

COURT / ESTATE FILE NUMBER COURT 25 - 3038201
COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF TOOL SHED BREWING COMPANY INC.

DOCUMENT **AFFIDAVIT NO. 4 OF JAMES COSTELLO**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

MILLER THOMSON LLP
525-8th Avenue SW
Calgary, Alberta T2P1G1

Attention: James W. Reid / Bryan A. Hosking
Telephone: 403.298.2418 / 403.206.6348
Fax: 403.262.0007
E-mail: jwreid@millerthomson.com /
bhosking@millerthomson.com
File No.: 0276443.0001

AFFIDAVIT NO. 4 OF JAMES COSTELLO

Sworn on April 8, 2024

I, JAMES COSTELLO, of Calgary, Alberta, SWEAR AND SAY THAT:

1. I am the Chief Executive Officer of Tool Shed Brewing Company Inc. (the "**Company**" or "**Tool Shed**"). As such, I have personal knowledge of the matters hereinafter deposed to, except where stated to be based on information and belief, and where so stated I verily believe the same to be true.
2. I have previously sworn affidavits in these proceedings on February 1, 2024, February 5, 2024 (the "**Second Costello Affidavit**"), and February 7, 2024.
3. Capitalized terms used herein and not defined have the meanings given in the Second Costello Affidavit.

4. This Affidavit is sworn in support of an Application returnable April 15, 2024 for an approval and reverse vesting order (the “**Vesting Order**”) seeking, among other things, the following relief:
- (a) abridging service of the application for the Vesting Order, and deeming service to be good and sufficient;
 - (b) authorizing and approving the sale transaction (the “**Transaction**”) contemplated in the share purchase agreement (the “**SPA**”) between Tool Shed and 2582568 Alberta Inc. (in such capacity, the “**Purchaser**”) dated February 6, 2024, by way of a reverse-vesting process;
 - (c) releasing the Company, the Purchaser, the Proposal Trustee (as defined below), the Interim Lender (as defined below), and their respective directors, officers, employees and independent contractors, as well as the directors, officers and employees of ResidualCo from all claims;
 - (d) annulling and/or authorizing the withdrawal of the Company’s Notice of Intention to Make a Proposal under the BIA upon closing of the Transaction;
 - (e) approving the Second Report of the Proposal Trustee as well as the actions, conduct and activities of the Proposal Trustee and its counsel described therein; and
 - (f) extending the time for Tool Shed to file a proposal and the corresponding stay of proceedings from April 15, 2024 up to and including May 6, 2024 (the “**Extended Stay Period**”).

Background and NOI Proceedings

- 5. Tool Shed filed a Notice of Intention to Make a Proposal pursuant to section 50.4 of the BIA on January 31, 2024 (the “**NOI Proceedings**”).
- 6. KPMG Inc. is the proposal trustee in the NOI Proceedings (the “**Proposal Trustee**”).
- 7. As outlined in the Second Costello Affidavit, Tool Shed is insolvent and required a stay of proceedings and urgent financing to continue operating as a going concern. The purpose of the NOI Proceedings was, among other things, to provide the Company an opportunity

to identify one or more purchasers for its assets or an investor in the Company's business through a Court-approved stalking horse sales process.

8. In the Second Costello Affidavit I provided a detailed description of Tool Shed's business, operations, assets, liabilities, and causes of insolvency.
9. On February 12, 2024, Justice M.J. Lema issued an Order in the NOI Proceedings granting, among other things (the "**February 12 Order**"):
 - (a) an extension of the stay of proceedings in the NOI Proceedings up to and including April 15, 2024;
 - (b) a first ranking charge over all of Tool Shed's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds (the "**Property**"), in priority to all other charges, up to the maximum amount of \$250,000.00, to secure the fees and disbursements of the Proposal Trustee, legal counsel to the Proposal Trustee and legal counsel to Tool Shed incurred both before and after the making of the February 12 Order (the "**Administration Charge**");
 - (c) approval of an interim financing term sheet dated February 6, 2024 (the "**Interim Loan Agreement**") between Tool Shed and 2582568 Alberta Inc. (in such capacity, the "**Interim Lender**"), pursuant to which the Interim Lender agreed to advance up to a maximum principal amount of \$250,000.00 to Tool Shed;
 - (d) a second ranking charge on the Property, in priority to all other charges except for the Administration Charge, up to a maximum of \$300,000.00 (the "**Interim Lender's Charge**") to secure amounts advanced by the Interim Lender under the Interim Loan Agreement; and
 - (e) approval of the stalking horse sale and investment solicitation process (the "**SISP**"), including the approval of the SPA as the stalking horse agreement in the SISP (the "**Stalking Horse Bid**") and approving the Break Fee as defined in the SPA.

