



Court File No.B-200208  
Estate No. 11-2638450  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN THE BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
TBA BEVERAGE INC.**

**ORDER MADE AFTER APPLICATION**

BEFORE THE HONOURABLE ) THE 7TH DAY OF AUGUST, 2020  
MR. JUSTICE VOITH )  
)

ON THE APPLICATION of TBA Beverage Inc. ("TBA"), coming on for hearing by telephone at the Courthouse at 800 Smithe Street, Vancouver, British Columbia on the 7th day of August, 2020 and on hearing Jeremy West, counsel for TBA and those other counsel listed on Schedule "A" hereto, AND UPON READING the materials filed herein; AND PURSUANT TO the *Bankruptcy and Insolvency Act*, R.S.C. 1983 c. 8-3 (the "BIA");

THIS COURT ORDERS that:

1. The time for service of the Notice of Application dated July 30<sup>th</sup>, 2020 is hereby abridged such that it is properly returnable today and service thereof on any interested party is hereby dispensed with.
2. Except as specifically provided herein the definitions utilized in the Order Made after Application on May 13, 2020 (the "May 13, 2020 Order") and the Order Made after Application on June 24, 2020 shall have the same meanings for the purposes of this Order.

**Approval of the Sale Contract**

3. The sale transaction (the "Transaction") contemplated by the Offer to Purchase and Asset Purchase Agreement dated July 14, 2020 (the "Sale Contract") between Mod Beverage Inc. ("Mod") and TBA, a copy of which is attached as Appendix "D" to the Proposal Trustee's Third Report to court dated July 30<sup>th</sup> 2020 and as Schedule "B" hereto, is hereby approved, and the Sale Contract is commercially reasonable. The execution of the Sale Contract by TBA is hereby authorized and approved, and TBA and the Proposal Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to Mod of the assets described in the Sale Contract (the "Assets").

4. Notice under section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 is not required in respect of the Transaction.
5. Upon delivery by the Proposal Trustee to Mod of a certificate certifying all conditions have been satisfied or waived and the Transaction has completed (the "Proposal Trustee's Certificate"), all of TBA's right, title and interest in and to the Assets described in the Sale Contract shall vest absolutely in Mod in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia (all of which are collectively referred to as the "Encumbrances"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Assets are hereby expunged and discharged as against the Assets.
6. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets shall stand in the place and stead of the Assets, and from and after the delivery of the Proposal Trustee's Certificate all Claims shall attach to the net proceeds from the sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
7. The Proposal Trustee is to file with the Court a copy of the Proposal Trustee's Certificate forthwith after delivery thereof.
8. Pursuant to Section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia, the Proposal Trustee is hereby authorized and permitted to disclose and transfer to Mod all human resources and payroll information in TBA's records pertaining to TBA's past and current employees, including personal information of all employees whose employment contracts are being assigned in accordance with Schedule B to the Sale Contract. Mod shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by TBA.
9. Subject to the terms of the Sale Contract, vacant possession of the Assets, including any real property, shall be delivered by TBA to Mod at 12:00 noon on the Closing Date (as defined in the Sale Contract).

10. TBA, with the consent of the Proposal Trustee Mod, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.

11. Notwithstanding:

- a. these proceedings;
- b. any applications for a bankruptcy order in respect of TBA now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
- c. any assignment in bankruptcy made by or in respect of TBA,

the vesting of the Assets in Mod pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of TBA and shall not be void or voidable by creditors of TBA, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

12. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Proposal Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

13. TBA, the Proposal Trustee, or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

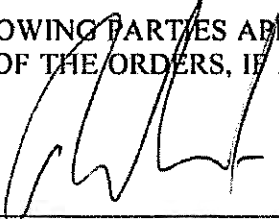
**Extension of time to file a Proposal and Stay**

14. The time for the filing of a Proposal by TBA be extended from August 12, 2020 to 11:59 p.m., September 25, 2020.

15. The stay of proceedings be extended from August 12, 2020 to 11:59 p.m., September 25, 2020.

16. Endorsement of this Order by counsel appearing on this application, other than counsel for TBA, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



\_\_\_\_\_  
Signature of Jeremy D West  
Solicitor for TBA Beverage Inc.

By the Court.  
Digitally signed by  
Day, Kristen



\_\_\_\_\_  
*Registrar in Bankruptcy*

**Schedule "A"- List of Counsel Appearing**

Jeremy D. West	Counsel for TBA Beverage Inc.
Chris Bowra	Proposal Trustee, The Bowra Group Inc.

