

COURT FILE NUMBER

25-3038201

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANTS

**IN THE MATTER OF THE NOTICE OF INTENTION TO
FILE A PROPOSAL OF TOOL SHED BREWING
COMPANY INC.**

**KPMG INC., IN ITS CAPACITY AS PROPOSAL
TRUSTEE**

DOCUMENT

FIRST REPORT OF THE PROPOSAL TRUSTEE

DATE

FEBRUARY 7, 2024

ADDRESS FOR SERVICE AND
CONTRACT INFORMATION OF
PARTY FILING THIS DOCUMENT:

PROPOSAL TRUSTEE

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1. INTRODUCTION

1. On January 31, 2024 (the “**Filing Date**”), Tool Shed Brewing Company Inc., (“**Tool Shed**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (the “**NOI**”), pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”), and KPMG Inc. (“**KPMG**”) was appointed as trustee (the “**Proposal Trustee**”) under these NOI proceedings (the “**NOI Proceedings**”).
2. The NOI provides the Company with a stay of proceedings until March 1, 2024 (the “**Initial Stay Period**”).
3. Attached hereto as **Appendix “A”** is a copy of the certificate of filing a Notice of Intention to Make a Proposal issued by the Official Receiver. Information on these proceedings can be accessed on the Proposal Trustee’s website at <https://home.kpmg/ca/en/home/services/advisory/deal-advisory/creditorlinks/tool-shed-brewing-company.html>

Purpose of the Report

4. The purpose of the First Report of the Proposal Trustee (the “**First Report**” or this “**Report**”) is to provide this Honourable Court with the Proposal Trustee’s views on the following matters:
 - a) A summary of certain background information about the Company;
 - b) The objectives of the NOI Proceedings and information concerning the creditors of the Company;
 - c) The Company’s consolidated statement of projected cash flow for the thirteen-week period from January 28, 2024 – April 27, 2024 (the “**Cash Flow Forecast**”);
 - d) The Company’s request for Court approval of interim financing (the “**Interim Financing**”) and an interim lender’s charge (the “**Interim Lender’s Charge**”);
 - e) The requested forty-five day extension to the Initial Stay Period to and including April 15, 2024 (the “**First Extension**”), as permitted under section 50.4(9) of the BIA;
 - f) The Company’s request for Court approval of a charge in favour of the Proposal Trustee, the Proposal Trustee’s counsel, and the Company’s counsel (the “**Administration Charge**”) for professional fees and costs;

- g) A summary of the Company’s proposed sales and investment solicitation process (the “SISP”) with respect to the Company; and
- h) The Proposal Trustee’s recommendations.

Restrictions and Scope Limitation

5. In preparing this First Report and making the comments herein, the Proposal Trustee has been provided with, and has relied upon, unaudited and other financial information and certain records (together, the “**Information**”) prepared by the Company and/or their representatives, and discussions with Company management and/or representatives. The Proposal Trustee has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. The Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants Handbook, and accordingly, the Proposal Trustee expresses no opinion or other form of assurance in respect of the Information.
6. Some information referred to in the First Report may consist of forecasts and projections, which were prepared based on management’s estimates and assumptions. Such estimates and assumptions are, by their nature, not ascertainable, and as a consequence, no assurance can be provided regarding the forecasted or projected results. The reader is cautioned that the actual results will likely vary from the forecasts or projections; even if the assumptions materialize, the variations could be significant.
7. The information contained in the First Report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the Company.
8. Capitalized terms not otherwise defined herein are defined in the Company’s application materials. The First Report should be read in conjunction with the affidavit of James Costello sworn on February 5, 2024 (the “**Second Costello Affidavit**”) as certain information contained in the Second Costello Affidavit have not been included herein to avoid unnecessary duplication.
9. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

2. BACKGROUND

10. Tool Shed is an Alberta corporation with its registered office in Calgary, Alberta.
11. Tool Shed has been in the business of brewing craft beer for the last 11 years and specializes in alcoholic and non-alcoholic beverages.
12. Tool Shed employs approximately 20 full-time and part-time staff. It leases its premises in the Franklin Industrial Area of Calgary.
13. Tool Shed's products are located in approximately 750 retailers and offered by 190 off-premise customers, such as restaurants, bars, pubs, and other establishments that serve alcoholic beverages. Tool Shed's products have been carried in retail stores such as Ace Liquor, Liquor Depot, Wine & Beyond, Sobeys, and Calgary Co-ops.
14. In addition to servicing the Alberta market, Tool Shed also supplies its product to BC Liquor Stores, an entity controlled by the Liquor and Distribution Branch of the Province of British Columbia.
15. Further, the Company also distributes its beverages in the provinces of Saskatchewan and Manitoba.
16. In order to be able to produce and distribute its alcoholic beverages, Tool Shed holds a number of licenses and permits, including permits issued by the Alberta Gaming, Liquor, and Cannabis Commission, as well as licenses from the regulators in British Columbia, Saskatchewan, and Manitoba (the "**Licenses and Permits**"). The Licenses and Permits are non-assignable and are critical for Tool Shed to continue to operate its business.

Financial Difficulties

17. Since 2020, Tool Shed has faced a strain on its financial resources, including the negative effects on the brewing industry brought on by the Covid-19 pandemic as well as its main credit facility with ATB Financial (the "**ATB Facility**") maturing.
18. Tool Shed attempted to obtain financing from Canadian Western Bank to payout the ATB Facility, but was ultimately unsuccessful. As a result, Tool Shed has relied on cash injections from individual investors, which has been insufficient to fully fund operations in the normal course.

19. In April 2023, Tool Shed carried out an informal sale and investment solicitation process (the “**Initial SISP**”). The purpose of the Initial SISP was to restructure Tool Shed’s debt load, find a purchaser, or find an equity partner to pay out short-term debts. The Initial SISP was unsuccessful and terminated in September 2023.
20. In December 2023, Tool Shed circulated a proposed debt-to-equity conversion of its unsecured debt to its creditors (the “**Debt Settlement Agreement**”), which would have seen the forgiveness of 100% of its unsecured debt in exchange for common shares of the Company. After numerous discussions and negotiations, the Debt Settlement Agreement was rejected by a majority of Tool Shed’s creditors.
21. Several judgements and garnishments for unpaid amounts due to creditors (the “**Judgements**”) have been obtained against the company, including a Requirement to Pay notice issued by the CRA for unpaid payroll source deductions.
22. Accordingly, Tool Shed is unable to repay the amounts outstanding under the Judgements, to the CRA, or other liabilities as they become due.

Objectives of the NOI Proceedings

23. The primary objectives of the NOI Proceedings are to:
 - a) Ensure the ongoing operations of the Company; and
 - b) Conduct a court supervised sales and investment process for the Company’s assets and business operations as a going concern.

Creditors

Secured Creditors

24. Secured creditors consist of amounts owed to individuals who have agreed to lend funds to the Company on a secured basis. As at the Filing Date, this amount totaled approximately \$715,400.

Unsecured creditors

25. Summarized below are the unsecured creditors of the Company that the Proposal Trustee was made aware of at the Filing Date:

Tool Shed Brewing Company Inc.	
Unsecured creditors	
As at January 31, 2024	
In CAD	Amount
Individual lenders	2,750,820
Accounts Payable	1,083,395
CRA	571,091
Landlord	14,058
Total	4,419,364

26. The Company estimates approximately \$4.4 million in unsecured claims. The total amount includes \$2.75 million in principal and interest due to the individual unsecured lenders, approximately \$1.1 million for accounts payable due to trade creditors, approximately \$571,100 due to the CRA for unpaid payroll source deductions, and approximately \$14,100 due to the Company’s landlord. The Proposal Trustee is in process of reviewing the Company books and records to confirm these creditor amounts. To date, the Proposal Trustee has not conducted a security review of any of the amounts owed to any of the secured creditors.