SISP and Outcome

10. Pursuant to the February 12 Order, the Proposal Trustee, in consultation with the Company, conducted the SISP and canvassed the market to identify potential interested

parties to participate in the SISP. The SISP was to solicit offers that were superior to the offer contained in the Stalking Horse Bid.

11. I am advised by the Proposal Trustee that it will provide a detailed report on the marketing efforts in the SISP and the outcome of the SISP in the Second Report to be filed with the Court. Based on numerous updates that have been provided to Tool Shed and its legal counsel by the Proposal Trustee, I understand that:
- (a) the SISP was commenced on February 12, 2024;
 - (b) the Proposal Trustee posted the teaser document on its website <http://KPMG.com/ca/tool-shed-brewing-company>. Attached as **Exhibit "A"** is a copy of the Tool Shed teaser posted to the Proposal Trustee's website;¹
 - (c) the Proposal Trustee utilized KPMG's Corporate Finance group to solicit interest from third parties in the brewing industry;²
 - (d) an invitation to prospective buyers to submit an offer for the sale of Tool Shed's business and assets was published in *Insolvency Insider*, a well known and respected publication among insolvency professionals with access to a large range of parties who may have an interest in distressed investment, lending, or sales transactions, as well as the *Calgary Herald*;³
 - (e) a virtual data room containing confidential information about the Company and its business operations was populated and maintained;⁴
 - (f) the Proposal Trustee received responses from four parties during the SISP. Representatives from two of those parties signed non-disclosure agreements and reviewed the materials in the virtual data room;⁵ and
 - (g) the parties who executed a non-disclosure agreement included John Donovan ("**Donovan**") and Darryl Bourne ("**Darryl**").

¹ Second Report at para 24.

² Second Report at para 25.

³ Second Report at para 24.

⁴ Second Report at para 24.

⁵ Second Report at para 26.

Due Diligence Requests During the SISP

12. After executing a non-disclosure agreement in order to participate in the SISP, Donovan, for himself, Julianna Bourne ("**Julianna**"), and Myron Tetreault ("**Myron**" and together with Donovan and Julianna, the "**Donovan Group**") submitted to the Company a significant list of requests for further information, which I, along with a number of employees of Tool Shed, worked diligently to complete in a timely fashion, often the same day. Every request for information was answered in less than two business days. In total, I estimate that I responded to over 100 requests from the Donovan Group during the SISP. Despite having no staff accountant and limited administrative staff at the Company, I made all reasonable efforts to respond to the extensive due diligence requests in a timely manner.
13. Many of the due diligence requests related to information that the Company did not readily have on-hand, resulting in a number of requests for information from other organizations that were operating on their own timelines.

The Donovan Group Bid Extension Requests

14. I am advised by the Proposal Trustee that on March 7, 2024, counsel to the Donovan Group requested that the Proposal Trustee extend the bid deadline under the SISP from March 11, 2024 to March 25, 2024 (the "**Initial Extension Request**"). Attached as **Exhibit "B"** is a copy of the March 7, 2024 e-mail sent to the Proposal Trustee and the Company's legal counsel (the "**March 7, 2024 E-mail**").
15. As set out in the Second Costello Affidavit, Donovan is an investor in, and a creditor of, Tool Shed.⁶ Darryl is also an investor and creditor through his wife Julianna.⁷ Donovan and Darryl are very familiar with Tool Shed's business operations and its financial constraints, and have been actively involved in reviewing the Company's books and records with my predecessors prior to my time as an employee of Tool Shed.
16. Pursuant to the March 7, 2024 E-mail, the Donovan Group's basis for requesting additional time to submit a binding bid in the SISP was that the information provided by the Company during the SISP did not include sufficient information about Tool Shed's operations and

⁶ Second Costello Affidavit at paras 63 and 66

⁷ Ibid.

finances. As a result, The Donovan Group alleged it was unable to make an unconditional bid by the bid deadline in the SISP.