**Schedule "B": Offer to Purchase and Asset Purchase Agreement dated July 14, 2020**

## OFFER TO PURCHASE AND ASSET PURCHASE AGREEMENT

**THIS AGREEMENT** is dated effective as of July 14, 2020 at 3:30 p.m. PDST

**BETWEEN:**

**MOD BEVERAGE INC.**, a company incorporated and existing under the laws of British Columbia

(the “**Purchaser**”)

- and -

**TBA BEVERAGE INC.**, a company amalgamated and existing under the laws of British Columbia (the “**Company**”)

**CONTEXT:**

- A.** On April 14, 2020, the Company filed a Notice of Intention to File a Proposal (the “**NOI**”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*.
- B.** Pursuant to an order of the Court (as defined herein) dated May 13, 2020, The Bowra Group Inc. (the “**Proposal Trustee**”) has been authorized to take all steps necessary to engage in a sales process for the sale of the Company’s assets, to execute documents of whatever nature in connection with said sales process, and to apply for any vesting order or other orders necessary to convey the Company’s assets to a purchaser free and clear of any liens or encumbrances.
- C.** The Company has agreed to sell, and the Purchaser has agreed to buy, certain assets of the Company’s business, as a going concern, in accordance with the terms and conditions of this Agreement.
- D.** The Company is indebted to the Purchaser pursuant to: (i) a line of credit agreement dated December 11, 2019, as assigned on March 31, 2020, amended on March 31, 2020, and amended again on June 19, 2020 (the “**LOC Agreement**”) and (ii) a loan agreement dated October 11, 2016, as assigned on November 5, 2019 and March 31, 2020 (the “**Loan Agreement**”, and collectively with the LOC Agreement, the “**Lending Agreements**”). The amendment to the LOC Agreement dated June 19, 2020 provided for interim secured financing of the Company and was approved by order of the Court dated June 24, 2020 with court file number B-200208. The Lending Agreements are secured by a general security agreement originally entered into between the Company and 0980332 B.C. Ltd., assigned on November 4, 2019 from 0980332 B.C. Ltd. to 1226461 B.C. Ltd., and assigned from 1226461 B.C. Ltd. to the Purchaser on March 31, 2020.
- E.** On April 13, 2020, the Purchaser (under its former name, 1241393 B.C. Ltd.) delivered a notice of default and demand for payment to the Company and issued a notice of

intention to enforce a security to the Company pursuant to Section 244 of the *Bankruptcy and Insolvency Act*.

- F. On April 13, 2020, the Purchaser and the Company entered into a forbearance agreement in which the Purchaser agreed to not take any steps to recover amounts owing under the Lending Agreements until July 12, 2020. On July 10, 2020, the Purchaser and the Company amended the forbearance agreement to extend the forbearance period to August 12, 2020.

**THEREFORE**, the parties agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Agreement, in addition to the terms defined above, the following terms have the following meanings:

- 1.1.1 **“Approval and Vesting Order”** means an order of the Court (a) approving this Agreement (b) vesting in the Purchaser all of the right, title and interest of the Assets free and clear of all Encumbrances, (c) assigning the Contracts to the Purchaser, (d) assigning the Assumed Liabilities to the Purchaser, and (e) transferring the Licenses to the Purchaser, subject to approval by the LCRB.
- 1.1.2 **“Assets”** means the following assets of the Company:
- 1.1.2.1 all of the equipment of the Company, including the equipment listed in Schedule A (the **“Equipment”**);
  - 1.1.2.2 the contracts listed in Schedule B (the **“Contracts”**);
  - 1.1.2.3 all intellectual property owned by the Company (the **“Intellectual Property”**), including the trademark registrations and applications listed in Schedule C (the **“Trademarks”**);
  - 1.1.2.4 all of the licenses of the Company, including the licenses listed in Schedule D (the **“Licenses”**);
  - 1.1.2.5 all leasehold improvements to the Premises;
  - 1.1.2.6 all Current Assets, as defined herein;
  - 1.1.2.7 all choses in action and judgements of the Company; and
  - 1.1.2.8 all goodwill associated with the Business (the **“Goodwill”**).



- 1.1.3 **“Assumed Liabilities”** is defined in Section 3.2.
- 1.1.4 **“Audit”** means the audit of the Company by the LDB which is ongoing as of the date of this Agreement.
- 1.1.5 **“Bid Deadline”** means 4:00 pm PST on July 14, 2020, or such other date as may be set by order of the Court.
- 1.1.6 **“Business”** means the Company’s business of manufacturing and selling alcoholic and non-alcoholic beverages.
- 1.1.7 **“Business Day”** mean any day other than (a) a Saturday or Sunday, or (b) a day that is a statutory holiday in Vancouver, British Columbia.
- 1.1.8 **“Closing”** means the completion of the Transaction.
- 1.1.9 **“Closing Priority Payable Amount”** is defined in Section 8.1.
- 1.1.10 **“Closing Date”** means 11:59pm PST on the earlier of: (a) September 30, 2020, (b) the date that is five calendar days after the completion of the Audit, and (c) the date that the Purchaser confirming in writing to the Company that it is satisfied with the status of the Audit.
- 1.1.11 **“Confidential Information”** is defined in Section 7.2.
- 1.1.12 **“Court”** means the Supreme Court of British Columbia.
- 1.1.13 **“Current Assets”** means all current assets of the Company including all cash, bank deposits, uncashed cheques, accounts receivable, inventory, prepaid expenses, and deposits, including the deposits set out in Schedule E.
- 1.1.14 **“Encumbrance”** means any security interest, mortgage, charge, pledge, hypothec, lien, encumbrance, restriction, option, adverse claim, right of others or other encumbrance of any kind.
- 1.1.15 **“LCRB”** means the British Columbia Liquor and Cannabis Regulation Branch.
- 1.1.16 **“LDB”** means the British Columbia Liquor Distribution Branch.
- 1.1.17 **“Lending Agreements”** is defined in Context clause D.
- 1.1.18 **“Lending Agreements Debt”** means the aggregate amount owing under the Lending Agreements as of the Closing Date.
- 1.1.19 **“Loan Agreement”** is defined in Context clause D.
- 1.1.20 **“LOC Agreement”** is defined in Context clause D.

