

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**

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

NOVEMBER 16, 2017

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I. INTRODUCTION

1. This is a supplemental report (the “**Supplemental Report**”) to the first report to the Court of 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**”) dated November 13, 2017 (the “**First Report**”) and is filed in respect of the motion brought by the Liquidator, returnable on November 17, 2017.
2. As detailed in the Liquidator’s First Report, the Liquidator is seeking an order, among other things: (a) authorizing the Liquidator to enter into and approving the marketing and listing agreement between the Liquidator and CBRE Limited (“**CBRE**”) dated November 10, 2017 (the “**Marketing and Listing Agreement**”); and (b) approving the sale process (the “**Sale Process**”).
3. The purpose of this Supplemental Report is to update this Honourable Court with respect to the process undertaken by the Liquidator in deciding to retain CBRE to be the marketing and listing agent and the proposed revisions to the Sale Process, in order to address the objections raised by the Respondents, SAMM Capital Holdings Inc. (“**SAMM**”) and Ali Akman (“**Akman**”) in the Affidavit of Ali Akman sworn November 15, 2017 (the “**Akman Affidavit**”).
4. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars. Capitalized terms not defined herein shall have the meanings set out in the Winding Up Order, the Sale Process and the First Report.
5. The information contained in this 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 Supplemental Report.

6. Future oriented financial information reported or relied on in preparing this 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 CBRE

7. Pursuant to the Marketing and Listing Agreement, subject to Court approval, the Liquidator has engaged CBRE to act as the marketing and listing agent in the Sale Process and to undertake all aspects contemplated in the Sale Process.
8. As set out in the First Report in paragraphs 120 to 126, the Liquidator had discussions with, received proposals from and met with two of the largest and most respected commercial real estate service firms in the country in order to consider which firm it would retain to assist in undertaking the Sale Process. The Liquidator ultimately chose CBRE based on its overall assessment of which firm would be value accretive to the Sale Process and work collaboratively with the Liquidator to undertake the Sale Process.
9. When the Liquidator contacted CBRE, it was advised by CBRE that it is currently in litigation with one of Akman's other corporations, S and A Hospitality Corporation ("S&A") for damages for breach of contract regarding alleged unpaid real estate commissions (the "**Litigation**").
10. When undertaking its analysis as to which firm to retain, the Liquidator considered whether the Litigation would preclude CBRE from being retained by the Liquidator to undertake the Sale Process, subject to Court approval.
11. In considering this issue, counsel for the Liquidator spoke to counsel for SAMM and Akman on October 24, 2017 to raise the Litigation with them and ask if they would have any concerns regarding the Liquidator engaging CBRE. Counsel for the Liquidator followed up by email to counsel for SAMM and Akman on the same day regarding the retention of CBRE. A copy of Greg Azeff's email to Bobby Sachdeva on October 24, 2017 at 5:57 p.m. is attached as **Appendix "A"** to this Supplemental Report.
12. Counsel for the Liquidator circulated a draft of the Sale Process Order to counsel for the Shareholders (including SAMM and Akman) on November 10, 2017.

13. The Liquidator was not advised of SAMM and Akman's position with respect to CBRE being retained by the Liquidator until after the Liquidator served its motion on November 13, 2017.
14. The Liquidator prepared a memo to Kingsett Mortgage Corporation on November 6, 2017, which set out its analysis as to why it intended to proceed to retain CBRE. The memo was also shared with Meridian Credit Union Limited. A copy of the memo dated November 6, 2017 is being filed separately with the Court as **Confidential Appendix "2"**. The Liquidator intends to seek a sealing order from the Court with respect to Confidential Appendix "2" since it contains commercially sensitive information.
15. After considering all relevant factors including the Litigation, the Liquidator decided to retain CBRE to undertake the Sale Process, subject to Court approval. An executed copy of the redacted Marketing and Listing Agreement is Appendix "L" to the First Report and the unredacted copy will be provided to the Court as Confidential Appendix "1".
16. On or about November 14, 2017, counsel for SAMM and Akman advised that their clients would be opposing the retention of CBRE.
17. In the Akman Affidavit, Akman asserts that another brokerage firm should be chosen as the marketing and listing agent for the purpose of the Sale Process. He further asserts that in the event the Court approves the Marketing and Listing Agreement, the Sale Process should be amended in a number of respects.
18. The Liquidator remains of the view that CBRE will undertake the mandate it has been retained to undertake in a professional manner that is fair to all stakeholders.
19. In the Liquidator's view, the amendments to the Sale Process Order proposed in the Akman Affidavit at subparagraphs 22 (b), (c) and (d) are either not possible or not reasonable. Bill Stone is the head of the Hotels team at CBRE. Based on a review of the pleadings for the Litigation and discussions with Bill Stone and CBRE's counsel, the Liquidator understands that he was involved in the sale process that led to the Litigation along with other members of the CBRE team. Mr. Stone and his team members possess the expertise and experience that the Liquidator is seeking to retain. The other

amendments, in the Liquidator's view, would potentially limit participation in the Sale Process, may cause significant delay and will increase costs.

20. The Liquidator has considered the reasons for SAMM and Akman's opposition contained in the Akman Affidavit and has amended the Sale Process to attempt to address the concerns raised. Under the amended Sale Process, CBRE will not have any involvement in the consideration of any bid received from any Shareholder (as defined in the Sale Process Order). A blackline of the Sale Process Order identifying the changes proposed by the Liquidator is attached as **Appendix "B"** to this Supplemental Report.