17. On March 8, 2024, counsel to the Proposal Trustee sent correspondence to counsel for the Donovan Group and counsel for the Company agreeing to extend the bid deadline from March 11, 2024 at 12:00 p.m. to March 14, 2024 at 12:00 p.m. (the “**Extended Bid Deadline**”). The correspondence sent by the Proposal Trustee regarding the Extended Bid Deadline is attached as **Exhibit “C”**.
18. As part of the Extended Bid Deadline, the Proposal Trustee informed the Donovan Group’s legal counsel and Tool Shed’s legal counsel that final requests for information must be delivered to the Proposal Trustee by March 11, 2024 at 12:00 p.m., and that the Company must provide final responses to the due diligence request by March 12, 2024 at 12:00 p.m. The Proposal Trustee further highlighted that it was important to “move this matter forward expeditiously” to “mitigate cashflow strain and to ensure we maintain a competitive process.”
19. In accordance with the terms of the Extended Bid Deadline, on March 9, 2024, the Proposal Trustee provided me with a “Final Due Diligence Request” from the Donovan Group. A copy of the Final Due Diligence Request list is attached as **Exhibit “D”**.
20. The employees of Tool Shed, including myself, continued to work diligently in answering the Final Due Diligence Request and on March 11, 2024, I provided the Proposal Trustee with all of the information available to Tool Shed in response to the Final Due Diligence Request. The Proposal Trustee confirmed this information was uploaded to the data room in accordance with the terms of the Extended Bid Deadline.

The Conditional Bid

21. Despite the Final Due Diligence Request being answered to the best of Tool Shed’s ability based on the information available to it, on the morning of March 14, 2024, the Donovan Group submitted a further request for an extension of the bid deadline (the “**Further Extension Request Letter**”), along with an unexecuted, non-binding, conditional bid to purchase 100% of the equity in the Company (the “**Conditional Bid**”).⁸ The Further Extension Request Letter sought an extension of the bid deadline to March 22, 2024 so

⁸ The Conditional Bid is attached as Confidential Appendix “C” to the Second Report.

that the Donovan Group could submit an unconditional bid. Attached as **Exhibit "E"** is a copy of the March 14, 2024 Extension Request Letter.

22. On March 18, 2024, counsel to the Proposal Trustee responded to the Further Extension Request Letter advising that the additional request for an extension of the bid deadline in the SISP was denied.
23. The grounds for the Proposal Trustee's rejection of the further request included, among other things, (i) the fact that the Conditional Bid was not in compliance with the procedures established under the SISP, (ii) that the Conditional Bid contained further due diligence conditions allowing the Conditional Bid to be terminated if the due diligence conditions were not fulfilled or waived, (iii) that the Conditional Bid was unexecuted, (iv) that it provided a condition for the retention of 50% of full-time employees of Tool Shed to accept offers of employment, and (v) that the Conditional Bid failed to account for professional fees incurred prior to the commencement of the NOI Proceedings in contravention of the February 12 Order. In addition, the Proposal Trustee highlighted the cash flow concerns of the Company. Attached as **Exhibit "F"** is a copy of the March 18, 2024 correspondence from counsel to the Proposal Trustee to counsel to the Donovan Group in response to the Further Extension Request Letter.
24. The Extended Bid Deadline expired on March 14, 2024 at 12:00 p.m., and no superior bid to the Stalking Horse Bid was received by the Proposal Trustee.

The Stalking Horse Bid is Declared the Successful Bid

25. Verbally on March 19, 2024, and in writing on March 21, 2024, the Proposal Trustee confirmed to the Stalking Horse Bidder that because no Qualified Bid was received by the Extended Bid Deadline, the Stalking Horse Bid was automatically declared by the SISP to be the Successful Bid. Attached as **Exhibit "G"** is a copy of the March 21, 2024 correspondence from the Proposal Trustee to me confirming same.

Late Bid Submitted by the Donovan Group

26. On March 22, 2024 at 4:04 pm, the Donovan Group submitted an executed, unconditional Share Purchase Agreement to the Proposal Trustee along with a deposit (the "**Late Donovan Bid**").⁹

⁹ The Late Donovan Bid is attached as Confidential Appendix "D" to the Second Report.

