 3.06). Until due and lawful notice of the appointment of another and subsequent agent in the Province of Ontario has been given to and accepted by the Vendor, service of process or of papers and such notices upon • will be accepted by the Purchaser as sufficient service.

3.10 **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

3.11 **Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

3.12 **Severability**

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any of the parties.

[The balance of this page has been intentionally left blank]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

PINNACLE INTERNATIONAL ONE LANDS INC.

Per: _____
Michele DeCotiis, President

I have authority to bind the Corporation

_____

TARN FINANCIAL CORPORATION, by its authorized signatory, KPMG Inc. in its capacity as Liquidator and without personal liability

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have authority to bind the Corporation

EXHIBIT "D"

PERMITTED ENCUMBRANCES

Liens: None

PIN 06164-0197(LT):

1. Instrument No. SC72205 registered April 23, 1948 being By-law 3861 - part lot control

2. Instrument No. A90238 registered April 6, 1962 being Notice of Agreement re By-law No. 10372 – to expropriate permanent easement for sewers and drains. Note: the description is in metes and bounds and needs to be plotted to determine location based on current reference plans as it runs along the south side of Village Green Square formerly Sufferance Road; it could also be shown on reference plans not currently on hand although it appears to be in the same area as Part 2 on Plan 66R-12484

3. Instrument No. A927533 registered June 19, 1981 being Notice of Agreement with The Corporation of the City of Scarborough re buildings not specified

4. Instrument No. C938338 registered March 3, 1995 being Notice of Site Plan Control Amending Agreement with The Corporation of the City of Scarborough re Agreement SC618244 & A927533

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November 1, 1968 with 1 5 year option to renew, but the parties could have continued to extend the term and not registered anything on title.

EXHIBIT "E"

OTHER EXCLUDED ASSETS

The Shares in Tarn Construction

Condo Purchase Agreements and any deposits related thereto as well as any Tarion registration for the sale of units in the proposed condominium corporation and any excess deposit security provided in respect thereof

EXHIBIT "F"

ALLOCATION OF PURCHASE PRICE

[The Purchase Price allocation will be determined by the Purchaser and the Vendor prior to the Closing Date]

Development Land and Hotel: [redacted]

Liability for Hotel operations including Flag, Contracts, Union and Non-Union Employees

Total Offer: Cash + Assumed Liabilities

EXHIBIT "G"

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

APPENDIX "I"

Frequently Asked Questions – Claims Procedure Order

On April 13, 2018, the Ontario Superior Court of Justice (the "**Court**") issued a Claims Procedure Order (the "**Claims Procedure Order**") in respect of Tarn Financial Corporation ("**Tarn Financial**"). Pursuant to the Claims Procedure Order, the Court approved and established a procedure for the solicitation, resolution and barring of certain claims against Tarn Financial (the "**Claims Process**").

These Frequently Asked Questions should be read in conjunction with the Claims Procedure Order that is located on the Liquidator's website at www.kpmg.com/ca/tarn (the "**Website**"). All capitalized terms have the same meaning given to them in the Claims Procedure Order unless otherwise defined.

1. What is the Claims Process?

The Claims Process is a Court approved procedure whereby any Person that believes it has a Claim against Tarn Financial can deliver a Proof of Claim to the Liquidator in respect of that Claim. The Claims Process also sets out the process for the Liquidator to follow when reviewing and determining Claims received.

2. Who is required to file a Proof of Claim in the Claims Process?

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, that believes it is owed money by Tarn Financial as of September 25, 2017 is required to deliver a completed Proof of Claim to the Liquidator.

3. Who will receive the Claims Process Notice and Proof of Claim that is sent by the Liquidator?

The Liquidator will send the Claims Process Notice and Proof of Claim by Friday, April 20, 2018 to: (i) all known creditors of Tarn Financial as at September 25, 2017 as evidenced by the books and records of Tarn Financial; and (ii) all persons who have notified the Liquidator of a potential Claim. In addition, out of an abundance of caution, the Liquidator will also be delivering this package to all known creditors of Tarn Construction Corporation, a wholly owned subsidiary of Tarn Financial.

4. Where can I find a copy of the Claims Process Notice and Proof of Claim?

The Claims Process Notice and the Proof of Claim form are attached to the Claims Procedure Order as Schedules "A" and "B", respectively. Copies of the

Claims Process Notice and Proof of Claim are also posted on the Website at www.kpmg.com/ca/tarn.

5. What Claims are excluded from the Claims Process?

Any claims for amounts due for goods or services supplied to Tarn Financial on or after September 25, 2017 are excluded from the Claims Process. A Proof of Claim should not be submitted to the Liquidator on account of such claims.

6. What is the Claims Bar Date and what is the significance of that date?

The Claims Bar Date is 5:00 p.m. Eastern Standard time on June 15, 2018, or any later date ordered by the Court. All Claimants must submit their Proof of Claim to the Liquidator on or before the Claims Bar Date. Claims that are not received by the Liquidator by the Claims Bar Date will be forever extinguished and barred.

7. What happens if a Claim is denominated in a foreign currency?

Any Claims denominated in a foreign currency will be converted by the Liquidator to Canadian dollars using the Bank of Canada's exchange rate, in effect at noon on September 25, 2017.

8. What happens after a Proof of Claim is submitted to the Liquidator?

Following the Claims Bar Date, the Liquidator will review all Proofs of Claim received by the Claims Bar Date. The Liquidator will review the Claim and any supporting documentation and will to determine whether to allow, partially allow or disallow the Claim.

9. How will the Liquidator notify Claimants of its determination of Claims?

The Liquidator will deliver a written Notice of Determination of Claim to all Claimants that submitted a Claim by the Claims Bar Date, which will set out the Liquidator's determination of the Claim and the reasons for such determination.

10. What actions can Claimants take if they disagree with the Liquidator's determination of their Claim?

Claimants wishing to dispute the Liquidator's determination can do so by delivering a written Notice of Objection to the Liquidator by no later than 5:00 p.m. on the day which is fourteen (14) days after receipt of the Notice of Determination of Claim.

11. How will the Liquidator resolve a Notice of Objection received in accordance with the Claims Procedure Order?

The Liquidator may attempt to settle the dispute directly with the Claimant. In the event a settlement is not achieved, the Liquidator may either direct the dispute to a claims officer (which is a person that would be appointed by the Court on application by the Liquidator to adjudicate the disputed Claim) or the Liquidator may seek directions from the Court on an appropriate process for resolving the disputed Claim.

12. Where can I find a copy of the Notice of Objection?

The Notice of Objection is appended as Schedule "D" to the Claims Procedure Order. A copy of the Notice of Objection is also posted on the Website at www.kpmg.com/ca/tarn.

13. Will distributions be made to Claimants under the Claims Process?

The Claims Process is used to determine the amount owing to creditors of Tarn Financial. The Liquidator will use the results of the Claims Process to make distributions to creditors. However, at this time, the timing and quantum of any distribution is unknown. Any distribution made will be made pursuant to a further Order of the Court.

APPENDIX "J"

Frequently Asked Questions – Deposit Confirmation Procedure Order

On April 13, 2018, the Ontario Superior Court of Justice (the "**Court**") issued a Deposit Confirmation Procedure Order (the "**Deposit Confirmation Procedure Order**") in respect of Tarn Construction Corporation ("**Tarn Construction**"). Pursuant to the Deposit Confirmation Procedure Order, the Court approved and established a process for confirming deposits paid to Tarn Construction by purchasers of condominium units in the development project known as 'The Kennedys' (the "**Deposit Confirmation Procedure**").

These Frequently Asked Questions should be read in conjunction with the Deposit Confirmation Procedure Order that is located on KPMG's website at www.kpmg.com/ca/tarn (the "**Website**"). All capitalized terms have the same meaning given to them in the Deposit Confirmation Procedure Order unless otherwise defined.

1. **What is the Deposit Confirmation Procedure?**

   The Deposit Confirmation Procedure is a Court approved process that allows KPMG to confirm the amounts of the Deposits made by Purchasers that have entered into an Agreement of Purchase and Sale ("**APS**") with Tarn Construction to purchase a Proposed Unit at the contemplated residential condominium development located at 2035 Kennedy Road, Toronto, known as 'The Kennedys'.

Deposit Statement (Deposits remitted up to and including March 31, 2018)

2. **Who will receive a Deposit Statement from KPMG?**

   Any Purchaser that has entered into an APS with Tarn Construction based on the books and records of Tarn Construction and has made or should have made a Deposit under the terms of their APS will receive a Deposit Statement.

3. **What will the Deposit Statement include?**

   The Deposit Statement will set out the Deposit paid by a Purchaser up to and including March 31, 2018 according to the books and records of Tarn Construction and the Deposit Trustee, Bennett Jones LLP, including deposit monies and monies for extras and upgrades.

4. **When will Purchasers receive a Deposit Statement?**

   KPMG will send a Deposit Statement to all Purchasers based on the books and records of Tarn Construction and the Deposit Trustee by Friday April 20, 2018. The Deposit Statement will be mailed out to Purchasers from Toronto, Ontario

and Purchasers should expect to receive the Deposit Statement by the end of April, 2018.

5. **What should you do if you are a Purchaser and you did not receive a Deposit Statement?**

Deposit Statements are being mailed out to Purchasers by KPMG by April 20, 2018. If you are a Purchaser and you do not receive a Deposit Statement by April 30, 2018, you should contact KPMG by phone at 1-855-222-8083 or by email at tarn@kpmg.ca to request your Deposit Statement be resent to you.

6. **What is a Purchaser required to do if they agree with the Known Deposit amount set out in the Deposit Statement?**

If a Purchaser agrees with the Known Deposit amount set out in the Deposit Statement, then the Purchaser does not need to do anything. If KPMG has not heard from a Purchaser by May 15, 2018, then the amount of the Deposit on the Deposit Statement will be accepted as accurate for all purposes.

7. **What is a Purchaser required to do if they disagree with the Known Deposit amount set out in the Deposit Statement?**

If a Purchaser disagrees with the Known Deposit amount set out in the Deposit Statement, then the Purchaser must deliver a completed Notice of Dispute of Deposit Statement to KPMG by May 15, 2018. The Notice of Dispute of Deposit Statement will be mailed to Purchasers with the Deposit Statement and can also be found on the Website at www.kpmg.com/ca/tarn.

The Purchaser must provide reasons for disputing the Known Deposit as set out in the Deposit Statement, and must provide supporting documentation. The evidence and supporting documentation should include the description of and copies of agreement(s), including the APS and any other written agreement giving rise to the Deposit, proof of Deposit dates and amounts paid, which can be done with copies of cheques, bank statements, or other forms of proof from a financial institution to confirm that a Deposit was paid by the Purchaser to Tarn Construction.

8. **What is the Deposit Confirmation Bar Date in respect of Deposits set out in the Deposit Statement and what is the significance of that date?**

The Deposit Confirmation Bar Date in respect of Deposits set out in the Deposit Statement is 5:00 p.m. Eastern Standard time on May 15, 2018, or any later date ordered by the Court. Any Purchaser who does not agree with the Known Deposit set out in the Deposit Statement they receive must submit a completed Notice of Dispute of Deposit Statement to KPMG on or before this Deposit Confirmation Bar Date for their dispute to be considered by KPMG. The

amount of the Deposit contained in the Deposit Statement will be accepted on May 15, 2018 for all Purchasers that do not deliver a Notice of Dispute of Deposit Statement by the deadline. After May 15, 2018, Purchasers will be forever barred from disputing the amount of their Known Deposit and the amount set out in the Deposit Statement will be accepted as accurate for all purposes.

9. **Where can I find a copy of the Notice of Dispute of Deposit Statement?**

A copy of the Notice of Dispute of Deposit Statement was sent to you along with the Deposit Statement. The Notice of Dispute of Deposit Statement is attached as Schedule "C" to the Deposit Confirmation Procedure Order. A copy of the Notice of Dispute of Deposit Statement is also posted on the Website at www.kpmg.com/ca/tarn.

Amended and Restated Deposit Statement (Deposits remitted after March 31, 2018)

10. **What happens if a Purchaser pays a Deposit due and owing under their APS after March 31, 2018?**

The Deposit Trustee will hold Additional Deposits paid by Purchasers after March 31, 2018 in trust, and under the oversight of KPMG.

11. **Who will receive an Amended and Restated Deposit Statement?**

Any Purchaser that pays an Additional Deposit to Tarn Construction or the Deposit Trustee under their APS after March 31, 2018 will receive an Amended and Restated Deposit Statement to acknowledge the Additional Deposit paid.

12. **What will the Amended and Restated Deposit Statement include?**

The Amended and Restated Deposit Statement will restate the Deposit set out in the Deposit Statement delivered to the Purchaser, and will set out the Additional Deposit paid by the Purchaser after March 31, 2018.

13. **When will a Purchaser receive an Amended and Restated Deposit Statement?**

KPMG will send the Amended and Restated Deposit Statement to any Purchaser that pays an Additional Deposit within (10) days after the Deposit Trustee receives the Additional Deposit.

14. **What is a Purchaser required to do if they agree with the Known Additional Deposit amount set out in the Amended and Restated Deposit Statement?**

If a Purchaser agrees with the Known Additional Deposit amount set out in the Amended and Restated Deposit Statement, then the Purchaser does not need to do anything. If KPMG has not heard from a Purchaser thirty (30) calendar days after the date set out on the Amended and Restated Deposit Statement, then the amount of the Additional Deposit on the Amended and Restated Deposit Statement will be accepted as accurate for all purposes.

15. **What is a Purchaser required to do if they disagree with the Known Additional Deposit amount set out in the Amended and Restated Deposit Statement?**

If a Purchaser disagrees with the Known Additional Deposit amount set out in the Amended and Restated Deposit Statement, then the Purchaser must deliver a completed Notice of Dispute of Amended and Restated Deposit Statement to KPMG within 30 days of the date of the Amended and Restated Deposit Statement. The Notice of Dispute of Amended and Restated Deposit Statement will be mailed to Purchasers with the Amended and Restated Deposit Statement and can also be found on the Website at www.kpmg.com/ca/tarn.

The Purchaser must provide reasons for disputing the Known Additional Deposit as set out in the Amended and Restated Deposit Statement, and must provide supporting documentation. The evidence and supporting documentation should include the description of and copies of agreement(s), including the APS and any other written agreement giving rise to the Additional Deposit, proof of Additional Deposit dates and amounts paid, which can be done with copies of cheques, bank statements, or other forms of proof from a financial institution to confirm that an Additional Deposit was paid by the Purchaser to Tarn Construction.

16. **What is the Deposit Confirmation Bar Date in respect of Additional Deposits set out in the Amended and Restated Deposit Statement and what is the significance of that date?**

The Deposit Confirmation Bar Date in respect of Additional Deposits set out in the Amended and Restated Deposit Statement is thirty (30) calendar days after the date of the Amended and Restated Deposit Statement, or any later date ordered by the Court. Any Purchaser who does not agree with the Known Additional Deposit set out in the Amended and Restated Deposit Statement they receive must submit a completed Notice of Dispute of Amended and Restated Deposit Statement to KPMG on or before this Deposit Confirmation Bar Date for their dispute to be considered by KPMG. The amount of the

Known Additional Deposit contained in the Amended and Restated Deposit Statement will be accepted for all Purchasers that do not deliver a Notice of Dispute of Deposit Statement by the Deposit Confirmation Bar Date. After this deadline, Purchasers will be forever barred from disputing the amount of their Known Additional Deposit and the amount set out in the Amended and Restated Deposit Statement will be accepted as accurate for all purposes.

17. **Where can I find a copy of the Notice of Dispute of Amended and Restated Deposit Statement?**

A copy of the Notice of Dispute of Amended and Restated Deposit Statement was sent to you along with the Amended and Restated Deposit Statement. The Notice of Dispute of Amended and Restated Deposit Statement is attached as Schedule "D" to the Deposit Confirmation Procedure Order. A copy of the Notice of Dispute of Amended and Restated Deposit Statement is also posted on the Website at www.kpmg.com/ca/tarn.

18. **Is a Purchaser required to submit a Notice of Dispute of Amended and Restated Deposit Statement in respect of the restated Known Deposit?**

No. If a Purchaser has already submitted a Notice of Dispute of Deposit Statement in respect of the Known Deposit, then the Purchaser is not required to resubmit a Notice of Dispute of Amended and Rested Deposit Statement in respect of the restated Known Deposit.

The Purchaser is only required to submit a Notice of Dispute of Amended and Restated Deposit Statement if they are disputing the Known Additional Deposit.

The Purchaser is required to follow the same process outlined above in respect of disputing Known Deposits.

Next Steps

19. **What happens after a Notice of Dispute of Deposit Statement and/or a Notice of Dispute of Amended and Restated Deposit Statement is submitted to KPMG?**

KPMG is in the process of determining the process for reviewing and determining disputed Deposits and/or Additional Deposits and it will seek a further Order of the Court to address this process on May 1, 2018. The Website will be updated to reflect this once the Court approves the review and determination procedure.

20. **Will KPMG be returning Deposits paid by Purchasers under the Deposit Confirmation Procedure?**

The Deposit Confirmation Procedure will allow KPMG to confirm the Deposits and to identify any Purchasers that dispute the amount of the Deposit they paid to Tarn Construction. The Successful Bidder has been selected under the Sale Process that has been run by KPMG and the Successful Bidder will not be assuming the APSs. As a result, on May 1, 2018, KPMG intends to seek Court authorization to terminate the APSs in accordance with their terms. KPMG will also be seeking an Order setting out the process to resolve any disputes relating to Deposits and, if authorized to terminate the APSs, to address the orderly return of Deposits to Purchasers in accordance with the terms of their APS. KPMG will provide a further update to you after the hearing on May 1, 2018 and such update will address timing for next steps.

APPENDIX "K"

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

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

April 17, 2018
Sent by Email (with a copy to follow by mail with the Deposit Statement)

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

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

As you are aware, KPMG Inc. ("**KPMG**") was appointed court appointed liquidator (in such capacity, the "**Liquidator**") of Tarn Financial Corporation ("**Tarn Financial**") pursuant to the Order (the "**Winding Up Order**") of the Ontario Superior Court of Justice (the "**Court**") dated September 15, 2017, which appointment was effective on September 25, 2017 pursuant to the Ontario *Business Corporations Act* for the purpose of winding up Tarn Financial and distributing its assets (the "**Winding Up Proceedings**"). Tarn owns and operates Tarn Construction Corporation ("**Tarn Construction**"), which is developing the condominium development project known as The Kennedys. The real property municipally known as 2035 Kennedy Road, Toronto that is being developed for The Kennedys is also owned by Tarn Financial (the "**Real Property**"). A copy of the Winding Up Order and information pertaining to the Winding Up Proceedings including all other Orders referenced in this letter are posted on KPMG's website at www.kpmg.com/ca/tarn (the "**Website**").

This letter is further to our letters to you dated October 11, 2017 and October 13, 2017, copies of which are posted on 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.

As you may be aware, the Liquidator obtained an Order approving a sale process (the "**Sale Process**") from the Court on November 29, 2017 and commenced the Sale Process on January 3, 2018 to market and sell the assets of Tarn Financial including the Real Property with the assistance of Colliers Macaulay Nicolls Inc. ("**Colliers**") as its listing and marketing agent. The Sale Process has been concluded and on Friday April 13, 2018, the Liquidator and Colliers determined the Successful Bidder. The Liquidator will be seeking Court approval of the Successful Bid on May 1, 2018. Of importance to you, the Successful Bidder's bid does not contemplate the purchase of the shares of Tarn Construction, the purchase of the Deposits paid pursuant to the APSs or the assumption of the APSs. In addition, it is a condition of the Successful Bid that the APSs be terminated.

This letter is intended to provide you with notice of a Motion being brought by KPMG, which will seek:

(a) the Court's authorization and approval to terminate the APSs entered into with Tarn Construction for condominium units in The Kennedys in accordance with the terms of the APSs; and

KPMG Inc. is a subsidiary of KPMG LLP, a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International") a Swiss entity.

(b) if granted, an Order establishing a process to resolve any disputes relating to deposits held by the Deposit Trustee, Bennett Jones LLP, and addressing the orderly return of Deposits to Purchasers in accordance with the terms of their APSs.

The Motion is scheduled to be heard by the Court on May 1, 2018 at 10:00 a.m. or as soon after that time as the Motion can be heard at the courthouse located at 330 University Ave., Toronto, Ontario. KPMG will serve and file its motion record on or about April 24, 2018 and it will be posted on the Website. If you intend to take a position on the Motion, we request that you advise KPMG in writing by April 27, 2018 at 2:00 p.m. so that KPMG can advise the Court.

By way of further update, on April 13, 2018, the Court granted a Deposit Confirmation Procedure Order establishing a process for confirming Deposits paid to Tarn Construction by Purchasers of condominium units in The Kennedys (the "**Deposit Confirmation Procedure**"). In order for KPMG to undertake the Deposit Confirmation Procedure, on April 13, 2018, the Court also granted a Receivership Order pursuant to section 101 of 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**").

Pursuant to the Deposit Confirmation Procedure, you will receive a Deposit Statement by mail setting out the Deposit paid by you to Tarn Construction up to and including March 31, 2018, as indicated by the books and records of Tarn Construction and the Deposit Trustee. The Deposit Statement will be mailed out to you by Friday April 20, 2018. If you do not receive the Deposit Statement by April 30, 2018, you should contact KPMG by phone at 1-855-222-8083 or by email at tarn@kpmg.ca to request that your Deposit Statement be resent to you. The Deposit Statement will have instructions on what is required of you. If you agree with the amount of the Deposits set out on the Deposit Statement then you do not have to do anything. The Deposit Statement will also be accompanied by a set of Frequently Asked Questions to provide you with additional guidance regarding the Deposit Confirmation Procedure.

Unless and until the APSs have been terminated, any deposit payments due after March 31, 2018 under your APS should be made in accordance with the terms of your APS (an "**Additional Deposit**"). Such future payments should be directed as follows:

Bennett Jones LLP c/o Tarn Financial Corporation
2035 Kennedy Road
M1T 3G2

Pursuant to the Deposit Confirmation Procedure, if you remit an Additional Deposit, you will receive an Amended and Restated Deposit Statement restating the Deposit made up to and including March 31, 2018, and setting out any Additional Deposit paid by you after March 31, 2018. The Amended and Restated Deposit Statement will provide you with instructions on what is required of you. Again if you agree with the amount of the Additional Deposit set out on the Amended and Restated Deposit Statement then you do not have to do anything.

As indicated in the October 11, 2017 and October 13, 2017 letters, all amounts that KPMG has been advised by the Deposit Trustee as having been paid by you in respect of your Deposits continue to be held in trust with Bennett Jones LLP and will continue to be held in trust in accordance with your APS and be under the oversight of KPMG. Additional Deposits received under your APS will also be held in trust with Bennett Jones and be overseen by KPMG.

KPMG (as Liquidator and Receiver) is the only party that is authorized to deal with The Kennedys development project pursuant to the Winding Up Order and the Receivership Order.

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

Yours truly,

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

APPENDIX "L"

THE KENNEDYS – EAST TOWER

CONDOMINIUM AGREEMENT OF PURCHASE AND SALE

1. **PROPERTY**

The undersigned

[redacted] (collectively or individually, as the case may be, the "**Purchaser**") agrees with Tarn Construction Corporation (the "**Vendor**") to purchase the following property (the "**Property**") municipally known as 2035 Kennedy Road, Toronto, Ontario being the proposed:

(a) suite no. [redacted] legally known as proposed residential unit no. 1 on level 2 substantially as shown for identification purposes only on the floor plan annexed hereto as Schedule "B" and finished substantially in accordance with the finishing package described in Schedule "C" hereto annexed (the "**Residential Unit**");

(b) **ONE** proposed parking unit(s) in a location to be assigned (and/or re-assigned from time to time) by the Vendor, in its sole discretion (individually, or collectively, as the case may be, the "**Parking Unit**"); and

(c) **ONE** proposed locker unit(s) in a location to be assigned (and/or re-assigned from time to time) by the Vendor, in its sole discretion (individually, or collectively, as the case may be, the "**Locker Unit**");

together with an undivided interest in the common elements appurtenant thereto, including any common element areas designated as being for the exclusive use of the Property, all in accordance with condominium plan documentation proposed to be registered on those lands and premises situate in the City of Toronto, Province of Ontario and being comprised of portions of the lands legally described as Part Lot 28, Concession 2, designated as Parts 1 and 2, Plan 66R-12484, being P.I.N. 06164-0197 (LT), and Lot 19, Registrar's Compiled Plan 9945, designated as Part 1, Plan 66R-28554, being all of P.I.N. 06164-0509 (LT) and as known as "The Kennedys – East Tower" as currently shown on the site plan attached to the Vendor's disclosure statement (the "**Lands**"), on the terms and conditions hereinafter set out.

2. **PURCHASE PRICE**

The purchase price for the Property shall be the aggregate of the following:

(a) for the Residential Unit, the sum of **THREE HUNDRED SEVENTY THOUSAND NINE HUNDRED NINETY ($370,990.00);**

(b) for the Parking Unit, the sum of **NIL ($0.00);** and

(c) for the Locker Unit, the sum of **THREE THOUSAND ($3,000.00)**

for a total purchase price of **THREE HUNDRED SEVENTY THREE THOUSAND NINE HUNDRED NINETY ($373,990.00)** (the "**Purchase Price**") inclusive of HST (hereinafter defined) on that portion of the Purchase Price allocated to realty (land and building) in accordance with Paragraph 16 of Schedule "A" to this Agreement but net of any applicable Rebates (hereinafter defined) which shall be assigned to the Vendor as set out at Paragraph 15 of Schedule "A" to this Agreement, all in Canadian funds, which shall be payable by the Purchaser as follows:

(a) The sum of **FIVE THOUSAND DOLLARS ($5,000.00)** by cheque, with this Agreement, as an initial deposit;

(b) The sum of **THIRTEEN THOUSAND SEVEN HUNDRED ($13,700.00)** being the amount required to be paid in order to bring the total deposits to five percent (5%) of the Purchase Price, by post-dated cheque with this Agreement made payable on **October 4, 2016** as a further deposit, pending completion or other termination of this Agreement;

(c) The sum of **EIGHTEEN THOUSAND SEVEN HUNDRED ($18,700.00)** being the amount required to be paid in order to bring the total deposits to ten percent (10%) of the Purchase Price, by post-dated cheque with this Agreement made payable on **January 15, 2017** as a further deposit, pending completion or other termination of this Agreement;

(d) The sum of **EIGHTEEN THOUSAND SEVEN HUNDRED ($18,700.00)** being the amount required to be paid in order to bring the total deposits to fifteen percent (15%) of the Purchase Price, by post-dated cheque with this Agreement made payable on **October 15, 2017** as a further deposit, pending completion or other termination of this Agreement;

(e) The sum of **EIGHTEEN THOUSAND SEVEN HUNDRED ($18,700.00),** being the amount required to be paid in order to bring the total deposits to twenty percent (20%) of the Purchase Price by certified cheque drawn on the Purchaser's Solicitor's trust account and issued by a Schedule 1 Canadian Chartered Bank, made payable to the Vendor's Solicitors, in trust, on the Occupancy Date (hereinafter defined) established or set by the Vendor pursuant to and in accordance with the provisions of the Tarion Addendum (hereinafter defined) issued by the Warranty Program (hereinafter defined); and,

(f) The balance of the Purchase Price by certified cheque drawn on the Purchaser's Solicitors' trust account or bank draft, in either case, issued by a Schedule 1 Canadian Chartered Bank payable to the Vendor's Solicitors (or as they may direct) on the Closing Date (hereinafter defined) subject to the adjustments hereinafter set forth.

All deposit cheques shall be made payable to the Vendor's Solicitors in trust and shall be delivered by the Vendor to the Vendor's Solicitors forthwith after the Vendor's receipt thereof. All funds shall, subject to what is contained in this Agreement to the contrary, be held pending completion or other termination of this Agreement, and shall be credited on account of the Purchase Price together with interest thereon as provided in the Act (hereinafter defined) on the Closing Date.

3. **CLOSING DATE**

(a) The Purchaser shall occupy the Residential Unit on the First Tentative Occupancy Date (as defined in the Statement of Critical Dates being part of the Tarion Addendum (hereinafter defined)) or such extended or accelerated date that the Residential Unit is substantially completed by the Vendor for occupancy by the Purchaser in accordance with the terms of this Agreement including, without limitation, the Tarion Addendum (the "**Occupancy Date**").

(b) The transfer of title to the Property shall be completed on the Closing Date. Save as may be provided for in this Agreement or in the Tarion Addendum, there shall be no changes to the Closing Date without the prior written consent of the Vendor, which consent may be given in the Vendor's sale and subjective discretion. In the event the Closing Date is extended at the Purchaser's request, the Purchaser agrees to pay a fee of $200.00 plus HST per day of the extension.

4. **CONTRACT DOCUMENTS**

In addition to Pages 1, 2 and 3, inclusive, of this Agreement (the "**Cover Provisions**"), the following schedules are integral parts of this Agreement and are contained on subsequent pages:

Schedule A	-	Additional Provisions of this Agreement
Schedule B	-	Floor Plan of Residential Unit
Schedule C		Standard Unit Finishes
Schedule D	-	Occupancy Licence
Schedule E		Tarion Warranty Corporation Statement of Critical Dates and Addendum to Agreement of Purchase and Sale

5. **BINDING OFFER**

(a) By signing this Agreement, the Purchaser makes an irrevocable offer to purchase the Property on the terms in this Agreement. If the Purchaser's offer is accepted by the Vendor on or prior to the Irrevocable Date (as defined herein), then a binding agreement of purchase and sale comes into existence immediately upon the Vendor's acceptance. The Purchaser acknowledges that he or she has received all pages and Schedules to this Agreement.

(b) Notwithstanding anything herein contained to the contrary, if the Purchaser has not delivered to the Vendor a written acknowledgement of receipt (the "**Acknowledgement of Receipt**") of each of the Vendor's Disclosure Statement and a copy of this Agreement accepted by the Vendor in order to evidence the commencement of the Purchaser's ten (10) day statutory rescission period by no later than the fifth (5th) day following acceptance of this Agreement by the Vendor, then the Vendor may terminate this Agreement at any time thereafter upon delivery of written notice to the Purchaser. If the Purchaser does not execute the Acknowledgement of Receipt while at the sales office, the Purchaser may deliver the Acknowledgement of Receipt in the manner provided in this Agreement.

(c) The Purchaser's offer or counter-offer or sign back to the Vendor is irrevocable by the Purchaser until twenty (20) days from the Purchaser's execution of the offer, or counter offer or sign back (the "**Irrevocable Date**"), after which date if not accepted by the Vendor, this offer, counter-offer or sign back, as the case may be, shall be null and void, and all deposit cheques will be returned to the Purchaser. Any counter-offer or signback by the Vendor is irrevocable by the Vendor for five (5) days, after which period if not accepted by the Purchaser, such counter-offer or signback shall be null and void, and all deposit cheques returned to the Purchaser.

(d) The Purchaser acknowledges that the Agreement obliges the Purchaser to complete the purchase of the Property in accordance with the terms of this Agreement. The Purchaser acknowledges that he or she has or will read all pages of this Agreement, including the Cover Provisions and all Schedules prior to the expiry of the 10 day rescission period, and agrees to be bound by all the terms in this Agreement.

(e) This offer, and the Vendor's acceptance, are deemed to be made under seal, whether or not a seal is physically attached, and the parties agree and intend that their signatures alone are sufficient to make this Agreement a contract under seal.

DATED this [redacted] day of [redacted]

SIGNED AND DELIVERED

In the presence of:

[redacted]

(Signature)

WITNESS:

[redacted]

SIGNED AND DELIVERED

In the presence of:

(Signature)

Purchaser:

Date of Birth:

WITNESS:

S.I.N.:

Phone:

E-mail:

The undersigned hereby accepts the offer and its terms, and agrees to and with the above-named Purchaser(s) to duly carry out the same on the terms and conditions above mentioned.

