

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

NOVEMBER 28, 2017

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I. INTRODUCTION

1. On February 13, 2017, Volkan Basegmez, Cem Bleda Basegmez, Anil Rukan Basegmez, BA&B Capital Inc., Serdar Kocturk and Kaan Holdings Inc. (collectively, the “**Applicants**”) commenced an application (the “**Application**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 seeking an Order winding up Tarn Financial Corporation (“**Tarn**”) and appointing KPMG Inc. (“**KPMG**”) as liquidator for that purpose. The Applicants are shareholders of Tarn and collectively hold 60% of the common shares of Tarn. The remaining 40% of the common shares of Tarn are held by the Respondent, SAMM Capital Holdings Inc. (“**SAMM**”), a company owned by the Respondent, Ali Akman (“**Akman**”).
2. The Application was heard by Justice Lederman on August 11, 2017 and on September 15, 2017 His Honour ordered the winding up of Tarn 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.
3. 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**”).
4. This is a second supplemental report (the “**Second Supplemental Report**”) to the First Report. Capitalized terms not defined herein shall have the meanings set out in the Winding Up Order, the Sale Process and the First Report.
5. As detailed in the First 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; and (b) approving the sale process (the “**Sale Process**”).
6. The Sale Process Motion was 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

Applicants, SAMM and Akman time to formalize a settlement that had been reached between them in principle.

7. The Sale Process Motion was unopposed except for the relief seeking the approval of CBRE as the marketing and listing agent, which was opposed by SAMM and Akman. On November 24, 2017, Justice McEwan declined to approve the retention of CBRE as marketing and listing agent. A copy of Justice McEwan's Endorsement dated November 24, 2017 is attached as **Appendix "A"** to this Second Supplemental Report.
8. Justice McEwan directed the Liquidator to seek to retain another marketing and listing agent with a view to returning to Court to seek approval of the Sale Process Order as reasonably quickly as possible.
9. The purpose of this Second Supplemental Report is to update this Honourable Court with respect to the proposed retention by the Liquidator of Colliers Macaulay Nicolls Inc. ("**Colliers**") to be the marketing and listing agent and the proposed revisions to the Sale Process, in order to address the change in the agent.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
11. The information contained in this Second Supplemental Report has been obtained from the books and records and other information of Tarn or Tarn Construction. The accuracy and completeness of the financial information contained herein has not been audited or otherwise verified by the Liquidator, and the Liquidator does not express an opinion or provide any other form of assurance with respect to the information presented herein or relied upon by the Liquidator in preparing this Second Supplemental Report.
12. Future oriented financial information reported or relied on in preparing this Second Supplemental Report is based on Management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

II. ENGAGEMENT OF COLLIERS

13. As set out in the First Supplemental Report, the Liquidator had discussions with, received proposals from and met with two of the largest and most respected commercial real estate

service firms in order to consider which firm it would retain to assist in undertaking the Sale Process. Those two firms were CBRE and Colliers.

14. On November 24, 2017 after Justice McEwan rendered his Endorsement, the Liquidator re-approached Colliers regarding its interest in acting as marketing and listing agent under the Sale Process and the terms of such engagement. As set out in the Confidential Appendix "2" previously filed with the Court, Colliers had initially proposed a commission structure which has since been revised based on further discussions with the Liquidator. The Liquidator has negotiated a form of marketing and listing agreement with Colliers (the "**Colliers Marketing and Listing Agreement**") which the Liquidator intends to enter into upon Court approval of same. A redacted copy of the Colliers Marketing and Listing Agreement is attached as **Appendix "B"** to this Second Supplemental Report.
15. An unredacted copy of the Colliers Marketing and Listing Agreement will be delivered to the Court as **Confidential Appendix "1"** to this Second Supplemental Report and the Liquidator is requesting a sealing order in respect of same due to the commercially sensitive terms set out therein.
16. The change in the proposed marketing and listing agent has necessitated a number of changes to the draft Sale Process Order, previously filed with the Court in the Liquidator's Sale Process Motion. A blackline of the Sale Process Order identifying the changes proposed by the Liquidator from the version contained as Schedule "A" to the Liquidator's Notice of Motion dated November 13, 2017 is attached as **Appendix "C"** to this Second Supplemental Report.

All of which is respectfully submitted at Toronto, Ontario this 28th day of November, 2017.