Rejection of the Late Donovan Bid by Proposal Trustee

27. On March 28, 2024, the Proposal Trustee wrote to counsel for the Donovan Group advising that it had considered the Late Donovan Bid in light of all the circumstances. The Proposal Trustee advised counsel to the Donovan Group and Tool Shed that it would not be accepting the Late Donovan Bid for a number of reasons, including the following (the "**March 28, 2024 Correspondence**"):

- (a) Although the stated value of the purchase price of the Late Donovan Bid may be higher than the purchase price under the Stalking Horse Bid, the price is not substantially higher as to suggest the Stalking Horse Bid is unreasonable;
- (b) The Late Donovan Bid does not contemplate assumption of the interest and penalties associated with the CRA Debt (as defined below), which must be paid pursuant to s 60(1.1) of the BIA, representing a difference of approximately \$116,000;
- (c) The Late Donovan Bid includes the pre-filing legal fees of Miller Thomson LLP ("**Pre-Filing Fees**") up to the maximum amount of that secured by the Administration Charge, whereas the Stalking Horse Bid proposes paying the Pre-Filing Fees outside the limits of the Administration Charge;
- (d) The Proposal Trustee has significant concerns about the Donovan Group's ability to close its proposed transaction by the outside closing date of April 30, 2024 due to the Donovan Group's delays and non-compliance with the SISP procedure;
- (e) Accepting the Late Donovan Bid would prejudice the Stalking Horse Bidder by denying it the opportunity to submit a better offer in the auction, which it would have been entitled to do if the Late Donovan Bid was submitted within the Extended Bid Deadline. This would subvert the intention of the SISP to provide the Stalking Horse Bidder with an opportunity to participate in the auction;
- (f) The restraints on the Company's cash flow are too significant to extend the dates to hold an auction and would delay the closing of a transaction; and
- (g) The Late Donovan Bid does not a substantially better recovery for the Company's stakeholders, if any, to justify compromising the integrity of the SISP as approved by the Court, and which bidders are entitled to rely on.

28. Ultimately the Proposal Trustee determined that the principles of commercial certainty, efficacy and fairness required it to reject the Late Donovan Bid. A copy of the March 28, 2024 Correspondence is attached as **Exhibit "H"**.
29. As a result of the position taken by the Proposal Trustee in the March 28, 2024 Correspondence, the SISP has now concluded with no Superior Offer being received.
30. Tool Shed seeks approval of the Transaction contemplated by the Stalking Horse Bid.

Lack of Good Faith by the Donovan Group

31. It is my belief that the Donovan Group's participation in the SISP, including its requests for multiple extensions of the bid deadline and the submission of the Late Donovan Bid, was not in good faith.
32. Donovan and Darryl have both been extensively involved with efforts to refinance, restructure, and/or sell Tool Shed since January 2023, with my predecessor, Tom Taylor, and with myself beginning in August of 2023. Donovan and Darryl have spent more time reviewing the Tool Shed books and records than anyone currently involved with the Company, including the Stalking Horse Bidder.
33. As set out in the Second Costello Affidavit starting at paragraph 86, I was involved with the only entity to submit a bid during the Initial SISP, being the Four Horsemen LOI. As a potential bidder in the Initial SISP, I signed a non-disclosure agreement to gain access to the data room, as well as submitted numerous additional due diligence requests to the Company. Donovan and Darryl had been working with Mr. Taylor at that time and had access to the data room and books and records of Tool Shed that were used to populate the data room long before I had access.
34. The secured creditors of Tool Shed, including Donovan and Darryl, did not support the Four Horsemen LOI, which provided some return on their respective investments.
35. Once I joined Tool Shed as interim CEO, I worked diligently with the Company's secured creditors, unsecured creditors, and debenture holders to try and reach an agreement, which would see Tool Shed's debt voluntarily converted by its creditors to equity. During this time I worked closely with Donovan and Darryl to try and find a solution to Tool Shed's liquidity crisis. I estimate I participated in approximately 50 meetings with various

stakeholders, much of which was with Donovan and Darryl, during the six month period after becoming interim CEO.