ACCEPTED this [redacted] day of [redacted], 201[redacted]

[redacted]

THE KENNEDYS – EAST TOWER

SCHEDULE A

ADDITIONAL PROVISIONS

1. **DEFINITIONS**

In addition to any other defined words or terms used throughout this Agreement, the defined terms set out below shall have the meanings ascribed thereto, namely:

(a) "**Act**" means the *Condominium Act*, S.O. 1998, the regulations thereunder and any amendments thereto (except in the case of the Tarion Addendum, in which case the reference to "Act" in the Tarion Addendum means the *Ontario New Home Warranty Plan Act* R.S.O. 1990 as amended, including the regulations enacted thereunder);

(b) "**Adjoining Components**" means those areas adjacent to or in proximity to the Condominium which are or may be utilized by the Vendor or the declarant or an affiliated or related company of the Vendor or a related or unrelated third party for residential, commercial, retail, office, institutional, public, hotel and/or parking purposes (or such other purposes as permitted by municipal by-laws, from time to time) and includes units and common elements presently existing thereon or that may be made by registration of one or more plans of condominium thereon at some future date, and may also include an adjacent property;

(c) "**Agreement**" means this agreement of purchase and sale, together with all Schedules hereto and including any amendments to this Agreement;

(d) "**Building**" means all buildings, structures and improvements constructed, or to be constructed, by the Vendor on the Lands;

(e) "**Business Day**" has the meaning ascribed to it in the Tarion Addendum;

(f) "**Closing Date**" or "**Date of Closing**" or "**Closing**" means that date or dates designated by the Vendor's Solicitors as the date on which registrable transfer of title to the Property will be delivered to the Purchaser or the Purchaser's Solicitors, which date shall be at least 20 days after written notice that the Creating Documents have been registered. The Vendor may, in its sole discretion postpone the Closing Date from time to time, provided that the Closing Date shall not be later than eighteen (18) months after the Occupancy Date;

(g) "**Condominium Corporation**" or "**Corporation**" or "**Condominium**" means the condominium corporation constituted under the Act by the registration of the Creating Documents;

(h) "**Condominium Documents**" means the Creating Documents, the by-laws and rules of the Condominium and the Disclosure Statement (inclusive of the budget statement), as may be amended from time to time;

(i) "**Consultant**" means any or all of the Vendor's architects, planners, engineers, technicians, technologists and other professional and business advisors whose services may be relevant in the context and includes accountants, building code agents, fire code specialists and other persons qualified to measure surface areas;

(j) "**CRA**" means the Canada Revenue Agency or its successors;

(k) "**Creating Documents**" means the declaration, plan, and description which are to be registered and will serve to create this Condominium, as may be amended from time to time;

(l) "**Date of Acceptance**" means the date that this Agreement has been accepted by each of the Vendor and Purchaser;

(m) "**Disclosure Statement**" means the disclosure statement delivered by the Vendor to the Purchaser as required by the Act;

(n) "**Existing Charges**" has the meaning set out in Paragraph 6(i);

(o) "**ETA**" means the *Excise Tax Act* (Canada), as amended, and the regulations made thereunder;

(p) "**Governmental Authorities**" or "**Governmental Authority**" means the Province of Ontario, the Municipality (including any applicable Regional government), all private or public utilities and includes a municipal council, a committee thereof, a Committee of Adjustment and/or Land Division or Severance Committee, a Minister of the provincial or federal government, and any public authority;

(q) "**HST**" means the federal portion and the provincial portion of the harmonized goods and services tax or single sales tax exigible with respect to the within transaction pursuant to the ETA;

(r) "**Interim Occupancy Period**" means the period of time from the Occupancy Date to the Closing Date;

(s) "**Mortgagee**" means the Vendor's lender(s) for the development of any part of the Lands;

(t) "**Municipality**" means the City of Toronto;

(u) "**Occupancy Licence**" means the agreement annexed hereto as Schedule D which sets out the terms and conditions of occupation of the Property during the Interim Occupancy Period;

(v) "**Occupancy Fee**" means the monthly fee payable in advance by the Purchaser during the Interim Occupancy Period and based upon the aggregate of the following amounts:

(i) where applicable, interest calculated on a monthly basis on the unpaid balance of the Purchase Price at the rate prescribed by the Act;

(ii) an amount reasonably estimated by the Vendor on a monthly basis for municipal realty taxes attributable to the Property; and

(iii) the projected monthly common expense contribution for the Property;

(w) "**Plan Act**" means the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. 0.31, as amended;

(x) "**Permitted Encumbrances**" means those instruments and documents, to which the Purchaser's title will be subject being the following:

(i) the Condominium Documents, including any agreements referred to therein, notwithstanding that they may be amended and varied from the proposed Condominium Documents contained in the Disclosure Statement;

(ii) any parking operations agreement, construction procedures agreement, subdivision, servicing, condominium, development, public transit, site plan, master site, joint user, security, access and circulation, construction licence, reciprocal, cost sharing, master site shared facility and like or similar agreements, party wall agreement, limiting distance agreements, encroachment agreement (s), indemnity agreement, education levy agreement or other instrument containing provisions relating to the use, development, construction, maintenance and/or repair of the Condominium and/or the Adjoining Components (or any of them);

(iii) all easements, licences and rights which may be required by or for the Adjoining Components (or any of them) and/or any Governmental Authority and/or the Municipality and/or any utility provider/monitor, and/or owners of neighbouring lands (including, without limiting the generality of the foregoing, any easements in favour of the public over the common elements of the Condominium to access the adjacent public lands). The Purchaser shall consent to the granting of any such easements, licence and rights and shall execute all documents requisite for this purpose, whether before or subsequent to the Closing Date;

(iv) any leases, notices of lease, restrictions, restrictive covenants, building covenants or conditions that run with the Lands;

(v) any agreements relating to the sharing of costs between the Condominium and owners of neighbouring lands, including, without limitation, the Adjoining Components (or any of them);

(vi) temporary easements in favour of the Vendor for construction, maintenance, repair, operation, sales and/or rentals relating to the Condominium, and any other component portion of the overall site currently owned by the Vendor including, but not limited to, the Adjoining Components;

(vii) any agreements which may or hereafter may be required by the Municipality or the Governmental Authorities and any agreements which may be desirable or necessary, in the Vendor's sole discretion, for the construction operation, maintenance and repair of the Condominium and any adjacent or neighbouring lands (inclusive of the Adjoining Components);

(viii) any reservations contained in the original Crown Patent;

(ix) all easements, agreements and instruments recorded on the PIN(s) pertaining to the Lands;

(x) any certificate of property use(s) pertaining to any record of site condition or modified generic risk assessment or any similar or like registration having regard for any applicable environmental legislation; and

(xi) any other title qualifications which do not materially adversely affect the use, enjoyment or marketability of the Property.

(y) "**Purchaser's Solicitors**" means a lawyer and/or law firm identified in this Agreement or appointed by the Purchaser from time to time upon providing written notice to the Vendor and the Vendor's Solicitors to act as the Purchaser's lawyer under this Agreement;

(z) "**Tarion Addendum**" means the mandatory Addendum issued by the Warranty Program which Addendum comprises the Warranty Program's Condominium Tentative Occupancy Date Form and includes a Statement of Critical Dates applicable to this transaction;

(aa) "**Vendor's Solicitors**" means Bennett Jones LLP; and

(bb) "**Warranty Program**" means the Warranty Program of the Tarion Warranty Corporation.

2. <u>TERMS OF INTERIM OCCUPANCY</u>

(a) If the Residential Unit is substantially completed sufficient to permit occupancy on the Occupancy Date, the Purchaser shall occupy the Residential Unit on the Occupancy Date. The Purchaser shall determine from the Vendor the time of day when the Purchaser may move into the Residential Unit and shall comply with the Vendor's rules and regulations regarding move in procedures, which will be provided to the Purchaser prior to the Occupancy Date.

(b) The Act provides that the rate of interest prescribed in the Act is the rate that the Bank of Canada has most recently reported as the chartered bank administered interest rate for a conventional one-year mortgage, established or determined as of the first day of the month in which the Purchaser assumes (or is required to assume) interim occupancy of the Residential Unit. However, for ease of administration, the Vendor shall be entitled to utilize the Bank of Canada's reported chartered bank administered interest rate for a conventional one-year mortgage, established as of the first of the month immediately preceding the month in which the first interim occupancy occurs in the Condominium, and which interest rate figure may be utilized for calculating the interest component of the Occupancy Fee. All occupancy fees so paid by the Purchaser shall be re-adjusted between the parties hereto on the Closing Date, if necessary, for any variance or discrepancy between the prescribed rate of interest and the rate of interest utilized by the Vendor as aforesaid. The common expense component of the Occupancy Fee shall also be re-adjusted on the Closing Date, if necessary, between the projected monthly common expense contributions, and the final monthly common expense contributions attributable to the Property as set out in or confirmed by the final first year budget statement in respect of the Condominium. The realty tax component of the Occupancy Fee shall be re-adjusted on the Closing Date, and if at that time, the supplementary assessment has not been issued by the Municipality, the Vendor may, in addition to the provisions of Paragraph 6(c) at its option choose to adjust for vacant land taxes only, whereupon the Purchaser shall be solely responsible for the supplementary assessment as and when issued by the Municipality which shall be in addition to those adjusted with the Vendor. Notwithstanding anything contained in this Agreement as to payment of property taxes, the Purchaser acknowledges responsibility for ensuring that the Property is properly assessed for property tax purposes and for taking such steps as may be necessary by way of appeal or otherwise in respect to the notice of assessment forwarded by the appropriate authority relating to occupancy of the Property.

(c) The Purchaser acknowledges that the Occupancy Fee shall not be credited by the Vendor as part of or as payment against the Purchase Price and shall not be considered as a deposit against the Purchase Price. The Purchaser shall, on or before taking possession of the Residential Unit deliver to the Vendor: (i) a series of eleven (11) monthly post-dated cheques as required by the Vendor to cover the Occupancy Fees; (ii) a cheque for the prorated Occupancy Fee period between the

Occupancy Date and the end of the month in which the Occupancy Date occurs; and (iii) any and all other documents required by the Vendor.

(d) The Purchaser acknowledges and agrees that the issuance of either a Consultant's certificate of substantial completion or such other confirmation that the Property has met the relevant Governmental Authorities minimum standards for occupancy shall, subject to the provisions of Section 9 of the Tarion Addendum, constitute complete and absolute acceptance by the Purchaser of all construction matters, and the quality and sufficiency thereof.

(e) The Vendor shall indemnify the Purchaser against any liability for any lien claims which are the responsibility of the Vendor, its trades and/or suppliers in full satisfaction of the Purchaser's rights under the *Construction Lien Act*, R.S.O. 1990, and any amendments thereto, and the Purchaser shall not claim any lien holdback, notwithstanding that the Vendor has not fully completed the Property or the common elements.

(f) Notwithstanding what is contained in Paragraph 2 (a) of this Schedule "A", at the sole discretion of the Vendor, the Purchaser may not be allowed to occupy the Residential Unit until the occupancy requirements of any relevant Governmental Authority have been complied with (as well as any applicable Permitted Encumbrances) and whether pertaining to the Property or all or any of the Adjoining Components and, if the Purchaser shall occupy the Residential Unit prior to the compliance of the aforesaid occupancy requirements, the Purchaser shall indemnify the Vendor for any costs, charges or penalties payable by, or claimed against, the Vendor as a result thereof.

(g) Notwithstanding the occupancy of the Residential Unit and the delivery of title thereto, the Vendor or any person authorized by it shall be entitled at all reasonable times (except in the case of an emergency or perceived emergency, in which event the Vendor shall have immediate entry into the Property) to enter the Property in order to make inspections or to do any work or repairs therein or thereon which may be deemed necessary by the Vendor in connection with the completion, rectification or servicing of any installation in the Property and such right shall be in addition to any rights and easements created under the Act.

(h) In the event the Purchaser does not notify the Vendor or the Vendor's Solicitors, in writing, of the name, address, phone number and facsimile number of the Purchaser's retained solicitor, at least 30 days prior to the Occupancy Date, then the Purchaser shall be obliged to pay to the Vendor's Solicitors (or correspondingly reimburse the Vendor on the Occupancy Date or Closing Date, as the case may be) all additional legal fees and ancillary disbursements (including without limitation, all additional photocopying and delivery charges) which may be incurred by the Vendor or charged by the Vendor's Solicitors in order to prepare and deliver an interim or final closing package to the Purchaser initially (and/or to thereafter subsequently prepare and deliver another interim or final closing package to the Purchaser's Solicitors) with the Vendor's Solicitor's legal fees for implementing same being a minimum of $350.00 plus HST, for each additional interim or final closing package, and with such fees being subject to increase, from time to time, without any requirement or obligation to notify the Purchaser of same prior to closing. If the Purchaser notifies the Vendor or the Vendor's Solicitors of a change in the Purchaser's Solicitors (i.e., the Purchaser retaining a different lawyer) after the interim closing or final package (as the case may be) has already been prepared for the original Purchaser's Solicitors, then the Purchaser shall likewise be obliged to pay a minimum of $350.00 plus HST, to the Vendor or the Vendor's Solicitors in order to reimburse the Vendor for its legal fees incurred in preparing a second interim closing or final closing package for the subsequent Purchaser's Solicitors. All such required payments shall be made by certified cheque to the Vendor's Solicitors and paid on the Occupancy Date or the Closing Date (as the case may be).

(i) The Purchaser covenants, acknowledges and agrees that during the Interim Occupancy Period, the Purchaser shall not be entitled to make any alterations or additions to the Property, or to install any construction changes, finishes or items to the Property without the prior written consent to the Vendor, which consent may be unreasonably withheld or delayed. If written approval of the Vendor is provided to the Purchaser, the Vendor may, at its option, require the Purchaser to provide a letter of credit, in a form satisfactory to the Vendor, acting reasonably, and to be issued by a Schedule I Canadian chartered bank and for an amount payable to the Vendor equal to 125% of the costs of all alterations, additions or other construction changes to the Property as confirmed by construction contractor contracts with parties acceptable to the Vendor, acting reasonably, which shall include, but is not limited to, any works which may require changes to duct work, electrical connections and other common building services and/or involves a permanent installation of fixed items within and to the Property shall be carried out and completed in a good and workmanlike manner by trades designated by the Vendor, in its absolute discretion, and in accordance with all applicable statutory laws and regulations. The letter of credit is also intended to provide security which, in addition to the deposits then paid by the Purchaser to the Vendor's Solicitors, in the event the Purchaser fails to complete this purchase and sale transaction with the Vendor on the Closing Date, may be applied by the Vendor, in the event of such default, in the same manner as the deposits paid initially to the Vendor's Solicitors, and as more particularly described in Paragraphs 24 to 26 of this Schedule "A". The letter of credit will not reduce or limit the Purchaser's liability for any damage or losses which the Vendor may suffer or incur as a result of the Purchaser's activities which arise from or are connected to the Purchaser's works. In addition, the letter of credit is to provide security for any damage to the Building caused by the Purchaser, or its trades and invitees, in undertaking any of the Purchaser's own alterations, additions or other construction changes to the Property. The Purchaser agrees to indemnify and save harmless the Vendor from any damages, costs or expenses incurred by the Vendor as a result of a breach of this provision by the Purchaser. The Purchaser shall be permitted to reduce the letter of credit, by way of drawn down, of up to 80% thereof only for the purpose of paying the Purchaser's trades provided no later than five (5) days (excluding Saturdays, Sundays and statutory holidays) prior to the intended draw down(s) the Purchaser provides a certificate addressed to the Vendor and the Mortgagee confirming that the monies are being drawn down solely for the purpose of paying the Purchaser's trades and subtrades. Prior to undertaking any approved installation, construction changes, finishes or items, the Purchaser shall be obliged to provide a policy of liability insurance to the Vendor noting the Vendor as an additional named insured, in such amount, terms and from an insurer acceptable to the Vendor, acting reasonably. Notwithstanding any consent or permission granted by the Vendor, the Purchaser acknowledges that between the date of final submission by the declarant or its consultant the "as built" plans for the Condominium to the relevant Governmental Authorities for approval and registration of the plan of the Condominium, no further work by the purchaser involving the relocation of partition walls, plumbing, electrical or mechanical (or other) systems will be permitted in order to facilitate final inspection by the Governmental Authorities and approval for registration of the Condominium.

(j) Notwithstanding any provision to the contrary in this Agreement, in the event that the Purchaser has not provided to the Vendor, on or prior to the Occupancy Date, evidence, acceptable to the Vendor in its sole and absolute discretion, of his or her ability to complete the transaction on the Closing Date, then the Vendor shall be permitted to refuse to permit the Purchaser occupancy of the Residential Unit and the Vendor shall be further permitted to consider the Purchaser to be in fundamental breach of this Agreement entitling the Vendor to forfeit the deposits and terminate the Agreement, without prejudice to any other right set out in the Agreement and at law.

(k) If any utility supply and services agreement requires the Purchaser to deliver a security deposit to a utility provider prior to the Occupancy Date, the Purchaser agrees to deliver such security deposit to the Vendor on the Occupancy Date.

3. **TITLE**

(a) The Vendor shall not be obligated to obtain or register on title to the Property a release of any of the Permitted Encumbrances, nor shall the Vendor be obliged to remove any of the Permitted Encumbrances, and the Purchaser shall satisfy himself or herself as to compliance therewith. If there are any outstanding work orders pertaining to the

Condominium on either of the Occupancy Date or the Closing Date, the Vendor shall take reasonable steps, within its discretion, to assure any relevant Governmental Authority that such outstanding work will be attended to and, notwithstanding the existence of such notice or work orders, the Purchaser shall complete this transaction and accept the Vendor's undertaking to rectify and/or repair any work which is the subject of such outstanding work orders within a reasonable time thereafter.

(b) If the Property is encumbered by one or more mortgages, charges, debentures or trust deeds in favour of a Mortgagee that are not to be assumed by the Purchaser, the Purchaser shall accept the Vendor's written undertaking to discharge the same from title within a reasonable time after the Closing Date, provided such undertaking of the Vendor is accompanied by a written statement from the Mortgagee confirming the amount required to be paid to obtain a discharge with respect to the Property, a direction from the Vendor directing payment of the amount specified by such Mortgagee, and an undertaking of the Vendor's Solicitors to register such discharge as and when received.

(c) The Purchaser shall execute all documents, without payment by the Vendor, which may be reasonably required in order to convey or confirm the Permitted Encumbrances and shall, if required by the Vendor, extract a similar covenant in any agreement entered into with any subsequent purchaser.

(d) The Vendor shall have a vendor's lien for unpaid purchase monies on Closing and shall be entitled to register a notice of lien against the Property any time on or after the Closing Date.

(e) This Agreement shall be subordinated to and postponed to any mortgages on the Lands arranged by the Vendor and any advances made thereunder from time to time.

(f) This Agreement is personal to the Purchaser, and does not create an interest in, or a right to a lien against the Property, the Building and/or the Lands. The Purchaser shall not register, or cause to be registered on title, notice of this Agreement nor any notice thereof, nor any caution with respect thereto, nor any certificate of pending litigation or other similar court process, nor shall the Purchaser give, register or permit to be registered any encumbrance against the Lands or sell, encumber or make any other disposition of the Property, until after the Closing Date. Without limiting the generality of the foregoing, the Purchaser on his or her behalf and for his or her assigns and successors, further agrees that neither the Purchaser nor his or her assigns and successors shall be entitled to register against the title of the Lands or Property any of the documents referred to above either before or after the Closing in order to secure a purchaser's lien and/or a right to specific performance, even if there is a default or breach in this Agreement by the Vendor. The Purchaser and his or her assigns and successors hereby elect to pursue any remedy they may have against the Vendor as an action for damages only, and not specific performance, and further waive any right to a purchaser's lien against title to the Lands and Property.

(g) The deed/transfer of the Property may contain the covenants and restrictions referred to in this Agreement. The Purchaser hereby shall abide by such covenants and restrictions after the Closing Date, and, if the Vendor so requires, the Purchaser shall exact similar covenants and restrictions from any immediate successors in title to the Property, all of which shall be assigned to and for the benefit of the Vendor.

Without limiting the generality of the foregoing, the Purchaser agrees that if any contemplated and/or required rights of way, easements licences or leases have not been determined or registered on the Closing Date, then:

(i) the transfer of the Property to the Purchaser may contain a covenant by the Purchaser personally and for his or her successors and assigns to grant any additional easements, rights of way, licences or leases as may be required by the Vendor, declarant, developer or any Governmental Authority, utility or service provider or monitor;

(ii) the Purchaser personally and for his or her successors and assigns shall be obliged to grant such easements, rights of way, licences and easements even if there is no covenant to do so in the transfer;

(iii) the Purchaser shall execute all documents without charge which may be required to convey or confirm any such easements, rights of way, licences and/or leases; and,

the Purchaser shall obtain a similar covenant in any purchase agreement entered into between the Purchaser and any subsequent purchaser, whether or not the covenant is in the transfer given to the Purchaser on the Closing Date.

4. **REQUISITIONS**

Provided that the title to the Property is good and free from all encumbrances, except the Permitted Encumbrances and save as otherwise set out in this Agreement, the Vendor shall notify the Purchaser or the Purchaser's Solicitors within a reasonable period of time after the registration of the Condominium Documents (the "**Notification Date**") and the Purchaser is to be allowed ten (10) days after the Notification Date to examine the title to the Property at his/her own expense, and shall not call for the production of any surveys, title deeds, abstracts of title, grading certificates, occupancy permits or certificates, nor any other proof or evidence of the title or occupiability of the Property. If within the aforementioned time period the Purchaser furnishes the Vendor in writing with any valid objection to title which the Vendor shall be unable or unwilling to remove, or which is not capable of being covered by title insurance at the Purchaser's cost, and which the Purchaser will not waive, then this Agreement shall, notwithstanding any intervening acts or negotiations, be null and void, and all deposit monies theretofore paid shall be returned to the Purchaser with interest, from the date of termination, at the rate prescribed under the Act, save for deductions for any extras ordered by the Purchaser from the Vendor and then unpaid and a reasonable sum for the cost of repairing and cleaning the Property as a result of the Purchaser occupying the Property during the Interim Occupancy Period, and the Vendor shall have no further liability or obligation hereunder and shall not be liable for any costs or damages thereby. Save as to any valid objection so made within such time, the Purchaser shall be conclusively deemed to have accepted the title to the Property. Notwithstanding anything contained in this Agreement or in the Act or any other applicable legislation, where any encumbrance is registered on title and a discharge, or release thereof is tendered for registration, the same shall be deemed to have been discharged for all purposes on acceptance for registration, notwithstanding that the relevant registers have not yet been certified to reflect such registration. The Purchaser acknowledges that the Vendor may respond to requisitions by a standard title memo or title insurance binder (if the Vendor elects to provide, at the Purchaser's cost, title insurance) and the same shall be deemed to be a satisfactory manner of response.

5. **TENDER**

(a) Any tender of documents or monies hereunder may be made on the Vendor or the Purchaser, or upon their respective solicitors, and money shall be tendered by negotiable cheque certified by a Canadian chartered bank, a Canadian trust company or by electronic transfer of funds.

(b) Any tender that can be made on the Occupancy Date shall be by attendance or delivery at the Vendor's Solicitors' office between the hours of 10:00 a.m. and 12:00 p.m. or between the hours of 2:00 p.m. and 4:00 p.m., on no less than one (1) hour's advance written notice. Under no circumstances shall the Vendor's Solicitors be obliged to tender at the offices of the Purchaser's Solicitors. If at any time prior to the Occupancy Date and/or the Closing Date, the Purchaser or his or her solicitor states in writing:

(i) to the Vendor; or

(ii) to the Vendor's agent; or

(iii) to a solicitor or employee of the Vendor's Solicitors,

that the Purchaser is unable or unwilling to complete the sale, then the Vendor or the Vendor's Solicitors may terminate this Agreement with liability to the Purchaser and the Vendor is relieved of any obligation to make any tender, or to complete construction of the Property. The written statement by the Purchaser or his or her solicitor of an unwillingness or inability to close during a negotiation or within a written offer (even if purportedly or actually made without prejudice) is deemed nevertheless to be a "with prejudice" submission of an inability or unwillingness to close for the purposes of this Agreement.

(c) Since the Teraview Electronic Registration System ("**TERS**") is operative in respect of the Lands, the Purchaser shall be obliged to retain a solicitor who is both an authorized TERS user and in good standing with the Law Society of Upper Canada, and shall authorize such solicitor to enter into the Vendor's Solicitors' standard form of escrow closing agreement (the "**DRA**"), establishing the procedures and timing for completing this transaction, to be delivered by the Vendor's Solicitors to the Purchaser's Solicitors no later than 5 days prior to the Closing Date. The delivery and exchange of documents and monies shall not occur contemporaneously with the registration of the transfer/deed but shall be governed by the DRA. The Purchaser shall not be entitled to receive a transfer/deed to the Property until all of the Purchaser's requisite closing documents are delivered to the Vendor's Solicitors and the balance of funds due on Closing are either remitted by certified cheque or by electronic funds transfer. An effective tender shall be deemed to have been validly made upon the Purchaser without the necessity of personally attending upon the Purchaser or the Purchaser's Solicitors when the Vendor's Solicitors have:

(i) delivered all of the Vendor's closing documents in accordance with the DRA, it being acknowledged by the Purchaser that keys to the Property shall be delivered, in escrow, to the Purchaser's Solicitors (in the event that occupancy has not already occurred);

(ii) advised the Purchaser's Solicitors, in writing, that the Vendor is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and,

(iii) completed all steps required by TERS in order to complete the transaction that can be performed by the Vendor's Solicitors without the co-operation or participation of the Purchaser's Solicitors and the "**completeness signatory**" for the transfer/deed has been electronically "**signed**" by the Vendor's Solicitors.

6. **ADJUSTMENTS**

(a) Unused Occupancy Fees for the Interim Occupancy Period, all utility costs including electricity, gas and water (unless included as part of the common expenses or payable by the Purchaser during the Interim Occupancy Period), realty taxes (including any local improvement rates), interest on the unpaid balance of the Purchase Price and common expense contributions, attributable to the Property, shall be apportioned and allowed to the Closing Date, with that day itself to be apportioned to the Purchaser.

(b) The Purchaser shall provide the Vendor on Closing with twelve (12) monthly post-dated cheques payable to the Condominium Corporation for common expense contributions for the one year period following the Closing Date or, alternatively, and in lieu of the provision of the afore-referenced twelve (12) monthly post-dated cheques, the Vendor shall be entitled to require the Purchaser to complete all requisite account information in, and correspondingly execute and deliver to the Vendor's Solicitors on or before the Closing Date, a pre-authorized cheque plan form prepared by the Vendor's Solicitors or by the Vendor directly for the payment of all common expenses hereafter due or owing to the Condominium in respect of the property, from time to time, accompanied by an unsigned cheque marked "void" from the Purchaser's bank account on which all such common expense payments shall be drawn or deducted.

(c) Realty taxes which shall be adjusted as assessed, or as estimated by the Vendor as if the Property had been separately assessed and fully paid by the Vendor, notwithstanding that same may not have been levied, assessed and/or paid by the Closing Date, shall be apportioned and allowed to the Closing Date, the Closing Date itself to apportioned to the Purchaser. If, in fact, any realty taxes attributable to the Property have not been paid in accordance with the manner that same have been adjusted for in the statement of adjustments, the Vendor shall provide the Purchaser on Closing with its written undertaking to pay same in accordance with the statement of adjustments forthwith after Closing and the Purchaser shall accept said undertaking and complete the transaction in accordance therewith. No readjustment of taxes will be requested or given for an amount which is $20.00 or less. In the event that the supplementary assessment has been issued by the Municipality by the Closing Date, realty taxes shall be adjusted on the basis of the vacant land tax and supplementary assessment, notwithstanding that same may not have been paid by the Closing Date and the Vendor shall provide its written undertaking to pay in accordance with the adjustments.

(d) The Purchaser shall also pay to the Vendor on the Closing Date, together with all HST payable in connection therewith:

(i) the sum of $400.00 per check or consumption meter to partially reimburse the Vendor for the cost of supply and installation of each water (hot and cold), hydro and gas (if applicable) check or consumption meter installed in or connected to the Residential Unit;

(ii) the amount of the enrolment fee for the Property payable pursuant to the Plan Act;

(iii) the insurance levy payable by the Vendor or the Vendor's Solicitors to the Lawyers Professional Indemnity Company or, if title insurance is provided by the Vendor, the portion of the premium attributable to the Property; and

(iv) the sum of $225.00 plus HST for the preparation by the Vendor's Solicitors of the transfer for the Property.

Regarding the adjustment contemplated at subsection 6(d)(iii) immediately above, the Purchaser shall not be obliged to pay to the Vendor the afore-referenced insurance levy if the Purchaser obtains a title insurance policy from an insurance company on the approved list of the Lawyers' Professional Indemnity Company insuring all transferees and chargees obtaining an interest in the Property and is otherwise in compliance with Endorsement No. 2, Real Estate Transaction Levy Surcharge – Professional Liability Insurance Policy, as amended, together with all related and ancillary policies and rules.

(e) An administration fee of $500.00 plus HST for each amendment to the Agreement or any of the Vendor's standard form transaction documents shall be charged to the Purchaser for each such amendment requested by, or on behalf of, the Purchaser after the expiry of the initial ten-day statutory rescission period.

(f) An administration fee of $250.00 plus HST shall be charged to the Purchaser for any cheque delivered to the Vendor and returned by the Vendor's bank.

(g) If the Purchaser desires to increase the amount to be paid on the Occupancy Date at any time after the expiry of the initial ten-day statutory rescission period, or wishes to vary the manner in which the Purchaser has previously requested or

indicated by execution of this Agreement to take title to the Property, or wishes to execute the documents required to complete the interim occupancy and/or final closing of this transaction under power of attorney, or wishes to add or change any units being acquired from the Vendor, then the Purchaser hereby covenants and agrees to pay to the Vendor's Solicitors the legal fees and/or disbursements incurred by the Vendor (which shall be in the minimum amount of $500.00 plus HST) in order to implement any of the foregoing changes but without there being any obligation on the part of the Vendor to approve of, or to implement, any of the changes so requested.

(h) The Purchaser shall provide the Vendor on the Closing Date and as the Vendor shall direct, a security deposit payable to the Condominium or any utility monitor/provider equal to three (3) months of estimated electricity, gas and water (hot and cold) consumption or such other estimated amount determined by the Condominium or any utility monitor/provider. In an effort to facilitate payment to the Condominium or any utility monitor/provider for the cost of utility consumption the Purchaser shall execute and deliver to the Vendor's Solicitors on or before the earlier of the Occupancy Date or the date that the Purchaser first occupies the Residential Unit an authorization form for a pre-authorized payment plan for the applicable charges (in the form provided to the Purchaser's Solicitors by the Vendor's Solicitors) accompanied by an unsigned cheque marked "VOID" from the bank account to be used for making all such payments to the Condominium or any utility monitor/provider.

(i) The Purchaser shall pay to the Vendor or the Vendor's Solicitors on the Closing Date the sum of $75.00 plus HST for each payment tendered under this Agreement, including any payment by cash, cheque or otherwise, for deposits, upgrades or any other monies paid on account of the Purchase Price up to, but not including, the Closing Date, representing a reasonable reimbursement to the Vendor of the costs incurred or to be incurred by the Vendor in fulfillment of the requirements of the Act.

(j) The Purchase Price does not include any amount for reimbursement of development charges, education development charges, parkland contributions, public art contributions, amounts owing pursuant to a Section 37 Agreement or similar agreement with the City, or any other levies, charges and similar imposts from a governmental authority (the "Charges"). The Purchaser acknowledges and agrees that it is obliged to pay and/or reimburse the Vendor for the amount of any Charges incurred by the Vendor, either on a per-unit basis, where the Charges are calculated on a per-unit basis, or on a pro-rata basis where the Charges are calculated on the development as a whole. Despite the provisions set out above, the parties hereby agree to the following limits on the individual components of the Charges as follows: (i) for development charges on units with 1 bedroom or less, $4,900; (ii) for development charges on units with 2 bedrooms or more, $7,900; (iii) for parkland contributions, $1,200 per residential unit; (iv) for amounts owing pursuant to Section 37 Agreements or public art contributions, $950 per unit.

(k) An administration fee of $75.00 plus HST to be charged to the Purchaser per occurrence for each change by the Purchaser in the form of funds tendered to the Vendor, including, without limitation, replacement of post-dated cheques and change in method of payment.

(l) An administration fee of $50.00 plus HST to be charged to the Purchaser at the time of request for each additional copy (hard copy or digital) of this Agreement or Schedule or Condominium Documents requested by the Purchaser.

(m) An administration fee of $100 plus HST to be charged to the Purchaser for each wire transfer.

(n) The Purchaser shall pay, on the Closing Date, a contribution to the reserve fund of the Condominium which will be equal to an amount of three (3) months of common expenses for the Condominium.