3. CASH FLOW FORECAST

27. The Company has prepared a cash flow forecast of its receipts and disbursements for the period from January 28, 2024 to April 27, 2024 (the “Cash Flow Forecast”). A detailed cash flow forecast for the Company is attached as **Appendix “B”** to this report. The cash flow forecast is summarized below:

Tool Shed Brewing Company Inc.		
13 Week Forecast, to week ended April 27, 2024		
Forecast in \$000's		
Week #		
Week Ending Date	Notes	Total
Revenue receipts	1	623,500
Advances from interim lender	2	250,000
Total Receipts		873,500
Disbursements: Operating Costs		
Payroll	3	397,250
Materials, inventory, and packaging	4	298,308
Rent		49,000
Utilities		48,000
Marketing and merchandise	5	25,500
Other	6	71,967
Total Disbursements		890,025
Beginning Cash		31,000
Less: Net Cash Flow		(16,525)
Ending Cash		14,475
Notes:		
1. Per management revenue estimates as at January 31, 2024. Includes funds to be released from AGLC as a result of the stay of proceedings and Feb 5 Order rendering the CRA Requirement to Pay no longer in effect.		
2. Funds to be advanced from 2582568 Alberta Inc. under the Interim Loan Agreement		
3. Regular employee payroll. Includes payment to CRA for source deductions withheld throughout NOI period.		
4. Includes supplier costs for brewing, canning, and packaging of products.		
5. Includes costs for marketing events at client premises, and production of branded merchandise.		
6. Includes various administrative costs and staff benefits.		
General note:		
-The Proposal Trustee has received a \$75,000 retainer to address its initial professional fees, and the initial professional fees of its counsel. Future professional fees incurred throughout the proceedings for the Proposal Trustee, the Proposal Trustee's counsel, and Tool Shed's counsel will be addressed by the Administrative Charge.		

28. The Company has prepared the Cash Flow Forecast for the purpose described in the notes, using Probable and Hypothetical Assumptions set out in the Notes to the cash flow statements.

29. We note that restructuring costs, including professional fees for the Proposal Trustee, the Proposal Trustee's counsel, and the Company's counsel, are proposed to be paid from the Stalking Horse Agreement or any other successful bidder that comes forward in the sales process. In the interim, the professional advisors will be relying upon the Administration Charge to secure the payment of those amounts, and those amounts are not specifically reflected in the Company's operating cash flows as shown in the Cash Flow Forecast.
30. The Proposal Trustee has reviewed the Cash Flow Forecast to the standard required by section 50.4(2) of the BIA. Section 50.4(2) requires the Proposal Trustee to review the debtor's cash flow statement as to its reasonableness and to file a report with the Office of the Superintendent of Bankruptcy on the Proposal Trustee's findings. The Canadian Association of Insolvency and Restructuring Professional's Standards of Professional Practice include a standard for Proposal Trustees fulfilling their statutory responsibilities under the BIA in respect of a Proposal Trustee's report on the Cash Flow Forecast.
31. Our review consisted of inquiries, analytical procedures, and discussions related to information supplied to us by certain of the Company's management and employees. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. We have also reviewed the support provided by management of the Company for the probable assumptions, and the preparation and presentation of the Cash Flow Forecast.
32. Based on our review, nothing has come to our attention that causes us to believe that in all material respects:
- a) the hypothetical assumptions are not consistent with the purpose of the cash flow statement;
 - b) as at the date of the First Report, the probable assumptions developed by management of the Company are not suitably supported and consistent with the plans of the Company or do not provide a reasonable basis for the cash flow statement, given the hypothetical assumptions;
or
 - c) the cash flow statement does not reflect the probable and hypothetical assumptions.
33. Since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations

may be material. Accordingly, we express no assurance as to whether the Cash Flow Forecast will be achieved.

34. The Cash Flow Forecast has been prepared solely for the purpose described on the face of the Cash Flow Forecast, and readers are cautioned that it may not be appropriate for other purposes.

4. INTERIM FINANCING AND INTERIM LENDER'S CHARGE

35. The Company has negotiated an interim financing agreement (the “**Interim Financing Agreement**”) with 2582568 Alberta Inc. (“**258**”, or the “**Interim Lender**”). The Interim Lender has been working with Company’s management to help facilitate ongoing operations and has agreed to provide an interim financing facility (the “**Interim Facility**”) pursuant to the terms of the Interim Financing Agreement.
36. A copy of the Interim Financing Agreement is attached hereto as **Appendix “C”**. The key terms of the Interim Financing Agreement are summarized as follows:
- a) The Interim Lender will provide \$250,000, plus amounts incurred for interest and costs;
 - b) The interest rate is 12% per annum;
 - c) The termination date of the Interim Facility is the earlier of:
 - i. 90 days from the date of the order approving the Interim Facility;
 - ii. the Transaction contemplated in the NOI Proceedings is completed;
 - iii. the implementation of a proposal within the NOI Proceedings which has been approved by the requisite majorities of the Company’s creditors and by an order entered by the Court;
 - iv. the closing of any sale or investment transaction involving the Company, regardless of whether resulting from the SISP or not, which transaction has been approved by an order of the Court;
 - v. the termination of the NOI Proceedings for any reason; or
 - vi. the termination of the Interim Facility by the Interim Lender upon the occurrence of an Event of Default (as that term is defined in the Interim Financing Agreement).
 - d) The Interim Facility will be secured by the Interim Lender’s Charge, which is a priority charge on all of the existing and after-acquired real and personal property of the Company; and

- e) The Interim Facility also includes certain customary ongoing covenants and events of default.
37. The Proposal Trustee has reviewed the Interim Financing Agreement and conducted a comparison of the Interim Facility to other publicly disclosed Canadian Interim Facility financing transactions of which the Proposal Trustee has knowledge. The Proposal Trustee is of the view that the interest rate, and terms of the Interim Facility as set out in the Interim Facility Agreement are reasonable, customary, and within the range of other transactions of this nature.
38. The Proposal Trustee has reviewed the key factors to be considered pursuant to section 50.6(5) of the BIA. The Proposal Trustee is satisfied that these factors are met, specifically:
- a) Section 50.6(5)(a) - The Interim Facility has a maturity date which will give the Company a reasonable timeframe within which to restructure;
 - b) Section 50.6(5)(b) – The Company’s business and financial affairs are intended to be managed in the normal course throughout the NOI Proceedings;
 - c) Section 50.6(5)(c) – The Interim Lender supports the restructuring proceedings;
 - d) Section 50.6(5)(d) – The Company is forecasting cash flow from operations but such cash flow is insufficient to support operations throughout the entire restructuring period, and the Company requires the Interim Facility to fully fund its operational costs;
 - e) Section 50.6(5)(e) – The nature and market value of the Company’s assets exceeds the available funds being advanced under the Interim Facility; and
 - f) Section 50.6(5)(f) – The Proposal Trustee does not believe that any creditor will be materially prejudiced by the Interim Financing Agreement or the Interim Lender’s Charge created by the Court.
39. The Interim Financing Agreement is conditional upon court approval of the Interim Lender’s Charge, in the form of a priority security and charge (subject only to the Administration Charge) over all assets, rights, undertakings and properties of the Company of every nature and kind whatsoever, and wherever situated including all proceeds thereof, up to a maximum of \$300,000.

5. *SISP*

40. The SISP takes into account the nature of the Company's assets and business operations, and the potential challenges in a marketing process. The Proposal Trustee does not believe that an extended sales process beyond what is contemplated in the SISP is appropriate given:
- a) The previous marketing efforts under the Initial SISP;
 - b) The anticipated lack of third-party interest in the business operations;
 - c) The significant amount of indebtedness owed by the Company; and
 - d) The lack of available funding for periods beyond the Cash Flow Forecast.
41. Accordingly, a streamlined sales and investment process has been developed to be reflective of the foregoing.