- 1.1.21 **“May 13 Order”** means the order of the Court dated May 13, 2020 with court file number B-200208 in the matter of the Notice of Intention to Make a Proposal of TBA Beverage Inc.
- 1.1.22 **“NOI”** is defined in Context clause A.
- 1.1.23 **“Offer”** is defined in Section 2.1.
- 1.1.24 **“Outside Date”** means September 30, 2020.
- 1.1.25 **“Premises”** means the Company’s premises at 1575 Vernon Dr, Vancouver, British Columbia.
- 1.1.26 **“Priority Payables”** means any amounts owing as of the Closing Date under the administrative charge approved pursuant to the May 13 Order.
- 1.1.27 **“Purchase Price”** means the sum of: (a) the Lending Agreements Debt; and (b) the Priority Payables. The Purchase Price is estimated at \$6,635,799, as set out in the calculation in Schedule F. This amount will be adjusted to actual immediately before Closing.
- 1.1.28 **“PST”** is defined in Section 9.2.
- 1.1.29 **“Transaction”** means the transaction of purchase and sale contemplated by this Agreement.

**ARTICLE 2  
OFFER AND ACCEPTANCE**

**2.1 Offer**

The Purchaser hereby offers to purchase (the **“Offer”**) the Assets from the Company, upon the terms and conditions contained herein.

**2.2 Acceptance**

The acceptance of this Offer by the Company will convert this Offer into a binding agreement for the purchase and sale of the Assets on the terms and conditions contained herein.

**ARTICLE 3  
PURCHASE AND SALE**

**3.1 Agreement of Purchase and Sale**

Subject to the terms and conditions of this Agreement, on the Closing Date the Purchaser will purchase the Assets from the Company for the Purchase Price.

**3.2 Assumption of Liabilities**

The Purchaser acknowledges and agrees that on Closing it will assume all of the Company's liabilities under the Contracts (the "Assumed Liabilities").

**3.3 As Is Where Is**

The Assets are being sold on an "as is where is" basis and the Company makes no representations and warranties regarding the Assets.

**3.4 Allocation of Purchase Price**

The parties work together to determine a reasonable allocation of the Purchase Price among the Assets.

**ARTICLE 4  
CONDITION PRECEDENT**

**4.1 Condition Precedent**

The obligation of each of the parties to complete the Transaction is subject to this Agreement and the Transaction being approved by an Approval and Vesting Order. The foregoing condition is for the mutual benefit of the Purchaser and the Company. Either party may elect on written notice to the other party to terminate this Agreement at any time after 5:00 p.m. (Vancouver time) on the Outside Date if any condition in this Section 4.1 has not been satisfied as at such time and satisfaction of such condition has not been waived by the parties.

**ARTICLE 5  
REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company represents and warrants to the Purchaser as follows, and acknowledges that the Purchaser is relying upon these representations and warranties in connection with the purchase of the Assets, despite any investigation made by or on behalf of the Purchaser.

**5.1 Corporate Existence**

The Company is a corporation duly incorporated and validly existing under the laws of British Columbia.

**5.2 Residence of Company**

The Company is not a non-resident of Canada for purposes of the *Income Tax Act* of Canada.

**ARTICLE 6  
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to the Company as follows, and acknowledges that the Company is relying upon these representations and warranties in connection with the sale of the Assets, despite any investigation made by or on behalf of the Company.

**6.1 Corporate Existence of Purchaser**

The Purchaser is a corporation duly incorporated and validly existing under the laws of British Columbia.

**6.2 Capacity to Enter Agreement**

The Purchaser has all necessary corporate power, authority and capacity to enter into and perform its obligations under this Agreement.

**6.3 Completion of Due Diligence**

The Purchaser had an opportunity to conduct any and all required due diligence in connection with the purchase of the Assets.

**6.4 Independent Review**

The Purchaser has relied solely upon its own independent review, investigation, and inspection of any documents, information and other due diligence materials, the Assets, and the Assumed Liabilities.

**6.5 No Reliance**

The Purchaser has not relied on any written or oral statements, representations, promises, warranties, or guarantees whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the Assumed Liabilities or the completeness of any information provided in connection therewith including by the Company, the Proposal Trustee, and their respective officers, directors, employees, agents, counsel, and professionals, except as expressly set out in this Agreement.

**6.6 Sophisticated Party**

The Purchaser is a sophisticated party capable of making its own assessments regarding the transactions contemplated by this Agreement.

**6.7 Professional Advice**

The Purchaser has had the benefit of independent legal, tax, accounting, and other relevant professional advice in connection with this Agreement.

**ARTICLE 7  
COVENANTS**

**7.1 Court Approval**

Commencing on or shortly after the Bid Deadline, the Company shall make reasonable efforts to obtain the issuance of an Approval and Vesting Order.