(o) The Purchaser shall pay the Vendor's Solicitor's legal fees (plus disbursements and HST) for the cost of obtaining and preparing partial cessations for any mortgages, charges, debentures or trust deeds to be adjusted on the Statement of Adjustments on the Closing Date.

Any reference to "Vendor" in this paragraph, as it pertains to payment and/or reimbursement of items in this paragraph, shall include the declarant and a related or affiliated entity of the Vendor or declarant.

Notwithstanding any other provision herein contained in this Agreement, the Purchaser acknowledges and agrees that the Purchase Price does not include any HST exigible with respect to any of the adjustments payable by the Purchaser pursuant to this Agreement, or any extras or upgrades purchased, ordered or chosen by the Purchaser from the Vendor which are not specifically set forth in this Agreement, and the Purchaser covenants and agrees to pay such HST to the Vendor in accordance with the ETA. In addition, and without limiting the generality of the foregoing, in the event that the Purchase Price is increased by the addition of extras, changes, upgrades or adjustments and as a result of such increase, the quantum of the Rebate (hereinafter defined) that would otherwise be available is reduced or extinguished (the quantum of such reduction being hereinafter referred to as the "**Reduction**") then the Purchaser shall pay to the Vendor on the Closing Date (as determined by the Vendor in its sole discretion) the Reduction.

7. FINANCIAL INFORMATION

The Purchaser covenants and agrees to provide credit information so as to establish the ability of the Purchaser to perform his/her obligations hereunder within sixty (60) days of acceptance of this Agreement. In addition, the Purchaser hereby covenants and agrees to provide, from time to time, within five (5) days after the Vendor's request, credit information required by the Vendor so as to establish the continuing ability of the Purchaser to perform his or her obligations hereunder, and specifically, the Purchaser shall provide the Vendor with an updated mortgage commitment ten (10) days prior to the Occupancy Date confirming that the mortgage commitment is still in good standing and verifying that the Purchaser will have the financial resources to pay the unpaid balance of the Purchase Price on Closing. The Purchaser is hereby notified that a consumer's report containing credit and personal information may be obtained and referred to at any time in connection with this transaction and the Purchaser hereby consents to such report being obtained by the Vendor and/or any Mortgagee. If the Purchaser has not provided the aforesaid credit information within the aforesaid time period, the Purchaser shall be deemed to be in default under this Agreement.

The Purchaser shall, prior to the expiration of the condition period provided for under the Tarion Addendum, if any (the "**Purchaser Financing Condition**") produce evidence of a satisfactory mortgage commitment signed by a lending institution or other mortgagee acceptable to the Vendor, confirming that the said lending institution or acceptable mortgagee will be advancing funds to the Purchaser sufficient to pay the balance due on Closing. The Purchaser shall execute an irrevocable direction acceptable to the Vendor as to form and substance whereby the Purchaser directs such lending institution to pay the net proceeds of all advances pursuant to said commitment directly to the Vendor or as the Vendor may direct. The Vendor may, in its sole discretion, elect to accept in the place of the mortgage commitment, other evidence satisfactory to the Vendor that the Purchaser will have available sufficient funds to pay the balance due on Closing. If the Purchaser fails to provide the mortgage commitment as aforesaid on or before the expiry of the Purchaser Financing Condition, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in the Agreement and/or at law.

8. PLANNING ACT COMPLIANCE AND CONDOMINIUM REGISTRATION CONDITIONS

This Agreement (and the completion of this transaction) shall be conditional upon compliance with the subdivision control and part lot control provisions of the *Planning Act* R.S.O. 1990, as amended, and the concomitant registration of this Condominium under the Act, which compliance and condominium registration shall be obtained by the Vendor at its sole cost, failing which (in the absence of any extension of the Closing

established or implemented by the Vendor pursuant to and in accordance with the provisions of the Tarion Addendum) this Agreement shall automatically be terminated and have no further force and effect, and the Vendor and the Purchaser shall have no further liabilities or obligations hereunder, and neither of the parties hereto shall thereafter be liable to the other for any costs and/or damages that may be suffered or incurred by them in connection with this Agreement or the termination thereof as a result of any such non-registration of the Condominium, save and except for any delay of closing compensation that may be payable by the Vendor to the Purchaser in connection therewith pursuant to the provisions of the Tarion Addendum and except for any damage to the Residential Unit by the Purchaser during the Interim Occupancy Period. Upon such termination all deposits paid towards the Purchase Price shall be refunded to the Purchaser, together with all interest earned and accrued thereof at the rate prescribed by the Act and save for any deduction for the costs or price of any extras ordered by the Purchaser and as yet unpaid or any damage to the Residential Unit.

9. **PURCHASER'S SALE OR ASSIGNMENT**

The Purchaser covenants not to list for sale or lease, enter into any offer to sell or lease, advertise for sale or lease, sell or lease or in any way assign or encumber his or her interest under this Agreement, or in the Property, prior to Closing without the prior written consent of the Vendor, which consent may be arbitrarily withheld or delayed. The Purchaser acknowledges and agrees that once a breach of this covenant occurs, the Vendor shall have the unilateral right and option of terminating this Agreement, effective upon delivery of notice of termination to the Purchaser or the Purchaser's Solicitors, whereupon the provisions of this Agreement dealing with the consequence of termination by reason of the Purchaser's default, shall apply (inclusive of forfeiture by the Purchaser of all deposit monies and other amounts theretofor paid).

10. **CONSTRUCTION MATTERS AND WARRANTIES**

(a) The Vendor hereby notifies the Purchaser that a "Homeowner Information Package" (the "**HIP**") is available from the Warranty Program. The Vendor shall deliver a copy of the HIP to the Purchaser at a point in time after the acceptance of this Agreement and, in any event at or before the inspection provided for in subparagraph (b) below.

(b) Within seven (7) Business Days after notification by the Vendor, the Purchaser agrees to meet the Vendor's representative either personally or in the company of a designate of the Purchaser or through such designate alone at a time which is mutually convenient to the Purchaser and the Vendor, both acting reasonably, prior to the Occupancy Date to inspect the Property (the "**PDI**"), and to complete the Warranty Program "Certificate of Completion and Possession", the PDI form and the "Confirmation of Receipt" of the HIP form and any other requisite documents all as prescribed from time to time, and required to be completed under, the provisions of the Plan Act (the "**Tarion Forms**"). The Purchaser shall be permitted to send a designate to conduct the PDI in the Purchaser's place or attend with their designate, provided the Purchaser first provides to the Vendor a written authority in form acceptable to the Vendor, appointing such designate for the PDI no later than two (2) Business Days prior to the PDI. If the Purchaser appoints the designate, the Purchaser acknowledges and agrees that the Purchaser shall be bound by all of the documents executed by the designate in the same degree and with the force and effect as if executed by the Purchaser directly. The Tarion Forms shall list all deficiencies, substitutions or items that cannot be inspected because they are dirty, incomplete or missing and shall confirm the Occupancy Date. The Tarion Forms shall be executed by both the Purchaser and the Vendor's representative forthwith after such inspection, and the Tarion Forms shall constitute the Vendor's only undertaking with respect to incomplete or deficient work. In the event that the Vendor performs any additional work to the Property in its discretion, the Vendor shall not be deemed to have waived the provision of this paragraph or otherwise broadened its obligations hereunder. The Vendor shall use its reasonable commercial efforts (having regard to weather conditions, the Vendor's building schedules, the availability of supplies and services and the Vendor's ability to access the Property) to complete or remedy all items listed in the Tarion Forms in accordance with the Plan Act. No further request for completion of items may be maintained by the Purchaser, and this shall serve as a good and sufficient release of the Vendor in that regard. The Purchaser further acknowledges and agrees that any warranties of workmanship or materials in respect of any aspect of the construction of the Property or of the common elements of the Condominium, whether imposed by law, equity or any legislation, shall be restricted to only those warranties deemed to be given by the Vendor under the Plan Act, and shall extend only for the period and in respect of those items stipulated or covered by the Warranty Program. The Purchaser acknowledges that he/she may be disentitled to the statutory warranties stipulated or covered by the Plan Act if the Property is not initially occupied by the Purchaser. Under no circumstances whatsoever shall the Purchaser or the Condominium Corporation have any claim against the Vendor for any alleged deficiencies or defects of materials or workmanship other than as provided for in the Plan Act.

(c) Under no circumstances whatsoever shall the Purchaser or the Condominium be able to claim:

(i) against the Vendor for any other alleged deficiencies or defects of materials or workmanship; and

(ii) against the Vendor and any other entity or person related to or affiliated with the Vendor for any alleged deficiency or defects arising therefrom including, without limitation, claims arising in negligence or nuisance.

For greater clarity and without limiting the generality of the foregoing provisions in this Paragraph 10, the Purchaser agrees that:

(i) neither the Purchaser nor the Condominium in respect of the common elements of the Condominium shall have any remedy or right of action except for the warranty claim against the Vendor or declarant of the Condominium alone for the warranties prescribed in the Plan Act;

(ii) the Purchaser in respect of the common elements of the Condominium hereby releases the Vendor, its servants, agents, employees, directors and officers from any and all remedies, claims and causes of action (including causes of action and negligence and nuisance and any rights that may be taken against the Vendor or the declarant by third party proceedings, except the warranty rights (if any) against the Vendor alone granted by the Plan Act); and,

(iii) the Purchaser agrees that this Paragraph 10 constitutes and may be pleaded by the Vendor or any of its servants, agents, employees, officers, professional consultants, trades and suppliers and any action brought against any of them by the Purchaser or the Corporation as a complete defence, including the defences of waivers, estoppel and release.

(d) The Purchaser on behalf of himself/herself and the Condominium Corporation in respect of the common elements of the Condominium hereby releases the Vendor, its servants, agents, employees, directors and officers from any and all remedies, claims and causes of action including negligence and nuisance and any actions that may be taken against the Vendor by third party proceedings except the warranty rights against the Vendor granted by the Plan Act. In addition, the Purchaser acknowledges that he or she will not have any claim for damages or nuisance arising from any delay in completing the common elements.

(e) The Vendor shall complete the common elements of the Condominium and the Property other than the Residential Unit as soon as is reasonably practicable, but the failure of the Vendor to complete the common elements, and/or the Property as aforesaid as soon as reasonably practicable or beyond the minimum standards required by the Municipality in order to permit occupancy thereof, on or before the Occupancy Date, shall in no event entitle the Purchaser to refuse to take possession of the Property and/or close the within transaction, or to fail to remit to the Vendor the entire amount of purchase monies required to be paid by the Purchaser hereunder, or to maintain any holdback of any part of the Purchase Price or of the Occupancy Fee.

(f) The Purchaser acknowledges and agrees that any warranty certificate contemplated will be issued after the Occupancy Date and issuance of the said certificate shall not be a condition to the completion of the purchase and sale transaction, nor a condition to the Purchaser performing its obligations under this Agreement.

(g) The attendance and completion of the inspection and the endorsement of the Tarion Forms by the Purchaser or the Purchaser's designate and the Vendor as contemplated in this Agreement are prerequisites of the Vendor's obligation to provide occupancy of the Residential Unit to the Purchaser and to complete this transaction on the Occupancy Date. In the event that the Purchaser fails to attend and complete the inspection and endorsement of the Tarion Forms, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement and/or at law. Alternatively, if the Purchaser fails to attend the aforesaid inspection, the Vendor may, at the Vendor's discretion, complete the Tarion Forms on behalf of the Purchaser, and the Purchaser hereby irrevocably appoints and authorizes the Vendor to act as his/her lawful attorney, in order to execute the Tarion Forms issued pursuant to the Plan Act.

(h) The Vendor is not responsible beyond the warranties in the Plan Act for the repair and/or rectification of any work resulting from ordinary settlement of the Property or the Condominium including (but not limited to) driveways, walkways, internal roads, patio stones, sodded areas, or for any damage to improvements or decorations caused by warpage, twisting or material shrinkage. The Purchaser further acknowledges and agrees that the Vendor shall not be liable for any secondary or consequential damage (of any kind whatsoever) resulting from any defects in material design or workmanship related to the development or construction of the Condominium. Without limiting the generality of Paragraph 10(o) of this Agreement, from and after the Occupancy Date and continuing after Closing, the Vendor shall not be responsible for any damage to any improvements, fixtures, furnishings or personal property made by the Purchaser to the Property resulting from (i) any act or omission to act of the Vendor or anyone under its direction or control, in completing outstanding matters of, or deficiencies in construction, (ii) any damage or delays and attendant costs caused by the Purchaser or any person with whom the Purchaser has had direct dealings for the upgrading and/or installation of materials or equipment or (iii) any damage caused by the use of the Property by the Purchaser, or his/her family, guests or pets.

Without limiting any other provisions of this Agreement, any arrangements by the Purchaser directly with subcontractors or others for upgrading and/or installation of materials or equipment does not form part of this Agreement, and the Vendor shall have no responsibility therefore whatsoever under this Agreement or the Plan Act. Such upgrading and/or installation may be carried out only after the Purchaser obtains the Vendor's written consent concerning the date(s) and the exact nature of the work to be done, and the Purchaser shall comply with the Vendor's requirements in order that completion of the Property and the condominium registration not be delayed. Where such direct Purchaser upgrading and/or installation arrangements are so undertaken, the Vendor shall not be responsible for any delays in completion of the Unit (including any delays in having the Property substantially completed sufficient to permit occupancy thereof by the Occupancy Date, or Closing, as the case may be) nor for the attendant costs, inconvenience and damages to the Purchaser occasioned thereby. The Purchaser shall indemnify and save harmless the Vendor from and against all claims, demands, losses, damages, injuries, costs, charges and expenses which the Vendor may sustain, incur or be liable for in consequence of such upgrading and/or installation.

(i) The Vendor may, from time to time in its sole discretion, or as required by any Governmental Authority or the Mortgagee, change, vary or modify the plans and specifications pertaining to the Property or the Condominium (including architectural, structural, engineering, landscaping, grading, mechanical, electrical, site service or other plans) from the plans and specifications existing at the time the Purchaser has entered into this Agreement, or as same may be illustrated in any Schedule to this Agreement, the proposed Condominium Documents, any sales brochure, model, sales office or otherwise, and the Purchaser shall have absolutely no claim or cause of action whatsoever against the Vendor or its agent(s) for any such changes, variances or modifications, nor shall the Purchaser be entitled to any notice thereof. Where any such change, variation or modification is material or substantial in nature, the Purchaser's only recourse and remedy shall be the termination of this Agreement within 10 days after the Purchaser is notified or otherwise made aware of the material change as provided for in the Act and the return of the deposit monies paid under this Agreement, together with interest accrued thereon from the date of notification at the rate prescribed by the Act. The Purchaser acknowledges that the unit number, model and type of Residential Unit herein described, or as may be pictorially represented in any schedule to this Agreement, models, drawings, illustrations or renderings, may have a reversed architectural lay-out. The Purchaser further expressly acknowledges that the Vendor's ability to change, vary or modify plans and specifications is an essential requirement for the successful completion of the project. As a result, the Vendor may alter the model and type of the Residential Unit purchased by the Purchaser and/or the unit number, model, type and/or size of the other residential units in the Condominium. The Purchaser further expressly acknowledges that the Vendor's ability to change, vary or modify the plans and specifications pertaining to the Property is an essential requirement for the successful marketing and completion of the project (which is agreed to be to the mutual benefit of the Vendor and all unit purchasers) and in consideration of the Purchaser assuming this risk of potential major or minor changes to the Property, the Purchaser acknowledges having received the benefit of a sale price which may (or may not) be lower than the prices that are (or may be) applicable to units comparable to the Residential Unit, when the same shall have been fully constructed and completed. If such alteration is material, the Purchaser may terminate the Agreement as herein provided and all monies heretofore paid by the Purchaser to the Vendor shall be returned with interest from the date of notification at the rate prescribed by the Act and the Vendor shall have no further liability or obligation hereunder and shall not be liable for any costs or damages in respect thereof. The Purchaser further acknowledges and agrees that:

(i) the relocation of the Parking Unit (if applicable) and Locker Unit (if applicable) to an area different from that shown to the Purchaser or shown on any plan; and

(ii) a reduction in the area or the existence of bulk heads, wiring, pipes, vents, fans and/or all utilities, services or columns that limit or reduce the size of a Parking Unit and/or Locker Unit, provided that the change meets or can in future be granted permission by a Governmental Authority to meet the requirements for a parking unit,

shall be deemed to be minor and the Purchaser shall not be entitled to compensation or to terminate this Agreement in respect of same.

If, in the sole discretion of the Vendor, it is necessary that an application to the Committee of Adjustment be processed subsequent to Closing in connection with any non-conforming parking unit, then the Purchaser does hereby consent to such application being made in the name of the Purchaser and hereby covenants to execute any documentation in connection with such application, without cost, forthwith upon the Vendor's request. In addition, the Purchaser hereby grants the Vendor the right and authority pursuant to a power of attorney to execute all such documentation in connection with such application.

(j) The Purchaser specifically acknowledges and agrees that the location of the drains, heating, cooling, boiler components/units and/or water tanks (or combination thereof) within the Residential Unit as may be presently depicted on any drawings, illustrations, renderings or models may, be relocated to different locations within the Residential Unit or the Condominium all in the Vendor's sole and absolute discretion. The Purchaser further acknowledges that any model suites displayed or to be displayed in the Vendor's sales office may include or contain items of finishing, furniture and/or equipment and/or be constructed with/by methods and materials which are not to be used or contained in the Property or included in the Purchase Price. The Purchaser further acknowledges that the Vendor may, from time to time in its sole discretion, for whatever reason, change, vary or modify the number, size and/or location of any windows, columns, steps and/or bulkheads within or adjacent to (or comprising part of) the Residential Unit, from the number, size and/or location

of same as displayed or illustrated in any schedule to this Agreement, sales brochures, models or floor plans previously delivered as shown to the Purchaser, including the insertion or placement of any windows, columns, steps and/or bulkheads in one or more locations within the Residential Unit which have not been shown or illustrated in any schedule to this Agreement, sales brochures, models or floor plans previously delivered and shown to the Purchaser (regardless of the extent or impact thereof) as well as the removal of any windows, columns, steps and/or bulkheads from any locations previously shown or illustrated in any Schedule to this Agreement, sales brochure, models in the sales office or otherwise. The Purchaser further acknowledges that the framing in of ducts, vents and/or pipes and other rough in work may result in bulk heads and box corners not otherwise indicated on the Vendor's present plans and/or specifications and may vary from unit to unit. The Purchaser further acknowledges that various types of flooring, such as, but not limited to, carpets, marble, tile and/or wood floors may result in different heights in the transitional areas between them, and that the Vendor may use thresholds as determined by the Vendor in the transition between such areas. The Purchaser further acknowledges that it may be necessary during construction of the Residential Unit to construct the exit from the interior to the balcony or terrace adjacent to the Residential Unit with one or more steps leading from the floor of the interior to the balcony and/or terrace. Furthermore, in calculating the height of the Residential Unit, the Consultant shall measure the ceiling height from the upper surface of the floor/slab (or joists) to the under side of the concrete ceiling slab. Where ceiling bulkheads and/or drop ceilings are installed within the Residential Unit and/or where drop ceilings are required, then the ceiling height of the Residential Unit will be less than that indicated on any plans, schedules and drawings and the consultant will measure ceiling heights without regard to bulkheads and drop ceilings and the Purchaser shall correspondingly be obliged to accept the same without any abatement or claim for compensation whatsoever.

(k) Notwithstanding anything contained in this Agreement to the contrary, if construction of the Residential Unit is not completed on or before the Occupancy Date or any extension thereof as hereinbefore contemplated, for any reason except for the Vendor's wilful neglect, or if the Purchaser cannot take possession of the Residential Unit on the Occupancy Date by reason of any fire, damage or other perils, hazards or damages whatsoever occasioned thereto, the Vendor shall not be responsible or liable for reimbursing the Purchaser for any costs, expenses, or damages suffered or incurred by the Purchaser as a result of such delay or damage, and specifically shall not be responsible for any costs and expenses incurred by the Purchaser in obtaining alternate accommodation pending the completion of construction of the Property or the rectification of the damage, nor for any costs incurred in having to store or move the Purchaser's furniture or other belongings pending such completion or rectification work, except such compensation as may be specifically paid under the Plan Act.

(l) The Vendor (its invitees, agents, trades and designees) shall have the right to enter upon the Property, after the completion of the within transaction, in order to complete and/or rectify those items required to be completed and/or rectified by the Plan Act, the Tarion Forms or as the Vendor requires. The Vendor shall complete and/or rectify same within a reasonable time after the Occupancy Date or Closing Date, as required by the Plan Act, having regard to the availability of equipment, materials and labour and access thereto.

(m) The Purchaser acknowledges and agrees that insofar as any wood finishes, marble tile, granite, carpeting, hardwood flooring, tiles, kitchen cabinetry or other manufactured finished materials installed within the Residential Unit by the Vendor are concerned:

(i) the colour, texture, grain and/or shading of such wood finishes, marble tile, granite, carpeting, hardwood flooring, tiles, kitchen cabinetry or other manufactured finished materials may vary from that of those selected by the Purchaser from the Vendor's samples due to the variations of shading, grain and dye lots produced or manufactured by the suppliers; and

(ii) the colour, finish and/or grain of wood products (including wood flooring) may vary from that of the wood selected by the Purchaser from the Vendor's samples, inasmuch as wood is a natural material which inherently cannot be precisely replicated or matched with other pieces of samples, thereby accounting for variations of colour, finish and/or grain even within the same lot or section of wood;

and the Purchaser shall accordingly be estopped from claiming any entitlement to any abatement of the Purchase Price, or any replacement (in whole or in part) of any wood finishes, marble tile, granite, carpeting, hardwood flooring, tiles, kitchen cabinetry or other manufactured finished materials so installed, or any other relief as a result or claim for compensation of the variations hereinbefore described or contemplated.

(n) The Purchaser acknowledges and agrees that the Vendor's obligations and liabilities with respect to the minimum quality of the construction of the Property in the Condominium and the timelines of warranty work are as set out in the Ontario Building Code, the Fire Code, the standards of the Municipality, the terms of any Permitted Encumbrances and the requirements of the Plan Act, all of which are binding on the Purchaser. For the purposes of this Agreement, such requirements mean the minimum statutory requirements of the Plan Act and all minimum standards and requirements set out in all Builder's Bulletins and Construction Performance Guidelines and other terms, standards, conditions and obligations set out in writing by the Plan Act and intended by it to be binding upon the Vendor. The Vendor shall not be obliged to build the Property and/or the Condominium or to compensate the Purchaser or perform warranty repairs to any other standard or criteria except in the minimum standards in accordance with the Plan Act or (if applicable) the Building Code or the Fire Code and/or any other applicable requirements of the Municipality or any other public authority or agency.

(o) The Purchaser acknowledges and agrees that the only legal duty owed by the Vendor, and the only warranties and representations the Purchaser will receive from the Vendor, are those written in this Agreement and the warranty provided by law under the Plan Act. There are no other express or implied legal duties or representations or warranties with respect to the Property or to any aspect of the construction of the Residential Unit. Any common law duties and representations, any common law alternative and/or concurrent remedies, and any implied duties or implied warranties at common law or by sales material or by the sales representative are excluded from this Agreement and waived by the Purchaser.

11. **FINISHES & APPLIANCES**

(a) Within fifteen (15) Business Days after notification by the Vendor, the Purchaser shall complete the Vendor's colour and material selection form for those items of construction or finishing for which the Purchaser is entitled to make selection pursuant to this Agreement, failing which the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement and/or at law or, in the alternative, the Vendor may complete the same in its sole and absolute discretion, on behalf of the Purchaser and the Purchaser shall be bound by the Vendor's selection and the Vendor shall not be liable for any delays in having the Property ready for occupancy on the Occupancy Date. The Purchaser acknowledges that the Vendor's scheduling requirements are paramount and that the Purchaser will be required to attend at times and locations selected by the Vendor specified above and a failure to attend to the appointment on the date and time fixed by the written notice is an act of default. The Purchaser acknowledges that any delay in making selections and/or re-selections may prejudice the Vendor's construction schedule and/or delay the Occupancy Date and/or the Closing Date. Except for direct orders approved in writing by the Vendor from suppliers as set out in the appointment or appointments, all selections must be made on the Vendor's form and will be made under the Vendor's usual terms and conditions which govern payment, selection, substitutions, completion, credits, refunds and limitations on selections, which terms and conditions are binding on the Purchaser.

The Purchaser acknowledges that only the items set out in Schedule C are included in the Purchase Price, and that furnishings, decor, improvements and samples shown in any sales brochure, models in the sales office or otherwise are for

conceptual and display purposes only and are not included in the Purchase Price unless specified in Schedule C. The Purchaser shall have no selection whatsoever insofar as exterior colours, designs and materials or finishings of the Condominium are concerned. The Purchaser further acknowledges that selections of exterior colours, designs and materials may be subject to architectural approval from a third party or the Municipality, over which the Vendor has no control. All selections of items of construction or finishing for which the Purchaser is entitled to make selection pursuant to this Agreement are to be made from the Vendor's samples. If the Purchaser's colour, material, construction or finishing selections are unavailable for any reason whatsoever, the Vendor shall give to the Purchaser twenty-one (21) Business Days' prior written notice of such unavailability, during which period, the Purchaser may make an alternate selection. If the Purchaser fails to make an alternate selection as aforesaid, the Vendor may substitute in its sole and absolute discretion, without the consent of the Purchaser, materials or finishing which are of equal or better quality, whether the same are different in colour and/or finish. The opinion of the Consultant as to the difference in quality is final and binding on the Purchaser.

The Purchaser agrees that the finishing materials shown or contained in any sales brochure and any model suite or sales centre (including, but not limited to broadloom, furniture, electrical and plumbing fixtures, countertops, appliances, flooring materials and wall finishes, upgraded kitchen cabinets, stained staircase and railing) may be for marketing and display purposes only, and may not be included in the Residential Unit or be of the same grade, type or quality as what is to be included pursuant to this Agreement. The Purchaser further acknowledges and agrees that both the choice of samples (either from the Vendor's samples or available from the Vendor's suppliers) and the upgrade prices are subject to change without notice. The Purchaser shall be entitled to send a designate to complete the Vendor's colour and material selection form(s) in the Purchaser's place, provided the Purchaser first provides to the Vendor a written authority, in form approved by the Vendor, appointing such designate. If the Purchaser appoints a designate, the Purchaser acknowledges and agrees that the Purchaser shall be bound by all the documents executed by the designate to the same degree and with the force and effect as if executed by the Purchaser directly.

(b) The Purchaser covenants and agrees to pay the Vendor, in advance, for all extras or changes (plus HST) specifically ordered by the Purchaser from the Vendor and to pay for the same forthwith upon demand. If this transaction does not close, by reason of the default of the Purchaser, the Vendor shall retain any sums so paid for extras or changes, whether installed or not, and shall not be obligated to return same to the Purchaser and the Vendor shall be allowed to deduct from any deposit or deposits paid to the Vendor any amounts remaining unpaid for extras or changes. Without limiting the generality of the foregoing, the Purchaser acknowledges and agrees that in the event the Purchaser proceeds to complete any selection of extras, upgrades or colours during the Purchaser's ten-day rescission period and should the Purchaser then proceed to cancel the Agreement during this time period, any monies paid towards selection shall not be refunded to the Purchaser and the Purchaser shall be fully liable for any outstanding amounts owing for any such extras, upgrades and colours ordered. The Purchaser further acknowledges and agrees that if this Agreement is not completed as a result of the Purchaser's default and if the Vendor deems it necessary to return the Residential Unit to the Vendor's standard colours or to remove any options and/or extras or colours specifically ordered or chosen by the Purchaser and already performed by the Vendor, then the Purchaser shall pay to the Vendor, on demand, the cost of returning the said options and/or extras and/or colours to the Vendor's standards together with a fifteen percent (15%) management and supervision fee, plus HST. The legal fees of the Vendor to enforce collection of these sums shall be payable by the Purchaser on a full indemnity basis.

(c) Where any extras or upgrades so ordered are not available to the Vendor for any reason whatsoever or are not, or cannot be, installed, in the sole and absolute discretion of the Vendor, the Vendor shall refund to the Purchaser, on a timely basis after the Closing Date, all monies paid for such extras or upgrades without interest, and the Purchaser shall have no recourse, action or claim against the Vendor whatsoever with respect thereto. The statutory declaration of a Consultant or supplier or an officer of the Vendor stating the amount of the calculation for an incomplete or unavailable item is conclusive and binding on the Purchaser. The Purchaser also agrees that any amounts so calculated and/or credited shall be accepted by the Purchaser as full and final settlement of any claim by the Purchaser with respect to the extras and upgrades which remain incomplete or unavailable as aforesaid. If the credit or refund is not available or included in the adjustments on the Closing Date, the Vendor shall be entitled to defer payment for a reasonable period of time following the Closing Date.

(d) The Vendor shall not be responsible or liable in any way to the Purchaser for the quality of, and/or workmanship with respect to the extras and/or upgrades unless same are purchased from and/or constructed directly by the Vendor.

(e) Save as otherwise expressly permitted under this Agreement, the Purchaser covenants that it shall not enter onto the Property prior to the Occupancy Date without the express written authority of the Vendor and accompanied by a representative of the Vendor. Save as otherwise expressly permitted under this Agreement, the Purchaser also covenants that he or she will not under any circumstances, perform or have performed any work of any nature or kind whatsoever on the Property prior to the conveyance of title to the Property to the Purchaser and in the event of a breach of this covenant, the Vendor shall, in addition to any other remedy, be entitled to take whatever steps are necessary to remove, correct or remedy any such work and the cost or expenses thereof plus a fifteen (15%) percent administration fee, plus HST, shall be paid forthwith upon demand to the Vendor, failing which the Vendor shall be entitled to terminate this Agreement.

Without limiting the generality of the foregoing, the Vendor's sales representatives, property managers and construction site employees do not have authority to waive these requirements or to authorize any work contrary to this paragraph and the Purchaser must receive a written authorization or waiver from an authorized signing officer of the Vendor. Any breach of this covenant by the Purchaser is an act of default. In addition to any other remedy granted to the Vendor by this Agreement, the Vendor (and/or the Condominium after registration of the Creating Documents if the alterations affect the common elements of the Condominium) shall be entitled to enter into the Property to remove, correct or remedy any such work and the costs or expenses thereof plus a fifteen percent (15%) management and supervision fee, plus HST, shall be paid by the Purchaser to the Vendor (or the Condominium Corporation, where applicable) within fifteen (15) days of written notice. The legal fees of the Vendor or the Condominium performing the work to enforce collection of these sums shall also be payable by the Purchaser on a full indemnity basis.