SISP Details

42. An overview of the SISP is provided below. Capitalized terms not defined herein are defined in the SISP.
- a) As soon as reasonably practicable after the approval of the SISP by the Court, the Proposal Trustee will arrange for a notice of the SISP (and such other relevant information which the Company, in consultation with the Proposal Trustee, considers appropriate) (the "**Notice**") to be published in *Insolvency Insider* and any industry publication, website, newspaper, or journal as the Company, in consultation with the Company, considers appropriate, if any; and
 - b) the Proposal Trustee, in consultation with the Proposal Trustee, will prepare:
 - i. a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and
 - ii. a non-disclosure agreement in form and substance satisfactory to the Company and the Proposal Trustee, and their respective counsel (an "**NDA**").

- c) The Proposal Trustee shall send the Teaser Letter to any party who requests a copy of the Teaser Letter and NDA or who is identified to the Company or the Proposal Trustee as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.
 - d) In order to participate in the SISP and ultimately be considered for qualification as a Qualified Bidder, an interested party (“**Potential Bidder**”) must deliver to the Proposal Trustee:
 - i. An executed NDA;
 - ii. A letter setting forth the identity of the party, contact information, and full disclosure of the direct and indirect owners of the party and their principals; and
 - iii. a form of financial disclosure and credit quality support or enhancement that allows the Company and the Proposal Trustee to make a reasonable determination as to the Potential Bidder’s financial and other capabilities to close the contemplated transaction on or before the Closing Date and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction.
 - e) Once an interested party has satisfied all of the requirements above, they will be deemed a Qualified Bidder; and
 - f) The SISP will be conducted on an “as is, where is” basis with no representations or warranties.
43. The following further provisions of the SISP apply to Potential Bidders who wish to submit a bid for the Company’s assets:
- a) The bid deadline for written offers to be received is March 11, 2024 (the “**Bid Deadline**”);
 - b) An offer submitted by a Potential Bidder will be considered a qualified bid (“**Qualified Bid**”) only if the offer complies with all of the requirements outlined in paragraph 24 of the SISP;
 - c) A Qualified Bid may be for all or a portion of the assets included in the Stalking Horse Agreement;
 - d) Immediately following the Bid Deadline, all Qualified Bids will be reviewed and assessed as to their likelihood of successful completion;

- e) In order for a Qualified Bid to be considered as superior to the Stalking Horse Agreement (“**Superior Offer**”), it must contain the following:
 - i. A cash payment to fully pay the Break Fee and the Minimum Incremental Overbid;
 - ii. A cash payment to fully satisfy the obligations owing to the Company’s landlord; and
 - iii. A cash payment or assumption of liabilities to satisfy all Assumed Liabilities, if such Assumed Liabilities are not included in the purchase price.
 - f) In the event that a Qualified Bid constitutes a Superior Offer, the Proposal Trustee shall provide the parties making the Superior Offer(s) and the Stalking Horse Bidder the opportunity to make further bids through an auction process as set out in paragraphs 30-35 of the SISP (“**Auction**”).
 - g) At the conclusion of the Auction, the Proposal Trustee will select one or a combination of bids to be the Winning Bid(s) in the Auction, and concurrently the Successful Bid(s) of the SISP;
 - h) In the event that there are no Qualified Bids or none of the Qualified Bids received were likely to be successful, the SISP will be deemed to be terminated and the Proposal Trustee will select the Stalking Horse Bidder as the Successful Bidder;
 - i) Upon notifying a Qualified Bidder that it is a Successful Bidder, the Company in consultation with the Proposal Trustee and the Successful Bidder will promptly move to finalize the sale; and
 - j) The Company shall apply to the Court as soon as practicable for approval by the Court of a proposed sale, including the Stalking Horse Agreement.
44. The Proposal Trustee is of the view that the SISP is reasonable and appropriate in the circumstances for the following reasons:
- a) A streamlined advertising campaign will expose the opportunity to a wide audience of potentially interested parties, while minimizing marketing costs;
 - b) The Company’s business operations will be widely exposed to the market for a sufficient length of time;

- c) The Company will continue to operate as normal with no interruption or intervention during the SISP, maximizing the equity value of the business;
- d) A sale or investment in the Company as a going concern is expected to generate greater value to creditors than a liquidation of the Company's assets under bankruptcy;
- e) The Stalking Horse Agreement sets an appropriate minimum price for the value of the business, and provides assurances of a transaction concluding at the end the SISP;
- f) The SISP contains negotiation and auction provisions with Qualified Bidders to maximize sale value; and
- g) The process contemplated by the SISP is fair, transparent, and reasonable in the circumstances.

6. *STALKING HORSE AGREEMENT*

45. As set out in the Second Costello Affidavit, the Company, with the assistance of its advisors and in consultation with the Proposal Trustee, has concluded that a restructuring focused on completing a sale or investment in the ongoing operations and assets of the Company, pursuant to the SISP, will maximize value for all stakeholders as opposed to the liquidation of the Company's assets, which mainly consist of general brewery equipment with limited value, through a bankruptcy proceeding.
46. As part of the SISP, 258 (the "**Stalking Horse Bidder**") has proposed a stalking horse bid (the "**Stalking Horse Agreement**") for an acquisition of 100% of the equity of the Company, conditional upon approval of a reverse vesting order (the "**Approval and Reverse Vesting Order**")
47. The Company, the Stalking Horse Bidder and their respective counsel (in consultation with the Proposal Trustee) have negotiated the terms and provisions of the Stalking Horse Agreement, a copy of which is attached as Exhibit "Z" to the Costello Affidavit.
48. The material terms of the Stalking Horse Agreement include the following (all terms not otherwise defined herein shall have the meanings as defined in the Stalking Horse Agreement):
- a) Reverse Vesting Order: In order to maintain the Company as a going concern, and to preserve the Licences and Permits which are required to continue business operations, the transaction contemplated in the Stalking Horse Agreement will be effected by way of a Reverse Vesting Order. New common shares will be issued to the purchaser, in exchange for the payment of the purchase price. Existing shares will be cancelled. Excluded Liabilities will be vested to a ResidualCo.
 - b) Purchase Price: Shall be estimated to be approximately \$1,215,000, to be satisfied by the amount required to bring the Company's lease for its rented premises into good standing, plus the assumption of the AssumedLiabilities, including payment of the restructuring costs incurred during the proceeding and secured by way of the Administration Charge and payment of the amounts owing to the CRA for source deduction arrears;

c) Assumed Liabilities:

- i. All Priority Payments, including but not limited to all amounts due and owing by the Company on account of source deductions to the Canada Revenue Agency, in the approximate amount of \$571,091.70.
- ii. All amounts owing to Miller Thomson LLP, KPMG LLP, and MLT Aikins LLP, under the Administration Charge pursuant to the Sale Process Order, as amended and/or restated from time to time, and such further order of the Court as may be granted, being \$250,000.00.
- iii. All amounts owing to the Interim Lender under the Interim Facility, under the Interim Lender's charge pursuant to the Sale Process Order, as amended and/or restated from time to time, and such further order of the Court as may be granted, being \$300,000.00 plus interest in accordance with the Interim Financing Term Sheet.
- iv. All amounts owing to Miller Thomson LLP for pre-filing work prior to the Proposal Proceedings being approximately \$80,000.00.
- v. Balances payable to certain critical suppliers, which include Ecolab, Cintas, BSG, and Falcon Systems.

d) Excluded Liabilities:

- i. Any and all Liabilities relating to any change of control provision that may arise in connection with the change of control contemplated by the Transaction and to which the Company may be bound as at the Closing Time.
- ii. Any and all Liabilities pertaining to the administration of the Proposal Proceedings.
- iii. All Liabilities relating to or under the Excluded Contracts and Excluded Assets.
- iv. All Liabilities to Terminated Employees whose employment with the Company is terminated on or before Closing, including all amounts owing on account of statutory notice, termination payments, individual or group notice of termination (as applicable), severance, wages, overtime pay, vacation pay, benefits, bonuses or other compensation or entitlements, including any amounts deemed owing pursuant to statute or common law.