**7.2 Confidentiality**

Until Closing, any confidential information made available by the Proposal Trustee or the Company to the Purchaser regarding the Assets or the Company, including confidential information delivered in oral, electronic, or written form (collectively, the “Confidential Information”) shall be kept strictly confidential by the Purchaser. Confidential Information shall include all notes, analyses, compilations, forecasts, studies or other documents prepared by the Purchaser that contain or reflect Confidential Information provided by the Proposal Trustee or the Company. Confidential Information shall not include information: (i) that is or becomes generally available to the public other than as a result of an act or omission by the Purchaser in breach of an obligation of confidentiality to the Proposal Trustee or the Company; or (ii) that the Purchaser receives or has received on a non-confidential basis from a source other than the Proposal Trustee or the Company, provided that such source is not known by the Purchaser to be subject to an obligation of confidentiality to the Proposal Trustee or the Company with respect to such information or otherwise prohibited from transmitting the information to the Purchaser. Without the prior written consent of the Company, the Purchaser shall not disclose Confidential Information, other than to its legal and financial advisors who need to know such information in connection with the Transaction and who have been informed by the Purchaser of the confidential nature of the Confidential Information and instructed by the Purchaser to keep such Confidential Information confidential.

**ARTICLE 8  
CLOSING ARRANGEMENTS AND PAYMENT OF PURCHASE PRICE**

**8.1 Pre-Closing Deliverables of the Company**

- 8.1.1 At least two Business Days prior to the Closing Date, the Company will deliver to the Purchaser a statement setting out its estimate of the Priority Payables (the "Closing Priority Payable Amount").
- 8.1.2 Immediately prior to Closing, the Company will pay all cash and bank deposits as follows: first, in payment of the in payment of any principal owing under the LOC Agreement; and second, in payment of any principal owing under the Loan Agreement.

**8.2 Closing Deliverables of the Company**

On the Closing Date, the Company will deliver to the Purchaser:

- 8.2.1 a copy of the issued and entered Approval and Vesting Order;
- 8.2.2 physical possession of the Equipment as installed or located at the Premises on an "as is where is" basis;
- 8.2.3 copies of all the Contracts, excluding unwritten employment agreements included in the Contracts;
- 8.2.4 assignments of the Intellectual Property and the Trademarks;
- 8.2.5 notices to any third parties with physical possession of any of the Assets advising that title to the Assets has been conveyed to the Purchaser;
- 8.2.6 a listing of trade accounts receivables outstanding together with copies of supporting documentation;
- 8.2.7 an assignment of all deposits included in the Current Assets;
- 8.2.8 a Form GST44 Election Concerning the Acquisition of a Business or Part of a Business duly executed by the Company;
- 8.2.9 electronic copies of all items included in the Assets, where possible; and
- 8.2.10 all other documents reasonably requested by the Purchaser to effect the Transaction.

**8.3 Closing Deliverables of the Purchaser**

On the Closing Date, the Purchaser will deliver to the Company or as directed by the Approval and Vesting Order:

- 8.3.1 a discharge of all amounts owing by the Company to the Purchaser under the Lending Agreements and a discharge of any corresponding security interests as payment of item (a) of the Purchase Price;
- 8.3.2 a certified cheque, bank draft, or wire transfer payable to the Company or the Company's legal counsel, as directed, in the amount of the Closing Priority Payable Amount as payment of item (b) of the Purchase Price;
- 8.3.3 confirmation that the Purchaser's obligations under Section 9.2 have been fulfilled;
- 8.3.4 a Form GST44 Election Concerning the Acquisition of a Business or Part of a Business, duly executed by the Purchaser;
- 8.3.5 a FIN 492 British Columbia Provincial Sales Tax exemption certificate if the Purchaser wants to claim this exemption related to the production machinery; and
- 8.3.6 all other documents reasonably requested by the Company to effect Transaction.

#### **8.4 Post-Closing Adjustments**

If, after the Closing Date, the amount of Priority Payables is found to be higher than in the estimate provided pursuant to Section 8.1.1, then the Purchaser will pay the increased amount of the Priority Payables directly to applicable Priority Payable supplier and the additional payment shall be considered an adjustment to the Purchase Price.

### **ARTICLE 9 GENERAL**

#### **9.1 Time of Essence**

Time is of the essence in all respects of this Agreement.

#### **9.2 Taxes and Charges**

The Purchase Price is exclusive of all sales tax, excise tax and LDB mark-ups and other LDB charges and all charges payable in order to convey title to the Assets to the Purchaser, including charges in respect of the assignment of the Trademarks and the Licenses. The Purchaser shall pay all applicable excise, sales tax (subject to exemptions or elections) and LDB mark-ups and other charges to the Company's counsel on the Closing Date on their undertaking to remit same on behalf of the Company to the applicable taxation authority or LDB who will provide receipt(s) of such payments post Closing to the Purchaser.

#### **9.3 Licenses**

The Purchaser acknowledges and agrees that it is solely responsible for meeting any requirements of the LCRB for the transfer of the Licenses. The Purchaser acknowledges and

agrees that the Company shall not be liable in respect of any damages to the Purchaser resulting from the LCRB refusing to transfer the Licenses for any reason.