12. **WARNINGS AND ACKNOWLEDGMENTS**

A. General

The Purchaser acknowledges that:

(a) the Vendor (or any affiliate) is presently, or may in the future be, processing a rezoning, official plan, severance and/or site plan approval application (or any related and ancillary applications including, without limiting the generality of the foregoing, amendments to the Section 37 Agreement pertaining to increased height and/or density) with respect to the Lands (including, without limiting the generality of the foregoing, that portion of the Lands upon which the Adjoining Components are contemplated to be constructed). The Purchaser hereby covenants and agrees that he/she shall not oppose any such applications and this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Purchaser thereto or in aid of an injunction restraining such opposition. The Purchaser agrees not to, whether directly or indirectly impede or delay the process of obtaining any rezoning, official plan amendments, site plan amendments, building plans, draft plans of subdivision or condominium, severance, variance or rezoning applications brought by the Vendor (or any affiliate), its successors and assigns or related and/or affiliated companies, with regard to any approvals of present or future uses of the Lands (including, without limiting the generality of the foregoing, that portion of the Lands upon which the Adjoining Components are contemplated to be constructed);

(b) any renderings (still video or otherwise) of the view(s) from the Residential Unit are approximate only and that the renderings may not reflect the actual view once the Building is complete or as neighbouring properties may be developed and the Purchaser agrees that it shall have no remedy, claim or cause of action against the Vendor alleging any representation or inducement in connection with such renderings;

(c) in rooms or areas of the Residential Unit in which there are extensive glass windows (extended glazing) or glass doors which, during certain times of the day result in strong or prolonged penetration of sunlight or wind-chill, cooling and heating levels which are standard in other parts of the unit, during times when no such strong or prolonged penetration of sunlight or wind-chill takes place, may not be achieved. No supplemental heating or cooling equipment will be provided for this purpose;

(d) the size of the Property as represented by the advertising and materials or by sales personnel is measured in accordance with the industry standard and, accordingly may differ from the measurements made using the unit boundaries set out in the Creating Documents and/or the floor plan as shown on Schedule "B". The Purchaser agrees that he/she is purchasing the Property with the square footage as calculated under Builder Bulletin 22 of the Warranty Program and has no claim for rescission, damages or a price abatement based on any other method of price calculation, including using any advertised or written or verbal information about the size of the Property to calculate the price per square foot. Actual useable floor space may vary from the stated floor area as set forth in Builder Bulletin 22 of the Warranty Program. If for any reason the Vendor shall construct the Residential Unit smaller than the square footage described in Builder Bulletin 22 of the Warranty Program, the sole remedy of the Purchaser shall be damages for the difference, if any, in the market value between the Residential Unit as constructed and the Residential Unit as it should have been constructed. The date for determining such market value shall be the lesser value as of the date of this Agreement or the Closing Date. A letter or other acknowledgement from a Consultant calculating the size of the Residential Unit in accordance with Builder Bulletin 22 of the Warranty Program shall be final and binding. Without limiting the generality of the foregoing, the Purchaser is advised that the floor area measurements are generally calculated based on the middle floor of the Building for each suite type, such that units on lower levels may have less floor space due to thicker structural membranes, mechanical rooms and other similar items while units on higher floors may have more floor space. Accordingly, the Purchaser hereby confirms and agrees that all details and dimensions of the Residential Unit purchased hereunder are approximate only and that the Purchase Price shall not be subject to any adjustment or claim for compensation whatsoever, whether based upon the ultimate square footage of the Residential Unit or the actual or usable living space within the confines of the Residential Unit or otherwise. The Purchaser further acknowledges that the ceiling height of the Residential Unit is measured from the upper surface of the floor slab (or subfloor) to the underside surface of the ceiling slab (or joists). However, where ceiling bulk heads are installed within the Residential Unit and/or where drop ceilings are required, then the ceiling height of the Residential Unit will be less than that indicated and the Purchaser shall correspondingly be obliged to accept the same without any abatement or claim for compensation whatsoever;

(e) the distances between any buildings shown on any site plan or model, and any neighbouring or adjacent buildings are approximate only and/or may be modified during construction;

(f) the wires, cables and fittings comprising the communications system servicing the Condominium may be owned by the Vendor and/or the suppliers thereof;

(g) the Vendor (or any affiliate) is presently, or may in the future be, processing a rezoning, official plan, severance and/or site plan approval application (or any related and ancillary applications) with respect to the Lands. The Purchaser hereby covenants and agrees that he/she shall not oppose any such applications and this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Purchaser thereto or in aid of an injunction restraining such opposition. The Purchaser agrees not to, whether directly or indirectly impede or delay the process of obtaining any rezoning, official plan amendments, site plan amendments, building plans, draft plans of subdivision or condominium, severance, variance or rezoning applications brought by the Vendor (or any affiliate), its successors and assigns or related and/or affiliated companies, with regard to any approvals of present or future uses of the Lands;

(h) in order to achieve a suitable indoor noise environment, windows may have to remain closed; therefore the Residential Unit will be equipped with a central air conditioning system (which may be central to the entire Building or may be central to the Residential Unit);

(i) the elevator banks, garbage and recycling room(s), the loading dock, the amenity facilities, the transformer, the Condominium's mechanical equipment and the parking garage may cause noise levels to exceed a comfortable level and occasionally interfere with some activities of the dwelling occupants in this Condominium. The Purchaser nevertheless agrees to complete this transaction in accordance with the terms hereof, notwithstanding the existence of such potential noise and/or vibration concerns, and the Purchaser further acknowledges and agrees that a noise warning clause similar to the preceding sentence (subject to amendment or enlargement by any wording or text recommended by the Vendor's noise consultants or by any of the Governmental Authorities) may be registered on title to the Condominium on the Closing Date, if, in fact, same is required by any of the Governmental Authorities;

(j) the proximity of the proposed development of the Property to the rail corridor and highway 401 may result in noise, vibration, electromagnetic interference, stray current, smoke and particulate matter transmissions to the development;

(k) the City of Toronto and the operators/users of the transit system will not accept responsibility for the effects set out above on any of the development and/or its occupants;

(l) the Purchaser acknowledges and agrees that the building will be obligated to install glass that is friendly to migrating birds and other building features in accordance with the City of Toronto's Bird Friendly Guidelines;

(m) the Purchaser specifically acknowledges and agrees that the proximity of the development of the Property to highway 401 and GO Transit operations may result in transmissions of noise vibration, electromagnetic interference, stray current, smoke and particulate matter (collectively referred to as **"Interferences"**) to the Property and despite the inclusion of control features within the development, Interferences from such operations may continue to be of concern, occasionally interfering with some activities of the occupants in the Property.

It is anticipated by the Vendor that in connection with the Vendor's or declarant's application to the Governmental Authorities for re-zoning, site plan approval, and draft plan of condominium approval certain requirements may be imposed upon the Vendor or the declarant by the Governmental Authorities. These requirements (the **"Requirements"**) usually relate to warning provisions to be given to purchasers in connection with environmental or other concerns (such as warnings relating to noise levels, the proximity of the buildings to major streets and similar matters). Accordingly, each Purchaser covenants and agrees that on either the Occupancy Date or the Closing Date, as determined by the Vendor, the Purchaser shall execute any and all documents required by the Vendor acknowledging, inter alia, that the Purchaser is aware of the Requirements and if the Vendor or declarant is required to incorporate the Requirements into the final Condominium Documents or the Agreement, each Purchaser shall accept the same, without in any way affecting this transaction and without same being deemed to be a material change.

13. **NOTICES**

(a) Any notice required to be delivered under the provisions of the Tarion Addendum, shall be delivered in the manner required by Paragraph 14 of the Tarion Addendum.

(b) Any other notice given pursuant to the terms of this Agreement shall be deemed to have been properly given if it is in writing and is delivered by hand, ordinary prepaid post, registered mail, facsimile transmission or electronic mail to the attention of the Purchaser or to the Purchaser's Lawyer to their respective addresses, including electronic e-mail addresses indicated herein or to the address of the Residential Unit after the Occupancy Date and to the Vendor at 2035 Kennedy Road, Toronto, Ontario, M1T 3G2, Attention: Ali Akman, or to the Vendor's Solicitors at the address indicated on the front page(s) of this Agreement or such other address as may from time to time be given by notice in accordance with the foregoing. Such notice shall be deemed to have been received on the day it was delivered by hand, by electronic mail or by facsimile transmission and upon the third day following posting, excluding Saturdays, Sundays and statutory holidays. This Agreement or any amendment or addendum thereto may, at the Vendor's option, be properly delivered if it is delivered by facsimile transmission or if a copy of same is computer scanned and forwarded by electronic mail to the other party. The Purchaser acknowledges that the Vendor reserves the right to provide notices contemplated by this Paragraph 13(b) in the manner herein set forth in this Paragraph 13(b) or in the manner for notice set forth in Paragraph 13(a) and, furthermore, that the Vendor may alternate the manner of notice between the requirements of Paragraph 13(a) and Paragraph 13(b) with respect to notices under Paragraph 13(b).

(c) Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement (save as may be specifically required to be delivered differently by the Tarion Addendum) may be given or delivered and accepted or received by the Purchaser's Solicitors on behalf of the Purchaser and by the Vendor's Solicitors on behalf of the Vendor. In the event of any amendment to this Agreement by the Purchaser, the Vendor, the Purchaser's Solicitors or the Vendor's Solicitors (including an addendum or amending agreement) then each and every change shall be deemed to provide that time is of the essence whether so expressed in such addendum or amending agreement.

14. **POWER OF ATTORNEY**

(a) The Purchaser hereby irrevocably constitutes and appoints the Vendor to be his/her lawful attorney, in order to execute any deposit receipt issued pursuant to Plan Act, as well as any excess condominium deposit insurance policy documents.

(b) If the Purchaser is comprised of more than one individual, each individual (hereinafter referred to as the "**Donor**") hereby constitutes and appoints the other to be and act as the Donor's lawful agent and attorney, in order to execute the Purchaser's Acknowledgement of Receipt of the Disclosure Statement (or amended Disclosure Statement), the Acknowledgement of Receipt of a copy of the fully executed Agreement and/or for the purposes of receiving notices required or desired to be delivered by the Vendor pursuant to this Agreement.

(c) If the Purchaser proposes to sign any document required to complete the interim occupancy and/or final closing of this transaction under power of attorney, the specific requirements of the Vendor to be set out in our addendum to this Agreement must be strictly followed.

15. **HST**

(a) Subject to Paragraph 16 herein, it is acknowledged and agreed by the parties hereto that the Purchase Price includes a component equivalent to the HST applicable as at the date hereof to this purchase and sale transaction, less the federal new housing rebate referenced in Section 254 of the ETA (the "**GST Rebate**") and the Ontario new housing rebate referenced in Section 41 of the *New Harmonized Value-added Tax System Regulations, No. 2* (the "**HST Rebate**").

(b) The Purchaser hereby represents and warrants to the Vendor that the Purchaser qualifies for the GST Rebate, if any is available, and the HST Rebate (hereinafter sometimes collectively referred to as the "**Rebates**").

(c) Notwithstanding anything to the contrary in this Agreement, the Purchaser hereby transfers and assigns to the Vendor all of the Purchaser's right, interest and entitlement now or in the future to the Rebates and agrees to execute and deliver to the Vendor, forthwith upon the Vendor's request for same and in any event on or before the Closing Date, all requisite documents and assurances that the Vendor may reasonably require to enable the Vendor to obtain the benefit of the Rebates, including, without limitation, Form GST190 (the "**Rebate Form(s)**").

(d) The Purchaser shall indemnify and save the Vendor harmless from and against any and all loss, costs, damages and/or liability (including any HST, plus penalties and interest thereon and any reasonable legal costs in connection therewith) which the Vendor may suffer, incur or be charged with as a result of:

(i) the Purchaser's failure to qualify for the GST Rebate or the HST Rebate;

(ii) the Purchaser having qualified initially but being subsequently not entitled to the GST Rebate or the HST Rebate; or

(iii) any amendment to the ETA, or applicable successor legislation, in force as at the date when HST becomes payable in respect of this purchase and sale transaction, the effect of which is to increase the rate of HST payable herein or to decrease the amount of the one or both of the Rebates.

This indemnity shall survive indefinitely the completion or termination of this Agreement. It is understood and agreed by the parties hereto that should the Purchaser not qualify for the GST Rebate, if any is available, or the HST Rebate or fails to deliver to the Vendor the Rebate Form(s) (duly executed by the Purchaser) by the Closing Date, then notwithstanding anything contained herein (or in the Purchase Agreement) to the contrary, the Purchaser shall be obliged to pay to the Vendor, by certified cheque delivered on the Closing Date, an amount equivalent to the GST Rebate or HST Rebate, or both, as the case may be, in addition to the outstanding balance of the Purchase Price. It is further understood and agreed by the parties that in the event that the Purchaser intends to rent out the Property before or after the Closing Date, the Purchaser shall not be entitled to the Rebates, but may nevertheless be entitled to pursue, on his own after the Closing Date, the federal and provincial new rental housing rebates directly with CRA, pursuant to the ETA and the Regulations thereto.

(e) The Purchaser's failure to pay or remit to the Vendor on the Closing Date the HST exigible in connection with this transaction, or if required pursuant to this Paragraph 15 to deliver to the Vendor the Rebate Form(s), duly executed by the Purchaser, or if required pursuant to this Paragraph 15 to pay to the Vendor by certified cheque an amount equivalent to the GST Rebate or HST Rebate, shall constitute a fundamental breach of contract, entitling the Vendor to immediately terminate this Agreement and to retain all deposit monies theretofore paid (together with all monies paid for any extras or changes requested to be made to the Residential Unit) as its liquidated damages and not as a penalty, without prejudice to any other rights or remedies available to the Vendor at law or in equity.

(f) Without limiting any of the foregoing provisions, the Purchaser further covenants and agrees that in the event that any assignment of the Purchase Agreement, amendment to the Purchase Agreement, novation to the Purchase Agreement, re-instatement of the Purchase Agreement or the acquisition of any upgrades or extras results in the GST Rebate or HST Rebate not being capable of being assigned, in whole, by the Purchaser to the Vendor, then the Purchaser shall pay to the Vendor such forgone amount by certified cheque on closing in the same manner as hereinbefore contemplated for repayment where purchasers do not qualify for the GST Rebate or HST Rebate.

(g) Notwithstanding any provision herein to the contrary, if the Purchaser does not qualify for the Rebates, or any of them, or fails to deliver the requisite documentation in connection therewith or takes any action that might disentitle it from

receiving the Rebates (such as a resale or rental listing), then, if discovered prior to Closing, the amount of the Rebates shall be paid to the Vendor on Closing or, if discovered after Closing, the Purchaser shall pay the Vendor by certified cheque the amount of the Rebates forthwith upon demand and shall indemnify the Vendor from any loss of the Rebates. Notwithstanding any provision to the contrary in the Agreement or in the applicable legislation, if at any time, in the view of the Vendor or the Vendor's Solicitors, the Purchaser's information might be inaccurate, incomplete or untruthful such that the Rebates, or any of them, may not be properly collected by the Vendor, the Vendor shall be entitled in its sole, subjective and absolute discretion to increase the Purchase Price by the amount of the Rebates and the Purchaser shall pay such additional sum on Closing.

16. **TAX ON CHATTELS**

The Purchaser acknowledges that HST is not included on that portion of the Purchase Price allocated to chattels in accordance with this Paragraph 16. The remainder of the Purchase Price is allocated to realty for purposes of Paragraph 2 of the Cover Provisions of this Agreement. The Purchaser agrees to deliver to the Vendor's solicitor, a copy of the " Affidavit of Residence and Value of the Consideration" on or prior to the Closing Date, indicating that HST will be paid on the value of the chattels, as aforesaid. For the purposes of calculating HST, the Vendor shall allocate the Purchase Price as between realty (land and building) and any chattels included in the agreement as part of the Purchase Price.

17. **SALES OFFICE**

The Purchaser shall not interfere with the completion of the Condominium and the Adjoining Components. Until the same are completed and all units have been sold, leased or conveyed and all space contained within the Condominium and the Adjoining Components has been leased and/or conveyed (if any portion of same is sold) the Vendor may make such use of the Condominium as may facilitate the foregoing including, but not limited to, the maintenance of any sales/rental or administration offices, model units, parking units and the advertising and/or showing of units and the display of signs and further, without limitation, the Vendor may make such use of the Condominium and the Lands (or any part or parts thereof) as may facilitate completion of the leasing of any non-residential space to be situate adjacent to the Condominium or any of the Adjoining Components.

18. **RESIDENCY**

The Vendor hereby represents that it is not now, and will not on Closing be, a non-resident of Canada as defined by Section 116 of the *Income Tax Act* (Canada).

19. **NO OTHER REPRESENTATIONS**

This Agreement, when accepted, shall constitute a binding agreement of purchase and sale. It is agreed and understood that there is no representation, warranty, collateral term or condition affecting this Agreement or the Property, or for which the Vendor will be held responsible or liable in any way, whether contained, portrayed, illustrated or represented by or contained in, any plan, drawing, brochure, display, model, sales office or any other sales/marketing materials, or alleged against its agent or any sales representative, other than as expressed herein in writing.

20. **VARIATION OF CONDOMINIUM DOCUMENTS**

The Purchaser acknowledges that the Condominium Documents including the budget statement for the one year period immediately following registration of the Condominium may vary from the proposed Condominium Documents and proposed budget statement given to the Purchaser when entering into this Agreement, and the Purchaser further hereby acknowledges and agrees that the ultimate features of the Condominium and the ultimate content and composition of the Property may vary from the intended features of the Condominium and the intended content and composition of the Condominium as related to the Purchaser or as shown or illustrated in any promotional literature, sales brochures, models, sales office, sketches or any other documents or illustrations shown or given to the Purchaser when entering into this Agreement. The Purchaser hereby acknowledges and agrees that if there is a material amendment to any of the documentation or information contained in any of the Condominium Documents as a result of any of the foregoing described events or situations that affects the Disclosure Statement viewed as a whole, to a material extent, the Purchaser's only remedy or recourse in such event shall be restricted to rescission of this Agreement within ten (10) days of the Purchaser receiving notice of such material amendment (subject to the rights of the Vendor under the Act), and under no circumstances shall the Purchaser have any claim or cause of action for damages and/or for specific performance of this Agreement, notwithstanding any rule of law or equity to the contrary. The Purchaser consents to any amendment required by the Vendor to the Creating Documents, whether after or before the Closing Date, with respect to structural changes, unit number or level changes or boundary amendments or variations in connection with any unit owned by the Vendor or declarant so long as the Purchaser's proportion of contribution to the common expenses is not thereby materially increased, except as contemplated in the Condominium Documents.

21. **REGISTRATION COSTS**

(a) The Vendor and the Purchaser each agree to pay the cost of registration of their own documents and any tax in connection therewith. Notwithstanding the generality of the foregoing, the Purchaser agrees to pay the land transfer tax in connection with the registration of the transfer of the Property and undertakes to register the transfer on the Closing Date.

(b) If a business transfer tax or value added tax or sales tax or similar method of taxation is imposed by the Government of Canada or Ontario or any other Governmental Authority prior to the Closing Date, or prior to the final payment of the unpaid balance of the Purchase Price herein, and such tax or taxes are applied to the sale of the Property or against any component, building material or service relating to the construction of the Property or the Condominium, then, notwithstanding anything else contained herein, the Purchaser acknowledges and agrees that the Purchase Price as set out in this Agreement has been computed without taking into account any such tax and that the said Purchase Price shall be increased by the amount of tax eligible in respect of the Property or otherwise with the construction of the Property or the Condominium, with the amount of such increase being paid at the earlier of the Occupancy Date or the Closing Date or as soon thereafter as the amount of the said tax can be calculated and the Purchaser hereby charges the Property in favour of the Vendor, with such amount owing to be secured by a Vendor's lien, charge or caution on and against the Property. If any tax whether categorized as a business transfer tax, a modified HST, value added tax or any other type of tax whatsoever including without limitation HST is levied or charged in connection with the termination of this Agreement by reason of the Purchaser's default, the Purchaser shall be solely responsible for paying such taxes and/or reimbursing the Vendor therefor thereafter together with any penalties or interest imposed thereon, whether or not the legislation imposing same may place responsibility for payment thereof onto the Vendor.

22. **RISK**

The Building and all equipment contained therein shall be and remain at the risk of the Vendor until Closing. In the event of any physical damage to the Building or the Property (or to any portion thereof and/or all improvements and any work undertaken by the Purchaser pursuant to this Agreement) caused by fire, explosion, flood, lightning, tempest, act of God, act of war or act of terrorism, or by any other insurable peril occurring prior to the final closing of this transaction (and whether before or during the Purchaser's occupancy of the Residential Unit) which renders the Residential Unit uninhabitable, then it is understood and agreed that:

(a) if any such damage can be substantially repaired within one (1) year from the date of the damage occurring, as determined jointly by the Vendor and the Consultant acting reasonably (and which determination shall be final and binding on the parties hereto, and not subject to challenge or appeal under any circumstances whatsoever), then such damage shall be deemed and construed to constitute an "Unavoidable Delay", as such term is defined in section 12 of the Tarion Addendum, in which case the provisions pertaining to Unavoidable Delay and the corresponding extension of the

Occupancy Date outlined in section 5 of the Tarion Addendum shall apply and prevail in such circumstances, and if the Purchaser has already taken possession of the Residential Unit at the time of such damage, then the Purchaser's existing occupancy of the Property shall thereupon be temporarily suspended for the duration of the Unavoidable Delay Period (as such term is defined in section 12 of the Tarion Addendum), and the Occupancy Fee so payable by the Purchaser to the Vendor shall correspondingly be abated and suspended during and throughout the Unavoidable Delay Period; and

(b) if the Mortgagee elects to appropriate all (or substantially all) of the available insurance proceeds (if any) so triggered by such damage to reduce, *pro tanto*, the Vendor's outstanding indebtedness to it, and/or is unwilling to lend or advance any monies required to rebuild and/or repair such damage, or if such damage cannot be substantially repaired within one (1) year from the date of the damage occurring, as determined jointly by the Vendor and the Consultant acting reasonably (and which determination shall be final and binding on the parties hereto, and not subject to challenge or appeal under any circumstances whatsoever), then in either case such damage shall be deemed and construed for all purposes to have frustrated the completion of this transaction and this Agreement, and if the Purchaser has already taken possession of the Residential Unit at the time of such damage, then the Purchaser's existing occupancy of the Property shall thereupon be forthwith terminated, and all monies paid by the Purchaser on account of the Purchase Price (inclusive of all monies paid to the Vendor for extras and/or upgrades) shall be fully refunded to the Purchaser, together with all interest accrued thereon at the prescribed rate, and the Vendor shall not be liable for any costs and/or damages incurred by the Purchaser thereby whatsoever. whether arising from (or in connection with) the termination of the Purchaser's existing occupancy of the Property, or the termination of this transaction, by virtue of the frustration of this Agreement occurring through no fault of the Vendor.

23. **RIGHT OF RE-ENTRY**

Notwithstanding the closing of this transaction, including the Purchaser's occupancy of the Property, the Vendor or any of its authorized representatives shall be entitled at all reasonable times to enter the Condominium (including the Property) in order to make inspections, and to do any work or repairs therein or thereon which may be deemed necessary by the Vendor, in its sole discretion, in connection with the completion, servicing or rectification of any installations in the Property or any other part of the Condominium, any part of the common elements of which the owner has the exclusive use and/or the common elements of the Condominium. This right is in addition to any other rights and easements created under the Act and/or by any documents registered or to be registered on title to the Condominium. Without limiting the generality of the foregoing, if the reason for entering into the Property is to complete the warranty obligations of the Vendor, the Purchaser covenants to ensure that any occupant of the Property shall promptly and actively co-operate in providing entry and access into the Property to complete all work and correct all deficiencies. The Purchaser further agrees to sign an acknowledgement for all work completed to the Purchaser's satisfaction.

24. **DEFAULT AND REMEDIES**

(a) The remedies in this paragraph and in the remainder of this Agreement are cumulative and alternative. Where the remedies differ, they shall be deemed to be alternative and the Vendor may defer any election among them or, in its discretion, pursue all remedies simultaneously.

(b) An act of default by the Purchaser is a breach of any promise, covenant, obligation or representation made by the Purchaser in this Agreement, and includes a breach by the Purchaser before both the Occupancy Date and/or the Closing Date, even if the breach is not described explicitly in this Agreement as an act of default. Upon learning of an act of default by the Purchaser prior to both the Occupancy Date and/or the Closing Date of this Agreement the Vendor shall be entitled to any remedy explicitly given to the Vendor by this Agreement and/or to terminate this Agreement with liability to the Purchaser and/or any other remedy permitted by law. The termination of this Agreement with liability to the Purchaser shall entitle the Vendor at its sole option and in its unfettered discretion to each of the following and any combination thereof:

(i) to retain the deposit(s) and all monies paid for extras and upgrades as liquidated damages and not as penalty and without limiting the Vendor's claim for damages in excess of such sums;

(ii) to require the Purchaser to perform the Agreement and/or pay damages for breach of this Agreement;

(iii) to recover from the Purchaser all damages and losses arising from the Purchaser's default as may be permitted by law; and

(iv) the Vendor is entitled to its full indemnity costs against the Purchaser either to enforce its rights or to defend any claim or counterclaim by the Purchaser in an action or any arbitration on a full indemnity basis.

(c) The Vendor is not obliged to elect a remedy until the conclusion of an arbitration or action, is not obliged to give notice to the Purchaser of any default, and is not obliged to permit the Purchaser to remedy its default, but may do so without waiver of its rights herein.

(d) The Vendor may terminate this Agreement with liability to the Purchaser by reason of the failure of the Purchaser to pay in full the funds payable to the Vendor for upgrades or extras or on the Occupancy Date or on the Closing Date or on any other date when the payment of funds are required by this Agreement.

(e) In addition to anything contained in Schedule D hereto, if this Agreement is terminated by the Vendor by reason of an act of default by the Purchaser after the Purchaser has obtained possession of the Property, then the Purchaser shall, on seven (7) days written notice, vacate the Property. If the Purchaser has entered into occupancy of the Property, in addition to any deposit or other monies paid by the Purchaser, the Purchaser shall reimburse the Vendor for an amount estimated and required by the Vendor to make repairs to the Property and common elements made necessary by such occupancy. The Purchaser shall execute such releases and any other documents or assurances as the Vendor may require, in order to confirm that the Purchaser, in accordance with the terms of this Agreement, does not have, any interest whatsoever in the Property, the Condominium and/or this Agreement, and in the event the Purchaser fails or refuses to execute same, the Purchaser hereby appoints the Vendor to be his/her lawful attorney in order to execute such releases, documents and assurances.

(f) If, before or after the Closing Date the Vendor is required to pay any lien, execution or encumbrance created or caused by the Purchaser, the Purchaser shall reimburse the Vendor for all amounts and costs so paid and for the Vendor's full indemnity legal costs plus HST, with a minimum fee of $500.00 plus HST.

(g) The Purchaser shall be liable to the Vendor for all of the Vendor's costs, losses and expenses arising from any default of the Purchaser either before or after termination or completion, and whether there is termination or completion of this Agreement. If the Agreement is completed, the Vendor is entitled to collect an administration fee of $1,000.00 plus HST per occurrence to bring the Agreement into good standing, plus an amount equal to the Vendor's costs, losses and expenses,

(h) on the Closing Date either by an adjustment to the Purchase Price or by registering a vendor's lien in priority to any and all mortgages. The Purchaser shall not be entitled to dispute the said costs, losses and expenses on the Closing Date but shall be limited to an action or arbitration after the Closing Date.

(i) The Tarion Addendum reflects the Warranty Program's policies, regulations and/or guidelines on extensions of the Occupancy Date, but it is expressly understood and agreed by the parties hereto that any failure to provide notice(s) of the

extension(s) of the Occupancy Date, the provisions of the Tarion Addendum shall only give rise to a damage claim by the Purchaser against the Vendor up to a maximum set out in the Plan Act and under no circumstances shall the Purchaser be entitled to terminate this transaction or otherwise rescind this Agreement as explicitly provided by the Plan Act.

(j) Notwithstanding any other term of this Agreement, the Purchaser acknowledges and agrees that if any amount, payment and/or adjustment which is/are due and payable by the Purchaser to the Vendor or the Vendor's Solicitors pursuant to this Agreement are not made and/or paid on the date due, but are subsequently accepted by the Vendor, notwithstanding the Purchasers default, such amount, payment and/or adjustment shall, until paid, bear interest at the rate equal to twelve percent (12%) per annum above the bank rate as defined in subsection 19(2) of O. Reg. 48-01 of the Act at the date of default.

(k) If the Purchaser is a non-resident of Ontario at the time any action is commenced, the Purchaser attorns to the jurisdiction of Ontario and by this document agrees to accept the jurisdiction of the Courts of the Province of Ontario. The Purchaser further agrees that any legal process, including any originating process that requires personal service, may be served on a non-resident purchaser by the acceptance of service given by a lawyer in Ontario appointed by the Vendor. The Purchaser, if he or she is a non-resident of Ontario, hereby grants to the Vendor an irrevocable power of attorney to appoint a lawyer in Ontario on behalf of the Purchaser, and the lawyer so appointed is hereby authorized by the Purchaser to accept service of originating process, even if the lawyer so appointed cannot locate, communicate with or receive instructions from the Purchaser. The Purchaser further agrees that any default judgement obtained by the Vendor pursuant to this paragraph is final and binding on the Purchaser, may only be set aside by the laws of the Province of Ontario, is enforceable in any jurisdiction where the Purchaser resides or has assets without inquiry into how the default judgement was obtained, and that Purchaser shall have no remedy against the lawyer appointed on his or her behalf by the Vendor.

25. **TERMINATION WITHOUT DEFAULT**

(a) If this Agreement is terminated pursuant to the Tarion Addendum, then the Vendor shall pay to the Purchaser all moneys and interest prescribed to be paid by the Tarion Addendum.

(b) If this Agreement is terminated after the Occupancy Date without default by the Purchaser, then:

(i) If the reason for the termination is described in the Tarion Addendum, then money shall be payable as set out in the Tarion Addendum;

(ii) If the termination is for any other reason, then all deposit monies paid by the Purchaser towards the Purchase Price, together with any interest required by law to be paid, shall be returned to the Purchaser; provided however, that the Vendor shall not be obligated to return any monies paid by the Purchaser as an Occupancy Fee;

(iii) The Purchaser acknowledges that the Occupancy Fee is paid for the benefit of the Purchaser's use of the Property, and the Purchaser shall receive as a refund only the Occupancy Fee for the entirety of any month in which the Purchaser did not have control or use or possession of any part of the Property after the date of termination.

(c) For greater certainty, in no instance shall the Vendor be liable for any other costs or claims or damages whatsoever, including, without limitation, any loss of bargain, relocation costs, loss of use of deposit monies or for any fees, professional or otherwise, expended in relation to this transaction. The Purchaser acknowledges and agrees that the foregoing may be pleaded by the Vendor as an estoppel to any action brought by the Purchaser.

(d) The Vendor may deduct by way of set off from any money payable to the Purchaser pursuant to this paragraph those sums payable by the Purchaser by reason of any default by the Purchaser prior to the date of termination and any other sums that are payable by the Purchaser under this Agreement, including extras and upgrades and other fees or costs where the Purchaser's liability for such sums predates the date of termination. The Vendor may also deduct from any money payable to the Purchaser a reasonable allowance (but in any case not less than $10,000) as a security deposit for any damages caused to the Condominium by the Purchaser's occupancy therein, which sum shall be adjusted as set out in Schedule D.

26. **OTHER REMEDIES AND AMENDMENTS**

(a) The Vendor and the Purchaser agree that any right or obligation of either party dealt with under the Plan Act shall be performed by them in accordance with this Agreement and the Plan Act, including:

(i) The standards for workmanship, material and timeliness;

(ii) The criteria used to measure or evaluate a warranty claim, including the dollar amounts; and

(iii) As set out in this Agreement.

(b) Without limiting the generality of this paragraph, in any action or arbitration the Purchaser and Vendor agree that the outcome and quantum of a claim which could be asserted as a warranty claim (even if claimed as a contract claim, a misrepresentation, a tort, or some other legal duty) shall be decided using the criteria, standards, and amounts used and applied by the Warranty Program and the Licence Appeal Tribunal and the Builders Arbitration Forum under the Plan Act, and that no other or greater criteria, standards, or amounts shall be applicable or awarded.

(c) The Purchaser acknowledges that his rights and remedies and the limitations thereto are fully set forth in this Agreement, and the Purchaser has no other causes of action or claims or remedies except as set out in this Agreement or the terms of the Plan Act. In particular, to the extent that the Plan Act does not exclude any other common law remedies in favour of the Purchaser, all such remedies are excluded and the Purchaser's remedies are limited to those set out in this Agreement.

(d) The Purchaser's right to terminate this Agreement before or after the Closing Date and/or rescind this Agreement are for those events set out expressively in this Agreement, including the Tarion Addendum, and no others. Any other claim by the Purchaser (including for conduct predating the signing of this Agreement by the Purchaser and the Vendor) shall be actionable only by way of a compensation claim. The Purchaser on behalf of the Purchaser and Condominium Corporation hereby releases the Vendor, its employees, officers, directors, owners, sales representatives, the Vendor's trades, experts and lawyers, the Vendor's related and affiliated corporation and the applicable Governmental Authorities from any and all causes of action against each and any of them (including but not limited to actions in contract, tort, real and personal property law, trust law, fiduciary duty, and unjust enrichment) except for any remedy explicitly given to the Purchaser against the Vendor either in this Agreement or by the Act and the Plan Act.

(e) All remedies available to the Purchaser are deemed to exclude:

(i) damages for mental distress, loss of enjoyment, or loss of a personal preference or personal choice;

(ii) punitive and/or exemplary damages;

(iii) substantial indemnity costs, except for such costs as may be awarded by an offer to settle by an arbitrator or under the Rules of Civil Procedure; and

(iv) initiating or joining a class action proceeding against the Vendor and/or any person released herein, and the Purchaser irrevocably elects to opt out of any class action against the Vendor and other persons released herein.