- v. Any Liabilities for commissions, fees or other compensation payable to any finder, broker or similar intermediary in connection with the negotiation, execution or delivery of this Agreement or the consummation of the Transaction.
 - vi. Any and all Liabilities that are not Assumed Liabilities.
- e) Target Closing Date: means April 26, 2024. The Parties covenant to cooperate with each other and shall use their commercially reasonable efforts to effect the Closing on or before the Closing Date. The closing of the transaction is conditional upon, among other things:
- i. the Court granting the Approval and Reverse Vesting Order; and
 - ii. the Purchaser being the Successful Bidder in the SISP.
- f) In the event that the Stalking Horse Agreement is not selected as the Successful Bidder, the payment of a fee to the Stalking Horse Bidder (the “**Break Fee**”), as reimbursement of the Stalking Horse Bidder’s expenses incurred in relation to the Stalking Horse Agreement and as compensation for being the Stalking Horse Bidder.
49. The Break Fee that is to be reimbursed to Stalking Horse Bidder in the event that the Stalking Horse Agreement is not selected as the Successful Bidder amounts to \$50,000. A stalking horse break fee is intended to reimburse reasonable out of pocket expenses and costs the potential purchaser has incurred in relation to their stalking horse bid, and normally ranges from 1% to 5% of the stalking horse purchase price. The Stalking Horse Agreement Break Fee amounts to approximately 4% of the purchase price. Given the professional fees and costs the Stalking Horse Bidder has incurred and has agreed to assume in preparing the Stalking Horse Agreement, and the time invested by the Stalking Horse Bidder in undertaking these efforts, the Break Fee amount appears reasonable in the circumstances.
50. The Proposal Trustee is recommending that the Court approve the Stalking Horse Agreement for the purpose of being the Stalking Horse Bid in the proposed Sale Process for the following reasons:
- a) In the Proposal Trustee’s view, the terms of the Stalking Horse Agreement are reasonable in the circumstances. The Proposal Trustee understands that the Stalking Horse Agreement is the result of extensive negotiation, and that in prior marketing efforts under the Initial SISP, no other interested parties have engaged in any meaningful way with the Company for an acquisition of its business;

- b) Furthermore, the Stalking Horse Agreement provides for the continuation of the Company's business operations, thereby assuring a customer for suppliers, employment offers for the majority of the Company's employees, and a continuing service provider for many customers at the end of the restructuring process; and

- c) The Proposal Trustee is not aware of any facts that would cause the Proposal Trustee to be of the view that the Stalking Horse Bidder will be unable to meet the conditions of the Stalking Horse Agreement.

7. ADMINISTRATION CHARGE

51. The Company is seeking approval of an Administration Charge over all of the property, assets, and undertakings of the Company in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, in an amount not to exceed \$250,000, in favour of the Company's counsel, the Proposal Trustee and the Proposal Trustee's counsel, in order to secure payment of their respective reasonable fees and disbursements incurred at their standard rates and charges.
52. The Proposal Trustee supports the Administration Charge pursuant to section 64.2(1) of the BIA on the basis that the professionals entitled to the benefit of the Administration Charge are necessary to the completion of these NOI Proceedings, and the Administration Charge provides certainty for the professionals involved that they will be properly compensated for their involvement in the NOI Proceedings.
53. In the event that the Company does not file a proposal or if the proposal filed is not approved by the Company's creditors or the Court, then the Company will be deemed to have made an assignment in bankruptcy. KPMG Inc. would be appointed Trustee in Bankruptcy and would be required to perform certain statutory duties. Without the benefit of the Administration Charge, KPMG Inc. would be at risk of non-payment of its fees.
54. The Proposal Trustee has been paid a retainer to address the professional fees of the Proposal Trustee and its counsel.
55. The Proposal Trustee understands that the Interim Lenders either consent to or do not oppose the granting of the Administration Charge.

8. PRIORITY OF CHARGES

56. The Company is requesting this Honourable Court declare the Administration Charge and Interim Lender's Charge to rank in priority to any and all charges, security interests, liens, trusts, deemed trusts and encumbrances against the property of the Company, including liens and trusts created by federal and provincial legislation. This would include a ranking in priority to the CRA deemed trust for the Company's unpaid payroll source deductions.

9. EXTENSION OF THE STAY PERIOD

57. The Company is seeking an order extending the Initial Stay Period for a further forty-five days up to and including April 15, 2024, to provide it and the Proposal Trustee with the time required to conduct the SISP.
58. The Proposal Trustee is of the view that the Company is acting in good faith and with due diligence. The Proposal Trustee considers the stay extension period to be reasonable considering the time required to close the potential transaction.
59. The Proposal Trustee does not believe that any creditor will be materially prejudiced by the extension of the Initial Stay Period to April 15, 2024.

10. PROPOSAL TRUSTEE'S RECOMMENDATION

60. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court issue an order:

- a) Approving the Interim Financing Agreement and the Interim Lender's Charge;
- b) Approving the Administration Charge;
- c) Approve the SISP with the Stalking Horse Agreement as a stalking horse bid therein; and
- d) Approving the extension of the stay period until April 15, 2024.

This Report is respectfully submitted this 7th day of February, 2024.

KPMG Inc.

**In its capacity as Proposal Trustee of
Tool Shed Brewing Company Inc.
and not in its personal or corporate capacity**



Per: Joe Sitholé
Vice President

APPENDIX "A"

CERTIFICATE OF FILING A NOTICE OF INTENTION TO MAKE A PROPOSAL



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Alberta
Division No. 02 - Calgary
Court No. 25-3038201
Estate No. 25-3038201

In the Matter of the Notice of Intention to make a proposal of:

Tool Shed Brewing Company Inc.

Insolvent Person

KPMG INC.

Licensed Insolvency Trustee

Date of the Notice of Intention:

January 31, 2024

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: February 01, 2024, 09:23

E-File/Dépôt Electronique

Official Receiver

Harry Hays Building, 220 - 4th Ave SE, Suite 478, Calgary, Alberta, Canada, T2G4X3, (877)376-9902

Canada

APPENDIX "B"

CASH FLOW FORECAST

Tool Shed Brewing Company Inc.

13 Week Forecast, to week ended April 27, 2024

Forecast in \$000's

Week #		1	2	3	4	5	6	7	8	9	10	11	12	13	Total
Week Ending Date	Notes	3-Feb	10-Feb	17-Feb	24-Feb	2-Mar	9-Mar	16-Mar	23-Mar	30-Mar	6-Apr	13-Apr	20-Apr	27-Apr	
Revenue receipts	1	40,000	40,000	45,000	45,000	47,500	48,500	48,500	48,500	48,500	48,500	54,500	54,500	54,500	623,500
Advances from interim lender	2	-	-	50,000	50,000	-	50,000	-	50,000	-	50,000	-	-	-	250,000
Total Receipts		40,000	40,000	95,000	95,000	47,500	98,500	48,500	98,500	48,500	98,500	54,500	54,500	54,500	873,500
Disbursements: Operating Costs															
Payroll	3	-	54,875	27,500	54,875	-	54,875	-	58,875	-	83,875	-	62,375	-	397,250
Materials, inventory, and packaging	4	13,208	22,100	24,500	22,000	27,500	19,500	18,000	23,000	24,000	27,500	24,500	19,000	33,500	298,308
Rent		-	-	14,000	-	17,500	-	-	-	-	17,500	-	-	-	49,000
Utilities		-	-	8,000	-	8,000	-	8,000	-	8,000	-	8,000	-	8,000	48,000
Marketing and merchandise	5	-	-	3,000	3,500	1,500	2,500	-	2,500	-	3,500	3,000	2,500	3,500	25,500
Other	6	8,517	700	11,200	17,500	3,950	950	6,450	950	3,950	4,950	3,950	4,950	3,950	71,967
Total Disbursements		21,725	77,675	88,200	97,875	58,450	77,825	32,450	85,325	35,950	137,325	39,450	88,825	48,950	890,025
Beginning Cash		31,000	49,275	11,600	18,400	15,525	4,575	25,250	41,300	54,475	67,025	28,200	43,250	8,925	31,000
Less: Net Cash Flow		18,275	(37,675)	6,800	(2,875)	(10,950)	20,675	16,050	13,175	12,550	(38,825)	15,050	(34,325)	5,550	(16,525)
Ending Cash		49,275	11,600	18,400	15,525	4,575	25,250	41,300	54,475	67,025	28,200	43,250	8,925	14,475	14,475

Notes:

1. Per management revenue estimates as at January 31, 2024. Includes funds to be released from AGLC as a result of the stay of proceedings and Feb 5 Order rendering the CRA Requirement to Pay no longer in effect.