#### **9.4 Notices**

Any notice sent pursuant to this Agreement must be in writing and either delivered personally or by courier, sent by prepaid registered mail, or transmitted by e-mail or functionally equivalent electronic means of transmission. Any notice must be sent to the intended recipient at its address as follows:

to the Purchaser at:

Attention: Alexander Milne  
803 E Hastings St #201  
Vancouver, BC, V6A 1R8  
amilne@adpinv.com

to the Company at:

Alexander Milne, President  
1575 Vernon Drive  
Vancouver, BC, V6A 3P8  
alex@tbabeverage.com

with copies to:

The Bowra Group Inc.  
Attention: Christopher Bowra  
505 Burrard St #430  
Vancouver, BC, V7X 1M3  
cbowra@bowragroup.com

Watson Goepel LLP  
Attention: Cameron Funnell  
1075 W Georgia St. Suite 1200  
Vancouver, BC, V6E 3C9  
cfunnell@watsongoepel.com

or at any other address as any party may at any time advise the other by notice given or made in accordance with this Section 9.4. Any notice delivered to the party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that party's address, provided that if that day is not a business day then the notice will be deemed to have been given or made and received on the next business day. Any notice transmitted by e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted.



#### **9.5 Further Assurances**

Each party will, at the requesting party's cost and expense, execute and deliver any further agreements and documents and provide any further assurances, undertakings and information as may be reasonably required by the requesting party to give effect to this Agreement and, without limiting the generality of this Section 9.5, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide any assurances, undertakings and information as may be required at any time by all governmental authorities.

#### **9.6 Entire Agreement**

This Agreement, together with any other agreement or agreements and other documents to be delivered pursuant to this Agreement, constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there are no representations, warranties or other agreements between the parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement or in any of the other agreements and documents delivered pursuant to this Agreement.

#### **9.7 Currency**

All references in this Agreement to dollars, monetary amounts or to "\$" are expressed in the lawful currency of Canada unless otherwise specifically indicated.

#### **9.8 Amendment and Waiver**

No amendment, discharge, modification, restatement, supplement, termination or waiver of this Agreement or any Section of this Agreement is binding unless it is in writing and executed by the party to be bound. No waiver of, failure to exercise or delay in exercising, any Section of this Agreement constitutes a waiver of any other Section (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

#### **9.9 Assignment and Enurement**

Neither this Agreement nor any right or obligation under this Agreement may be assigned by either party without the prior written consent of the other parties. This Agreement enures to the benefit of and is binding upon the parties and their respective heirs, executors, administrators, estate trustees, trustees, personal or legal representatives, successors and permitted assigns.

#### **9.10 Governing Law**

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of British Columbia and the laws of Canada applicable in that Province. The parties attorn to the courts located in British Columbia.

**9.11 Severability**

Each Section of this Agreement is distinct and severable. If any Section of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that Section, in whole or in part, will not affect:

9.11.1 the legality, validity or enforceability of the remaining Sections of this Agreement, in whole or in part; or

9.11.2 the legality, validity or enforceability of that Section, in whole or in part, in any other jurisdiction.

**9.12 Counterparts and Electronic Delivery**

This Agreement may be executed and delivered by the parties in one or more counterparts, each of which will be an original, and each of which may be delivered by e-mail or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

**ARTICLE 10  
ACCEPTANCE**

**10.1 Acceptance of Offer**

This Offer is open for acceptance by the Company by the delivery or transmission by email of an executed copy of this Offer to the Purchaser no later than 5:00 pm (Vancouver time) on July 22, 2020, failing which this Offer will be null and void.

**MOD BEVERAGE INC.**

Per:    
 DocuSigned by:  
8898A688EFD4E4...  
Authorized Signatory

Per: Benjamin Milne   
 DocuSigned by:  
3DA3747642EA478...  
Authorized Signatory

**TBA BEVERAGE INC.**

Per:    
 DocuSigned by:  
8898A688EFD4E4...  
Authorized Signatory

Per: Benjamin Milne   
 DocuSigned by:  
3DA3747642EA478...  
Authorized Signatory

## Schedule A – List of Equipment

<b>MAJOR ASSETS -- COMPLETE LINES</b>
<i>2016/2017 Brewhouse</i>
Newlands MM-50H 6,000 litre capacity stainless steel mash mixer
Newlands LT-50H 11,734 litre capacity stainless steel lauter tun
Newlands BK-50H 5,000 litre capacity stainless steel brew/boil kettle
Newlands WP-50H 7,790 litre capacity stainless steel whirlpool
Newlands HB-242G 1,084 litre capacity stainless steel hop back tank
Newlands 10,000 litre capacity stainless steel hot water tank
Newlands 10,000 litre capacity stainless steel cold water tank
all stainless steel fittings, connections, hoses, lines and components
Newlands 76-0371 brewhouse control panel
Hope Industrial Systems main operator console with stainless steel surround and operator's platform
<i>2016/2017 Malts/Bulk Handling System</i>
Brock galvanized product silo
all Chore Time Flex Auger tubing from exterior bin to interior distribution
Meridian 1212-55 30,000 kg. capacity spent grain silo
all product lines and Netzsch auger system with fill hose
Newlands 76-0301 automated control system for spent grain system
2016 Bühler Minicomcompact DBZE 2 grist mill
Newlands SGH-400 400 lb. capacity manual feed hopper
Chore Time galvanized product bin with feed system
Newlands 76-0372 grain handling control panel
<i>2016/2017 Bottling Line and Case Packer</i>
Bevco conveyor collection/feed table
Bevco Link-Belt approx. 24 ft. empty bottle transfer conveyor
Chart Industries nitrogen doser
Domino Ax350i inkjet coding printer with Touch Pad controls and stand
PE Labellers Modular Plus 3-station automatic labelling machine
Bevco Link-Belt approx. 20 ft. transfer conveyor
GAI 3031FM Bier-003 12-station bottle cleaner/filler machine
Bevco Link-Belt approx. 36 ft. curved transfer conveyor with Bevco bottle drying station
Bevco conveyor split and infeed to Hamrick packer
Hamrick 360 packer with additional tooling and forms
all exit conveyors and rollcase run-outs