(f) For greater certainty,

(i) the only entities with any liability to the Purchaser is the Vendor, and the Purchaser on behalf of the Purchaser and the Condominium Corporation covenants and agrees that no claim shall be made against the declarant of the Condominium and any trade, subtrade, supplier of the Vendor or the declarant or against sales agent or broker, Consultant, lawyer or other person, corporation, or Governmental Authority, or any officer, director, partner, employer, servant, or agent of any of the same.

(ii) except as may otherwise be set out in this Agreement, any claim arising from an alleged misrepresentation by the Vendor, the declarant, or any sales agent, if legally valid, shall be a remedy for damages only, and only if not otherwise excluded by this Agreement.

(iii) the Purchaser is entitled to damages in lieu of specific performance and/or damages assessed as of any date, other than the date of breach, only if the Purchaser proves that the Purchaser was always ready, willing, able, prompt, desirous and eager to complete all of the Purchaser's financial obligations on every date when such payments was due or such obligation was to be performed.

(g) If at any time before the Occupancy Date or the Closing Date, as the case may be, the Vendor or its lawyer wrongly terminates this Agreement by reason of the alleged default of the Purchaser, and the Purchaser is not in default or believes he or she is not in default, the Purchaser shall not be entitled to treat the wrongful termination by the Vendor as grounds to terminate the Agreement, or to rescind the Agreement, or to enforce the Agreement, or to deny liability in a proceeding unless and until:

(i) the Purchaser offers to complete the Agreement by a written notice with an offer to the Vendor's Solicitors to complete the Agreement within five Business Days of the date of receipt of the notice, and

(ii) the Vendor's Solicitors accept the offer by written notice within the five Business Days of receipt of the notice and either appoints a new Closing Date in the acceptance letter or confirms the existing Occupancy Date or Closing Date, as the case may be.

The Purchaser shall be entitled to any applicable delay damages pursuant to the Tarion Addendum, but to no other damages or claims. The acceptance of the Purchaser's offer by the Vendor constitutes a waiver by the Purchaser of all prior breaches of the Agreement by the Vendor, a revocation of any termination of the Agreement, and a re-instalment of the Agreement. Except for a delayed closing claim pursuant to the Tarion Addendum this, paragraph can be pleaded against the Purchaser as a complete waiver or estoppel in any other proceeding between the Vendor and the Purchaser.

(h) The Purchaser acknowledges that this Agreement supersedes all prior negotiations and all advertising material, constitutes the entire Agreement between the Vendor and the Purchaser, and that in entering into this Agreement the Purchaser relies on no representations, warranties, collateral purchase agreements or prior negotiations or conditions affecting this Agreement or the Property or the Lands, or supported thereby other than those set out herein in writing and more specifically absolves the Vendor of any obligation to perform or comply with any promises or representations as may have been made by any sales representative, in any sales brochure, in any sales office, in any model suite or in any advertisement unless the same have been reduced to writing either in this Agreement or any other document signed by the Vendor or the Vendor's Solicitors, or in the Condominium Documents.

(i) This Agreement cannot be terminated or modified or amended except by a written document executed in writing by the parties, or by a written letter or letters by the parties' lawyers, or as set out in the Tarion Addendum. The sales representative of the Vendor does not have the authority to promise a change or amendment to the Agreement, a limitation of any remedy of the Vendor, or a termination of the Agreement, and no promise of a sales representative or officer of the Vendor is valid unless and until signed by the Vendor. Conduct does not constitute a waiver of the requirement for a written document to terminate or modify or amend this Agreement.

(j) A waiver by the Vendor of any breach of covenant or act of default by the Purchaser or failure by the Vendor to enforce its rights herein shall not constitute any further waiver of the Vendor's rights.

(k) If after Closing any dispute arises out of this transaction which is not subject to the dispute resolution provisions of the Warranty Program, or in respect of which the Warranty Program declines to be involved, the Vendor shall have the option to terminate this Agreement and to require a reconveyance of the Property, on paying to the Purchaser by certified cheque the total of all sums paid by the Purchaser pursuant to this Agreement, except for HST, and all sums paid by the Purchaser on account of municipal realty taxes on the Property. The said option may be exercised by the Vendor by giving notice to the Purchaser by prepaid registered mail at any time within 365 days after the date the Vendor determines that the dispute arose, or within 365 days after the date the Vendor determined that the Warranty Program is either inapplicable or not involved in the issues under dispute, whichever period is later. The Purchaser, if in possession, will vacate and will reconvey, both within 10 days of notice being given and will pay to the Vendor on account of the Purchaser's period of possession a sum calculated at a yearly rate of 10% of the Purchase Price. The Purchaser agrees that the Purchaser will be responsible for any damage caused to the Property during the Purchaser's period of possession, reasonable wear and tear excluded, and further agrees that no claim for damages, compensation or other relief will accrue to or be pursued by the Purchaser and hereby constitutes these presents as a full release, waiver and estoppel of any such claim. For greater certainty, the parties acknowledge that these provisions shall not apply to any matter governed by the Warranty Program during the period of time that any such matter may be subject to the dispute resolution mechanisms established under the Warranty Program.

27. **TIME OF THE ESSENCE**

Time shall be of the essence of this Agreement in all respects, and any waiver, extension, abridgement or other modification of any time provisions shall not be effective unless made in writing and signed by the parties hereto or by their respective solicitors who are hereby expressly authorized in that regard.

28. **NON-MERGER**

All of the Purchaser's covenants, warranties, obligations and agreements herein contained in this Agreement, shall not merge on the Closing Date, but shall remain in full force and effect according to their respective terms, notwithstanding the conveyance to the Purchaser of title to the Property and the payment of the Purchase Price. The Purchaser shall give further written assurances as to the non-merger of the Purchaser's covenants, on Closing, if so requested by the Vendor. All of the Vendor's covenants, warranties, obligations and agreements herein contained expire at the later of the limitation period of a warranty under the Plan Act, a limitation period under the Act or two years after the Closing Date.

29. **SUCCESSORS AND ASSIGNS**

This Agreement shall enure to the benefit of and be binding upon the parties and their respective personal representatives, and heirs, successors and permitted assigns. In the event of the assignment by the Vendor of this Agreement, to the extent that the assignee thereof assumes the covenants and obligations of the Vendor hereunder, the Vendor shall thereupon and without further agreement, be freed and relieved of all liability with respect to this Agreement.

30. **ELECTRONIC CONSENT AND CLOSING SYSTEM**

(a) **ELECTRONIC CONSENT TO THE DELIVERY OF DOCUMENTS IN ELECTRONIC FORMAT**

Pursuant to the provisions of the *Electronic Commerce Act 2000*, S.O. 2000, as amended, the Purchaser hereby consents to the delivery by the Vendor or the Vendor's Solicitors of the Condominium Disclosure Statement and the documents accompanying same, and any amendments thereto (including without limitation, any amendments to the Disclosure Statement, and any documents pertaining to the interim occupancy closing and/or final closing of this transaction, and any other information and/or documentation pertaining to this transaction such as the Form 4 Certificates issued in connection with the Purchaser's deposit cheques, pursuant to section 81(6) of the Act), in electronic format including without limitation, by copying such documents onto a computer disk that is delivered to the Purchaser or the Purchaser's Solicitors (instead of being in paper format), or by delivering same via e-mail at the e-mail address of the Purchaser or the Purchaser's Solicitors, or by posting such information or documentation on the internet via the password-protected customer website utilized by the Vendor to communicate with the Purchaser , if the Vendor chooses to do so. In addition, the Purchaser acknowledges and agrees that copies of the registered declaration and by-laws of the Condominium (including any agreements authorized by any of the by-laws) may be delivered to the Purchaser's Solicitors via the Vendor's electronic closing system described in Paragraph 30(b) hereof, rather than being delivered directly to the Purchaser or the Purchaser's Solicitors in paper format.

(b) **ELECTRONIC CLOSING SYSTEM**

It is understood and agreed that the Vendor may utilize the services of an internet-based electronic transaction management system to assist the Purchaser, the Vendor, and their respective solicitors in preparing the documents (and managing the procedures) required to complete the interim occupancy closing and the final closing of this transaction (hereinafter referred to as the "**Electronic Closing System**") through a secure password protected internet website utilized by the Vendor or its solicitors (hereinafter referred to as the "**eClose website**"). As such, the Purchaser acknowledges and agrees that the Vendor's or its solicitors delivery of some or all of the interim closing and/or final closing documents, as well as some or all of the Condominium Documents, and/or any amendments to same (including any amendments to the Disclosure Statement, any revised budget statement and/or any status certificate or accompanying documentation) may be delivered electronically, by the Vendor or the Vendor's Solicitors uploading any such documentation on the internet, via the eClose website, and making same available for downloading (and ultimately for photocopying) by the Purchaser's Solicitors (or alternatively, if the Vendor's Solicitors so choose, by the Vendor's Solicitors e-mailing such documentation directly to the Purchaser's Solicitors), and delivery by such means shall be considered acceptable and effective for all purposes. In light of the foregoing, the Purchaser shall be obliged to retain a lawyer who is in good standing with the Law Society of Upper Canada and who either:

(i) is (or following the execution of this Agreement, takes all necessary steps to become) a registered user of the Electronic Closing System administered by eClose Guaranteed Inc., or any other entity selected by the Vendor (the particulars of which can be obtained through the Vendor's Solicitors), to facilitate both the interim occupancy closing and the final closing of this transaction; or

(ii) declines to become a registered user of the Electronic Closing System or is otherwise unable or unwilling to access and/or utilize the Electronic Closing System to facilitate both the interim occupancy closing and the final closing of this transaction, in which case, the Purchaser acknowledges that the Vendor's Solicitors shall then be required to employ additional non-electronic systems and procedures in order to communicate with the Purchaser's Solicitors in completing this transaction, and the Purchaser shall correspondingly be obliged to pay to the Vendor's Solicitors (or correspondingly reimburse the Vendor on Closing for) all additional legal fees and ancillary disbursements which may be incurred by the Vendor or charged by the Vendor's Solicitors in order to implement such additional non-electronic systems and procedures (with the Vendor's Solicitors' legal fees for implementing same being a minimum of $500.00 plus HST, for each of the interim closing package and/or the final closing package, and with such fees being subject to increase, from time to time, without any requirement or obligation to notify the Purchaser of same prior to closing). The Purchaser's failure to remit a certified cheque for such fees (made payable to the Vendor's Solicitors) on the interim closing or final closing of this transaction (as the case may be) shall automatically entitle the Vendor and the Vendor's Solicitors to refuse to complete this transaction and to refrain from providing occupancy of the Unit to the Purchaser and/or to refrain from electronically releasing the deed/transfer of title to the Property to the Purchaser's Solicitors.

Notwithstanding the utilization of the Electronic Closing System to manage and complete this transaction, it is nevertheless understood and agreed that the issues of tender, and the delivery and/or exchange of documents, monies and keys to the Property, and the release thereof to the Vendor and the Purchaser (as the case may be), shall continue to be governed by (and be subject to the overriding provisions of) Paragraph 5 hereof.

31. **STATUS CERTIFICATE**

The Purchaser hereby authorizes the Condominium Corporation, when created, to issue a certificate in the form prescribed by the Act, stating any arrears on account of common expenses owed by the Purchaser (at the Purchaser's cost and to be adjusted for on the Statement of Adjustments as a credit to the Vendor or the Vendor's Solicitors).

32. **MISCELLANEOUS**

(a) The meanings of the words and phrases used in this Agreement and in any schedules annexed hereto shall have the meanings ascribed to them in the Act, unless this Agreement or the context otherwise requires a different meaning for same. This Agreement shall be read with all changes in gender and number required by the context. Any headings used throughout this Agreement are for ease of reference only, and shall not be deemed or construed to form a part of this Agreement. Execution of this Agreement by facsimile transmission, PDF or other authorized electronic means shall be binding upon each party hereto and upon the parties so signing by facsimile transmission. This Agreement may be executed in counterpart.

(b) Where the Purchaser is a corporation, or where the Purchaser is buying in trust for a corporation to be incorporated, or where the Purchaser is buying in trust for another individual(s), the execution of this Agreement by the principal or principals of such corporation, or by the person named as the Purchaser in trust for a corporation to be incorporated or other individual(s), as the case may be, shall be deemed and construed to constitute the personal guarantee of such person or persons so signing with respect to the obligations of the Purchaser herein. The naming of the beneficiary in the Agreement or the adoption or ratification of the Agreement by the beneficiary, by another party, or by a corporation, does not remove the liability of the Purchaser for any act of default before or after ratification. The beneficiary of the

Purchaser's trust shall be deemed for all purposes to be the partner of the Purchaser, and shall be jointly and severally liable with the Purchaser to honour all of the obligations of the Purchaser and for damages for any act of default of the Purchaser.

(c) Purchaser further agrees that any person who takes title to the Property as a beneficiary and/or pursuant to a direction or authorization signed by the Purchaser shall be deemed for all purposes to have signed this Agreement through the agency of the Purchaser, or to be the partner of the Purchaser(s), and to be bound by the Agreement. Notwithstanding any other term in this Agreement, the Vendor may demand as a condition precedent to the Vendor's obligation to complete the transaction on the Occupancy Date and/or the Closing Date that any person referred to as a beneficiary and/or in a direction or authorization as a person to be named as a transferee shall sign an acknowledgement on the Vendor's form agreeing to be bound by this Agreement and provide evidence, acceptable to the Vendor, that such beneficiary or person to be named as transferee has applied for and received approval as having sufficient financing. The completion of this Agreement on the Occupancy Date and/or the Closing Date without an acknowledgement is not a waiver of the Vendor's right to demand the acknowledgement. It is an act of default by the original Purchaser and transferee to refuse to provide the acknowledgement, and the Vendor may deliver on the Closing Date a transfer excluding such a transferee. If the Purchaser does not take title to the Property on the Closing Date, the Purchaser is nevertheless still jointly and severally bound with the transferee(s) for all of the obligations of the Purchaser after closing as if he or she had received title.

(d) Except for anything contrary to the Tarion Addendum, if any paragraph in this Agreement, or any clause or provision of any paragraph, or the application of the Agreement, paragraph, clause or provision therein to any circumstance shall be held to be invalid or unenforceable, then the remaining clauses, provisions and paragraphs of this Agreement or the application thereof to any circumstance shall be severed from this Agreement, the remainder shall not be affected by such holding, the unenforceable provision or paragraph shall be disregarded, the Agreement shall be interpreted as if such provision or paragraph were never included, and the Agreement shall continue to be valid and enforceable to the fullest extent permitted by law. In the case of anything contrary to the Tarion Addendum, the paragraph, clause or provision shall be limited or modified so that it shall comply with such requirement, but only to the extent necessary to make it comply with the Tarion Addendum. Whenever in this Agreement the Vendor or someone else may provide a certificate that is deemed to be conclusive and binding on the Purchaser, the Vendor has the unfettered right and discretion to determine who shall provide the certificate, and the Vendor's choice is deemed to be conclusive and binding on the Purchaser.

(e) The Purchaser's initial deposit cheque will only be deposited by the Vendor following the expiry of the Purchaser's statutory ten (10) day rescission period, and statutory interest will only commence to accrue at the prescribed rate from and after the respective dates that the Purchaser's deposit cheques have been respectively deposited into the Vendor's account for the project.

(f) Acceptance by the Vendor of this offer shall be deemed to have been sufficiently made if this Agreement is executed by the Vendor on or before the Irrevocable Date without requiring any notice of such acceptance to be delivered to the Purchaser prior to such time. Without limiting the generality of the foregoing, acceptance of this offer (or any counter-offer with respect thereto) may be made by way of facsimile transmission (or similar system reproducing the original) provided all of the necessary signatures and initials of both parties hereto are duly reflected on or represented by the facsimile copy of the Agreement so transmitted, and such acceptance shall be deemed to have been effected or made when the accepted offer (or counter-offer as the case may be) is transmitted to the intended party.

(g) As soon as prescribed security for the said deposit monies has been provided in accordance with the Act, and any required replacement security has been provided by the Vendor to the Warranty Program, the Vendor's Solicitors shall be entitled to release such funds to the Vendor. The Purchaser acknowledges that the Vendor's Solicitors shall be entitled to release and disburse any deposits to the Vendor (or as the Vendor may direct), in excess of $20,000.00 when one or more excess condominium deposit insurance policies issued by any insurers selected by the Vendor authorized to provide excess condominium deposit insurance in Ontario insuring the deposit monies so withdrawn or intended to be withdrawn and delivers the said excess condominium deposit insurance policy or policies to the Purchaser or his/her solicitors. In the event that a cheque or bank draft is delivered to the Vendor by a third party on behalf of the Purchaser (i.e. drawn on the bank account of such third party rather than on the bank account of the Purchaser) then such bank draft or cheque shall be deemed to be a payment made by such third party as agent for and on behalf of the Purchaser, in which case it is agreed that the certificate confirming that such deposit monies are being held in a designated trust account by the Vendor's Solicitors pending the completion or termination of this transaction or the provision of prescribed security in respect of same (being Form 4 prescribed under the Act) shall be issued and delivered directly to the Purchaser only, and not to such third party.

(h) Purchaser consents to the collection and use of personal information with respect to compliance by the Vendor with the provisions of *The Personal Information Protection and Electronic Documents Act*, S.C. 2000, as amended, the Purchaser hereby consents to the collection and use by the Vendor of the Purchaser's personal information (which includes personal information set out in this Agreement and other personal information obtained by the Vendor both before and after the execution of this Agreement), including, but not limited to the Purchaser's name, home address, email address, facsimile number, telephone number, social insurance number, date of birth, marital status, residency status, financial information (collectively, the "**Information**") and the Purchaser agrees that the Vendor may disclose and distribute the Information or any parts thereof to any third parties involved in the sale, construction, development and financing of the Property, including, without limitation: (1) lenders supplying construction or other financing to the Vendor, and parties including legal counsel, representing such lenders; (2) lenders supplying financing to the Purchaser with respect to the acquisition of the Property and lenders introduced to the Purchaser by the Vendor in connection with such financing, and parties, including legal counsel, representing such lenders; (3) Tarion Warranty Corporation; (4) third parties which provide utilities or services to the Property (such as for example, suppliers of security systems, telephone, cable television, telecommunications, utilities and utility monitoring); (5) third parties providing labour and/or materials for the construction of the Property; (6) any relevant Governmental Authority, including any department, division or agency thereof; (7) the Vendor's Solicitors in connection with the completion of the transaction of purchase and sale contemplated by this Agreement, including the closing by electronic means, including by the way of Teraview electronic registration system; and (8) the operator of any internet based electronic transaction management system retained and/or implemented by the Vendor (inclusive of the Electronic Closing System and/or eClose website).

(i) The Vendor expressly reserves its right to market units in the Condominium in a block or blocks to investors. The portion of the units to the nearest anticipated 25% that the Vendor intends to lease is 0%. This percentage estimate may increase or decrease as market conditions for sales fluctuate.

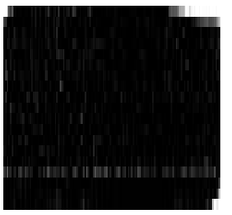
(j) This Agreement has been made in the Province of Ontario and for all purposes shall be construed in accordance with and shall be governed by the laws of the Province of Ontario. The parties further agree that any litigation or arbitration concerning this Agreement shall be tried or heard in the courts of the Province of Ontario or by a single arbitrator in Ontario, and the place of trial or arbitration shall be in the City of Toronto. In the event of an arbitration, either party may appeal the decision to the Superior Court of Justice within the jurisdiction where the arbitration was held with the same judicial criteria for appeal as is exercised by the Court of Appeal for Ontario.

(k) Each sales representative at the sales office is the agent of the Vendor and will be compensated for by the Vendor. As set out herin, the sales representative does not have the authority to give advice to the Purchaser or bind the Vendor by any promise or representation made orally or in writing. The signature of the Vendor or the Vendor's Solicitors on a written document is required in order to bind the Vendor to a promise or representation.

(l) The Purchaser acknowledges on his or her behalf and on behalf of the Corporation and agrees that notwithstanding any rights or causes of action which he or she might otherwise have at law or in equity arising out of this Agreement, neither he, she nor the Condominium shall assert any such rights nor have any claim or cause of action (as a result of any matter or thing arising under or in connection with this Agreement) against any person, firm, corporation or other legal entity other than the person, firm, corporation or legal entity specifically named or defined as the Vendor herein, even though the Vendor may be found to be a nominee or agent of another person, firm, corporation or other legal entity and this acknowledgement and agreement may be pleaded as an estoppel and bar against the Purchaser or the Corporation and any action or proceeding brought by the Purchaser to the Corporation to assert any of such rights, claims, or causes of action. The Purchaser further acknowledges that the Vendor may not be the registered owner of Lands and/or the Residential Unit or any other unit on the Closing Date but will cause title to the Property to be conveyed to the Purchaser on Closing. The Purchaser further acknowledges, and so accepts and agrees, that any representations, warranties, agreements, covenants and obligations contained herein or flowing from any document delivered pursuant to this Agreement will be those of the Vendor and not those of the registered owner of the Lands and/or any units, namely the declarant of the proposed Condominium. The Purchaser further acknowledges and so accepts that if the Vendor is not one and the same as the declarant, then in such event the declarant will be executing the declaration as registered owner of the Lands only, as required by the Act, and that save only for statutory liability under the Act regarding a shortfall in the first year operating budget of this Condominium, the declarant has no obligations or liabilities of any nature or kind whatsoever to the Purchasers (/residents) or to the Condominium. The Purchaser acknowledges that the Vendor may assign the benefit of these acknowledgements to the declarant and the Purchaser further acknowledges that this acknowledgement may be pleaded by the Vendor and/or the declarant as a bar or estoppel to any claim to the contrary.

(m) In the event that any of the documents delivered by the Vendor's Solicitors to the Purchaser or the Purchaser's Solicitors for execution by the Purchaser are signed in foreign characters or lettering (which bears no relation to the Purchaser's name in English, as same appears in the documents being executed) then the Purchaser agrees to ensure that his or her signature is duly witnessed and that a statement is added in English by such witness confirming that the witness saw the Purchaser sign the document after same had been read to the Purchaser and the Purchaser appeared to fully understand same.

(n) The Purchaser acknowledges that the Vendor may not be the registered owner of the Property and may not be the registered owner of the Property on the Closing Date. In such case, the Purchaser acknowledges and so accepts that all obligations of the Vendor hereunder (inclusive of any covenants, representations, warranties or assurances) are those of the Vendor alone and not the registered owner of the Lands and the Purchaser covenants and agrees that the Purchaser shall have no recourse or entitlement to any claim whatsoever against the registered owner of the Lands for any obligations of the Vendor under this Agreement and that any representations, warranties, agreements, covenants and obligations contained in this Agreement or flowing from any documents delivered pursuant to this Agreement are those of the Vendor and not those of the registered owner of the Property.

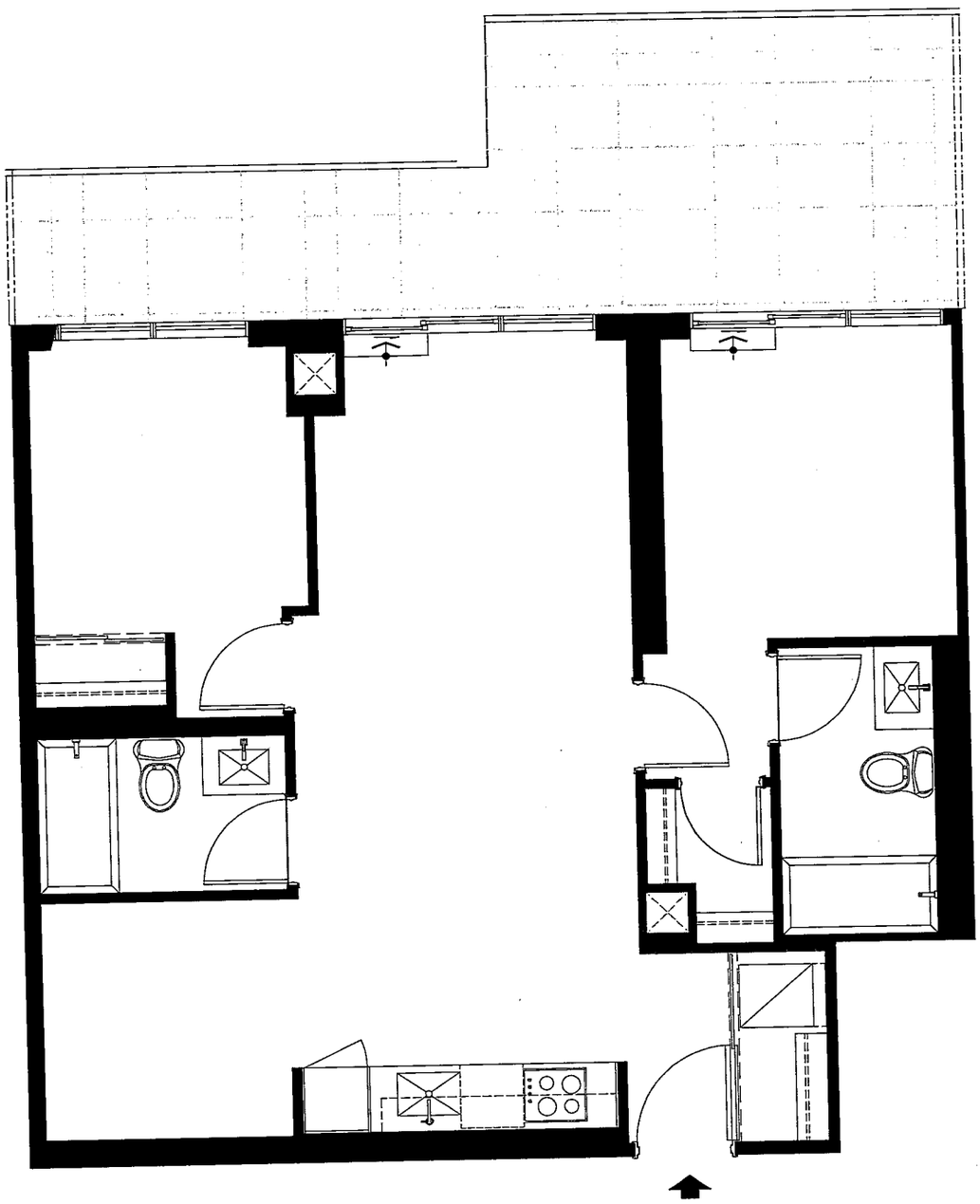


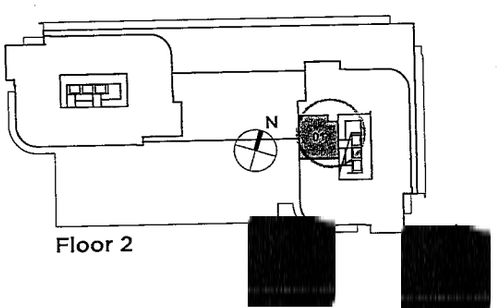
Schedule B

THE KENNEDYS
CONDOMINIUMS

THE SEATTLE / P 2BD + 2B - A

2 Bedroom + Den - 778 Sq.ft.





Suite# [redacted]
Level [redacted]
Unit# [redacted]
Date [redacted]
Purchasers Initials [redacted]
Purchasers Initials
Vendor Initials [redacted]

This plan is not to scale and subject to architectural review and revision including without limitation, the Unit being constructed with a layout that is the reverse of that set out above. All materials, specifications, details and dimensions, if any, are approximate and subject to change without notice in order to comply with building site conditions and municipal, structural, Vendor and/or architectural requirements. Actual floor area may vary in accordance with Bulletin 22 published by the Tarion Warranty Corporation. Bulkheads are not shown on this plan and may be located in areas of the Unit as required to provide venting and mechanical systems. Balconies, Terraces and Patios if any are exclusive use common elements, shown for display purposes only and location and size are subject to change without notice. Window location, size and type may vary without notice. E. & O.E.

SCHEDULE "C" – STANDARD FEATURES AND FINISHES

Interior Suite Finishes

- Wide Plank Engineered Laminate flooring for foyer, living/dining, bedroom and den* from Vendor's standard samples.
- White 12" x 12" ceramic tile for storage and laundry room floors
- 8'6" foot Stippled-ceilings
  floor-to-ceiling heights are approximate and are not applicable to areas under mechanical bulkheads.
- Wood door casings with matching trim and 4" baseboards
- Solid core wood veneer suite entry door complete with brushed chrome lever handle.
- Glass sliding partition doors, as per plan
- Semi solid interior doors complete with brushed chrome lever handle, as per plan
- Semi solid sliding closet doors or slab swing closet door as per plan
- White plastic coated ventilated wire shelving in all closets
- Light fixture installed in hallway
- Ceiling light fixture in bedrooms
- Capped ceiling outlet in dining room and den
- Paint colour white
- Stacked washer and dryer-24", front loading

Gourmet Kitchen Features

- Custom-style kitchen cabinetry from Vendor's standard samples.
- Choice of stone kitchen counter top from Vendor's standard samples.
- Designer tile backsplash from vendor's standard samples.
- Single stainless steel under mount sink with single-lever-pull-out faucet, as per plan.
- 6 1/4" Premium Laminate flooring from Vendor's standard samples.
- Refrigerator- counter-depth, bottom freezer, and stainless steel finish
- Slide in oven with cook top- stainless steel finish
- Stainless Steel Dishwasher
- Microwave Stainless Steel finish
- Hood Fan

Bathroom Features

- Choice of stone countertop and under mount basin from Vendor's standard samples
- Quality designed cabinetry from Vendor's standard samples
- 5' white soaker tub, as per plan
- Fixed glass panel tub enclosure, as per plan
- Glass shower door for bathrooms with separate showers, as per plan
- Acrylic base shower tray for floor of all separate shower enclosures from Vendor's standard samples.
- Elongated one-piece toilet in white
- Vanity Mirror
- Chrome single-lever faucet
- Wall sconce lighting
- Waterproof shower light fixture
- Choice of porcelain tiles for bathroom floors, walls of bathtub and shower enclosure or separate shower walls from Vendor's standard samples
- Bathroom exhaust vented to exterior
- Privacy lock
- Chrome finished temperature controlled and pressure balanced valve in all bathrooms

THE TECHNOLOGY

- Two-Pipe fan coil for year round control of heating and cooling
- Individual suite hydro meter
- 100 amp service panel with automatic circuit breaker
- White Decora-style switches and matching plugs
- Cable TV outlets located in living room, all bedroom and den (one per room)
- Telephone outlets located in living room, all bedroom and den (one per room)
- Suite entry door to have door contact and keypad connect to lobby concierge desk
- Weather proof electrical outlet located on balcony

Please Note: The Vendor shall have the right to make reasonable changes in the opinion of the Vendor in the plans and specifications if required and to substitute other material for that provided for herein with material that is of equal or better quality than that provided for herein. The determination of whether or not a substitute material is of equal or better quality shall be made by the Vendor's architect whose determination shall be final and binding. The Purchaser acknowledges that colour, texture, appearance, grains, veining, natural variations in appearance etc. of features and finishes installed in the Unit may vary from Vendor's samples as a result of normal manufacturing and installation processes and as a result of any such finishes being of natural products and the Purchaser agrees that the Vendor is not responsible for same. The Vendor is not responsible for shade difference occurring in the manufacture of items such as, but not limited to, finishing materials or products such as carpet, tiles, bath tubs, sinks and other such products where the product manufacturer establishes the standard for such finishes. Nor shall the Vendor be responsible for shade difference in colour of components manufactured from different materials but which components are designed to be assembled into either one product or installed in conjunction with another product and in these circumstances the product as manufactured shall be accepted by the Purchaser. Purchaser acknowledges and agrees that carpeting may be seamed in certain circumstances and said seams may be visible. Purchaser acknowledges and agrees that pre-finished wood flooring (if any) may react to normal fluctuating humidity levels inducing gapping or cupping. The Purchaser acknowledges that marble (if any) is a very soft stone which will require a substantial amount of maintenance by the Purchaser and is very easily scratched and damaged. **Plan and specifications are subject to change without notice.** E & O.E.

YOUR NEW HOME IS PROTECTED BY FOUR LEVELS OF GUARANTEES

- One Year Guarantee on the workmanship and materials of your new home, a guarantee backed by the "TARION" New Home Warranty Program (the new name for the trusted Ontario New Home Warranty Program).
- Full 2 years coverage on electrical, plumbing, heat delivery & distribution system.
- The "TARION" New Home Warranty Program 7 Year Structural Guarantee on major structural components of your new home.
- Individual components in your new home are guaranteed by the manufacturer. Warranties provided by these reputable brand-name manufacturers are all passed on to you.

*See the TARION New Home Warranty Program for full warranty details.