2. Funds to be advanced from 2582568 Alberta Inc. under the Interim Loan Agreement

3. Regular employee payroll. Includes payment to CRA for source deductions withheld throughout NOI period.

4. Includes supplier costs for brewing, canning, and packaging of products.

5. Includes costs for marketing events at client premises, and production of branded merchandise.

6. Includes various administrative costs and staff benefits.

General note:

-The Proposal Trustee has received a \$75,000 retainer to address its initial professional fees, and the initial professional fees of its counsel. Future professional fees incurred throughout the proceedings for the Proposal Trustee, the Proposal Trustee's counsel, and Tool Shed's counsel will be addressed by the Administrative Charge.

APPENDIX "C"

INTERIM FINANCING TERM SHEET AGREEMENT

February 6th, 2024

Tool Shed Brewing Company Inc.

801 30 Street NE

Calgary, Alberta T2A 5L7

Attention: Graham Sherman

INTERIM FINANCING TERM SHEET OF TOOL SHED BREWING COMPANY INC.

Dated as of February 6th, 2024

- A. **WHEREAS** Tool Shed Brewing Company Inc. (the “**Borrower**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”) on February 1, 2024, and KPMG Inc. has consented to act as the proposal trustee (“**Proposal Trustee**”) for the proceedings (the “**NOI Proceedings**”);
- B. **AND WHEREAS** the Borrower has entered into a stalking horse share purchase agreement with the Interim Lender (the “**Stalking Horse Agreement**”), after the conclusion of which the Borrower will sell all of its shares to the Interim Lender or to a nominee of the Interim Lender (the “**Transaction**”);
- C. **AND WHEREAS** the Borrower has requested that 2582568 Alberta Inc. (the “**Interim Lender**”) provide it with loans in order to fund certain of its obligations during the pendency of the NOI Proceedings (as defined below), the proposed sale and investment solicitation process (the “**SISP**”), and the Stalking Horse Agreement;
- D. **AND WHEREAS** the Interim Lender has agreed to provide a credit facility in the maximum aggregate principal amount of \$250,000 (“**Maximum Amount**”), plus applicable interest and expenses, subject to and in accordance with the terms set out in this term sheet (the “**Interim Financing Term Sheet**”);
- E. **AND WHEREAS** the Borrower and the Interim Lender have agreed, as a condition to the granting of the Interim Credit Facility, to seek the permission of the Court to secure the Interim Credit Facility by way of a priority charge against the assets and undertakings of the Borrower;
- F. **NOW THEREFORE** the parties, in consideration of the foregoing and the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

SUMMARY OF TERMS FOR THE INTERIM FINANCING CREDIT FACILITY

- 1. **Borrower:** Tool Shed Brewing Company Inc.
- 2. **Interim Lender:** 2582568 Alberta Inc.
- 3. **Interim Credit Facility:** A super priority interim financing, non-revolving credit facility in the maximum aggregate principal amount of \$250,000, plus applicable Interest (as defined below) and Recoverable Expenses (as defined below) (collectively, the “**Interim Credit Facility**”).

4. Purpose:

To provide for the short-term liquidity needs of the Borrower pursuant to the 13-week cash flow projections (the "**Cash Flow Projections**") and in accordance with the Approval Order (as defined below) and in accordance with the authorized uses as set out in Section 7, while the Borrower is under Court protection pursuant to the NOI Proceedings. If there should be any conflict between the Approval Order and this Interim Financing Term Sheet in relation to the authorized uses of the funds provided pursuant to this Interim Financing Term Sheet, the Approval Order shall prevail.

5. Advances

Advances under the Interim Credit Facility ("**Interim Advances**") shall bear interest at a rate equal to 12% per annum. Interest shall accrue daily on the aggregate outstanding principal of the Interim Loan Facility and shall be calculated and payable in cash, not in advance, on the Maturity Date, to such account as directed in writing by the Interim Lender to the Borrower from time to time.

Nothing in this Interim Financing Term Sheet creates a legally binding obligation on the Interim Lender to advance any amount under the Interim Credit Facility at any time unless: (i) the Borrower is in compliance with the provisions of this Interim Financing Term Sheet and the Order of the Court which approves this Interim Financing Term Sheet, the Interim Credit Facility, the SISF, the Stalking Horse Agreement, and the Break Fee, and grants the Interim Lender's Charge (as defined below) (the "**Approval Order**"); (ii) the funding conditions set out in Sections 12 and 13 of this Interim Financing Term Sheet have been satisfied; and (iii) the Borrower is operating within the parameters of the Cash Flow Projections.

6. Interest

All computations of interest hereunder will be calculated on the basis of a 365 day year and the actual days elapsed, up to (but excluding) the date of actual payment from the funding date or the due date, as applicable and using the nominal rate method of calculation, and will not be calculated using the effective rate method of calculation or on any other basis that gives effect to the principle of deemed re-investment of interest; provided that whenever a rate of interest or fee hereunder is calculated on the basis of a year (a "**Deemed Year**") that contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest or fee rate shall be expressed as a yearly rate by multiplying such rate of interest or fee by the actual number of days in the calendar year of calculation and dividing it by the number of days in the Deemed Year.

Any amounts which are not paid when due and payable by the Borrower hereunder shall accrue interest (after as well as before maturity and judgment) on a daily basis up to and including the date of actual payment from the due date, at a rate equal to 12% per annum, payable on demand by the Interim Lender .

The Borrower is authorized to use Interim Advances only:

7. Use of Proceeds:

- (i) For working capital, including for restructuring costs in the NOI Proceedings and for other general corporate purposes of the Borrower;
- (ii) To make payments necessary to comply with or as contemplated under the Approval Order;
- (iii) To pay professional fees of the Interim Lender in connection with the NOI Proceedings, whether incurred before or after the granting of the Approval Order;
- (iv) To fund the management and execution of the SISP and the Stalking Horse Agreement;
- (v) To pay the fees and expenses of the beneficiaries of the Administration Charge (as defined below) and professional fees of the Borrower and Proposal Trustee (including the Borrower's legal counsel, the Proposal Trustee and the Proposal Trustee's legal counsel and such other agents, advisors and consultants of the Borrower retained in accordance with the Approval Order), incurred both before and after the granting of the Approval Order;

and in each case of the foregoing paragraphs (i) to (v), consistent with (and as specifically provided for in) the Cash Flow Projection; provided that no proceeds from the Interim Credit Facility shall be used other than in accordance with this Interim Financing Term Sheet unless otherwise agreed in writing by the Interim Lender.