Bevco conveyor split and approx. 30 ft. infeed conveyor to Swithback Brew Pack Jr. packer share of Saginaw Controls Beverage Packaging System motor control centre
<i>2016/2017 Canning Line and Case Packer</i>
Ska Fabricating Can-I-Bus depalletizer
MCE empty can transfer conveyor with discharge chutes and 5 ft. Bevco transfer conveyor
Comac Pegasus 8IM 8-head can filler and sealer machine
Bevco Link-Belt approx. 90 ft. transfer conveyor with Bevco can dryer to diverter shop-built can sprayer
Filtec 3g fill level inspection machine
Domino Ax350i inkjet coding printer with Touch Pad controls and stand
Carleton Helican Technolgies 16OZ can inspection station conveyor diverter
Bevco Link-Belt approx. 20 ft. transfer conveyor
Bevco Link-Belt approx. 16 ft. transfer conveyor
Switchback Brew Pack Jr. A1-2H cartoner with Nordson ProBlue 7 gluer
Bevco approx. 10 ft. transfer conveyor
6 ft. motorized rollcase conveyor
Switchback BGF-12 tray former
6 ft. rollcase conveyor
Bevco approx. 12 ft. transfer conveyor
PakTech CCA-120 can carrier applicator
Bevco approx. 10 ft. transfer conveyor
Bevco approx. 12 ft. transfer conveyor
stainless steel holding station
Bevco approx. 26 ft. transfer conveyor
Bevco approx. 10 ft. merge conveyor
stainless steel holding station
10 ft. rollcase exit conveyor
share of Saginaw Controls Beverage Packaging System motor control centre
SL-150-002 Can Sleeving Machine in packaging – The sleeving machine has not been set up at the Premises and is currently stored offsite. The Purchaser will be responsible for transporting and setting up this machine as it deems necessary.
<i>Portable Canning Line</i>
Ska Fabricating 1/2 pint mobile depalletizer
2019 Wild Goose Canning WG5 mobile 5-station filling machine (up to 50 cans per minute)
stainless steel transfer table
Meheen portable labeller

<i>Centrifuge and Bright Beer Cellar</i>
Alfa Laval centrifuge with control panel and mobile cart structure
Newlands YT-10B 1,000 litre capacity yeast tank with scaling system and support stand (YT1)
Newlands YT-10B 1,000 litre capacity yeast tank with scaling system and support stand (YT2)
Newlands BT-100H 11,630 litre capacity stainless steel bright beer tank with support stand (BBT1)
Newlands BT-100H 11,630 litre capacity stainless steel bright beer tank with support stand (BBT2)
Newlands BT-50H 5,710 litre capacity bright beer tank with support stand (BBT3)
<b>MAJOR ASSETS -- PLANT SYSTEMS</b>
<i>Clean-In-Place System (CIP)</i>
Newlands clean-in-place main control station
Newlands stainless steel caustic tank
Newlands stainless steel acid tank
Newlands 76-0374 control panel
associated piping and connections
<i>Portable Clean-In-Place System (CIP)</i>
Alfa Laval 5 hp. transfer pump with VFD
2 Newlands 65USG capacity mobile stainless steel tanks
<i>Compressed Air System</i>
2017 Atlas Copco ZT37VSDff compressor
all air lines and filters throughout plant
<i>Plant Automation Systems</i>
all software and related computers and peripherals
all product fluid transfer systems including pumps, lines, sensors, shut-offs, connectors, parts and components
<i>Plant Refrigeration System</i>
Pro Chiller NAC035VJRH CA Series chiller
all associated piping, lines and monitoring
Newlands 76-0373 temperature control panel
<i>Plant Boiler System</i>
2017 Bryan Boilers RV700-S-15-FDA natural gas boiler

Fulton distribution system and tank
Sussman ES60 electric boiler (near bottling line dryer)
all associated piping, lines and controls
<i>Leasehold Improvements: (FMV Only)</i>
chain link fencing around chiller and product bins
electrical room improvements and overhead raceways
flooring improvements
lighting and HVAC improvements
<b>MAJOR ASSETS -- OTHER</b>
<i>2016/2017 Fermentation Cellar</i>
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV1)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV2)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV3)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV4)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV5)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV6)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV7)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV8)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV9)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV10)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV11)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV12)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV13)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV14)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand

(FV15)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV16)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV17)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV18)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV19)
Newlands UT-100H 10,000 litre capacity stainless steel fermenting tank with support stand (FV20)
Newlands HM-8 910 litre capacity stainless steel portable mixing kettle
Newlands HT-50H 5,000 litre capacity stainless steel fermenting tank with support stand (FV21)
Newlands HT-50H 5,000 litre capacity stainless steel fermenting tank with support stand (FV22)
Newlands HT-50H 5,000 litre capacity stainless steel fermenting tank with support stand (FV23)
Newlands HT-50H 5,000 litre capacity stainless steel fermenting tank with support stand (FV24)
Newlands HT-50H 5,000 litre capacity stainless steel fermenting tank with support stand (FV25)
Newlands HT-50H 5,000 litre capacity stainless steel fermenting tank with support stand (FV26)
Newlands HT-50H 5,000 litre capacity stainless steel fermenting tank with support stand (FV27)
2 barrel (2 pce.) stainless steel fermenting tank system
2 barrel (2 pce.) stainless steel fermenting tank system
<b><i>Brewhouse Area</i></b>
3 hp. stainless steel transfer pump
3 hp. stainless steel transfer pump
Washguard 3/2 hp. stainless steel transfer pump
Wilden stainless steel diaphragm pump with dolley and connection
2017 Ertel/Alsop 16PY4VDOST4 stainless steel filter
Washguard 3/2 hp. stainless steel transfer pump
3 hp. stainless steel transfer pump
3 hp. stainless steel transfer pump
2015 SPX 2065LV transfer pump
Sabco Brew Magic mini brewer on rolling cart
<b><i>Boiling/Canning/Packaging Areas</i></b>
2017 KHS Innokeg Keg-Boy C2 keg filler with cleaning station, Schmalz Jumbo Ergo lifter/handler, Gorbel 250 lb. capacity gantry and Sera Dosieranlage cleaning station
Ska Fabricating Snodgrass depalletizer
custom-built hi-cone station
Domino Ax350i inkjet coding printer with Touch Pad controls and stand

Domino Ax350i inkjet coding printer with Touch Pad controls and stand
<i>Forklifts and Warehouse Equipment</i>
Toyota 18-8FGU18 2,750 lb. capacity propane forklift with side-shift and 1,206 hrs
Presto.PPS2200 2,200 lb. capacity electric lift with 3,788 hrs.
Raymond 8210 4,500 lb. capacity electric pallet jack
2016 Lantech Q300XT automatic pallet wrapper
Rice Lake pallet scale with read-out
2 pallet jacks, fork extensions, dock plate and dock board (outside)
Vestil A-Lift-S-HP 400 lb. capacity manual lift
mobile forklift man cage
<i>Lab Areas</i>
Newlands YPS-240S stainless steel mobile yeast propagation station
Newlands YPS-240S stainless steel mobile yeast propagation station
12 ft. x 18 ft. walk-in cooler with 9 shelf units
Rotofix 32A benchtop centrifuge
OneVision can seal testing system including tools in shop area, Anton Paar Alex 500 alcohol and extract meter and misc. alcohol related test equipment
Edgegard fume hood
Yamato IC63 incubator
2016 Tuttnauer 2540E-B/L autoclave
Poly Science VB10 circulating bath, Ohaus Scout scale and stirrer
LW MI5 microscope and accessories
Hanna Edge pH tester, ISS MBM 250 density tester and Beckman DU520 general purpose UV/Vis spectrophotometer
<i>Parts</i>
assorted machine parts, hose, fittings and repair parts
<b>SECONDARY ASSETS</b>
<i>Brewhouse Area</i>
extension ladder
shop vac, pressure washer, mop, plastic rack, 3 folding tables and whiteboard
stainless steel double washdown sink and hand sink
Burrell wrist-action shaker and AND scale
folding table, barrier guards, parts bins, hose reel, 2 shelf units, fans and Justrite spill pallet
2-tiered cart, rolling bin, garbage bins, stereos, fans, spill platforms, cleaning misc. and 2 hose reels