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

Per:



Anamika Gadia
Senior Vice President

APPENDIX “A”

Court File Number: CV-17-11697-0000

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Bassegmez et al Plaintiff(s)
AND
Alman et al Defendant(s)

Case Management ☐ Yes ☐ No by Judge: _____

Counsel	Telephone No:	Facsimile No:
See attached		

- ☒ Order ☐ Direction for Registrar (No formal order need be taken out)
☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
☐ Adjourned to: _____
☐ Time Table approved (as follows): _____

I agree with the submission
of Alman / Samin that CBRE
ought to be removed as the marketer
and listing agent.

Given the outstanding litigation
between CBRE and S+A Hospitality
Corp - a company in which Mr
Alman is the President / Director -
I am satisfied that a reasonable

24 Nov 17

Date

[Signature]

Judge's Signature

☒ Additional Pages _____

i. By way of clarity, I should have noted that
it is not a "renewal issue" but rather I have declined
to approve their agreement as listing agent

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

appearance of bias on the part of Mr Akman exists.

When one reviews the st. of claim in the CBBB action it is clear that allegations are aimed directly at Mr Akman. Mr Bill Stone is the principal ~~actor~~ actor in that litigation on behalf of CBBB and would also be the point person in this proposed sale.

In these circumstances without casting any aspersions in the direction of CBBB or KPMG, there is a real perceived bias or conflict of interest.

I am not satisfied that the solution proposed by KPMG resolves the problem. It creates a "two track" process which may eventually lead to more

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

difficulties and for litigation.

Also, my proposal at the
inquest made in good faith
underscores the perceived problem.

I am concerned with the issue
of delay but it has been
relatively brief and caused by
Akman / Sam only received
KPMG's materials recently. ~~Be~~

Overall, given my determination,
I cannot lay the blame ~~for~~ for
delay ~~at~~ completely at the feet
of Akman / Sam.

Further given Marriott's submission
it may be unlikely that
any bid from Mr Akman would
succeed but it would be
improper for me to prepage
the potential of success.

Last, KPMG & others raise the

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Fact that Mr Akman has had dealings in other commercial realtors which could lead to conflicts. This may be the case but there is no evidence of outstanding litigation which is the central feature of this dispute.

Overall, it is my view that removal of CBEE is fair & reasonable and overall better for the process itself so as to potentially reduce further conflict.

It is worth the price of some delay to have a process removed from ~~the~~ ^{my} ~~an~~ ^{reasonable} perception of bias.

The ~~sealing~~ order is fair & reasonable in the circs - I shall go as part of the proposed order.
I signed today -

APPENDIX “B”

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

BETWEEN

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

-and-

Colliers Macaulay Nicolls Inc. (the “**Brokerage**” or “**Colliers**”)

WHEREAS the Liquidator has been appointed as liquidator of the effects and estate of Tarn (the “**Property**”), pursuant to the order (the “**Winding Up Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 15, 2017 and effective as of September 25, 2017 under Court File Number: CV-17-11697-00CL (the “**Winding Up Proceedings**”);

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

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

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

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

ARTICLE 1 – RECITALS

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

ARTICLE 2 – TERM AND SCOPE OF ENGAGEMENT

- 2.1 Subject to the approval by the Court of (i) the Sale Process and (ii) this Agreement, the Liquidator hereby engages the Brokerage and gives it the exclusive right to list the Property for sale for a period of six (6) calendar months from the Court’s approval of the Sale Process (the “**Term**”).
- 2.2 Subject to the approval by the Court of this Agreement, the Liquidator, by its signature below, acknowledges and agrees that this Agreement is for a Term exceeding one hundred and eighty (180) days.
- 2.3 Subject to the approval of the Court, the Services will be as set out in the Sale Process and will include:
 - a) assisting the Liquidator in the implementation of the Sale Process;
 - b) identifying and assisting the Liquidator in evaluating potential interested parties and dealing with inbound enquiries with respect to participating in the Sale Process;