**Refer to Schedule "A" suite layout to determine width of refrigerator and range.

[redacted]

[2 Pages]

THE KENNEDYS – EAST TOWER

SCHEDULE D

OCCUPANCY LICENCE

1. **CREATION OF LICENCE AND PAYMENTS**

(a) If title to the Property is not conveyed to the Purchaser at the time of occupancy, the Purchaser shall occupy the Property pursuant to the Licence created by this Agreement. The Licence shall terminate on the earlier of the Closing Date or the date that the Licence terminates pursuant to this Agreement.

(b) The Purchaser shall pay to the Vendor an Occupancy Fee, calculated in accordance with the terms of the Agreement as an occupancy charge on the first day of each month, in advance, during occupancy. The Occupancy Fee may be recalculated by the Vendor, from time to time, based on revised estimates of the items which may be lawfully taken into account in the calculation thereof and the Purchaser shall pay to the Vendor such revised Occupancy Fee and /or replacement or supplementary cheques within 15 days of notice of same from the Vendor. If the Occupancy License is extended beyond 12 months, the Purchase shall, within 15 days of written demand by the Vendor, provide from time to time 12 further post-dated cheques for each year of the Occupancy Licence.

(c) The Purchaser shall make all Occupancy Fee payments without objections or deduction, and all such payments shall be subject to readjustment on the Closing Date.

(d) The Purchaser shall provide to the Vendor prior to occupying the Residential Unit, each and every one of the following:

(i) A certified cheque or bank draft for payment of the Occupancy Fee for the stub period between the Occupancy Date and the last day of the month, or for the entire month if the Occupancy Date is the first day of a month,

(ii) Eleven (11) post-dated cheques, one for the 11 months following the Occupancy Date, each payable on the first day of each month, or by an alternative pre-authorized payment plan as directed and required by the Vendor;

(iii) A clear execution certificate against the Purchaser and each person intended to be named by the Purchaser as a Transferee;

(iv) Payment by bank draft or certified cheque of any upgrades or extras (including HST) ordered by the Purchaser but not yet paid for;

(v) Payment by bank draft or certified cheque of all sums owing to the Vendor or the Vendor's Solicitors arising from the default of the Purchaser;

(vi) Proof of insurance, as set out at Paragraph 2 (c); and

(vii) Any other documents or sums required to be paid or delivered pursuant to this Agreement with payment by bank draft or certified cheque.

(e) The Purchaser shall in addition to the Occupancy Fee, be responsible for, and pay when due, all charges for utility services provided to the Property during the term of the Occupancy Licence including without limitation, electricity, gas, water and sewage charges, unless the same are included in the proposed condominium expenses.

2. **OBLIGATIONS DURING OCCUPANCY LICENCE**

(a) The Purchaser shall use the Residential Unit only as a single family residential dwelling and the Property shall be occupied only by the Purchaser and his/her immediate family or such other person or persons approved in writing by the Vendor in its sole and unfettered discretion. The Purchaser agrees to comply with the provisions of the Agreement and the terms of the Condominium Documents

(b) The Purchaser shall not assign the right to reside in or occupy or permit occupancy of the Residential Unit by any other person, or otherwise part with possession of the Property except as set out in this Agreement without the consent of the Vendor, which consent may be arbitrarily withheld.

(c) The Purchaser shall maintain the Property in a clean and sanitary condition and shall not make any alterations, improvements or additions to the Property without the written approval of the Vendor, which approval may be arbitrarily and unreasonably withheld. The Purchaser agrees to indemnify and save harmless the Vendor as a result of a breach of this provision by the Purchaser.

(d) The parties hereto agree that acceptance of possession of the Property hereunder by the Purchaser or any member of his/her family or such other person or persons as approved in writing by the Vendor shall not be deemed in any way as a release or abandonment of any of the Purchaser's or the Vendor's rights under this Agreement and time shall continue to be of the essence. The Vendor may enforce the provisions of this Occupancy Licence separate and apart from the provisions of the Agreement.

(e) The Purchaser agrees to obtain public liability insurance during his/her occupancy for a sum of not less than $2,000,000.00 naming the Purchaser and his/her family members as loss payees with a cross liability endorsement in favour of the Vendor and to provide proof of such insurance prior to the Occupancy Date if requested by the Vendor.

(f) The Vendor shall not be liable for any death or injury arising from or out of any occurrence in, upon, at, or relating to the Condominium, or the Property or damage to property of the Purchaser or of others located on the Condominium or any unit therein, and shall also not be responsible for a loss of or damage to any property of the Purchaser or others from any cause whatsoever, whether or not any such death, injury, loss or damage results from the negligence of the Vendor, its agents, servants or employees, or other persons for whom it may at law be responsible. The Vendor shall not be liable for any damage caused by other owners, occupants, tenants, invitees or any other person on the Condominium or by occupants of adjacent property thereto, or the public, or caused by construction or by any private, public or quasi public work.

(g) All property of the Purchaser kept or stored on the Condominium or on or in the Property shall be so kept or stored at the risk of the Purchaser only and the Purchaser shall indemnify the Vendor and save it harmless from and against any claim arising out of any damages to the same, including without limitation, any subrogated claims by the Purchaser's insurers.

(h) Notwithstanding any other terms, covenants and conditions contained in this Agreement, and in addition to Paragraphs 2(f) and 2(g), the Purchaser shall protect, indemnify and hold the Vendor harmless from and against any and all loss (including loss of all occupancy payments payable by the Purchaser pursuant to this Agreement), claims, actions, damages, liability and expense in connection with loss of life, personal injury, damaged property or any other loss or injury whatsoever arising from or out of this Agreement, or any occurrence in, upon or at the Condominium, or the Property, or the occupancy or use by the Purchaser of the Condominium or any part thereof or the Property, or occasioned wholly or in part by any act or omission of the Purchaser or by anyone permitted to be on the Condominium or the Property by the Purchaser. If the Vendor shall, without fault on its part, be made a party to any litigation commenced by or against the Purchaser, then the Purchaser shall protect, indemnify and hold the Vendor harmless and shall pay all costs, expenses and reasonable legal fees incurred or paid by the Vendor in connection with such litigation.

(i) The Purchaser acknowledges that the Vendor holds a fire insurance policy only on the Condominium (as required under the *Condominium Act*) and not on any improvements or betterment made by or on behalf of the Purchaser. It is the responsibility of the Purchaser after the Occupancy Date to insure improvements or betterment to the Residential Unit and to replace and/or repair same if they are removed, injured or destroyed.

3. **TERMINATION OF LICENCE**

(a) The provisions of this Article apply to the termination of the Occupancy Licence prior to a Closing Date pursuant to the terms of this Agreement, or by order of a Court or Arbitrator, or by the Creating Documents, or by reason of the default of the Purchaser.

(b) If the Creating Documents have not been registered within eighteen (18) months after the Occupancy Date the Vendor shall have the right to terminate the Agreement and this Occupancy Licence by notice in writing to the Purchaser of the Purchaser's Solicitors effective the last day in the month following the month in which said notice is given. No such notice or right to terminate can be given or exercised by the Purchaser after the date that the Creating Documents have been registered.

(c) The Purchaser shall vacate the Property on the date fixed in the notice given pursuant to Paragraph 3(b) or on any date fixed by the Vendor pursuant to the terms of the Agreement or by a Court or arbitrator for possession (the **"Termination Date"**). The Purchaser shall deliver all keys and passcards to the property manager and shall leave the Property in its original state, reasonable wear and tear excepted, and make good any damages caused by any improvements or fixtures to the Property not authorized or installed by the Vendor. The property manager may require a joint inspection of the Property after the Purchaser has provided vacant possession of the same.

(d) Within 30 days after the Termination Date, the Vendor shall deliver a report in writing from one or more Consultants as to any of the fixtures removed from the Property and all damage to the Property or the common elements attributed or caused by the Purchaser or other occupants of the Property or invitees, or those when the Purchase is in law responsible. The report shall also include the actual or anticipated repair costs, and include as part of the total costs a 20 per cent allowance for the Vendor's costs to make the repairs, plus HST. The report shall be final and binding on the Vendor and the Purchaser.

(e) The Purchaser shall pay the total costs of the repairs to the Vendor within 10 days of delivery of the Report. For all repairs for which there are estimates, the amounts shown as estimates shall be deemed to be final and binding on the Vendor and the Purchaser.

(f) If the Purchaser is entitled to a refund of the deposits, either with or without interest, the same shall be paid within 40 days after the Termination Date, if the Purchaser has delivered vacant possession of the Property. The Vendor shall set off against the payment the total cost identified in the Report and any of the other sums identified in Paragraphs 3(g), 3(h), and 3(i).

(g) If the Purchaser overholds possession of the Property after the Termination Date, the Vendor shall be entitled to payment of the Occupancy Fee on a per diem basis until the date the Purchaser delivers vacant possession of the Property.

(h) If the Purchaser fails to give the Vendor vacant possession of the Property on the Termination Date, the provisions of Section 58(1)(4) of the Residential Tenancies Act S.O. 2006, as amended, shall apply with respect to the termination of the occupancy of the Purchaser. If the Vendor is required to apply for a court or tribunal for an order terminating the Purchaser's occupancy of the unit, the Purchaser shall reimburse the Vendor for all costs and legal fees, on a full indemnity basis, the Vendor may incur in so doing.

(i) The Vendor shall not be responsible or liable for reimbursing the Purchaser for any decoration or installation of any finishings or any other items undertaken by the Purchaser for the Property and the Purchaser shall pay to the Vendor the costs to identify any fixtures removed from the Property identified in the report.

(j) If the Purchaser defaults on any of the Purchaser's obligations pursuant to this Agreement while the Purchaser is in occupation of the Property, or if the Purchaser fails to complete the Agreement on the Closing Date, the Vendor, in addition to all other remedies granted to it, may terminate this Agreement and the Occupancy Licence by written notice, and fix a Termination Date by such notice. The provisions of Paragraphs 3(b) to 3(c), 3(g), 3(h) and 3(i) apply to such termination *mutatis mutandis*.

(k) Upon the termination of the Occupancy Licence the Vendor, and its officers directors, agents and servants shall not be liable for any damages or costs whatsoever, including without limiting the generality of the foregoing for any loss of bargain, relocating costs, loss of use of deposit monies or for any professional or other fees paid in relation to this transaction, unless the same is required to be paid under the Plan Act.

[redacted] [redacted]

TARION
PROTECTING ONTARIO'S NEW HOME BUYERS

Condominium Form
(Tentative Occupancy Date)

Property The Kennedys Condominiums

Statement of Critical Dates

Delayed Occupancy Warranty

This Statement of Critical Dates forms part of the Addendum to which it is attached, which in turn forms part of the agreement of purchase and sale between the Vendor and the Purchaser relating to the Property. **The Vendor must complete all blanks set out below. Both the Vendor and Purchaser must sign this page.**

NOTE TO HOME BUYERS: ***Please visit Tarion's website: www.tarion.com for important information about all of Tarion's warranties including the Delayed Occupancy Warranty, the Pre-Delivery Inspection and other matters of interest to new home buyers. You can also obtain a copy of the Homeowner Information Package which is strongly recommended as essential reading for all home buyers. The website features a calculator which will assist you in confirming the various Critical Dates related to the occupancy of your home.***

VENDOR TARN CONSTRUCTION CORPORATION
Full Name(s)

[redacted]

PURCHASER
Full Name(s)

1. Critical Dates

The **First Tentative Occupancy Date**, which is the date that the Vendor anticipates the home will be completed and ready to move in, is: the 5th day of October, 2020.

The Vendor can delay Occupancy on one or more occasions by setting a subsequent **Tentative Occupancy Date**, in accordance with section 1 of the Addendum by giving proper written notice as set out in section 1.

By no later than 30 days after the Roof Assembly Date (as defined in section 12), with at least 90 days prior written notice, the Vendor shall set either (i) a **Final Tentative Occupancy Date**; or (ii) a **Firm Occupancy Date.**

For purchase agreements signed after the Roof Assembly Date, the First Tentative Occupancy Date is inapplicable and the Vendor shall instead elect and set either a Final Tentative Occupancy Date or Firm Occupancy Date.

the ___day of _____, 20____.
Final Tentative Occupancy Date

or

the ___day of _____, 20____.
Firm Occupancy Date

If the Vendor sets a Final Tentative Occupancy Date but cannot provide Occupancy by the Final Tentative Occupancy Date, then the Vendor shall set a **Firm Occupancy Date** that is no later than 120 days after the Final Tentative Occupancy Date, with proper written notice as set out in section 1 below.

If the Vendor cannot provide Occupancy by the Firm Occupancy Date, then the Purchaser is entitled to delayed occupancy compensation (see section 7 of the Addendum) and the Vendor must set a Delayed Occupancy Date which cannot be later than the Outside Occupancy Date.

The **Outside Occupancy Date**, which is the latest date by which the Vendor agrees to provide Occupancy, is: the 2nd day of October, 2023.

2. Notice Period for an Occupancy Delay

Changing an Occupancy date requires proper written notice. The Vendor, without the Purchaser's consent, may delay Occupancy one or more times in accordance with section 1 of the Addendum and no later than the Outside Occupancy Date. Notice of a delay beyond the First Tentative Occupancy Date must be given no later than: (i.e., at least **90 days** before the First Tentative Occupancy Date), or else the First Tentative Occupancy Date automatically becomes the Firm Occupancy Date. the 7th day of July, 2020.

3. Purchaser's Termination Period

If the home is not complete by the Outside Occupancy Date, then the Purchaser can terminate the transaction during a period of **30 days** thereafter (the "**Purchaser's Termination Period**"), which period, unless extended by mutual agreement, will end on: the 1st day of November, 2023.
If the Purchaser terminates the transaction during the Purchaser's Termination Period, then the Purchaser is entitled to delayed occupancy compensation and to a full refund of all monies paid plus interest (*see sections 7, 10 and 11 of the Addendum*).

Note: ***Any time a Critical Date is set or changed as permitted in the Addendum, other Critical Dates may change as well. At any given time the parties must refer to: the most recent revised Statement of Critical Dates; or agreement or written notice that sets a Critical Date, and calculate revised Critical Dates using the formulas contained in the Addendum. Critical Dates can also change if there are unavoidable delays (see section 5 of the Addendum).***

Acknowledged this [redacted] day of [redacted]

VENDOR: [redacted]

PURCHASER: [redacted]

TARION
PROTECTING ONTARIO'S NEW HOME BUYERS

Condominium Form
(Tentative Occupancy Date)

Addendum to Agreement of Purchase and Sale
Delayed Occupancy Warranty

This addendum, including the accompanying Statement of Critical Dates (the "**Addendum**"), forms part of the agreement of purchase and sale (the "**Purchase Agreement**") between the Vendor and the Purchaser relating to the Property. This Addendum is to be used for a transaction where the home is a condominium unit (that is not a vacant land condominium unit). This Addendum contains important provisions that are part of the delayed occupancy warranty provided by the Vendor in accordance with the *Ontario New Home Warranties Plan Act* (the "ONHWP Act"). If there are any differences between the provisions in the Addendum and the Purchase Agreement, then the Addendum provisions shall prevail. **PRIOR TO SIGNING THE PURCHASE AGREEMENT OR ANY AMENDMENT TO IT, THE PURCHASER SHOULD SEEK ADVICE FROM A LAWYER WITH RESPECT TO THE PURCHASE AGREEMENT OR AMENDING AGREEMENT, THE ADDENDUM AND THE DELAYED OCCUPANCY WARRANTY.**

Tarion recommends that Purchasers register on Tarion's **MyHome** on-line portal and visit Tarion's website – **tarion.com**, to better understand their rights and obligations under the statutory warranties.

The Vendor shall complete all blanks set out below.

Vendor TARN CONSTRUCTION CORPORATION
Full Name(s)

44777
Tarion Registration Number

416-293-1414
Phone

Fax

2035 Kennedy Road
Address

Toronto ON M1T 3G2
City Province Postal code

info@kennedycondos.com
Email*

PURCHASER [redacted]
Full Name(s)

[redacted]
Address City Province Postal Code

[redacted]
Phone

Fax

[redacted]
Email*

PROPERTY DESCRIPTION

2035 Kennedy Road
Municipal Address

Toronto Ontario
City **Province** **Postal Code**

Part Lot 28, Concession 2, designated as Parts 1 and 2, Plan 66R-12484, being P.I.N. 06164-0197 (LT), and Lot 19, Registrar's Compiled Plan 9945, designated as Part 1, Plan 66R-28554, being all of P.I.N. 06164-0509 (LT)
Short Legal Description

INFORMATION REGARDING THE PROPERTY

The Vendor confirms that:

(a) The Vendor has obtained Formal Zoning Approval for the Building. O Yes ✠ No
If no, the Vendor shall give written notice to the Purchaser within 10 days after the date that Formal Zoning Approval for the Building is obtained.

(b) Commencement of Construction: O has occurred; or ✠ is expected to occur by the 15th day of August, 2017.

The Vendor shall give written notice to the Purchaser within 10 days after the actual date of Commencement of Construction.

***Note: Since important notices will be sent to this address, it is essential that you ensure that a reliable email address is provided and that your computer settings permit receipt of notices from the other party.**

[redacted]

SETTING AND CHANGING CRITICAL DATES

1. Setting Tentative Occupancy Dates and the Firm Occupancy Date

(a) **Completing Construction Without Delay**: The Vendor shall take all reasonable steps to complete construction of the Building subject to all prescribed requirements, to provide Occupancy of the home without delay, and, to register without delay the declaration and description in respect of the Building.

(b) **First Tentative Occupancy Date**: The Vendor shall identify the First Tentative Occupancy Date in the Statement of Critical Dates attached to this Addendum at the time the Purchase Agreement is signed.

(c) **Subsequent Tentative Occupancy Dates**: The Vendor may, in accordance with this section, extend the First Tentative Occupancy Date on one or more occasions, by setting a subsequent Tentative Occupancy Date. The Vendor shall give written notice of any subsequent Tentative Occupancy Date to the Purchaser at least 90 days before the existing Tentative Occupancy Date (which in this Addendum may include the First Tentative Occupancy Date), or else the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. A subsequent Tentative Occupancy Date can be any Business Day on or before the Outside Occupancy Date.

(d) **Final Tentative Occupancy Date**: By no later than 30 days after the Roof Assembly Date, the Vendor shall by written notice to the Purchaser set either (i) a Final Tentative Occupancy Date; or (ii) a Firm Occupancy Date. If the Vendor does not do so, the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Vendor shall give written notice of the Final Tentative Occupancy Date or Firm Occupancy Date, as the case may be, to the Purchaser at least 90 days before the existing Tentative Occupancy Date, or else the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Final Tentative Occupancy Date or Firm Occupancy Date, as the case may be, can be any Business Day on or before the Outside Occupancy Date. For new Purchase Agreements signed after the Roof Assembly Date, the Vendor shall insert in the Statement of Critical Dates of the Purchase Agreement either: a Final Tentative Occupancy Date; or a Firm Occupancy Date

(e) **Firm Occupancy Date**: If the Vendor has set a Final Tentative Occupancy Date but cannot provide Occupancy by the Final Tentative Occupancy Date then the Vendor shall set a Firm Occupancy Date that is no later than 120 days after the Final Tentative Occupancy Date. The Vendor shall give written notice of the Firm Occupancy Date to the Purchaser at least 90 days before the Final Tentative Occupancy Date, or else the Final Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Firm Occupancy Date can be any Business Day on or before the Outside Occupancy Date.

(f) **Notice**: Any notice given by the Vendor under paragraph (c), (d) or (e) must set out the stipulated Critical Date, as applicable.

2. Changing the Firm Occupancy Date – Three Ways

(a) The Firm Occupancy Date, once set or deemed to be set in accordance with section 1, can be changed only:
  (i) by the Vendor setting a Delayed Occupancy Date in accordance with section 3;
  (ii) by the mutual written agreement of the Vendor and Purchaser in accordance with section 4; or
  (iii) as the result of an Unavoidable Delay of which proper written notice is given in accordance with section 5.

(b) If a new Firm Occupancy Date is set in accordance with section 4 or 5, then the new date is the "Firm Occupancy Date" for all purposes in this Addendum.

3. Changing the Firm Occupancy Date – By Setting a Delayed Occupancy Date

(a) If the Vendor cannot provide Occupancy on the Firm Occupancy Date and sections 4 and 5 do not apply, the Vendor shall select and give written notice to the Purchaser of a Delayed Occupancy Date in accordance with this section, and delayed occupancy compensation is payable in accordance with section 7.

(b) The Delayed Occupancy Date may be any Business Day after the date the Purchaser receives written notice of the Delayed Occupancy Date but not later than the Outside Occupancy Date.

(c) The Vendor shall give written notice to the Purchaser of the Delayed Occupancy Date as soon as the Vendor knows that it will be unable to provide Occupancy on the Firm Occupancy Date, and in any event at least 10 days before the Firm Occupancy Date, failing which delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date, in accordance with paragraph 7(c). If notice of a new Delayed Occupancy Date is not given by the Vendor before the Firm Occupancy Date, then the new Delayed Occupancy Date shall be deemed to be the date which is 90 days after the Firm Occupancy Date.

(d) After the Delayed Occupancy Date is set, if the Vendor cannot provide Occupancy on the Delayed Occupancy Date, the Vendor shall select and give written notice to the Purchaser of a new Delayed Occupancy Date, unless the delay arises due to Unavoidable Delay under section 5 or is mutually agreed upon under section 4, in which case the requirements of those sections must be met. Paragraphs (b) and (c) above apply with respect to the setting of the new Delayed Occupancy Date.

(e) Nothing in this section affects the right of the Purchaser or Vendor to terminate the Purchase Agreement on the bases set out in section 10.

4. Changing Critical Dates – By Mutual Agreement

(a) This Addendum sets out a framework for setting, extending and/or accelerating Critical Dates, which cannot be altered contractually except as set out in this section 4. Any amendment not in accordance with this section is voidable at the option of the Purchaser. For greater certainty, this Addendum does not restrict any extensions of the Closing date (i.e., title transfer date) where Occupancy of the home has already been given to the Purchaser.

(b) The Vendor and Purchaser may at any time, after signing the Purchase Agreement, mutually agree in writing to accelerate or extend any of the Critical Dates. Any amendment which accelerates or extends any of the Critical Dates must include the following provisions:

(i) the Purchaser and Vendor agree that the amendment is entirely voluntary – the Purchaser has no obligation to sign the amendment and each understands that this purchase transaction will still be valid if the Purchaser does not sign this amendment;
(ii) the amendment includes a revised Statement of Critical Dates which replaces the previous Statement of Critical Dates;
(iii) the Purchaser acknowledges that the amendment may affect delayed occupancy compensation payable; and
(iv) if the change involves extending either the Firm Occupancy Date or the Delayed Occupancy Date, then the amending agreement shall:

i. disclose to the Purchaser that the signing of the amendment may result in the loss of delayed occupancy compensation as described in section 7;
ii. unless there is an express waiver of compensation, describe in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation; and
iii. contain a statement by the Purchaser that the Purchaser waives compensation or accepts the compensation referred to in clause ii above, in either case, in full satisfaction of any delayed occupancy compensation payable by the Vendor for the period up to the new Firm Occupancy Date or Delayed Occupancy Date.

If the Purchaser for his or her own purposes requests a change of the Firm Occupancy Date or the Delayed Occupancy Date, then subparagraphs (b)(i), (iii) and (iv) above shall not apply.

(c) A Vendor is permitted to include a provision in the Purchase Agreement allowing the Vendor a one-time unilateral right to extend a Firm Occupancy Date or Delayed Occupancy Date, as the case may be, for one (1) Business Day to avoid the necessity of tender where a Purchaser is not ready to complete the transaction on the Firm Occupancy Date or Delayed Occupancy Date, as the case may be. Delayed occupancy compensation will not be payable for such period and the Vendor may not impose any penalty or interest charge upon the Purchaser with respect to such extension.

(d) The Vendor and Purchaser may agree in the Purchase Agreement to any unilateral extension or acceleration rights that are for the benefit of the Purchaser.

5. Extending Dates – Due to Unavoidable Delay

(a) If Unavoidable Delay occurs, the Vendor may extend Critical Dates by no more than the length of the Unavoidable Delay Period, without the approval of the Purchaser and without the requirement to pay delayed occupancy compensation in connection with the Unavoidable Delay, provided the requirements of this section are met.

(b) If the Vendor wishes to extend Critical Dates on account of Unavoidable Delay, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, and an estimate of the duration of the delay. Once the Vendor knows or ought reasonably to know that an Unavoidable Delay has commenced, the Vendor shall provide written notice to the Purchaser by the earlier of: 20 days thereafter; and the next Critical Date.

(c) As soon as reasonably possible, and no later than 20 days after the Vendor knows or ought reasonably to know that an Unavoidable Delay has concluded, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, identifying the date of its conclusion, and setting new Critical Dates. The new Critical Dates are calculated by adding to the then next Critical Date the number of days of the Unavoidable Delay Period (the other Critical Dates changing accordingly), provided that the Firm Occupancy Date or Delayed Occupancy Date, as the case may be, must be at least 10 days after the day of giving notice unless the parties agree otherwise. Either the Vendor or the Purchaser may request in writing an earlier Firm Occupancy Date or Delayed Occupancy Date, and the other party's consent to the earlier date shall not be unreasonably withheld.

(d) If the Vendor fails to give written notice of the conclusion of the Unavoidable Delay in the manner required by paragraph (c) above, then the notice is ineffective, the existing Critical Dates are unchanged, and any delayed occupancy compensation payable under section 7 is payable from the existing Firm Occupancy Date.

(e) Any notice setting new Critical Dates given by the Vendor under this section shall include an updated revised Statement of Critical Dates.

EARLY TERMINATION CONDITIONS

6. Early Termination Conditions

(a) The Vendor and Purchaser may include conditions in the Purchase Agreement that, if not satisfied, give rise to early termination of the Purchase Agreement, but only in the limited way described in this section.

(b) The Vendor is not permitted to include any conditions in the Purchase Agreement other than: the types of Early Termination Conditions listed in Schedule A; and/or the conditions referred to in paragraphs (i), (j) and (k) below. Any other condition included in a Purchase Agreement for the benefit of the Vendor that is not expressly permitted under Schedule A or paragraphs (i), (j) and (k) below is deemed null and void and is not enforceable by the Vendor, but does not affect the validity of the balance of the Purchase Agreement.

(c) The Vendor confirms that this Purchase Agreement is subject to Early Termination Conditions that, if not satisfied (or waived, if applicable), may result in the termination of the Purchase Agreement. O Yes O No

(d) If the answer in (c) above is "Yes", then the Early Termination Conditions are as follows. The obligation of each of the Purchaser and Vendor to complete this purchase and sale transaction is subject to satisfaction (or waiver, if applicable) of the following conditions and any such conditions set out in an appendix headed "Early Termination Conditions":

Condition #1 (if applicable)
Description of the Early Termination Condition:

See Appendix

The Approving Authority (as that term is defined in Schedule A) is: _____

The date by which Condition #1 is to be satisfied is the _____day of_____, 20 _____.

Condition #2 (if applicable)
Description of the Early Termination Condition:

See Appendix

The Approving Authority (as that term is defined in Schedule A) is: _____

The date by which Condition #2 is to be satisfied is the _____day of _____, 20_____.

The date for satisfaction of any Early Termination Condition may be changed by mutual agreement provided in all cases it is set at least 90 days before the First Tentative Occupancy Date, and will be deemed to be 90 days before the First Tentative Occupancy Date if no date is specified or if the date specified is later than 90 days before the First Tentative Occupancy Date. This time limitation does not apply to the condition in subparagraph 1(b)(iv) of Schedule A which must be satisfied or waived by the Vendor within 60 days following the later of: (A) the signing of the Purchase Agreement; and (B) the satisfaction or waiver by the Purchaser of a Purchaser financing condition permitted under paragraph (k) below.

Note: The parties must add additional pages as an appendix to this Addendum if there are additional Early Termination Conditions.

(e) There are no Early Termination Conditions applicable to this Purchase Agreement other than those identified in subparagraph (d) above and any appendix listing additional Early Termination Conditions.

(f) The Vendor agrees to take all commercially reasonable steps within its power to satisfy the Early Termination Conditions identified in subparagraph (d) above.

(g) For conditions under paragraph 1(a) of Schedule A the following applies:

(i) conditions in paragraph 1(a) of Schedule A may not be waived by either party;
(ii) the Vendor shall provide written notice not later than five (5) Business Days after the date specified for satisfaction of a condition that: (A) the condition has been satisfied; or (B) the condition has not been satisfied (together with reasonable details and backup materials) and that as a result the Purchase Agreement is terminated; and
(iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed not satisfied and the Purchase Agreement is terminated.

(h) For conditions under paragraph 1(b) of Schedule A the following applies:

(i) conditions in paragraph 1(b) of Schedule A may be waived by the Vendor;
(ii) the Vendor shall provide written notice on or before the date specified for satisfaction of the condition that: (A) the condition has been satisfied or waived; or (B) the condition has not been satisfied nor waived, and that as a result the Purchase Agreement is terminated; and
(iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed satisfied or waived and the Purchase Agreement will continue to be binding on both parties.

(i) The Purchase Agreement may be conditional until Closing (transfer to the Purchaser of title to the home), upon compliance with the subdivision control provisions (section 50) of the *Planning Act* and, if applicable, registration of the declaration and description for the Building under the *Condominium Act, 1998*, which compliance shall be obtained by the Vendor at its sole expense, on or before Closing.

(j) The Purchaser is cautioned that there may be other conditions in the Purchase Agreement that allow the Vendor to terminate the Purchase Agreement due to the fault of the Purchaser.

(k) The Purchase Agreement may include any condition that is for the sole benefit of the Purchaser and that is agreed to by the Vendor (e.g., the sale of an existing dwelling, Purchaser financing or a basement walkout). The Purchase Agreement may specify that the Purchaser has a right to terminate the Purchase Agreement if any such condition is not met, and may set out the terms on which termination by the Purchaser may be effected.

MAKING A COMPENSATION CLAIM

7. Delayed Occupancy Compensation

(a) The Vendor warrants to the Purchaser that, if Occupancy is delayed beyond the Firm Occupancy Date (other than by mutual agreement or as a result of Unavoidable Delay as permitted under sections 4 and 5), then the Vendor shall compensate the Purchaser up to a total amount of $7,500, which amount includes: (i) payment to the Purchaser of a set amount of $150 a day for living expenses for each day of delay until the Occupancy Date or the date of termination of the Purchase Agreement, as applicable under paragraph (b) below; and (ii) any other expenses (supported by receipts) incurred by the Purchaser due to the delay.

(b) Delayed occupancy compensation is payable only if: (i) Occupancy and Closing occurs; or (ii) the Purchase Agreement is terminated or deemed to have been terminated under paragraph 10(b) of this Addendum. Delayed occupancy compensation is payable only if the Purchaser's claim is made to Tarion in writing within one (1) year after Occupancy, or after termination of the Purchase Agreement, as the case may be, and otherwise in accordance with this Addendum. Compensation claims are subject to any further conditions set out in the ONHWP Act.

(c) If the Vendor gives written notice of a Delayed Occupancy Date to the Purchaser less than 10 days before the Firm Occupancy Date, contrary to the requirements of paragraph 3(c), then delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date.

(d) Living expenses are direct living costs such as for accommodation and meals. Receipts are not required in support of a claim for living expenses, as a set daily amount of $150 per day is payable. The Purchaser must provide receipts in support of any claim for other delayed occupancy compensation, such as for moving and storage costs. Submission of false receipts disentitles the Purchaser to any delayed occupancy compensation in connection with a claim.

(e) If delayed occupancy compensation is payable, the Purchaser may make a claim to the Vendor for that compensation after Occupancy or after termination of the Purchase Agreement, as the case may be, and shall include all receipts (apart from living expenses) which evidence any part of the Purchaser's claim. The Vendor shall assess the Purchaser's claim by determining the amount of delayed occupancy compensation payable based on the rules set out in section 7 and the receipts provided by the Purchaser, and the Vendor shall promptly provide that assessment information to the Purchaser. The Purchaser and the Vendor shall use reasonable efforts to settle the claim and when the claim is settled, the Vendor shall prepare an acknowledgement signed by both parties which:

(i) includes the Vendor's assessment of the delayed occupancy compensation payable;
(ii) describes in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation (the "Compensation"), if any; and
(iii) contains a statement by the Purchaser that the Purchaser accepts the Compensation in full satisfaction of any delayed occupancy compensation payable by the Vendor.