8. Recoverable Expenses:

The Borrower shall pay all reasonable and documented fees and expenses (collectively, the "**Recoverable Expenses**") incurred by the Interim Lender in connection with the preparation, registration and ongoing administration of this Interim Financing Term Sheet, the Interim Credit Facility, the Approval Order, the SISP (including negotiation of any resulting purchase agreement), the Stalking Horse Agreement, the Interim Lender's Charge (as defined below) and with the enforcement of the Interim Lender's rights and remedies hereunder and thereunder, at law or in equity, including, without limitation all reasonable legal fees and disbursements incurred by the Interim Lender. For greater certainty, "Recoverable Expenses" shall include all reasonable and documented fees and expenses incurred by the Interim Lender in connection with the NOI Proceedings and all Court attendances in respect thereof. If the Interim Lender has paid any expenses for which the Interim Lender is entitled to reimbursement from the Borrower, such expenses shall be added to the Interim Credit Facility and shall accrue interest at the rate set out above. All such Recoverable Expenses and interest thereon shall be secured by the Interim Lender's Charge whether or not any funds under the Interim Credit Facility are advanced.

9. Security:

All present and future debts, liabilities and obligations of the Borrower to the Interim Lender under or in connection with the Interim Credit Facility (including, without limitation, principal, interest and Recoverable Expenses), this Interim Financing Term Sheet and any other documents executed in connection therewith, including the Stalking Horse Agreement entered into between Interim Lender and Borrower and the Break Fee contemplated thereunder, shall be secured by a Court-ordered priority charge in the quantum specified herein (the “**Interim Lender’s Charge**”) granted to the Interim Lender in and to all present and future properties, assets, and undertakings of the Borrower, real and personal, tangible and intangible, whether now owned or hereafter acquired, and the proceeds thereof (the “**Property**”). The only other court-ordered charge on the Property to be granted within the NOI Proceedings shall be an administration charge in the maximum aggregate amount of \$250,000 under the Approval Order for the payment of the reasonable and documented fees and expenses of the Proposal Trustee, counsel to the Borrower, and counsel to the Proposal Trustee (the “**Administration Charge**”). For greater clarity, the Administration Charge shall rank in priority to the Interim Lender’s Charge under the Approval Order.

10. Maturity Date:

Unless otherwise agreed to by the Interim Lender and the Borrower in writing or specified herein, the term of the Interim Credit Facility shall expire, and the Borrower shall repay all obligations owing to the Interim Lender under or in connection with this Interim Financing Term Sheet, on the earliest of the following (the “**Maturity Date**”):

- (a) 90 days from the date of the Approval Order;
- (b) the closing of the Transaction, in which case the applicable amounts advanced or deemed to be advanced under the Interim Credit Facility (plus accrued interest and Recoverable Expenses, if applicable) shall be credited against the purchase price, as set out in the Stalking Horse Agreement;
- (c) the implementation of a proposal within the NOI Proceedings which has been approved by the requisite majorities of the Borrower’s creditors and by an order entered by the Court;
- (d) the closing of any sale or investment transaction involving the Borrower, regardless of whether resulting from the SISP or not, which transaction has been approved by an order of the Court;
- (e) the date on which the NOI Proceedings are terminated for any reason; and

- (f) the occurrence of an Event of Default (as defined below), subject to a cure period of three (3) business days, beginning on the date of the occurrence of such Event of Default.

11. Repayment:

Unless the Maturity Date occurs in accordance with Section 10(b) above, the aggregate principal amount owing under the Interim Credit Facility plus all accrued and unpaid interest and Recoverable Expenses (other than the Initial Legal Expenses (as defined below) to the extent already recovered) shall become immediately due and payable on the Maturity Date.

For certainty, the Interim Credit Facility shall be treated in all respects as a debtor-in-possession loan in accordance with the terms and conditions set out in this Interim Financing Term Sheet unless and until the Stalking Horse Agreement is selected as the successful bid in the SISP and the Transaction closes, at which point the applicable amounts owing under the Interim Credit Facility (plus accrued interest and Recoverable Expenses, if applicable) shall be credited against the purchase price set out in the Stalking Horse Agreement.

The Borrower and the Interim Lender acknowledge and agree that, notwithstanding anything to the contrary herein, the Interim Credit Facility, accrued interest and Recoverable Expenses (other than the Initial Legal Expenses to the extent they have already been recovered) shall be repaid on the Maturity Date in accordance with **Section 10** and, for certainty, no interest or Recoverable Expenses (other than the Initial Legal Expenses) will be paid from the Interim Credit Facility prior to the Maturity Date. Notwithstanding the foregoing, up to \$25,000 of the Interim Lender's Recoverable Expenses (the "**Initial Legal Expenses**") shall be due and payable out of the Interim Credit Facility on the earlier of the date of invoicing by the Interim Lender or the Maturity Date, as applicable.

**12. Conditions
Precedent to
Effectiveness:**

The effectiveness of this Interim Financing Term Sheet is subject to the satisfaction of the following conditions precedent as determined by the Interim Lender in its sole discretion:

- (a) the Court shall have issued the Approval Order, in form and substance satisfactory to the Interim Lender, including:
 - i. approving the SISP and authorizing and directing the Proposal Trustee to implement and carry out the SISP;
 - ii. approving the Stalking Horse Agreement;
 - iii. approving this Interim Financing Term Sheet and the Interim Credit Facility;
 - iv. approving the Break Fee (as defined in the Stalking Horse Agreement) and authorizing payment of the same;

- v. granting the Interim Lender's Charge in favour of the Interim Lender in an amount no less than \$300,000, subject only to the Administration Charge;
 - vi. authorizing the Interim Lender to effect registrations, filings and recordings wherever in its discretion it deems appropriate regarding the Interim Lender's Charge;
 - vii. providing that the Interim Lender's Charge shall be valid and effective to secure all of the obligations of the Borrower to the Interim Lender hereunder, without the necessity of the making of any registrations or filings and whether or not any other documents have been executed by the Borrower;
 - viii. declaring that the granting of the Interim Lender's Charge and all other documents executed and delivered to the Interim Lender as contemplated herein, including, without limitation, all actions taken to perfect, record and register the Interim Lender's Charge, do not constitute conduct meriting an oppression remedy, settlement, fraudulent preference, fraudulent conveyance or other challengeable or reviewable transaction under any applicable federal or provincial legislation; and
 - ix. provisions restricting the granting of any additional liens or encumbrances on the Property, other than as permitted herein and the Interim Lender's Charge.
- (b) the Approval Order shall not have been vacated, stayed, appealed or amended in a manner not acceptable to the Interim Lender, and no application or motion has been made to vacate, stay, appeal or amend same;
- (c) the Interim Lender shall have received and approved the Cash Flow Projections;
- (d) the Interim Lender shall be satisfied that the Borrower has complied with and is continuing to comply in all material respects with all applicable laws and regulations in relation to its business and all respects with respect to the Approval Order;
- (e) the Borrower shall have executed and delivered this Interim Financing Term Sheet and all other documents in connection with the Interim Credit Facility;
- (f) All representations and warranties the Borrower under this Interim Financing Term Sheet and in any other interim financing credit documentation are true and correct;

- (g) The Borrower shall have complied with all covenants under this Interim Financing Term Sheet;
- (h) no Event of Default (as defined below) shall have occurred or is reasonably expected to occur as a result of any such Interim Advances; and
- (i) such other conditions as the Interim Lender may reasonably request or require.