- c) preparing appropriate marketing materials for the Property for distribution to potential interested parties;
 - d) contacting potential interested parties and providing access to such information about the Property as may be appropriate and acceptable to the Liquidator, subject to customary business confidentiality arrangements via a virtual data room prepared and managed by the Brokerage;
 - e) assisting the Liquidator in structuring potential transactions and participating in the negotiation of such transactions;
 - f) providing such written reports as may be reasonably requested by the Liquidator with respect to the Sale Process in connection with any motion for Court approval of a transaction; and
 - g) rendering such other advisory and marketing services as would customarily be provided in connection with the marketing of assets as may be requested by the Liquidator.
- 2.4 The Brokerage shall report to the Liquidator on request in such detail as the Liquidator may reasonably require in connection with the Services hereunder and, without limiting the generality of the foregoing, shall provide the Liquidator with bi-weekly reporting including details of contact with potential purchasers, changes to market conditions and comments with respect to the actual activities undertaken and those proposed by the Brokerage.
- 2.5 The Brokerage shall market the Property on terms and conditions agreed and acceptable to the Liquidator and in accordance with the Sale Process, including without limitation, and sale of the Property shall be subject to approval of the Court and shall be on an “as-is, where-is” basis, with no representations or warranties from the Liquidator or the Brokerage (as applicable) as to any matter including, without limitation, title, quality, use, zoning, type or value of the Property.

ARTICLE 3 – THE BROKERAGE REMUNERATION

- 3.1 The Liquidator agrees to pay the Brokerage a commission equivalent to [REDACTED] (the “**Commission**”). Gross sales price shall include any and all consideration received or receivable, in whatever form, including but not limited to assumption or release of existing liabilities, without downward adjustment for any capital or environmental issues. Commissions shall be paid and deemed earned if and only if a closing occurs pursuant to a contract of sale executed and delivered by the Liquidator.
- 3.2 The Commission shall be earned by the Brokerage in the event that during the Term the Liquidator enters into a binding agreement of purchase and sale for the Property with a purchaser procured by the Brokerage, the Liquidator or from any other source whatsoever, including any of the existing stakeholders.
- 3.3 The Commission shall be payable immediately upon the closing of the agreement of purchase and sale referred to in section 3.2 above, notwithstanding that the sale may close, or the transfer may be completed, following the expiry of the Term.
- 3.4 The Commission payable herein shall be subject to the payment of Harmonized Sales Tax (HST) thereon by the Liquidator.
- 3.5 The Brokerage shall be responsible for all travel and marketing costs other than third party reports, if any are required as determined by Colliers and the Liquidator.

ARTICLE 4 – HOLDOVER

- 4.1 The Liquidator further agrees to pay the Brokerage the Commission if, within one hundred and eighty (180) calendar days after the expiration of the Term (the “**Holdover Period**”), with or

without the involvement of the Brokerage, the Liquidator enters into a binding agreement of purchase and sale for the Property, or negotiations continue, resume or commence and thereafter continue leading to the execution of a binding agreement of purchase and sale for the Property outside of the Holdover Period, with any person or entity (including his/her/its successors, assigns or affiliates) with whom the Brokerage has negotiated (either directly or through another agent) or to whom the Property was introduced or submitted, from any source whatsoever, or to whom the Liquidator was introduced, from any source whatsoever.

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

ARTICLE 5 – EXCLUSIVE ENGAGEMENT

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

ARTICLE 6 – DUAL AGENCY

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

ARTICLE 7 – GENERAL PROVISIONS

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

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

ARTICLE 9 – TERMINATION AND SURVIVAL

- 8.1 In the event that this Agreement is not approved by the Court, this Agreement shall be terminated and shall be null and void.
- 8.2 The Brokerage acknowledges that the Winding Up Order is currently under appeal. In the event that the appeal is successful or the Applicants and Respondents in the Winding Up Proceedings consensually resolve the dispute between them in a manner that results in the Winding Up Order being terminated, the Brokerage acknowledges and agrees that its engagement hereunder and this Agreement shall be terminated.
- 8.3 Upon Termination of this Agreement pursuant to Section 8.2 of the Agreement only, the Brokerage would be entitled to its out of pocket costs and expenses payable from the Liquidator from the date of its engagement to the date of the Agreement is terminated plus a break fee in the amount of [REDACTED]. The Brokerage agrees to provide an accounting of its out of pocket costs and expenses within 14 days of the Liquidator's

appointment ceasing to allow the Liquidator to claims such costs under the Liquidator's Charge (as defined in the Winding Up Order).