36. I provided Donovan and Darryl with unfettered access to the Company's financial information during this time. I worked to provide as much information as possible, including requests for documentation, and spent a significant amount of time with them in meetings discussing the Company's financial status.
37. Prior to the Stalking Horse Bidder making the Stalking Horse Bid, I approached all current investors, including Donovan and Darryl to see if they wanted to invest in the Stalking Horse Bidder and be part of the investor group in the restructured Tool Shed.
38. On February 13, 2024, Darryl informed me that him and his wife Julianna would not be able to invest any new money into Tool Shed, as they had purchased a home in Scottsdale, Arizona which required their surplus cash. Attached as **Exhibit "I"** is a copy of the text messages exchanged on February 13, 2024 between Darryl and myself.
39. After sending me this text, I was surprised to find out that Darryl had executed a non-disclosure agreement to participate in the SISP as he had told me that he was unwilling to invest in the restructured Company.
40. At the time of the Initial Extension Request and in the days leading up to the original bid deadline, the Donovan Group investor Myron was in a multiple day running race in Utah called the "Moab Run the Rocks" (March 8-10, 2024). It is my belief that Myron was not seriously concerned with the further due diligence requests that the Donovan Group was requesting from the Proposal Trustee and the Company. Attached as **Exhibit "J"** is a screenshot of Myron participating in the race and his official time over the three-day race.
41. Ultimately, the Donovan Group has been provided with more detailed information about the Company throughout the Initial SISP and the SISP than any other bidder, including the Stalking Horse Bidder. I believe this should have allowed the Donovan Group to make a bid which conformed with the requirements and timelines in the February 12 Order and SISP procedures.
42. It is my belief that the Late Donovan Bid is a last ditch attempt to force an auction to try and squeeze money out of the Stalking Horse Bidder that is reserved for working capital in the restructured business and for the benefit of the new investors of Tool Shed.

Licenses and Permits

43. Tool Shed holds certain licenses and permits which allows it to brew and/or distribute alcoholic beverages in the provinces of Alberta, British Columbia, Saskatchewan, and Manitoba (the "**Licenses and Permits**").
44. The Licenses and Permits are key assets of the Company. They allow the Company to manufacture and sell its products to the Alberta Gaming, Liquor and Cannabis Commission ("**AGLC**"), as well as the public. The Company cannot operate its business without the Licenses and Permits.
45. The Company operates out of its leased commercial premises located at 801 30 St NE #9, Calgary, AB TWA 5L7 in the Franklin Industrial area of Calgary (the "**Premises**" or the "**Taphouse**"). The Licenses and Permits are in many cases tied to the Premises. As discussed below, those Licences and Permits become void if the Premises is transferred to or leased by someone other than the Company.
46. The process for obtaining the Licenses and Permits can be expensive and time consuming. It is far more efficient for an entity to simply renew a License or Permit, than it is for a new entity to apply for a fresh License or Permit. Tool Shed would be forced to cease operations if it had to apply anew for new licenses and permits, as it would be unable to operate and sell its products in the interim until a decision was made by the relevant agency. This would cripple Tool Shed's cash flow and result in a halting of business operations.
47. The Licenses and Permits that the Company holds include:
 - (a) A Class A liquor license issued by the Alberta Gaming, Liquor and Cannabis Commission ("**AGLC**") on November 27, 2023 and expiring on November 26, 2024 (the "**Class A License**"). The Class A License permits the Company to purchase and sell liquor, as well as allow consumption of liquor at its premises open to the public. The Class A License is legally necessary for the Company to be able to sell its own product and to operate the Taphouse. The Class A License becomes void if the premises of the Company is leased or transferred to the control of someone other than Tool Shed. A copy of the Class A License is attached as **Exhibit "K"**;
 - (b) A Class E liquor license issued by the AGLC on November 27, 2023 and expiring on November 26, 2024 (the "**Class E License**"). The Class E License permits the

Company to manufacture liquor at its premises. Without the Class E License, Tool Shed could not legally brew beer. The Class E License becomes void if the premises of the Company is leased or transferred to the control of someone other than Tool Shed. A copy of the Class E License is attached as **Exhibit "L"**;

- (c) A liquor agency registration license issued to Tool Shed by the AGLC effective April 26, 2023 and expiring April 25, 2026 (the "**Liquor Agency License**"). The Liquor Agency License permits Tool Shed to act as a representative of a liquor supplier in the sale of the supplier's liquor under the provisions of the *Gaming, Liquor and Cannabis Act* (Alberta) and regulations. The Liquor Agency License is necessary for the Company to be able to sell its product in accordance with Alberta law. The Liquor Agency License is not transferable. The Liquor Agency License is attached as **Exhibit "M"**;
- (d) A Class D liquor licence issued on November 27, 2023 and expiring November 26, 2024 (the "**Class D License**"). The Class D License allows the Company to sell its liquor for off-Premises consumption, with special authorization to attend any AGLC approved artisan market, trade show, or approved farmers' market. The Class D License becomes void if the premises of the Company is leased or transferred to the control of someone other than Tool Shed. The Class D License is attached as **Exhibit "N"**;
- (e) A food handling permit issued by Alberta Health Services under the *Public Health Act* (Alberta) (the "**Food Handling Permit**"). The Food Handling Permit allows the Company to sell food at its premises to the public. The Food Handling Permit is valid from December 1, 2023 to November 30, 2024. The Food Handling Permit is not transferable. The Food Handling Permit is attached as **Exhibit "O"**; and
- (f) A Business License issued by the City of Calgary issued under the City of Calgary's business licensing bylaws on November 27, 2023 and expiring November 26, 2024 (the "**Business License**"). The Business License allows the Company to operate as an entertainment establishment, alcohol beverage manufacturer, retail dealer, alcohol seller, and food service provider. Without the Business License, Tool Shed could not legally operate its business in the City of Calgary. The Business License is attached as **Exhibit "P"**;