**13. Conditions
Precedent to Interim
Advances**

The Interim Lender's obligation to make Interim Advances to the Borrower is subject to the satisfaction of the following conditions precedent as determined by the Interim Lender in its sole discretion (collectively, the "**Funding Conditions**"):

- (a) this Interim Financing Term Sheet shall have become effective and all conditions precedent set out in Section 12 shall have been fulfilled and continue to be satisfied;
- (b) the Interim Lender shall have received from the Borrower an Interim Advance Request, which shall be executed by an officer of the Borrower, and shall certify, *inter alia*, that the Interim Advance Request is within the Maximum Amount is consistent with the Cash Flow Projections, and that the Borrower is in compliance with the Interim Financing Term Sheet and Approval Order;
- (c) prior to making any Interim Advance in the NOI Proceedings, the Borrower and the Interim Lender (or their respective counsel) shall have had a reasonable opportunity to review advance copies of, and shall be reasonably satisfied with, all material documents to be filed in respect of, as applicable:
 - (i) the Approval Order; and
 - (ii) any other Order sought by the Borrower in the NOI Proceedings ("**Other NOI Orders**").
- (d) the Interim Lender shall be satisfied, acting reasonably, with the form and content of the court orders made in the NOI Proceedings applicable to the Borrower (the "**Restructuring Court Orders**", which shall include but are not limited to the Approval Order and the Other NOI Orders);
- (e) the Interim Lender shall be satisfied that the Borrower has complied with and is continuing to comply in all material respects with all applicable laws, regulations and policies in relation to its business other than (i) as may be permitted under the Restructuring Court Orders or (ii) as to which any enforcement in respect of noncompliance is stayed by a Restructuring Court Order, provided the issuance of such

Restructuring Court Order (in each case) does not result in the occurrence of an Event of Default (as defined below);

- (f) the requested Interim Advance shall not, if advanced to the Borrower, cause the aggregate amount of all outstanding Interim Advances to exceed the Maximum Amount or be greater than the total Interim Advances projected to be required in the Cash Flow Projection, unless otherwise specifically approved by the Interim Lender;
- (g) all Initial Legal Expenses shall have been paid, or will be paid from the proceeds of the requested Interim Advance, as applicable, within such period of time as is acceptable to the Interim Lender in its absolute discretion;
- (h) all of the representations and warranties of the Borrower as set forth herein and in any other interim financing credit documentation shall be true and correct in all respects;
- (i) no Default or Event of Default shall have occurred or will occur as a result of the requested Interim Advance;
- (j) the Interim Lender is satisfied that no matter, event or circumstance that, individually, or in the aggregate could, in the opinion of the Interim Lender, acting reasonably, be expected to have a material adverse effect on: (i) the business, operations, or financial condition of the Borrower; (ii) the Property of the Borrower; (iii) the Interim Lender's Charge, including its relative priority; (iv) the ability of the Borrower to perform its obligations to the Interim Lender or to any person under any material contract; or (v) the Interim Lender's ability to enforce any of its rights or remedies against the Property or for the obligations of the Borrower to be satisfied from the realization thereof (a "**Material Adverse Change**") shall have occurred after the date of the issuance of the Approval Order;
- (k) since the date of the Approval Order there shall not have occurred any payment, prepayment, redemption, purchase or exchange of any pre-filing indebtedness or equity, or amendment or modification of any of the terms thereof, except as permitted by the terms of the Approval Order or as otherwise provided for hereunder and the aggregate amount of all such pre-filing amounts do not exceed the amount set out therefor in the Cash Flow Projections; and
- (l) The Approval Order shall be in full force and effect and shall not have been reversed, modified, amended or stayed in a manner adverse to the interests of the Interim Lender.

14. Representations and Warranties

The Borrower represents and warrants to the Interim Lender, which representations and warranties shall be deemed to be repeated at

each Interim Advance, and upon which the Interim Lender relies on entering into this Interim Financing Term Sheet, that:

- (a) The Borrower is duly incorporated and validly existing under the laws of its jurisdiction of incorporation and is qualified to carry on business in each jurisdiction in which it owns property or assets or carries on business.
- (b) subject to the granting of the Approval Order, the Borrower has the power, capacity, legal right, and authority to own or lease or lease its property, carry on business and to execute and deliver this Interim Financing Term Sheet and each other documents delivered in connection herewith, and the transactions contemplated hereby and thereby:
 - (i) are within the powers of the Borrower;
 - (ii) have been duly authorized by all necessary corporate approval of the Borrower;
 - (iii) have been duly executed and delivered by or on behalf of the Borrower;
 - (iv) constitute legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with its terms; and
 - (v) do not require the consent or approval of, registration or filing with, or any other action by, any governmental authority.
- (c) the activities of the Borrower have been conducted in compliance with all applicable law, subject to the provisions of the BIA and any order of the Court;
- (d) the Cash Flow Projections are reasonable and prepared in good faith;
- (e) no Event of Default has occurred and is continuing;
- (f) the Borrower has made full and complete disclosure in writing to the Interim Lender of all litigation or other proceedings involving the Borrower and all claims and/or threatened claims, litigation or proceedings against the Borrower that exist, to the Borrower's knowledge, after due inquiry, as at the date hereof;

15. Positive Covenants: The Borrower covenants and agrees with the Interim Lender, so long as any amounts are outstanding by the Borrower to the Interim Lender hereunder, to:

- (a) promptly on the receipt by the Borrower of the same, give the Interim Lender a copy of any Notice of Motion or

Application to vary, supplement, amend, revoke, terminate or discharge the Restructuring Court Orders or any Court order approving or affecting the Transaction or similar transaction, including, without limitation, any application to the Court for the granting of new or additional security that will or may have priority over the Interim Lender's Charge, or otherwise for the variation of the priority of the Interim Lender's Charge;

- (b) allow the Interim Lender or its advisors, on reasonable written notice during regular business hours, and at any time after and during the continuance of an Event of Default, to enter on and inspect each of the Borrower's assets and properties;
- (c) provide the Interim Lender or its advisors, on reasonable written notice and during normal business hours, full access to the books and records of the Borrower;
- (d) cause management of the Borrower to fully co-operate with the Interim Lender and the Proposal Trustee or their respective agents and advisors, as applicable;
- (e) promptly provide the Interim Lender with any additional financial information reasonably requested by the Interim Lender;
- (f) use the Interim Advances under the Interim Financing Credit Facility only for the purposes for which they are being provided, as set out in Sections 4 and 7 of this Interim Financing Term Sheet, or such other purposes that may be agreed to by the Interim Lender and the Proposal Trustee, in writing;
- (g) provide the Interim Lender and the Proposal Trustee with prompt written notice of any event which constitutes, or which, with notice, lapse of time, or both, would constitute an Event of Default, a breach of any covenant, or other term or condition of this Interim Financing Term Sheet (including the accuracy of any representations or warranties), or of any document executed in connection with this Interim Financing Term Sheet;
- (h) pay all claims which, under law, may rank prior to or *pari passu* with the Interim Lender's Charge due and payable from and after the commencement of the NOI Proceedings, as and when such amounts are due;
- (i) pay all pre-filing payroll, source deductions, goods and services tax, and other taxes that are in arrears and which, under law, may rank prior to or *pari passu* with the Interim Lender's Charge using the Interim Credit Facility prior to the Maturity Date;

- (j) keep the Borrower's assets (including the Property) fully insured against such perils in such manner, and only to the extent, as would be customarily insured by companies owning similar assets;
- (k) comply with all orders of the Court in the NOI Proceedings and all applicable laws; and
- (l) conduct all activities in the ordinary course and in material compliance with the Cash Flow Projections.