- 8.4 This Agreement may be terminated for cause by the Liquidator on written notice to the Brokerage.
- 8.5 Upon a termination of this Agreement, the rights and obligations of the Liquidator and the Brokerages shall be at an end, save and except for the rights and obligations set out in Sections 7.1 and 8.3 hereof which shall survive termination of this Agreement.

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

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

Per:

Per: Anamika Gadia
Senior Vice President

Colliers Macaulay Nicolls Inc.
(the "**Brokerage**")

Per:

I have authority to bind the company

Print Name: _____

APPENDIX “C”

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

THE HONOURABLE ●MR.)
1729TH DAY

FRIDAYWEDNESDAY, THE

JUSTICE ●MCEWEN)

OF NOVEMBER, 2017

BETWEEN:

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,

BA&B CAPITAL INC., SERDAR KOCTURK

and KAAH HOLDINGS INC.

Applicants

- and -

ALI AKMAN, SAMM CAPITAL HOLDINGS INC.

and TARN FINANCIAL CORPORATION

Respondents

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

SALE PROCESS ORDER

THIS MOTION, made by KPMG Inc., in its capacity as court appointed liquidator (the “Liquidator”) pursuant to section 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial Corporation (“Tarn”), for an order: (a) authorizing the Liquidator to enter into and approving the marketing and listing agreement between the Liquidator and ~~CBRE Limited (“CBRE”)~~ Colliers Macaulay Nicolls Inc. (“Colliers”) substantially in the form attached to the Second Supplemental Report of the Liquidator dated November 10-28, 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, ~~nunc pro tunc~~, to execute and to carry out and perform its obligations under the Marketing and Listing Agreement (including the payment of the amounts due to be paid to CBRE 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 CBREColliers 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 CBREColliers, 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. ~~9.~~ **THIS COURT ORDERS** that the Liquidator may from time to time apply to this Court for advice and directions on the discharge of its duties and powers hereunder.

Schedule "A" - Sale Process

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

On November ~~17, 2017~~, 2017, the Court made an order (the "**Sale Process Order**") among other things, (a) approving the marketing and listing agreement between the Liquidator and ~~CBRE Limited~~ dated as of November 10, 2017 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; ~~and~~ (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 ~~CBRE 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 ~~CBRE 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 ~~CBRE~~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;

"~~CBRE~~Colliers" means ~~CBRE Limited~~Colliers Macaulay Nicolls Inc., in its capacity as listing and marketing agent engaged by the Liquidator pursuant to a Marketing and Listing Agreement dated ~~as of November 10, 2017~~ and approved by the Court by Order dated November ~~17, 2017~~29, 2017;

"Confidential Information Memorandum" means a confidential information memorandum prepared by ~~CBRE~~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 Hotel¹;

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

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

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

"Notice Parties" means ~~CBRE to the attention of Bill Stone (bill.stone@cbre.com), Deborah Borotsik (deborah.borotsik@cbre.com), Mike Czestochowski (mike.czestochowski@cbre.com) and Lauren Doughty (lauren.doughty@cbre.com)~~ 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 ~~17, 2018~~ 17, 2018;

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

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

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

"Phase II Bid Deadline" means noon (Eastern time) on February ~~7, 2018~~ 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;

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

“Qualified Phase I Bidder” means (i) a Phase I Bidder for all of the Assets that delivers the documents described in paragraphs (a) through (d) in Section 7, and that the Liquidator and CBRE 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 that it would be able to consummate if selected as a Successful Bidder or (ii) a Phase I Bidder that is a Portion Bidder and that delivers the documents described in paragraphs (a) through (d) in Section 7, and that the Liquidator and CBRE 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 CBRE 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 CBRE 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, CBRE 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. CBREColliers 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 CBREColliers 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 CBREColliers as listing and marketing agent to undertake the marketing and sale aspects of the Sale Process, subject to the oversight of the Liquidator as the statutory representative of Tarn and officer of the Court. Interested Parties wishing to obtain information about the Sale Process, a copy of the Confidentiality Agreement and information in connection with their due diligence, should contact the following representatives of CBRE: bill.stone@cbre.com; deborah.borotsik@cbre.com; mike.ezestochowski@cbre.com and lauren.doughty@cbreColliers; 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 CBREColliers in order to prepare and submit their Phase I Bid by the Phase I Bid Deadline. In addition, Phase I Bidders that meet the Phase I Participant Requirements set out herein be given access to an electronic data room in order to undertake their diligence, which will include the Template APA.