(f) If the Vendor and Purchaser cannot agree as contemplated in paragraph 7(e), then to make a claim to Tarion the Purchaser must file a claim with Tarion in writing within one (1) year after Occupancy. A claim may also be made and the same rules apply if the sale transaction is terminated under paragraph 10(b), in which case, the deadline for a claim is one (1) year after termination.

(g) If delayed occupancy compensation is payable, the Vendor shall either pay the compensation as soon as the proper amount is determined; or pay such amount with interest (at the prescribed rate as specified in subsection 19(1) of O.Reg. 48/01 of the *Condominium Act, 1998*), from the Occupancy Date to the date of Closing, such amount to be an adjustment to the balance due on the day of Closing.

8. Adjustments to Purchase Price

Only the items set out in Schedule B (or an amendment to Schedule B), shall be the subject of adjustment or change to the purchase price or the balance due on Closing. The Vendor agrees that it shall not charge as an adjustment or readjustment to the purchase price of the home, any reimbursement for a sum paid or payable by the Vendor to a third party unless the sum is ultimately paid to the third party either before or after Closing. If the Vendor charges an amount in contravention of the preceding sentence, the Vendor shall forthwith readjust with the Purchaser. This section shall not: restrict or prohibit payments for items disclosed in Part I of Schedule B which have a fixed fee; nor shall it restrict or prohibit the parties from agreeing on how to allocate as between them, any rebates, refunds or incentives provided by the federal government, a provincial or municipal government or an agency of any such government, before or after Closing.

MISCELLANEOUS

9. Ontario Building Code – Conditions of Occupancy

(a) On or before the Occupancy Date, the Vendor shall deliver to the Purchaser:
(i) an Occupancy Permit (as defined in paragraph (d)) for the home; or
(ii) if an Occupancy Permit is not required under the Building Code, a signed written confirmation by the Vendor that all conditions of occupancy under the Building Code have been fulfilled and Occupancy is permitted under the Building Code.

(b) Notwithstanding the requirements of paragraph (a), to the extent that the Purchaser and the Vendor agree that the Purchaser shall be responsible for one or more prerequisites to obtaining permission for Occupancy under the Building Code, (the "Purchaser Occupancy Obligations"):
   (i) the Purchaser shall not be entitled to delayed occupancy compensation if the reason for the delay is that the Purchaser Occupancy Obligations have not been completed;
   (ii) the Vendor shall deliver to the Purchaser, upon fulfilling all prerequisites to obtaining permission for Occupancy under the Building Code (other than the Purchaser Occupancy Obligations), a signed written confirmation that the Vendor has fulfilled such prerequisites; and
   (iii) if the Purchaser and Vendor have agreed that such prerequisites (other than the Purchaser Occupancy Obligations) are to be fulfilled prior to Occupancy, then the Vendor shall provide the signed written confirmation required by subparagraph (ii) on or before the Occupancy Date.

(c) If the Vendor cannot satisfy the requirements of paragraph (a) or subparagraph (b)(ii), the Vendor shall set a Delayed Occupancy Date (or new Delayed Occupancy Date) on a date that the Vendor reasonably expects to have satisfied the requirements of paragraph (a) or subparagraph (b)(ii), as the case may be. In setting the Delayed Occupancy Date (or new Delayed Occupancy Date), the Vendor shall comply with the requirements of section 3, and delayed occupancy compensation shall be payable in accordance with section 7. Despite the foregoing, delayed occupancy compensation shall not be payable for a delay under this paragraph (c) if the inability to satisfy the requirements of subparagraph (b)(ii) is because the Purchaser has failed to satisfy the Purchaser Occupancy Obligations.

(d) For the purposes of this section, an "Occupancy Permit" means any written or electronic document, however styled, whether final, provisional or temporary, provided by the chief building official (as defined in the *Building Code Act*) or a person designated by the chief building official, that evidences that permission to occupy the home under the Building Code has been granted.

10. Termination of the Purchase Agreement

(a) The Vendor and the Purchaser may terminate the Purchase Agreement by mutual written agreement. Such written mutual agreement may specify how monies paid by the Purchaser, including deposit(s) and monies for upgrades and extras are to be allocated if not repaid in full.

(b) If for any reason (other than breach of contract by the Purchaser) Occupancy has not been given to the Purchaser by the Outside Occupancy Date, then the Purchaser has 30 days to terminate the Purchase Agreement by written notice to the Vendor. If the Purchaser does not provide written notice of termination within such 30-day period, then the Purchase Agreement shall continue to be binding on both parties and the Delayed Occupancy Date shall be the date set under paragraph 3(c), regardless of whether such date is beyond the Outside Occupancy Date.

(c) If: calendar dates for the applicable Critical Dates are not inserted in the Statement of Critical Dates; or if any date for Occupancy is expressed in the Purchase Agreement or in any other document to be subject to change depending upon the happening of an event (other than as permitted in this Addendum), then the Purchaser may terminate the Purchase Agreement by written notice to the Vendor.

(d) The Purchase Agreement may be terminated in accordance with the provisions of section 6.

(e) Nothing in this Addendum derogates from any right of termination that either the Purchaser or the Vendor may have at law or in equity on the basis of, for example, frustration of contract or fundamental breach of contract.

(f) Except as permitted in this section, the Purchase Agreement may not be terminated by reason of the Vendor's delay in providing Occupancy alone.

11. Refund of Monies Paid on Termination

(a) If the Purchase Agreement is terminated (other than as a result of breach of contract by the Purchaser), then unless there is agreement to the contrary under paragraph 10(a), the Vendor shall refund all monies paid by the Purchaser including deposit(s) and monies for upgrades and extras, within 10 days of such termination, with interest from the date each amount was paid to the Vendor to the date of refund to the Purchaser. The Purchaser cannot be compelled by the Vendor to execute a release of the Vendor as a prerequisite to obtaining the refund of monies payable as a result of termination of the Purchase Agreement under this paragraph, although the Purchaser may be required to sign a written acknowledgement confirming the amount of monies refunded and termination of the purchase transaction. Nothing in this Addendum prevents the Vendor and Purchaser from entering into such other termination agreement and/or release as may be agreed to by the parties.

(b) The rate of interest payable on the Purchaser's monies shall be calculated in accordance with the *Condominium Act, 1998*.

(c) Notwithstanding paragraphs(a) and (b) above, if either party initiates legal proceedings to contest termination of the Purchase Agreement or the refund of monies paid by the Purchaser, and obtains a legal determination, such amounts and interest shall be payable as determined in those proceedings.

12. Definitions

"Building" means the condominium building or buildings contemplated by the Purchase Agreement, in which the Property is located or is proposed to be located.

"Business Day" means any day other than: Saturday; Sunday; New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day; and any special holiday proclaimed by the Governor General or the Lieutenant Governor; and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is

not a Business Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are not Business Days; and where Christmas Day falls on a Friday, the following Monday is not a Business Day.
"Closing" means completion of the sale of the home, including transfer of title to the home to the Purchaser.
"Commencement of Construction" means the commencement of construction of foundation components or elements (such as footings, rafts or piles) for the Building.
"Critical Dates" means the First Tentative Occupancy Date, any subsequent Tentative Occupancy Date, the Final Tentative Occupancy Date, the Firm Occupancy Date, the Delayed Occupancy Date, the Outside Occupancy Date and the last day of the Purchaser's Termination Period.
"Delayed Occupancy Date" means the date, set in accordance with section 3, on which the Vendor agrees to provide Occupancy, in the event the Vendor cannot provide Occupancy on the Firm Occupancy Date.
"Early Termination Conditions" means the types of conditions listed in Schedule A.
"Final Tentative Occupancy Date" means the last Tentative Occupancy Date that may be set in accordance with paragraph 1(d).
"Firm Occupancy Date" means the firm date on which the Vendor agrees to provide Occupancy as set in accordance with this Addendum.
"First Tentative Occupancy Date" means the date on which the Vendor, at the time of signing the Purchase Agreement, anticipates that the home will be complete and ready for Occupancy, as set out in the Statement of Critical Dates.
"Formal Zoning Approval" occurs when the zoning by-law required for the Building has been approved by all relevant governmental authorities having jurisdiction, and the period for appealing the approvals has elapsed and/or any appeals have been dismissed or the approval affirmed.
"Occupancy" means the right to use or occupy the home in accordance with the Purchase Agreement.
"Occupancy Date" means the date the Purchaser is given Occupancy.
"Outside Occupancy Date" means the latest date that the Vendor agrees to provide Occupancy to the Purchaser, as confirmed in the Statement of Critical Dates.
"Property" or "home" means the home being acquired by the Purchaser from the Vendor, and its interest in the related common elements.
"Purchaser's Termination Period" means the 30-day period during which the Purchaser may terminate the Purchase Agreement for delay, in accordance with paragraph 10(b).
"Roof Assembly Date" means the date upon which the roof slab, or roof trusses and sheathing, as the case may be, are completed. For single units in a multi-unit block, whether or not vertically stacked, (e.g., townhouses or row houses), the roof refers to the roof of the block of homes unless the unit in question has a roof which is in all respects functionally independent from and not physically connected to any portion of the roof of any other unit(s), in which case the roof refers to the roof of the applicable unit. For multi-story, vertically stacked units, (e.g. typical high rise) roof refers to the roof of the Building.
"Statement of Critical Dates" means the Statement of Critical Dates attached to and forming part of this Addendum (in form to be determined by Tarion from time to time), and, if applicable, as amended in accordance with this Addendum.
"The ONHWP Act" means the *Ontario New Home Warranties Plan Act* including regulations, as amended from time to time.
"Unavoidable Delay" means an event which delays Occupancy which is a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which are beyond the reasonable control of the Vendor and are not caused or contributed to by the fault of the Vendor.
"Unavoidable Delay Period" means the number of days between the Purchaser's receipt of written notice of the commencement of the Unavoidable Delay, as required by paragraph 5(b), and the date on which the Unavoidable Delay concludes.

13. Addendum Prevails

The Addendum forms part of the Purchase Agreement. The Vendor and Purchaser agree that they shall not include any provision in the Purchase Agreement or any amendment to the Purchase Agreement or any other document (or indirectly do so through replacement of the Purchase Agreement) that derogates from, conflicts with or is inconsistent with the provisions of this Addendum, except where this Addendum expressly permits the parties to agree or consent to an alternative arrangement. The provisions of this Addendum prevail over any such provision.

14. Time Periods, and How Notice Must Be Sent

(a) Any written notice required under this Addendum may be given personally or sent by email, fax, courier or registered mail to the Purchaser or the Vendor at the address/contact numbers identified on page 2 or replacement address/contact numbers as provided in paragraph (c) below. Notices may also be sent to the solicitor for each party if necessary contact information is provided, but notices in all events must be sent to the Purchaser and Vendor, as applicable. If email addresses are set out on page 2 of this Addendum, then the parties agree that notices may be sent by email to such addresses, subject to paragraph (c) below.
(b) Written notice given by one of the means identified in paragraph (a) is deemed to be given and received: on the date of delivery or transmission, if given personally or sent by email or fax (or the next Business Day if the date of delivery or transmission is not a Business Day); on the second Business Day following the date of sending by courier; or on the fifth Business Day following the date of sending, if sent by registered mail. If a postal stoppage or interruption occurs, notices shall not be sent by registered mail, and any notice sent by registered mail within 5

Business Days prior to the commencement of the postal stoppage or interruption must be re-sent by another means in order to be effective. For purposes of this section 14, Business Day includes Remembrance Day, if it falls on a day other than Saturday or Sunday, and Easter Monday.

(c) If either party wishes to receive written notice under this Addendum at an address/contact number other than those identified on page 2 of this Addendum, then the party shall send written notice of the change of address, fax number, or email address to the other party in accordance with paragraph (b) above.

(d) Time periods within which or following which any act is to be done shall be calculated by excluding the day of delivery or transmission and including the day on which the period ends.

(e) Time periods shall be calculated using calendar days including Business Days but subject to paragraphs (f), (g) and (h) below.

(f) Where the time for making a claim under this Addendum expires on a day that is not a Business Day, the claim may be made on the next Business Day.

(g) Prior notice periods that begin on a day that is not a Business Day shall begin on the next earlier Business Day, except that notices may be sent and/or received on Remembrance Day, if it falls on a day other than Saturday or Sunday, or Easter Monday.

(h) Every Critical Date must occur on a Business Day. If the Vendor sets a Critical Date that occurs on a date other than a Business Day, the Critical Date is deemed to be the next Business Day.

(i) Words in the singular include the plural and words in the plural include the singular.

(j) Gender-specific terms include both sexes and include corporations.

15. Disputes Regarding Termination

(a) The Vendor and Purchaser agree that disputes arising between them relating to termination of the Purchase Agreement under section 11 shall be submitted to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and subsection 17(4) of the ONHWP Act.

(b) The parties agree that the arbitrator shall have the power and discretion on motion by the Vendor or Purchaser or any other interested party, or of the arbitrator's own motion, to consolidate multiple arbitration proceedings on the basis that they raise one or more common issues of fact or law that can more efficiently be addressed in a single proceeding. The arbitrator has the power and discretion to prescribe whatever procedures are useful or necessary to adjudicate the common issues in the consolidated proceedings in the most just and expeditious manner possible. The *Arbitration Act, 1991* (Ontario) applies to any consolidation of multiple arbitration proceedings.

(c) The Vendor shall pay the costs of the arbitration proceedings and the Purchaser's reasonable legal expenses in connection with the proceedings unless the arbitrator for just cause orders otherwise.

(d) The parties agree to cooperate so that the arbitration proceedings are conducted as expeditiously as possible, and agree that the arbitrator may impose such time limits or other procedural requirements, consistent with the requirements of the *Arbitration Act, 1991* (Ontario), as may be required to complete the proceedings as quickly as reasonably possible.

(e) The arbitrator may grant any form of relief permitted by the *Arbitration Act, 1991* (Ontario), whether or not the arbitrator concludes that the Purchase Agreement may properly be terminated.

For more information please visit www.tarion.com

SCHEDULE A

Types of Permitted Early Termination Conditions

1. The Vendor of a condominium home is permitted to make the Purchase Agreement conditional as follows:

(a) upon receipt of Approval from an Approving Authority for:
- (i) a change to the official plan, other governmental development plan or zoning by-law (including a minor variance);
- (ii) a consent to creation of a lot(s) or part-lot(s);
- (iii) a certificate of water potability or other measure relating to domestic water supply to the home;
- (iv) a certificate of approval of septic system or other measure relating to waste disposal from the home;
- (v) completion of hard services for the property or surrounding area (i.e., roads, rail crossings, water lines, sewage lines, other utilities);
- (vi) allocation of domestic water or storm or sanitary sewage capacity;
- (vii) easements or similar rights serving the property or surrounding area;
- (viii) site plan agreements, density agreements, shared facilities agreements or other development agreements with Approving Authorities or nearby landowners, and/or any development Approvals required from an Approving Authority; and/or
- (ix) site plans, plans, elevations and/or specifications under architectural controls imposed by an Approving Authority.

The above-noted conditions are for the benefit of both the Vendor and the Purchaser and cannot be waived by either party.

(b) upon:
- (i) receipt by the Vendor of confirmation that sales of condominium dwelling units have exceeded a specified threshold by a specified date;
- (ii) receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged by a specified date;
- (iii) receipt of Approval from an Approving Authority for a basement walkout; and/or
- (iv) confirmation by the Vendor that it is satisfied the Purchaser has the financial resources to complete the transaction.

The above-noted conditions are for the benefit of the Vendor and may be waived by the Vendor in its sole discretion.

2. The following definitions apply in this Schedule:

"Approval" means an approval, consent or permission (in final form not subject to appeal) from an Approving Authority and may include completion of necessary agreements (i.e., site plan agreement) to allow lawful access to and use and occupancy of the property for its intended residential purpose.
"Approving Authority" means a government (federal, provincial or municipal), governmental agency, Crown corporation, or quasi-governmental authority (a privately operated organization exercising authority delegated by legislation or a government).

3. Each condition must:

(a) be set out separately;
(b) be reasonably specific as to the type of Approval which is needed for the transaction; and
(c) identify the Approving Authority by reference to the level of government and/or the identity of the governmental agency, Crown corporation or quasi-governmental authority.

4. For greater certainty, the Vendor is not permitted to make the Purchase Agreement conditional upon:

(a) receipt of a building permit;
(b) receipt of an occupancy permit; and/or
(c) completion of the home.

[redacted]

[redacted]

SCHEDULE B

Adjustments to Purchase Price or Balance Due on Closing

PART I Stipulated Amounts/Adjustments

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing, the dollar value of which is stipulated in the Purchase Agreement and set out below.

[Draft Note: List items with any necessary cross-references to text in the Purchase Agreement.]

1. See Schedule "B" following page 12

2.

3.

PART II All Other Adjustments – to be determined in accordance with the terms of the Purchase Agreement

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing which will be determined after signing the Purchase Agreement, all in accordance with the terms of the Purchase Agreement.

[Draft Note: List items with any necessary cross-references to text in the Purchase Agreement.]

1. See Schedule "B" following page 12

2.

3.

[redacted]

[redacted]

Appendix A to 2012 Tarion Addendum

Early Termination Conditions

Re: THE KENNEDYS – EAST TOWER

Condition #1

Description of the Early Termination Condition:

-Receipt by the Vendor of confirmation that sales of condominium dwelling units have exceeded the 70% threshold by November 6, 2017.

The Approving Authority is (not applicable).

The date by which Condition #1 is to be satisfied is the 6th day of November, 2017.

Condition #2

Description of the Early Termination Condition:

-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 Approving Authority is (not applicable).

The date by which Condition #2 is to be satisfied is the 9th day of October, 2018.

Condition #3

Description of the Early Termination Condition:

-Confirmation by the Vendor that it is satisfied the Purchaser has the financial resources to complete the transaction.

The Approving Authority is (not applicable).

The date by which Condition #3 is to be satisfied is the 60th day following the date of acceptance of the agreement of purchase and sale.





Schedule B to 2012 Tarion Addendum

Adjustments to Purchase Price or Balance Due on Closing

Re: THE KENNEDYS – EAST TOWER

PART I Stipulated Amounts/Adjustments

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing, the dollar value of which is stipulated in the Purchase Agreement and set out below.

No.	Reference in Purchase Agreement	Description	Amount (not including any applicable taxes & disbursements)
1.	Agreement 2(b)	In the event the closing date is extended at the Purchaser's request, the Purchaser pays a fee for each day of extension.	$200 per each day of the extension.
2.	Schedule "A", 2(h)	In the event the Purchaser does not notify the Vendor or the Vendor's Solicitor, in writing, of the Purchaser's retained solicitor, at least 30 days prior to the Occupancy Date, then the Purchaser shall be obliged to pay to the Vendor's Solicitors (or correspondingly reimburse the Vendor on the Occupancy Date or Closing Date, as the case may be), for all additional legal fees and ancillary disbursements which may be incurred by the Vendor or charged by the Vendor's Solicitors in order to prepare and deliver an interim or final closing package to the Purchaser initially (and/or to thereafter subsequently prepare and deliver another interim or final closing package to the Purchaser's solicitor) with the Vendor's Solicitor's legal fees for implementing same, and with such fees being subject to increase, from time to time, without any requirement or obligation to notify the Purchaser of same prior to closing. If the Purchaser notifies the Vendor or the Vendor's Solicitors of a change in the Purchaser's Solicitors (i.e., the Purchaser retaining a different lawyer) after the interim closing or final package (as the case may be) has already been prepared for the original Purchaser's solicitor, then the Purchaser shall likewise be obliged to pay to the Vendor or the Vendor's Solicitors in order to reimburse the Vendor for its legal fees incurred in preparing a second interim closing or final closing package for the subsequent Purchaser's solicitor. All such required payments shall be made by certified cheque to the Vendor's Solicitors and paid on the Occupancy Date or the Closing Date (as the case may be).	A minimum of $350.00 for each additional interim or final closing package
3.	Schedule "A" 6(d)	The Purchaser shall also pay to the Vendor on the Closing Date, together with all HST payable in connection therewith: (i) a sum per check or consumption meter to partially reimburse the Vendor for the cost of each water, hydro and gas check or consumption meter installed; and (ii) a sum for the preparation by the Vendor's Solicitors for the transfer of the Property.	(i) $400.00 per check meter (ii) $225.00 for the preparation of the transfer.
4.	Schedule "A" (e)	An administration fee for each amendment to the Agreement or any of the Vendor's standard form transaction documents shall be charged to the Purchaser for each such amendment requested by, or on behalf of, the Purchaser after the expiry of the initial ten-day statutory rescission period.	$500.00 per amendment.
5.	Schedule "A", 6(f)	An administration fee shall be charged to the Purchaser for any cheque delivered to the Vendor and returned by the Vendor's bank.	$250.00 per cheque
6.	Schedule "A" 6(g)	If the Purchaser desires to increase the amount to be paid on the Occupancy Date at any time after the expiry of the initial ten-day statutory rescission period, or wishes to vary the manner in which the Purchaser has previously requested or indicated by execution of this Agreement to take title to the Property, or wishes to add or change any units being acquired from the Vendor, then the Purchaser hereby covenants and agrees to pay to the Vendor's Solicitors, as a fixed, non-refundable fee and is not reimbursement to a third party, the legal fees and/or disbursements incurred by the Vendor in order to implement any of the foregoing changes but without there being any obligation on the part of the Vendor to approve of, or to implement, any of the changes so requested.	A minimum of $250 for each variance or change.
7.	Schedule "A", 6(i)	The Purchaser shall pay to the Vendor or the Vendor's Solicitors on the Closing Date a fee for each payment tendered under this Agreement, including any payment by cash, cheque or otherwise, for deposits, upgrades or any other monies paid on account of the Purchase Price up to, but not including, the Closing Date,	$75.00 for each payment

		representing a reasonable reimbursement to the Vendor of the costs incurred or to be incurred by the Vendor in fulfillment of the requirements of the Act.	
8.	Schedule "A"(j)	The Purchase Price does not include any amount for reimbursement of development charges, education development charges, parkland contributions, public art contributions, amounts owing pursuant to a Section 37 Agreement or similar agreement with the City, or any other levies, charges and similar imposts from a governmental authority (the "Charges"). The Purchaser acknowledges and agrees that it is obliged to pay and/or reimburse the Vendor for the amount of any Charges incurred by the Vendor, either on a per-unit basis, where the Charges are calculated on a per-unit basis, or on a pro-rata basis where the Charges are calculated on the development as a whole. The Charges are subject to limits.	Limit on individual charges of (i) development charges for 1 bedroom or less units: $4,900; (ii) for development charges on units with 2 bedrooms or more: $7,900; (iii) for parkland contributions: $1,200; (iv) for Section 37 or public art contributions, $950.
9.	Schedule "A" 6(l)	The Purchaser shall pay to the Vendor at the time of request, an amount to reimburse the Vendor for any copies of the Agreement or the Condominium Documents over and above the first copy.	$50.00 Per additional copy.
10.	Schedule "A" 6(m)	An administrative fee shall be charged to the Purchaser for each wire transfer.	$100.00 per wire transfer.
11.	Schedule "A" 24(f)	If, before or after the Closing Date the Vendor is required to pay any lien, execution or encumbrance created or caused by the Purchaser, the Purchaser shall reimburse the Vendor for all amounts and costs so paid and for the Vendor's full indemnity legal costs.	Minimum of $500.00
12.	Schedule "A" 24(g)	The Purchaser shall be liable to the Vendor for all of the Vendor's costs, losses and expenses arising from any default of the Purchaser either before or after termination or completion, and whether there is termination or completion of this Agreement. If the Agreement is completed, the Vendor is entitled to collect an administration fee per occurrence to bring the Agreement into good standing, plus an amount equal to the Vendor's costs, losses and expenses,	$1000.00 per occurance.
13.	Schedule "A", 30(b)(ii)	The Purchaser shall be obliged to retain a lawyer who is in good standing with the Law Society of Upper Canada and who, if declines to become a registered user of the Electronic Closing System or is otherwise unable or unwilling to access and/or utilize the Electronic Closing System to facilitate both the interim occupancy closing and the final closing of this transaction, in which case, the Purchaser acknowledges that the Vendor's Solicitors shall then be required to employ additional non-electronic systems and procedures in order to communicate with the Purchaser's Solicitors in completing this transaction, and the Purchaser shall correspondingly be obliged to pay to the Vendor's Solicitors (or correspondingly reimburse the Vendor on Closing for), as a fixed, non-refundable fee and is not reimbursement to a third party, all additional legal fees and ancillary disbursements which may be incurred by the Vendor or charged by the Vendor's Solicitors in order to implement such additional non-electronic systems and procedures (with the Vendor's Solicitors' legal fees for implementing same, and with such fees being subject to increase, from time to time, without any requirement or obligation to notify the Purchaser of same prior to closing). The Purchaser's failure to remit a certified cheque for such fees (made payable to the Vendor's Solicitors) on the interim closing or final closing of this transaction (as the case may be) shall automatically entitle the Vendor and the Vendor's Solicitors to refuse to complete this transaction and to refrain from providing occupancy of the Unit to the Purchaser and/or to refrain from electronically releasing the deed/transfer of title to the Property to the Purchaser's Solicitors.	A minimum of $500.00 for each interim and/or final closing package

PART II All Other Adjustments – to be determined in accordance with the terms of the Purchase Agreement

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing, which will be determined after signing the Purchase Agreement, all in accordance with the terms of the Purchase Agreement. All said charges, fees or other anticipated adjustments will be subject to any applicable taxes and disbursements.

No.	Reference in Purchase Agreement	Description
1.	Schedule "A", 1(v) and 2(c)	The Purchaser shall, on or before taking possession of the Property, deliver to the Vendor a series of eleven (11) monthly post-dated cheques as required by the Vendor to cover the Occupancy Fees payable in advance by the Purchaser during the Interim Occupancy Period; a cheque for the prorated Occupancy Fee period between the Occupancy Date and the end of the month in which the Occupancy Date occurs. The Occupancy Fees are based upon the aggregate of: (a) where applicable, interest calculated on a monthly basis on the unpaid balance of the Purchase Price at the rate prescribed by the Act; (b) an amount reasonably estimated by the Vendor on a monthly basis for municipal realty taxes attributable to the Property; and (c) the projected monthly common expense contribution for the Property.
2.	Schedule "A" 2(b)	All occupancy fees so paid by the Purchaser shall be re-adjusted between the parties hereto on the Closing Date, if necessary, for any variance or discrepancy between the prescribed rate of interest and the rate of interest utilized by the Vendor as aforesaid. The common expense component of the Occupancy Fee shall also be re-adjusted on the Closing Date, if necessary, between the projected monthly common expense contributions, and the final monthly common expense contributions attributable to the Property as set out in or confirmed by the final first year budget statement in respect of the Condominium. The realty tax component of the Occupancy Fee shall be re-adjusted on the Closing Date, and if at that time, the supplementary assessment has not been issued by the Municipality, the Vendor may, in addition to the provisions of Paragraph 6(c) at its option choose to adjust for vacant land taxes only, whereupon the Purchaser shall be solely responsible for the supplementary assessment as and when issued by the Municipality which shall be in addition to those adjusted with the Vendor
3.	Schedule "A", 2(k)	If any utility supply and services agreement requires the Purchaser to deliver a security deposit to a utility provider prior to the Occupancy Date, the Purchaser agrees to deliver such security deposit to the Vendor on the Occupancy Date.
4.	Schedule "A", 6(a)	Unused Occupancy Fees for the Interim Occupancy Period, all utility costs including electricity, gas and water (unless included as part of the common expenses or payable by the Purchaser during the Interim Occupancy Period), realty taxes (including any local improvement rates), interest on the unpaid balance of the Purchase Price and common expense contributions, attributable to the Property, shall be apportioned and allowed to the Closing Date, with that day itself to be apportioned to the Purchaser.
5.	Schedule "A", 6(b)	The Purchaser shall provide the Vendor on Closing with twelve (12) monthly post-dated cheques payable to the Condominium Corporation for common expense contributions for the one year period following the Closing Date or, alternatively, and in lieu of the provision of the afore-referenced twelve (12) monthly post-dated cheques, the Vendor shall be entitled to require the Purchaser to complete all requisite account information in, and correspondingly execute and deliver to the Vendor's Solicitors on or before the Closing Date, a pre-authorized cheque plan form prepared by the Vendor's Solicitors or by the Vendor directly for the payment of all common expenses hereafter due or owing to the Condominium in respect of the property, from time to time, accompanied by an unsigned cheque marked "void" from the Purchaser's bank account on which all such common expense payments shall be drawn or deducted.
6.	Schedule "A", 6(c)	Realty taxes which shall be adjusted as assessed, or as estimated by the Vendor as if the Property had been separately assessed and fully paid by the Vendor, notwithstanding that same may not have been levied, assessed and/or paid by the Closing Date, shall be apportioned and allowed to the Closing Date, the Closing Date itself to apportioned to the Purchaser. If, in fact, any realty taxes attributable to the Property have not been paid in accordance with the manner that same have been adjusted for in the statement of adjustments, the Vendor shall provide the Purchaser on Closing with its written undertaking to pay same in accordance with the statement of adjustments forthwith after Closing and the Purchaser shall accept said undertaking and complete the transaction in accordance therewith. No readjustment of taxes will be requested or given for an amount which is $20.00 or less. In the event that the supplementary assessment has been issued by the Municipality by the Closing Date, realty taxes shall be adjusted on the basis of the vacant land tax and supplementary assessment, notwithstanding that same may not have been paid by the Closing Date and the Vendor shall provide its written undertaking to pay in accordance with the adjustments.
7.	Schedule "A", 6(d)	The Purchaser shall also pay to the Vendor on the Closing Date, together with all HST payable in connection therewith: (i) the enrolment fee for the Property payable pursuant to the Plan Act; and (ii) the insurance levy payable by the Vendor or the Vendor's Solicitors to the Lawyers Professional Indemnity Company or, if title insurance is