All of which is respectfully submitted at Toronto, Ontario this 16th 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”

Mahar, Kyla

From: Azeff, Gregory
Sent: Tuesday, October 24, 2017 5:57 PM
To: 'bsachdeva (bsachdeva@pallettvalo.com)'
Cc: Gadia, Anamika; Mahar, Kyla; De Caria, Stephanie
Subject: Tarn Financial

Bobby: Further to our discussion, please get back to us as soon as possible on the following items:

1. Broker issue. There has been some consideration of the possibility of engaging CBRE in connection with the sale process. However, we understand that there may be ongoing litigation between CBRE and your client arising from an issue unrelated to this matter. Please advise as to whether your client would have any concerns regarding engaging CBRE on this mandate.

We are also considering Colliers for the same role. We understand your client has had some dealings with Colliers in the past in connection with Tarn. Please advise as to the nature of such dealings including the Colliers personnel involved.

2. Bentley. As you know, the Liquidator is comfortable with the invoice amount of \$190,000 in respect of the Bentley. We understand that your client intends to purchase the vehicle. Please arrange for your client to remit payment to the Liquidator as soon as possible.
3. Insurance. The current insurance policy covers both the Delta as well as a Holiday Inn owned by your client. We are now in the renewal period. We do not intend to maintain coverage over the Holiday Inn. Please confirm that your client is arranging separate coverage for the Holiday Inn property.

Thanks Bobby – happy to discuss further at your convenience if necessary.

Regards,
Greg

GREGORY AZEFF

Partner

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 4011
Toronto, Ontario M5H 3S1
Direct Line: +1 416.595.2660
Fax: +1 416.595.8695
Email: gazeff@millerthomson.com
millerthomson.com



MILLER THOMSON
AVOCATS | LAWYERS

Please consider the environment before printing this email.

Appendix “B”

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

THE HONOURABLE •) FRIDAY, THE 17TH DAY
JUSTICE • MCEWEN) OF NOVEMBER, 2017

BETWEEN:

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

Applicants

– and –

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

Respondents

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

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**”) dated November 10, 2017 (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**”), and on hearing the submissions of counsel for the Liquidator, the Applicants, certain of the Respondents, Kingsett Mortgage Corporation, 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 by the Liquidator pursuant to the terms thereof), and such Marketing and Listing Agreement 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 CBRE 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 CBRE, 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.

GENERAL

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, 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; (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**").

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 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, 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, 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” means CBRE Limited, 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;

“Confidential Information Memorandum” means a confidential information memorandum prepared by CBRE 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 I), 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;

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

“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 Czystochowski (mike.czystochowski@cbre.com) and Lauren Doughty (lauren.doughty@cbre.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). For the purposes of any bid submitted by a Shareholder, Notice Parties shall exclude any representatives of CBRE;

“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;

“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;

“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 CBRE, 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, 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;

“Shareholders” means Volkan Basegmez, Cem Bleda Basegmez, Anil Rukan Basegmez, BA&B Capital Inc., Serdar Kocturk and KAAN Holdings Inc., Ali Akman, SAMM Capital Holdings Inc. and **“Shareholder”** means any of them;

“Successful Bid” means the highest and/or best Qualified Phase II Bid as determined by the Liquidator and CBRE, 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;

“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 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. CBRE 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 CBRE 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 CBRE 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.czestochowski@cbre.com and lauren.doughty@cbre.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 CBRE 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.

Notwithstanding the engagement of CBRE as listing and marketing agent and their mandate in the Sale Process as set out herein, only the Liquidator, in consultation with the Secured Lenders, will review and determine whether any Phase I Bid submitted by a Shareholder is a Qualified Phase I Bid and whether any Phase II Bid submitted by a Shareholder is a Qualified Phase II Bid, a Successful Bid or a Back-up Bid.

4. **Timeline**

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

Milestone	Date
Phase I Bid Deadline	January 17, 2018
Phase II Bid Deadline	February 7, 2018
Anticipated Timing for Sale Hearing	March 7, 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 CBRE, 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, CBRE 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 CBRE 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 CBRE following the Phase I Bid Deadline.

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

provided, however, that the Liquidator and CBRE 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 CBRE 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 CBRE are not satisfied with the number or terms of the Non-Binding APAs, the Liquidator and CBRE may extend the Phase I Bid Deadline or amend the Sale Process. CBRE 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 CBRE, in consultation with the Secured Lenders, shall determine which Phase I Bidders are Qualified Phase I Bidders. CBRE 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 CBRE, in consultation with the Secured Lenders, shall determine which Qualified Phase I Bidders are Qualified Phase II Bidders. CBRE 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. CBRE 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 CBRE, 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 CBRE;
- (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 CBRE 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 CBRE 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 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 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, 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 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 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 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 ● of the Ontario Superior Court of Justice (Commercial List) dated November 17, 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

Volkan Basegmez et al.
Applicants

Ali Akman et al.
and
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

LIQUIDATOR'S SUPPLEMENTAL REPORT
DATED NOVEMBER 16, 2017

MILLER THOMSON LLP

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

Kyla Mahar LSUC#: 44182G

Tel: 416.597.4303 / Fax: 416.595.8695

Stephanie De Caria LSUC#: 68055L

Tel: 416.595.2652 / Fax: 416.595.8695

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