- (g) British Columbia Sales license for the sale of Tool Shed's products in the Province of British Columbia ("**British Columbia Sales License**");
 - (h) Saskatchewan Sales licence for the sale of Tool Shed's products in the Province of Saskatchewan ("**Saskatchewan Sales License**"); and
 - (i) Manitoba Sales License for the sale of Tool Shed's products in the Province of Manitoba ("**Manitoba Sales License**").
48. Depending on the province, the sales licences obtained by Tool Shed in British Columbia, Saskatchewan, and Manitoba took anywhere from six to twelve months to obtain. The provincial sales licenses are agency agreements which the Company has been unable to obtain copies of in time for this Application.
49. The Licenses and Permits are not assignable and are in large part tied to the Taphouse operated by Tool Shed. As a result, a reverse-vesting transaction is the only transaction structure that can preserve the important value contained in the Licenses and Permits which allow Tool Shed to operate and offer its product to the market.
50. As described below, the Purchaser is only prepared to conclude the Transaction if the Licenses and Permits remain in tact through the reverse-vesting Transaction.

Approval of the SPA and the Transaction

The Transaction

51. The Transaction is a going-concern transaction that, if approved, will retain the Premises and will ensure that the Company's customers and suppliers maintain their relationship with Tool Shed.
52. The principal terms of the SPA are summarized below. All capitalized terms in this section of the Affidavit take their definitions from the SPA. A copy of the SPA is attached as **Exhibit "Q"**.

Term	Details
Seller	Tool Shed Brewing Company Inc.
Purchaser	2582568 Alberta Inc.
Transaction Structure	Reverse-vesting share purchase transaction.

Purchase Price	Cash plus assumption of the Assumed Liabilities in the aggregate amount of \$1,215,000.00, to be paid as follows: <ol style="list-style-type: none"> 1. \$14,057.82 to the Landlord three days prior to Closing, to be held in trust and released immediately upon Closing. 2. A cash payment equal to the value of the Assumed Liabilities, which the Company shall retain on Closing in accordance with the Reorganization Transactions, shall be satisfied by the Company performing the Assumed Liabilities as and when they become due.
Deposit	No deposit required.
Interim Financing	The Purchaser shall provide a \$250,000 Interim Facility to the Company pursuant to the terms of the Interim Financing Term Sheet. The Interim Facility is to be secured by a super-priority interim financing charge in the amount of \$250,000.
Excluded Assets	<ol style="list-style-type: none"> 1. Excluded Contracts.
Excluded Liabilities	<ol style="list-style-type: none"> 1. 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. 2. Any and all Liabilities relating to amounts outstanding to shareholders or holders of convertible notes, debentures, or other similar securities or debt instruments of the Company as at the Closing Time. 3. Any and all Liabilities pertaining to the administration of the Proposal Proceedings including, without limitation, under any court-ordered charge granted therein. 4. All Liabilities relating to or under the Excluded Contracts and Excluded Assets. 5. 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. 6. Any and all Liabilities that are not Assumed Liabilities.
Permits and Licenses	<ol style="list-style-type: none"> 1. To be completed prior to Closing.
Assumed Contracts	<ol style="list-style-type: none"> 1. Lease Agreement dated September 21, 2017 between York Realty Inc. and Tool Shed Brewing Company Inc.
Assumed Liabilities	<ol style="list-style-type: none"> 1. 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. 2. All amounts owing to Miller Thomson LLP, KPMG Inc., and MLT Aikins LLP and paid in the ordinary course as the amounts come due, 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 up to \$250,000.00. 3. All amounts owing to the Interim Lender under the Interim Facility including Recoverable Expenses and interest, under the Interim Lender's charge pursuant to the Sale Process Order, as amended and/or restated from time