16. Negative Covenants: The Borrower covenants and agrees with the Interim Lender, so long as any amounts are outstanding by the Borrower to the Interim Lender hereunder, to not:

- (a) seek or support anyone seeking any Court order (in the NOI Proceedings or otherwise) which is adverse to the interests of the Interim Lender, including for certainty but without limitation, any change to the Interim Credit Facility or the Interim Lender's Charge;
- (b) fail to comply with the Restructuring Court Orders, or any Court order approving or affecting the Transaction, or similar transaction;
- (c) make any payment to any director, officer, investor or related party of the Borrower except salary and wages in the normal course at the rates as of the date hereof (but specifically excluding bonuses or other incentive payments) without the prior written consent of the Interim Lender and the Proposal Trustee;
- (d) make any payments or distributions of any kind other than those that do not result in an Event of Default and are provided for in the Cash Flow Projections;
- (e) transfer, lease, sell or otherwise dispose of all or any part of its Property other than in accordance with the Stalking Horse Agreement or the SISF;
- (f) make any investments or acquisitions of any kind, direct or indirect, in any business or otherwise other than as approved by the Interim Lender;
- (g) without the prior written consent of the Interim Lender, incur any borrowings or other indebtedness, obligations or liabilities, other than the Interim Credit Facility, or create or grant any security (other than the Administration Charge and the Interim Lender's Charge) over any of the Property, whether ranking in priority to or subordinate to the Interim Lender's Charge;

- (h) change its name (other than in accordance with the Stalking Horse Agreement), amalgamate, consolidate with or merge into, or enter into any similar transaction with, any other entity; or
- (i) other than the Proposal Trustee, its legal counsel and legal counsel to the Borrower, and the Interim Lender engaged as of the date hereof, pay, incur any obligation to pay, or establish any retainer with respect to the fees, expenses or disbursements of a legal, financial or other advisor of any party, unless such fees, expenses or disbursements, as applicable, are reviewed and approved in advance by the Proposal Trustee and the Interim Lender.

17. Proposal Trustee

The Proposal Trustee in the Proposal Proceedings is KPMG Inc. The Proposal Trustee shall be authorized to have direct discussions with the Interim Lender, and the Interim Lender shall be entitled to receive information from the Proposal Trustee as may be requested by the Interim Lender from time to time.

18. Events of Default:

The Interim Credit Facility shall be subject to the following events of default (each, an “**Event of Default**”):

- (a) the Borrower’s failure to pay any amount due hereunder when due and payable;
- (b) the Borrower’s failure to comply with or fulfill, to the satisfaction of the Interim Lender, any covenant, condition precedent, payment obligation, or other term or condition of this Interim Financing Term Sheet;
- (c) the seeking or support by the Borrower of any Court order (in the NOI Proceedings or otherwise) which is adverse to the interests of the Interim Lender, including for certainty but without limitation, any change to the Interim Credit Facility or the Interim Lender’s Charge (or the relative priority thereof);
- (d) the issuance of any Court order (in the NOI Proceedings or otherwise) which is adverse to the interests of the Interim Lender, including for certainty but without limitation, any change to the Interim Credit Facility or the Interim Lender’s Charge (or the relative priority thereof);
- (e) the occurrence of an event that will, in the opinion of the Interim Lender, materially impair the Borrower’s financial condition, operations or ability to perform under this Term Sheet or any order of the Court;
- (f) the failure by the Borrower to comply with the Approval Order, the SISP Order, the Stalking Horse Agreement or any Court order approving or affecting the Transaction, or similar transaction;

- (g) any material deviation from the Cash Flow Projections, as determined by the Interim Lender, acting reasonably;
- (h) the occurrence of any Material Adverse Change;
- (i) the NOI Proceedings are converted into a liquidation or receivership proceeding under the BIA;
- (j) the sale, transfer, assignment, conveyance or lease of substantially all of the Property, except pursuant to a transaction resulting from the SISP (or the Stalking Horse Agreement) or as may be otherwise approved by the Interim Lender in writing;
- (k) the commencement of any claim, action, proceeding, application, motion, defense or other contested matter the purpose of which is to seek, or the result of which would be, to obtain any order, judgment, determination, declaration or similar relief: (i) invalidating, setting aside, avoiding, or subordinating the obligations of the Borrower in connection with the Interim Credit Facility, the Interim Lender's Charge or its priority; (ii) for monetary, injunctive or other relief against the Interim Lender or the Property; or (iii) preventing, hindering or otherwise delaying the exercise by the Interim Lender of any of its rights and remedies hereunder, pursuant to the Approval Order, the Stalking Horse Agreement, under applicable law, or the enforcement or realization by the Interim Lender against any of its collateral.

19. Remedies and Enforcement:

Following the occurrence of an Event of Default, and the expiration of the cure period prescribed in Section 10(f), upon written notice to the Borrower and the Proposal Trustee, the Interim Lender shall have the right, subject to the Interim Lender obtaining an Order from the Court lifting the stay under the NOI Proceedings, to:

- (a) apply to the Court to further enhance any powers of the Proposal Trustee;
- (b) seek the appointment of a receiver, an interim receiver or a receiver and manager over the Property, or to seek the appointment of a trustee in bankruptcy of the Borrower;
- (c) apply to the Court for an order or orders, on terms satisfactory to the Proposal Trustee and the Borrower, providing the Proposal Trustee with the power, in the name of and on behalf of the Borrower, to take all necessary steps in the NOI Proceedings;
- (d) enforce the Interim Lender's Charge and realize on the Property and any other collateral securing the Interim Credit Facility;

- (e) exercise the rights and powers of a secured lender pursuant to the *Personal Property Security Act*, RSA 2000, c P-7, or any legislation of similar effect; and
- (f) exercise all such other rights and remedies available to the Interim Lender under this Interim Financing Term Sheet, the Approval Order, the Stalking Horse Agreement, any other order of the Court or applicable law.

No failure or delay on the part of the Interim Lender in exercising any of its rights and remedies shall be deemed to be a waiver of any kind.

20. Amendments, Waivers

No amendment or waiver of any provisions of this Interim Financing Term Sheet or consent to any departure by the Borrower from any provision thereof is effective unless it is in writing and signed by the Interim Lender. Such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

21. Timing

Time is of the essence in this Interim Financing Term Sheet and the Interim Credit Facility and all transactions contemplated thereby.

22. Severability

Each of the provisions contained in this Interim Financing Term Sheet is distinct and severable and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

23. Notices

Any notice, request, consent, waiver or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or direct electronic transmission to such party in accordance with the Stalking Horse Agreement.

24. Further Assurances:

The Borrower will, at its own expense and promptly on demand by the Interim Lender at any time, do such acts and things and execute and deliver such documents as the Interim Lender may reasonably request to give effect to any of the provisions set out hereunder.

25. Assignment:

The Borrower shall not assign this Interim Financing Term Sheet or any of its rights or obligations set out herein without the prior written consent of the Interim Lender. The Interim Lender may assign or sell its rights or obligations with respect to this Interim Financing Term Sheet to any person without the prior written consent of the Borrower.

26. Governing Law:

The Interim Credit Facility and the provisions set out herein shall be governed and construed in all respects in accordance with the

laws of the Province of Alberta and the laws of Canada applicable therein.

27. Currency:

All dollar amounts herein are in Canadian Dollars.

28. Counterparts

This Interim Financing Term Sheet may be executed in any number of counterparts, each of which when taken together shall constitute one and the same instrument. Any counterpart of this Interim Financing Term Sheet can be executed and delivered by any manner of direct electronic transmission each of which shall be deemed to be an original hereof; provided that the Borrower will deliver to the Interim Lender executed wet ink signatures within three (3) business days of entering into this Interim Financing Term Sheet.

29. Acceptance:

This Interim Financing Term Sheet is open for acceptance until 5:00 p.m. (Calgary time) on February 7, 2024. The Borrower may accept this Interim Financing Term Sheet by returning a countersigned copy of this Interim Financing Term Sheet to the Interim Lender (by electronic transmission or personal delivery).

[Signature Page Follows]

Dated this 6th day of February, 2024.

2582568 ALBERTA INC.

DocuSigned by:
James Costello
By: _____
C267250007A5434...
Name: James Costello
Title: Director

I have authority to bind the Corporation.

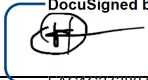
ACCEPTANCE

TO THE INTERIM LENDER:

For good and valuable consideration received, Tool Shed Brewing Company Inc. hereby accepts and agrees to comply with the provisions of the Interim Financing Term Sheet set out above.

Dated this 6 day of February, 2024.

TOOL SHED BREWING COMPANY INC.

By:  DocuSigned by:
Name: Graham Sherman
Title: Founder

I have authority to bind the Corporation.