All Phase I Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Process so that they are actually received by each of the Notice Parties no later than the Phase I Bid Deadline. All Phase II Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Process so that they are actually received no

later than the Phase II Bid Deadline. In addition, written copies of the Bids shall be delivered by the applicable deadline to the Liquidator and its counsel at the following addresses: (a) the Liquidator, KPMG Inc., Bay Adelaide Centre, 4600 – 333 Bay Street, Toronto, Ontario M5H 2S5 Attn.: Anamika Gadia, agadia@kpmg.ca; and (b) counsel to the Liquidator, Miller Thomson LLP, Scotia Plaza, 5800- 40 King Street West, Toronto, Ontario M5H 3S1, Attn: Kyla Mahar, kmahar@millerthomson.com. A Bid received after the Phase I Bid Deadline shall not constitute a Phase I Bid and a Phase II Bid received after the Phase II Bid Deadline may be disqualified. A Bid shall be delivered to all Notice Parties at the same time.

4. **Timeline**

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

Milestone	Date
Phase I Bid Deadline	January 17, 2018 <u>31, 2018</u>
Phase II Bid Deadline	February 7, 2018 <u>23, 2018</u>
Anticipated Timing for Sale Hearing	March 7, 2018 <u>23, 2018</u>

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 CBREColliers, 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, CBREColliers 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 CBREColliers 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 CBREColliers following the Phase I Bid Deadline.

CBREColliers, 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. CBREColliers will be responsible for the coordination of all reasonable requests for additional information and due-diligence access from Qualified Phase I Bidders. CBREColliers 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 CBREColliers 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 CBREColliers 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 CBREColliers shall be obligated to furnish any due diligence information after the Phase II Bid Deadline. Neither the Liquidator nor CBREColliers 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 CBREColliers 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 CBREColliers 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 CBREColliers 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 CBREColliers 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 CBREColliers, 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 CBREColliers 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 CBREColliers 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 CBREColliers 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 CBREColliers demonstrating that such Phase I Bidder has the ability to close the contemplated transaction;

provided, however, that the Liquidator and CBREColliers 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 CBREColliers 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 CBREColliers are not satisfied with the number or terms of the Non-Binding APAs, the Liquidator and CBREColliers may extend the Phase I Bid Deadline or amend the Sale Process. CBREColliers 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 CBREColliers, in consultation with the Secured Lenders, shall determine which Phase I Bidders are Qualified Phase I Bidders. CBREColliers 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 CBREColliers, in consultation with the Secured Lenders, shall determine which Qualified Phase I Bidders are Qualified Phase II Bidders. CBREColliers 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. CBREColliers 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 CBREColliers, 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 CBREColliers;
- (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 CBREColliers 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 CBREColliers and appropriate contact information for such financing sources must be provided;
- (e) No Fees payable to Qualified Phase II Bidder. A Phase II Bid may not request or entitle the Qualified Phase II Bidder to any break-up fee, expense reimbursement or similar type of payment;
- (f) Disclosure: Fully disclose the identity of each entity that will be entering into the transaction and that is participating or benefiting by such Bid; and

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

The Liquidator and CBRE 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 CBRE 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 CBRE 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 CBRE 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, CBRE 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 ~~CBRE~~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 ~~17~~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]

ONTARIO SUPERIOR COURT OF JUSTICE Proceeding commenced at Toronto	
SALE PROCESS ORDER (DATED: NOVEMBER 17, 2017) MILLER THOMSON LLP Scotia Plaza 40 King Street West, Suite 5800 Toronto Ontario M5H 3S1 Kyla Mahar LSUC#: 44182G Tel: 416.597.4303 / Fax: 416.595.8695 Stephanie De Caria LSUC#: 68055L Tel: 416.597.2652 / Fax: 416.595.8695 Lawyers for KPMG Inc., in its capacity as Liquidator of Tarn Financial Corporation	

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Description	#28148771v1<Legal> - Sale Process Order (Tarn Financial)(draft as of November 28-17)(as served)
Rendering set	Standard

Legend:	
Insertion	
Deletion	
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Moved to	
Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count

Volkan Basegmez et al.
Applicants

Ali Akman et al.
and Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

**SECOND SUPPLEMENTAL FIRST REPORT
OF THE LIQUIDATOR
DATED NOVEMBER 28, 2017**

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