	<p>to time, and such further order of the Court as may be granted, being up to \$300,000.00 in accordance with the Interim Financing Term Sheet.</p> <ol style="list-style-type: none">4. All amounts owing to James Costello and Graham Sherman for services rendered up to and including the Closing Date, which for certainty, such amounts will not form part of the Purchase Price.5. All amounts owing to Miller Thomson LLP for pre-filing work prior to the Proposal Proceedings being approximately \$80,000.00.
As is Where is	The Post-Consolidation Shares will be sold to the Purchaser on an "as is, where is" basis, subject only to the representations and warranties contained in the SPA.
Key Conditions to Closing	<ol style="list-style-type: none">1. The Court shall have issued and entered the Approval and Reverse Vesting Order, which order shall not have been stayed, set aside, or vacated and no application, motion or other proceeding shall have been commenced seeking the same, in each case which has not been fully dismissed, withdrawn or otherwise resolved in a manner satisfactory to the Parties, each acting reasonably.2. The Licences and Permits shall be in good standing at the Closing Time and no material default shall have occurred under such Licenses and Permits and such Licenses and Permits shall remain in good standing immediately following and notwithstanding closing.3. The Reorganization Transactions shall have been completed in the order and in the timeframes contemplated in the SPA.4. The Vesting Order must release the Purchaser, the Applicant, and the Applicant's director, officers, employees, and professional advisors.
Closing Date	<p>No later than ten (10) Business Days after the date upon which the conditions to Closing have been satisfied or waived, other than those that are to be satisfied or waived at the Closing.</p> <p>The Parties shall cooperate with each other and shall use their commercially reasonable efforts to effect the Closing on or before the Outside Date of April 30, 2024.</p>

53. The Company shall retain the Lease as part of the Retained Assets in the Transaction. As of the date of swearing this Affidavit, all amounts owing to the Landlord are current.
54. The Purchaser also intends to satisfy the Assumed Liabilities as and when they become due. With respect to the CRA Debt, the Purchaser will pay the CRA Debt in full within 60 days of closing.
55. The Excluded Assets, Excluded Liabilities, Assumed Contracts, and Assumed Liabilities remain subject to change prior to Closing.
56. The Company has consulted with the Proposal Trustee to assess the reasonableness of the purchase price and the Proposal Trustee has advised it is of the view that it is reasonable in the circumstances.

57. It is expected that the Purchaser will continue to operate the business as a going concern and will continue to employ all of Tool Shed's 20 employees.

The Transaction is Necessary

58. By proceeding by way of a reverse-vesting transaction, the Purchaser will retain the benefit of the Licenses and Permits. The Licenses and Permits cannot be transferred to a new entity and the Company cannot operate its business without them. The SISP has not identified any potential investor or purchaser prepared to buy the Company as a going concern without the Licenses and Permits.
59. Proceeding by way of asset purchase transaction would require a purchaser of Tool Shed's assets to reapply for the Licenses and Permits, which would take time and money that the Company does not have, and would cripple its ability to carry on business in the interim. As a result, the failure to retain the Licenses and Permits would likely result in the Company filing for bankruptcy.
60. On a balance of interests, the approval of the Transaction and implementation through the Vesting Order will provide a net benefit to the employees, landlord, suppliers and customers of Tool Shed because it will permit Tool Shed to continue as a going concern. The alternative to the Transaction is a forced liquidation.
61. In a liquidation scenario, I am advised by counsel that, after repayment of all professional fees secured by the Administration Charge, all amounts outstanding to the Interim Lender must be repaid in full. Further, Tool Shed is indebted to the Canada Revenue Agency for source deductions in the approximate amount of \$571,091.70 (the "**CRA Debt**").
62. I am advised by counsel that a large portion of the CRA Debt is subject to a deemed trust that, although subordinate to the Administration Charge and the Interim Lender's Charge, effectively ranks ahead of the claims of secured creditors of Tool Shed. Given Tool Shed's limited assets, and the amounts outstanding under the Interim Loan Facility and the CRA Debt, it is unlikely that secured creditors would receive any meaningful recovery in a liquidation scenario.
63. The Proposal Trustee, Interim Lender, and the Purchaser are supportive of the approval of the SPA and the closing of the Transaction.