<i>Multi/Bulk Handling Areas</i>
3 forklift propane tanks -- in fenced area
disassembled shelving by loading door
4-bay run of shelving
(2) 2-bay runs of shelving
bay of shelving
2-bay run of pallet racking
fan, shop vac, ladder, step, fire extinguisher and cleaning misc.
<i>Bottling/Canning/Packaging Areas</i>
rolling ladder, hose reel, garbage bins, 2 tables, small scale, 5 ft. section of rollcase conveyor, water cooler and various steps
banding cart, computer cart with printer, box scale and tool cabinet with tools
2 bays of shelving, assorted totes, 2 file cabinets, 2 dollies, spill trays, coolers, 3 folding tables, 3 tents and printer
<i>Lab/Storage/Shop Areas</i>
stereo, stool, dolly, 2 tables, whiteboard and 2 scales
assorted pylons, (4) 2 dr. storage cabinets, step ladder, bike rack, fire extinguishers and 2 shelf units
3-tiered cart, small compressor, stainless steel fridge, rack, desk, chair, fan, 2 dr. cabinet and lab supplies
table, 2 dr. flame proof cabinet, chair, fire extinguisher and misc. supplies
contents in repair shop area including 22 sections of various shelving, 2 dr. storage cabinet, small drill press, shop vac, cleaning misc., first aid kits and extension cords
BBQ, custom table, disassembled shelving, keg dispenser and fire extinguishers
timeclock, safety vests, steel-toed slip-ons, old Clamco heat tunnel and keg dispenser in hallway
contents in storage room including Husky tool cabinet with tools, 6 bays of shelving, fall protection, table, step ladder, shovels, totes, parts bins and supplies
<i>Offices</i>
reception and open office area including wood table, iMac computer, computer with printer, audio equipment, 4 client chairs, office chair, Canon multifunction machine, rolling pedestal, bar table, 8 stools, 3 sofas, coffee table, rug and plants
exec. office with 2 desks, sofa, television, computer, 4 client chairs, table, 3 office chairs, credenza and printer
meeting room table, Toshiba television, 5 chairs and credenza
office with 4 desks, 4 chairs, glass table, 3 computers, chrome stand, file cabinet, printer, scanner and spare monitor

boardroom with table, 10 chairs, Toshiba television and credenza
office with laptop, iMac computer, 3 tables, 3 chairs, 2 dr. file cabinet and plant
office -- locked/no access (no values provided)
contents in lunchroom including stainless steel fridge, 15 dr. lockers, step ladder, table, 6 chairs, sofa, 2 stands, microwave and lunchroom misc.
contents in main office area including 10 desks, 11 chairs, credenza, bookcase, 2 tables, bar fridge, pedestal, lamp, 2 heaters and misc. office supplies
4 laptops, 6 monitors, Canon MF733 multifunction and HP printer
contents in first aid office and contents of storage room including coolers, promotional merchandise and pop-up tents

**Schedule B – List of Contracts**

1. the sublease for the property with civic address 1575 Vernon Drive, Vancouver, BC, V6A 3P8, between Freshtap Holdings Inc. and the Company (under its former name, Factory Brewing Ltd.) dated May 24, 2016, as amended on May 25, 2016
2. all employment agreements between the Company and its employees (excluding any stock option agreements between the Company and its employees)
3. agreement with Valhalla Brewing & Beverage Co. LLC dated April 6, 2017
4. garbage removal contract with Revolution Resource Recovery Inc.
5. agreement with ContainerWorld Forwarding Services Inc. dated September 19, 2019
6. preventative maintenance agreement with Black & McDonald Limited dated January 14, 2020
7. gas supply and service agreement with Praxair Canada Inc. dated February 17, 2017
8. standard malt contract with Canada Malting Co. Limited dated September 30, 2019
9. agreement with Kybe Electrical Contracting Ltd. dated December 16, 2019
10. equipment lease agreement with Raymond Johnston Equipment dated January 3, 2019

For greater certainty, the contracts to be assigned to the Purchaser do not include the following contracts:

- A. agreement with Doans Craft Brewing Company Inc. dated May 25, 2018
- B. agreement with Red Bird Brewing Company Inc. dated April 23, 2020
- C. agreement with Shang Bev. Co. dated March 23, 2020
- D. kegshare agreements with FreshTap Logistics Inc.

**Schedule C – List of Trademarks**

1. Canadian trademark registration number TMA968207 for “Postmark”
2. Canadian trademark application number 2028540 for “Spectrum”
3. Canadian trademark application number 2015254 for “Spectrum Beer Company” and design
4. Canadian trademark application number 2015256 for “Haus Lager” and design
5. Canadian trademark application number 2015260 for “Phantom Beer Company” and design

**Schedule D – List of Licenses**

1. Distillery license #307446 expiring March 31, 2021
2. Brewery license #307445 expiring March 31, 2021
3. Winery license #307826 expiring March 31, 2021

**Schedule E – Deposits**

**Lease deposit to FreshTap Holdings Inc. - \$58,194.72**

**Gas deposit to Fortis BC - \$3,723.01**

**Electricity deposit to BC Hydro - \$7,434.00**

**ContainerWorld Forwarding Services Inc. deposit - \$24,000**

**Schedule F – Estimate of Purchase Price****Computation of estimated Purchase Price:****Item (a): Estimated Lending Agreements Debt**

Senior debt - principal	\$5,000,000
Senior debt - approximate interest to August 2020	\$211,541
Line of credit - principal	\$1,350,000
Line of credit - approximate interest to August 2020	\$44,258
<b>TOTAL</b>	<b>\$6,605,799</b>

**Item (b): Estimated Priority Payables**

Professional Fees	\$30,000
<b>TOTAL</b>	<b>\$30,000</b>

**Total of items (a) and (b): \$6,635,799**

Court File No.B-200208  
Estate No. 11-2638450  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH  
COLUMBIA  
IN THE BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF TBA BEVERAGE INC.**

**ORDER MADE AFTER APPLICATION**

File No.: 231724-0000  
Initials: JDW/cc

**WATSON GOEPEL LLP**  
Lawyers  
Suite 1200 - 1075 West Georgia Street  
VANCOUVER, B.C.  
V6E 3C9

Tel: (604) 688 1301  
Fax: (604) 688 8193