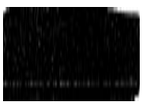
		provided by the Vendor, the portion of the premium attributable to the Property.
8.	Schedule "A" 6(h)	The Purchaser shall provide the Vendor on the Closing Date and as the Vendor shall direct, a security deposit payable to the Condominium or any utility monitor/provider equal to three (3) months of estimated electricity, gas and water (hot and cold) consumption or such other estimated amount determined by the Condominium or any utility monitor/provider. In an effort to facilitate payment to the Condominium or any utility monitor/provider for the cost of utility consumption the Purchaser shall execute and deliver to the Vendor's Solicitors on or before the earlier of the Occupancy Date or the date that the Purchaser first occupies the Residential Unit an authorization form for a pre-authorized payment plan for the applicable charges (in the form provided to the Purchaser's Solicitors by the Vendor's Solicitors) accompanied by an unsigned cheque marked "VOID" from the bank account to be used for making all such payments to the Condominium or any utility monitor/provider..
9.	Schedule "A", 6(n)	The Purchasers shall pay, on the Closing Date, a contribution to the reserve fund of the Condominium which will be equal to an amount of three (3) months of common expenses for the Condominium.
10.	Schedule "A" 6(o)	The Purchaser shall pay the Vendor's Solicitor's legal fees (plus disbursements and HST) for the cost of obtaining and preparing partial cessations for any mortgages, charges, debentures or trust deeds to be adjusted on the Statement of Adjustments on the Closing Date.
11.	Schedule "A", last paragraph of 6	The Purchase Price does not include any HST exigible with respect to any of the adjustments payable by the Purchaser pursuant to this Agreement, or any extras or upgrades purchased, ordered or chosen by the Purchaser from the Vendor which are not specifically set forth in this Agreement, and the Purchaser covenants and agrees to pay such HST to the Vendor in accordance with the ETA. In addition, and without limiting the generality of the foregoing, in the event that the Purchase Price is increased by the addition of extras, changes, upgrades or adjustments and as a result of such increase, the quantum of the Rebate that would otherwise be available is reduced or extinguished (the quantum of such reduction being hereinafter referred to as the "Reduction"), then the Purchaser shall pay to the Vendor on the Closing Date (as determined by the Vendor in its sole discretion) the Reduction.
12.	Schedule "A", 10(h)	The Purchaser shall indemnify and save harmless the Vendor from and against all claims, demands, losses, damages, injuries, costs, charges and expenses which the Vendor may sustain, incur or be liable for in consequence of such upgrading and/or installation.
13.	Schedule "A", 11(b)	The Purchaser covenants and agrees to pay the Vendor, in advance, for all extras or changes (plus HST) specifically ordered by the Purchaser from the Vendor and to pay for the same forthwith upon demand. If this transaction does not close, by reason of the default of the Purchaser, the Vendor shall retain any sums so paid for extras or changes, whether installed or not, and shall not be obligated to return same to the Purchaser and the Vendor shall be allowed to deduct from any deposit or deposits paid to the Vendor any amounts remaining unpaid for extras or changes. Without limiting the generality of the foregoing, the Purchaser acknowledges and agrees that in the event the Purchaser proceeds to complete any selection of extras, upgrades or colours during the Purchaser's ten-day rescission period and should the Purchaser then proceed to cancel the Agreement during this time period, any monies paid towards selection shall not be refunded to the Purchaser and the Purchaser shall be fully liable for any outstanding amounts owing for any such extras, upgrades and colours ordered. The Purchaser further acknowledges and agrees that if this Agreement is not completed as a result of the Purchaser's default and if the Vendor deems it necessary to return the Residential Unit to the Vendor's standard colours or to remove any options and/or extras or colours specifically ordered or chosen by the Purchaser and already performed by the Vendor, then the Purchaser shall pay to the Vendor, on demand, the cost of returning the said options and/or extras and/or colours to the Vendor's standards together with a fifteen percent (15%) management and supervision fee, plus HST. The legal fees of the Vendor to enforce collection of these sums shall be payable by the Purchaser on a full indemnity basis..
14.	Schedule "A". 11(e)	The Purchaser covenants that he or she will not under any circumstances, perform or have performed any work of any nature or kind whatsoever on the Property prior to the conveyance of the Property to the Purchaser and in the event of a breach of this covenant, the Vendor shall, in addition to any other remedy, be entitled to take whatever steps are necessary to remove, correct or remedy any such work and the cost or expenses thereof plus a fifteen (15%) percent administration fee plus HST, shall be paid forthwith upon demand to the Vendor, failing which the Vendor shall be entitled to terminate this Purchase Agreement. In addition to any other remedy granted to the Vendor by this Agreement, the Vendor (and/or the Condominium after registration of the Creating Documents if the alterations affect the common elements of the Condominium) shall be entitled to enter into the Property to remove, correct, or remedy any such work, and the costs or expenses thereof plus a fifteen percent (15%) management and supervision fee, plus HST, shall be paid by the Purchaser to the Vendor (or the Condominium Corporation, where applicable) within 15 days of written demand. The legal fees of the Vendor or Condominium Corporation performing the work to enforce collection of these sums shall also be payable by the Purchaser on a full indemnity basis.
15.	Schedule "A",	Subject to paragraph 15 of Schedule "A" herein, it is acknowledged and agreed by the parties hereto that the Purchase Price includes a component equivalent to the HST

	15(a)	applicable as at the date hereof to this purchase and sale transaction, less the federal new housing rebate referenced in Section 254 of the ETA (the "GST Rebate") and the Ontario new housing rebate referenced in Section 41 of the New Harmonized Value-added Tax System Regulations, No. 2 (the "HST Rebate").
16.	Schedule "A", 15(c)	Notwithstanding anything to the contrary in this Agreement, the Purchaser hereby transfers and assigns to the Vendor all of the Purchaser's right, interest and entitlement now or in the future to the Rebates and agrees to execute and deliver to the Vendor, forthwith upon the Vendor's request for same and in any event on or before the Closing Date, all requisite documents and assurances that the Vendor may reasonably require to enable the Vendor to obtain the benefit of the Rebates including, without limitation, Form GST190 (the "Rebate Form(s)").
17.	Schedule "A", 15(d)	The Purchaser shall indemnify and save the Vendor harmless from and against any and all loss, costs, damages and/or liability (including any HST, plus penalties and interest thereon and any reasonable legal costs in connection therewith) which the Vendor may suffer, incur or be charged with as a result of: (i) the Purchaser's failure to qualify for the GST Rebate or the HST Rebate; (ii) the Purchaser having qualified initially but being subsequently not entitled to the GST Rebate or the HST Rebate; or (iii) any amendment to the ETA, or applicable successor legislation, in force as at the date when HST becomes payable in respect of this purchase and sale transaction, the effect of which is to increase the rate of HST payable herein or to decrease the amount of the one or both of the Rebates. This indemnity shall survive indefinitely the completion or termination of this Agreement. It is understood and agreed by the parties hereto that should the Purchaser not qualify for the GST Rebate, if any is available, or the HST Rebate or fails to deliver to the Vendor the Rebate Form(s) (duly executed by the Purchaser) by the Closing Date, then notwithstanding anything contained herein (or in the Purchase Agreement) to the contrary, the Purchaser shall be obliged to pay to the Vendor, by certified cheque delivered on the Closing Date, an amount equivalent to the GST Rebate or HST Rebate, or both, as the case may be, in addition to the outstanding balance of the Purchase Price. It is further understood and agreed by the parties that in the event that the Purchaser intends to rent out the Property before or after the Closing Date, the Purchaser shall not be entitled to the Rebates, but may nevertheless be entitled to pursue, on his own after the Closing Date, the federal and provincial new rental housing rebates directly with CRA, pursuant to the ETA and the Regulations thereto.
18.	Schedule "A", 15(e)	The Purchaser's failure to pay or remit to the Vendor on the Closing Date the HST exigible in connection with this transaction, or if required pursuant to paragraph 15 to deliver to the Vendor the Rebate Form(s), duly executed by Purchaser, or if required pursuant to paragraph 15 to pay to the Vendor by certified cheque an amount equivalent to the GST Rebate or HST Rebate, shall constitute a fundamental breach of contract, entitling the Vendor to immediately terminate this Agreement and to retain all deposit monies theretofore paid (together with all monies paid for any extras or changes requested to be made to the Property) as its liquidated damages and not as a penalty, without prejudice to any other rights or remedies available to the Vendor at law or in equity.
19.	Schedule "A", 15(f)	Without limiting the terms of the Agreement, the Purchaser further covenants and agrees that in the event that any assignment of the Purchase Agreement, amendment to the Purchaser Agreement, novation to the Purchase Agreement, re-instatement of the Purchase Agreement or the acquisition of any upgrades or extras results in the GST Rebate or HST Rebate not being capable of being assigned, in whole, by the Purchaser to the Vendor, then the Purchaser shall pay to the Vendor such forgone amount by certified cheque on closing in the same manner as hereinbefore contemplated for repayment where purchasers do not qualify for the GST Rebate or HST Rebate.
20.	Schedule "A", 15(g)	Notwithstanding any provision herein to the contrary, if the Purchaser does not qualify for the Rebates, or any of them, or fails to deliver the requisite documentation in connection therewith or takes any action that might disentitle it from receiving the Rebates (such as a resale or rental listing), then, if discovered prior to Closing, the amount of the Rebates shall be paid to the Vendor on Closing or, if discovered after Closing, the Purchaser shall pay the Vendor by certified cheque the amount of the Rebates forthwith upon demand and shall indemnify the Vendor from any loss of the Rebates. Notwithstanding any provision to the contrary in the Agreement or in the applicable legislation, if at any time, in the view of the Vendor or the Vendor's Solicitors, the Purchaser's information might be inaccurate, incomplete or untruthful such that the Rebates, or any of them, may not be properly collected by the Vendor, the Vendor shall be entitled in its sole, subjective and absolute discretion to increase the Purchase Price by the amount of the Rebates and the Purchaser shall pay such additional sum on Closing.
21.	Schedule "A", 16	The Purchaser acknowledges that HST is not included on that portion of the Purchase Price allocated to chattels in accordance with this Paragraph 16. The remainder of the Purchase Price is allocated to realty for purposes of Paragraph 2 of the Cover Provisions of this Agreement. The Purchaser agrees to deliver to the Vendor's solicitor, a copy of the "Affidavit of Residence and Value of the Consideration" on or prior to the Closing Date, indicating that HST will be paid on the value of the chattels, as aforesaid. For the purposes of calculating HST, the Vendor shall allocate the Purchase Price as

		between realty (land and building) and any chattels included in the agreement as part of the Purchase Price.
22.	Schedule "A", 21(a)	The Vendor and the Purchaser each agree to pay the cost of registration of their own documents and any tax in connection therewith. Notwithstanding the generality of the foregoing, the Purchaser agrees to pay the land transfer tax in connection with the registration of the transfer of the Property and undertakes to register the transfer on the Closing Date.
23.	Schedule "A", 21(b)	If a business transfer tax or value added tax or sales tax or similar method of taxation is imposed by the Government of Canada or Ontario or any other Governmental Authority prior to the Closing Date, or prior to the final payment of the unpaid balance of the Purchase Price herein, and such tax or taxes are applied to the sale of the Property or against any component, building material or service relating to the construction of the Property or the Condominium, then, notwithstanding anything else contained herein, the Purchaser acknowledges and agrees that the Purchase Price as set out in this Agreement has been computed without taking into account any such tax and that the said Purchase Price shall be increased by the amount of tax eligible in respect of the Property or otherwise with the construction of the Property or the Condominium, with the amount of such increase being paid at the earlier of the Occupancy Date or the Closing Date or as soon thereafter as the amount of the said tax can be calculated and the Purchaser hereby charges the Property in favour of the Vendor, with such amount owing to be secured by a Vendor's lien, charge or caution on and against the Property. If any tax whether categorized as a business transfer tax, a modified HST, value added tax or any other type of tax whatsoever including without limitation HST is levied or charged in connection with the termination of this Agreement by reason of the Purchaser's default, the Purchaser shall be solely responsible for paying such taxes and/or reimbursing the Vendor therefor thereafter together with any penalties or interest imposed thereon, whether or not the legislation imposing same may place responsibility for payment thereof onto the Vendor.
24.	Schedule "A", 24(j)	Notwithstanding any other term of this Agreement, the Purchaser acknowledges and agrees that if any amount, payment and/or adjustment which is/are due and payable by the Purchaser to the Vendor or the Vendor's Solicitors pursuant to this Agreement are not made and/or paid on the date due, but are subsequently accepted by the Vendor, notwithstanding the Purchasers default, such amount, payment and/or adjustment shall, until paid, bear interest at the rate equal to twelve percent (12%) per annum above the bank rate as defined in subsection 19(2) of O. Reg. 48-01 of the Act at the date of default.
25.	Schedule "A" 25(d)	The Vendor may deduct by way of set off from any money payable to the Purchaser pursuant to this paragraph those sums payable by the Purchaser by reason of any default by the Purchaser prior to the date of termination and any other sums that are payable by the Purchaser under this Agreement, including extras and upgrades and other fees or costs where the Purchaser's liability for such sums predates the date of termination. The Vendor may also deduct from any money payable to the Purchaser a reasonable allowance (but in any case not less than $10,000) as a security deposit for any damages caused to the Condominium by the Purchaser's occupancy therein, which sum shall be adjusted as set out in Schedule D
26.	Schedule "A" 31	The Purchaser authorizes the Condominium Corporation, when created, to issue a certificate in the form prescribed by the Act, stating any arrears on account of common expenses owed by the Purchaser (at the Purchaser's cost to be adjusted for in the Statement of Adjustments as a credit to the Vendor or the Vendor's Solicitors).
27.	Schedule "H", 1(d)(i), (ii), (iv) and (v)	The Purchaser shall provide to the Vendor prior to occupying the Property, each and every one of the following: (i) A certified cheque or bank draft for payment of the Occupancy Fee for the stub period between the Occupancy Date and the last day of the month, or for the entire month if the Occupancy Date is the first day of a month, (ii) Eleven (11) post-dated cheques, one for the eleven (11) months following the Occupancy Date, each payable on the first day of each month, or by an alternative pre-authorized payment plan as directed and required by the Vendor; (iv) Payment by bank draft or certified cheque of any upgrades or extras (including HST) ordered by the Purchaser but not yet paid for, if applicable; (v) Payment by bank draft or certified cheque of all sums owing to the Vendor or the Vendor's Solicitors arising from the default of the Purchaser.
28.	Schedule "H", 1(e)	The Purchaser shall in addition to the Occupancy Fee, be responsible for, and pay when due, all charges for utility services provided to the Property during the term of the Occupancy Licence including without limitation, electricity, gas, water and sewage charges, unless the same are included in the proposed condominium expenses.
29.	Schedule "H", 3(d)	Within 30 days after the Termination Date, the Vendor shall deliver a report in writing from one or more Consultants as to any of the fixtures removed from the Property and all damage to the Property or the common elements attributed or caused by the Purchaser or other occupants of the Property or invitees, or those when the Purchase is in law responsible. The report shall also include the actual or anticipated repair costs, and include as part of the total costs a 20% allowance for the Vendor's costs to make

		the repairs, plus HST. The report shall be final and binding on the Vendor and the Purchaser.
30.	Schedule "H", 3(h)	If the Purchaser fails to give the Vendor vacant possession of the Property on the Termination Date, the provisions of Section 58(1)(4) of the *Residential Tenancies Act* S.O. 2006, as amended, shall apply with respect to the termination of the occupancy of the Purchaser. If the Vendor is required to apply for a court or tribunal for an order terminating the Purchaser's occupancy of the unit, the Purchaser shall reimburse the Vendor for all costs and legal fees, on a full indemnity basis, the Vendor may incur in so doing.





THE KENNEDYS – EAST TOWER

PURCHASER'S ACKNOWLEDGEMENT

TO: **TARN CONSTRUCTION CORPORATION** (the "**Declarant**")

RE: Sale to [redacted] (the "**Purchaser(s)**")
Residential Unit [redacted] Level [redacted] Suite [redacted] in a proposed condominium to be located at 2035 Kennedy Road, Toronto, Ontario, known as The Kennedys – East Tower (the "**Property**").

I/WE, the undersigned, being the Purchaser(s) of the Property, acknowledge(s) that I/we have received from the Declarant on the date set out below a complete copy of each of the following documents:

1. the Disclosure Statement, including the Table of Contents.

2. a budget statement prepared by the Declarant for the year immediately following the registration of the Declaration and Description, together with the monthly common expense by unit type schedule for each of the Phase 1A Residential Condominium.

3. the proposed Declaration.

4. the proposed By-laws Nos. 1 and 3, inclusive, including copies of the proposed draft Assignment Agreement re assumed agreements appended to By-law Nos. 3.

5. the proposed Rules.

6. sections 73 and 74 of the Condominium Act.

7. the proposed standard unit by-law, being By-law No. 2, setting out what constitutes a standard unit for each class of unit.

8. the fully executed Agreement of Purchase and Sale.

The Purchaser hereby acknowledges that the purpose of a disclosure statement is to enable the Purchaser to review the documents which will govern this proposed condominium project and to make a determination as to whether the Purchaser wishes to complete the transaction set out in the agreement of purchase and sale for the Property (the "**Agreement**").

The Purchaser is hereby advised that the Purchaser is entitled to rescind the Agreement and receive the return of the deposit monies provided for in the Agreement without interest or deduction by delivering written notice to the Vendor or its solicitor within ten (10) days of later of (i) the date of delivery to the Purchaser of a fully executed copy of the Agreement, or (ii) delivery of the above documents, Items 1 to 8 inclusive, to the Purchaser (being the date herein set out below).

IN WITNESS WHEREOF I/we have executed this Acknowledgement.

DATED this [redacted] day of [redacted], [redacted]

[redacted]

Witness

[redacted]

Purchaser: [redacted]

Witness

Purchaser:

[redacted]

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

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

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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.

TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	TUESDAY, THE 1ST
	)	
JUSTICE MCEWEN	)	DAY OF MAY, 2018

BETWEEN:

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

Applicants

- and –

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

Respondents

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, **[NEED NAME FROM SUNRAY]** (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 this day 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 •, 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 limited 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.

Schedule A – Form of Liquidator's Certificate

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

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

Applicants

- and –

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

Respondents

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)

15. Notice of Lease Instrument Number E236074 registered March 23, 1999 in favour of Microcell Conexions Inc.

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

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

18. General Assignment of Rents instrument Number AT3740683 registered November 14, 2014, in support of Charge AT3740682 in favour of Meridian Credit Union Limited.

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

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

21. Charge Instrument Number AT4443337 registered December 23, 2016, in favour of Kingsett Mortgage Corporation.

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

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

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

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

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

27. Construction Lien AT4694989 registered September 29, 2017, registered by MCW Consultants Ltd. perfected by Certificate instrument Number AT4734146 registered November 16, 2017.

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

29. Construction Lien AT4701329 registered October 6, 2017, registered by GFL Infrastructure Group lnc. 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 lnc.

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.

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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 lnfrastructure Group lnc. 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 lnstrument 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.

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

APPROVAL AND VESTING ORDER
DATED MAY 1, 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.

TAB 4

Revised: January 21, 2014

Court File No. ——CV-17-11697-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE ——	)	~~WEEKDAY,~~TUESDAY, THE #1ST
	)	
JUSTICE ——MCEWEN	)	DAY OF ~~MONTH, 20YR~~MAY, 2018

~~B E T W E E N:~~

~~PLAINTIFF~~

~~Plaintiff~~

–BETWEEN:

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ, BA&B CAPITAL INC., SERDAR KOCTURK
and –KAAN HOLDINGS INC.
~~DEFENDANT~~

~~Defendant~~

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 ~~[RECEIVER'S NAME]~~KPMG Inc. ("**KPMG**"), in its capacity as ~~the~~ Court-appointed ~~receiver (the "Receiver")~~Liquidator (in such capacity, the "**Liquidator**") pursuant to section 207 of the ~~undertaking, property~~Ontario *Business Corporations Act* of the effects and ~~assets of [DEBTOR] (the "Debtor")~~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 ~~of purchase and sale~~ (the ~~"Sale~~"**Asset Purchase Agreement**~~")~~") between ~~the Receiver and [NAME OF PURCHASER]~~Tarn Financial (the ~~"~~"**Vendor**") and Sunray Group of Hotels Inc. or its nominee, **[NEED NAME FROM SUNRAY]** (collectively, the "**Purchaser**~~") dated [DATE] and appended to the Report of the Receiver~~") dated ~~[DATE] (the "Report"),~~April 20, 2018 and vesting in the Purchaser the~~Debtor's~~Vendor Vendor's right, title and interest in and to the assets described in the ~~Sale~~Asset Purchase Agreement (the ~~"~~"**Purchased Assets**~~"),~~"), was heard this day 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 ~~Receiver, [NAMES OF OTHER PARTIES APPEARING],~~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 ~~[NAME]~~Alina Stoica sworn ~~[DATE]~~April •, 2018 filed[1]:

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.

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[1] ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

~~1.~~3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,[2] and the execution of the ~~Sale~~Asset Purchase Agreement by the ~~Receiver~~[3]Vendor is hereby authorized and approved, with such minor amendments as the ~~Receiver~~Vendor may deem necessary. The ~~Receiver~~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.

~~2.~~5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a ~~Receiver's~~Liquidator`s certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the ~~"Receiver's~~"**Liquidator's Certificate**~~"),~~"), all of the ~~Debtor's~~Vendor`s right, title, benefit and interest in and to the Purchased Assets described in the ~~Sale~~Asset Purchase Agreement ~~[and listed on~~including the lands legally described in **Schedule B** hereto~~]~~[4] (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

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~~[2] In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

~~[3] In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

~~[4] To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "~~"~~**Claims**~~"~~[5]~~)~~") including, without limiting the generality of the foregoing: ~~(~~i)~~ ~~any encumbrances or charges created by the Winding Up Order ~~of the Honourable Justice [NAME] dated [DATE];~~, 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.

~~3.~~6. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver]~~[Land Titles Division of ~~{LOCATION}~~Metropolitan Toronto Land Registry No. 66 of an Application for Vesting Order in the form prescribed by the *Land Titles Act* ~~and/or the *Land Registration Reform Act*~~]~~[6], the Land Registrar is hereby directed to enter the Purchaser as the owner of the ~~subject real property identified in Schedule B hereto (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 limited 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.

~~[5] The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

~~[6] Elect the language appropriate to the land registry system (Registry vs. Land Titles).~~

~~4.~~8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds[7] 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 ~~Receiver's~~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[8], 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.

~~5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.~~

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.

~~6.~~10. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the ~~Receiver~~Vendor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the ~~Company's~~Vendor`s records pertaining to the ~~Debtor's~~Vendor`s past and current employees~~,~~

~~[7] The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

~~[8] This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

~~including personal information of those employees listed on Schedule "●" to the Sale Agreement~~. 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 ~~Debtor~~Vendor.

~~7.~~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 ~~Debtor~~Vendor and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the ~~Debtor~~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 ~~Debtor~~Vendor and shall not be void or voidable by creditors of the ~~Debtor~~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.

~~8.~~12. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the ~~*Bulk*~~*Retail Sales Act* (Ontario).

~~9.~~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 ~~Receiver~~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 ~~Receiver~~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 ~~Receiver~~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.

~~Revised: January 21, 2014~~

Schedule A – Form of ~~Receiver's~~Liquidator's Certificate

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

~~B E T W E E N:~~

~~PLAINTIFF~~

~~Plaintiff~~

–BETWEEN:

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ, BA&B CAPITAL INC., SERDAR KOCTURK
and –KAAN HOLDINGS INC.
~~DEFENDANT~~

~~Defendant~~

~~RECEIVER'S~~

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.

LIQUIDATOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~Mr. Justice Lederman of the Ontario Superior Court of Justice (Commercial List) (the ~~"~~"**Court**~~")~~") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~September 15, 2017 (the "**Winding Up Order**"), KPMG Inc. was appointed as ~~the receiver~~ (liquidator (in such capacity, the ~~"Receiver")~~"**Liquidator**") of the ~~undertaking,~~

~~property~~effects and ~~assets~~estate of ~~[DEBTOR]~~Tarn Financial Corporation (the "~~Debtor~~"). **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 ~~[DATE],~~May 1, 2018, the Court approved the asset purchase agreement ~~of purchase and sale~~ made as of ~~[DATE OF AGREEMENT]~~April 20, 2018 (the ~~"Sale"~~**Asset Purchase Agreement**~~")~~") between the ~~Receiver [Debtor]~~Vendor and ~~[NAME OF PURCHASER]~~Sunray Group of Hotels Inc. (the ~~"~~"**Purchaser**~~")~~") and provided for the vesting in the Purchaser of the ~~Debtor's~~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 ~~Receiver~~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~~closing as set out in ~~section ● of~~ the ~~Sale~~Asset Purchase Agreement have been satisfied or waived by the ~~Receiver~~Vendor and the Purchaser~~;~~, and (iii) the Transaction has been completed to the satisfaction of the ~~Receiver~~Liquidator.

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

~~THE RECEIVER CERTIFIES the following:~~

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 ~~Receiver~~Vendor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the ~~Sale~~Asset Purchase Agreement;

2. The conditions to ~~Closing~~closing as set out in ~~section ● of~~ the ~~Sale~~Asset Purchase Agreement have been satisfied or waived by the ~~Receiver~~Vendor and the Purchaser, respectively; and

3. The Transaction has been completed to the satisfaction of the ~~Receiver~~Liquidator.

4. This Certificate was delivered by the ~~Receiver~~Liquidator at _____ [TIME] on _____ [DATE~~.~~], 2018.

~~[NAME OF RECEIVER],~~KPMG Inc., **in its capacity as** ~~Receiver~~Court-appointed Liquidator **of** ~~the undertaking, property and assets of [DEBTOR],~~Tarn Financial Corporation, **and not in its personal capacity**

Per: _____

Name:

Title:

Schedule B – ~~Purchased Assets~~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)

15. Notice of Lease Instrument Number E236074 registered March 23, 1999 in favour of Microcell Conexions Inc.

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

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

18. General Assignment of Rents instrument Number AT3740683 registered November 14, 2014, in support of Charge AT3740682 in favour of Meridian Credit Union Limited.

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

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

21. Charge Instrument Number AT4443337 registered December 23, 2016, in favour of Kingsett Mortgage Corporation.

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

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

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

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

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

27. Construction Lien AT4694989 registered September 29, 2017, registered by MCW Consultants Ltd. perfected by Certificate instrument Number AT4734146 registered November 16, 2017.

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

29. 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~~, Easements and Restrictive Covenants~~ 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.

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

APPROVAL AND VESTING ORDER
DATED MAY 1, 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
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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.

TAB 5

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

THE HONOURABLE	)	**TUESDAY, THE 1st DAY**
	)	
JUSTICE MCEWEN	)	**OF MAY, 2018**

BETWEEN:

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

Applicants

– and –

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

Respondents

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

DISPUTED DEPOSITS RESOLUTION PROCEDURE ORDER

THIS MOTION, made by KPMG Inc. ("**KPMG**"), in its capacity as Court-appointed receiver and manager (in such capacities, the "**Receiver**"), of all of the assets, undertakings and properties of Tarn Construction Corporation ("**Tarn Construction**") pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended and appointed pursuant to the Order of Justice McEwen dated April 13, 2018 (the "**Receivership Order**"), upon the application of KPMG in its capacity as Court-appointed liquidator (in such capacity, the "**Liquidator**") pursuant to section 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial Corporation ("**Tarn Financial**"), and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the "**Winding Up Order**"), which appointment was effective on September 25, 2017, for an Order establishing a procedure for the resolution of Disputed Deposits (as defined below) asserted by purchasers of proposed

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

ON READING the Third Report of the Liquidator and the First Report of the Receiver dated April 24, 2018 and on hearing the submissions of counsel for the Receiver, and such other counsel as were present as indicated on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Service sworn April ●, 2018 , filed:

SERVICE

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

DEFINITIONS AND INTERPRETATION

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

(a) "**Additional Deposit**" means a Deposit paid after March 31, 2018;

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

(c) "**APS**" means an agreement of purchase and sale between Tarn Construction and a Purchaser for the sale and purchase of a Proposed Unit at the contemplated Development Project;

(d) "**Business Day**" means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;

(e) "**Court**" means the Ontario Superior Court of Justice, Commercial List;

(f) "**Deposit**" means any monies including, without limitation, deposit monies and monies on account of extras and upgrades paid by a Purchaser pursuant to an APS for a Proposed Unit at the Development Project;

(g) "**Deposit Confirmation Bar Date**" means 5:00 PM Eastern Standard Time on May 15, 2018 with respect to the Deposits set out on the Deposit Statement and thirty (30) calendar days after the date set out on the Amended and Restated Deposit Statement with respect to the Additional Deposits, or such later date as may be ordered by this Court;

(h) "**Deposit Confirmation Procedure**" means the procedure outlined in the Deposit Confirmation Procedure Order in connection with the confirmation and assertion of Deposits remitted to Tarn Construction, as amended or supplemented by further Order of the Court;

(i) "**Deposit Confirmation Procedure Order**" means the Order approving the Deposit Confirmation Procedure granted on April 13, 2018 by the Court in these proceedings;

(j) "**Deposit Statement**" means the document delivered to Purchasers setting out the Deposit remitted by a Purchaser up to and including March 31, 2018, as prepared by the Receiver, with the assistance of the Deposit Trustee, in the form substantially attached as Schedule "A" to the Deposit Confirmation Procedure Order;

(k) "**Deposit Trustee**" means Bennett Jones LLP;

(l) "**Development Project**" means the contemplated residential condominium development located at 2035 Kennedy Road, Toronto, Ontario, known as the "The Kennedys";

(m) "**Disputed Deposit**" means a Deposit that a Purchaser has disputed for any reason by delivering a Notice of Dispute of Deposit Statement or Notice of Dispute of

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

(n) **Disputed Deposit Resolution Procedure**" means the procedure outlined in this Order for determining Proven Deposits and resolving Disputed Deposits;

(o) "**Known Additional Deposit**" means a Purchaser's Additional Deposit known by the Receiver based on the books and records of Tarn Construction and the Deposit Trustee, and as set out in the Amended and Restated Deposit Statement prepared by the Receiver;

(p) "**Known Deposit**" means a Purchaser's Deposit known by the Receiver based on the books and records of Tarn Construction and the Deposit Trustee, and as set out in the Deposit Statement prepared by the Receiver;

(q) "**Notice of Dispute of Amended and Restated Deposit Statement**" means a notice disputing the Amended and Restated Deposit Statement, substantially in the form attached as "Schedule D" to the Deposit Confirmation Procedure Order;

(r) "**Notice of Dispute of Deposit Statement**" means a notice disputing the Deposit Statement, substantially the form attached as Schedule "C" to the Deposit Confirmation Procedure Order;

(s) "**Proposed Unit**" means a residential condominium unit at the Development Project;

(t) "**Proven Deposit**" means the amount and/or validity of a Deposit as finally determined by the Receiver, in consultation with The Guarantee Company, in accordance with this Disputed Deposits Resolution Procedure Order, and for greater certainty a Proven Deposit will be "finally determined" for the purposes of this definition if any one of the following circumstances applies:

(i) the Receiver has delivered a Deposit Statement or Amended and Restated Deposit Statement to a Purchaser and the applicable time period for filing a Notice of Dispute of Deposit Statement and/or Notice of Dispute of

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

(ii) a Disputed Deposit has been reviewed by the Receiver, in consultation with the Deposit Trustee and The Guarantee Company, and then consensually resolved with the Purchaser in accordance with this Disputed Deposit Resolution Procedure Order;

(iii) the Purchaser has failed to bring a motion in accordance with the timelines set out in paragraph 12 of this Order to determine the amount and/or validity of a Disputed Deposit that has not been consensually resolved;

(iv) the Court has made a determination with respect to the amount and/or validity a Disputed Deposit, and no appeal or application for leave to appeal therefrom has been taken or served, or where such appeal or application for leave to appeal has been dismissed, determined or withdrawn;

(u) "**Purchaser**" means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity, that has entered into an APS and/or has paid a Deposit, as indicated by the books and records of Tarn Construction and/or the Deposit Trustee; and

(v) "**The Guarantee Company**" means The Guarantee Company of North America;

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

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

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

ROLE OF THE RECEIVER

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

DETERMINATION OF PROVEN DEPOSITS

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

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

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

RESOLUTION OF DISPUTED DEPOSITS

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

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

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

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

SERVICE AND NOTICE

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

facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

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

GENERAL PROVISIONS

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

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

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

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

DISPUTED DEPOSIT RESOLUTION PROCEDURE ORDER (DATED MAY 1, 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.

TAB 6

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

THE HONOURABLE	)	**TUESDAY, THE 1st DAY**
	)	
JUSTICE MCEWEN	)	**OF MAY, 2018**

BETWEEN:

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

Applicants

– and –

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

Respondents

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

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

THIS MOTION, made by KPMG Inc. ("**KPMG**"), in its capacity as Court-appointed receiver and manager (in such capacities, the "**Receiver**"), of all of the assets, undertakings and properties of Tarn Construction Corporation ("**Tarn Construction**" and the "**Vendor**") pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended and appointed pursuant to the Order of Justice McEwen dated April 13, 2018 (the "**Receivership Order**"), upon the application of KPMG in its capacity as Court-appointed liquidator (in such capacity, the "**Liquidator**") pursuant to section 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial Corporation ("**Tarn Financial**"), and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the "**Winding Up Order**") which appointment was effective on September 25, 2017, for advice and directions from the Court in accordance with paragraph 18 of the Receivership Order

specifically confirming that the Receiver is entitled to terminate the Agreements of Purchase and Sale (the "**APSs**") entered into by Tarn Construction as Vendor and individual purchasers (the "**Purchasers**") for the sale and purchase of proposed condominium units in the unbuilt development project known as "The Kennedys" in accordance with the terms of the APSs and, in particular, the condition contained at Appendix A of Schedule E to the APSs entitled "Tarion Warranty Corporation Statement of Critical Dates and Addendum" which states: "Receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged by October 9, 2018" (the "**Construction Financing Early Termination Condition**") and confirming the timing of the Receiver's ability to do so was heard this day 330 University Avenue, Toronto, Ontario.

ON READING the Third Report of the Liquidator and the First Report of the Receiver dated April 24, 2018 and on hearing the submissions of counsel for the Receiver, and such other counsel as were present as indicated on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Service sworn April ● 2018, filed:

SERVICE

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

DEFINED TERMS

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

ENTITLEMENT TO TERMINATE APSs PURSUANT TO CONSTRUCTION FINANCING EARLY TERMINATION CONDITION

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

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

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

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

ORDER
(RE: ENTITLEMENT TO TERMINATE CONDOMINIUM AGREEMENTS OF PURCHASE AND SALE)
(DATED MAY 1, 2018)

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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

THIRD REPORT OF THE LIQUIDATOR AND FIRST REPORT OF THE RECEIVER (APRIL 23, 2018)

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