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COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

DOCUMENT

**SECOND REPORT OF DELOITTE  
RESTRUCTURING INC. AS THE COURT-  
APPOINTED RECEIVER AND MANAGER OF  
SWIMCO AQUATICS SUPPLIES LTD.,  
SWIMCO PARTNERSHIP, BLUE CRUSH  
BIKINI & BOARDSHORT COMPANY LTD.,  
LORI BACON HOLDINGS LTD. AND STEVE  
FORSETH HOLDINGS LTD.**

**DATED FEBRUARY 16, 2021**

**PREPARED BY DELOITTE RESTRUCTURING  
INC.**

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY FILING THIS  
DOCUMENT

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## Introduction and Background

### Background

1. Swimco Aquatics Supplies Ltd. (“**SAS**”) and Swimco Partnership (“**SP**”) (collectively, “**Swimco Group**” or the “**Companies**”) are private retail companies that sold swimwear and accessories across Canada through in-store retail locations and online ecommerce.
2. Blue Crush Bikini & Boardshort Ltd. (“**Blue Crush**”), Lori Bacon Holdings Ltd. (“**LBH**”), and Steve Forseth Holdings Ltd. (“**SFH**”) (collectively referred to as “**Holdcos**”) are corporate partners of SP. Each of the Holdcos hold one unit in SP and 33.3% of the voting shares in SAS.
3. D. Bacon Holdings Ltd. (“**DBH**”), Lori Jo Holdings Ltd. (“**LJH**”) and Steve Forseth Enterprises Ltd. (“**SFE**”) (together, the “**Related Parties**”), each respectively own 100% of voting preferred shares of Blue Crush, LBH and SFH, respectively.
4. The Companies’ head office was in a warehouse located at 6403 Burbank Road S.E., Calgary, Alberta (the “**Building**”). SP’s primary assets were inventory and the Building (collectively, “**SP Property**”). The inventory was in the possession of SAS for sale in the various retail store outlets. All retail store leases were held by SAS. SAS’s primary assets were fixtures and leasehold improvements located in the retail stores and the Swimco Group intellectual property (collectively, “**SAS Property**”, and together with the SP Property, the “**Property**”). Although SAS and SP were established for the operations of the Swimco Group, the Companies operated as a single, integrated economic unit.
5. As a result of the downturn in the retail market due to the COVID-19 pandemic and related emergency health measures that were imposed by the government of Canada, the Swimco Group experienced significant cash flow difficulties and the Swimco Group was unable to meet its obligations as they became due.

### Proposal and deemed assignment into bankruptcy

6. On June 11, 2020, SAS and SP each 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* (the “**BIA**”). Deloitte Restructuring Inc. (“**Deloitte**”) consented to act as proposal trustee under the NOIs.
7. On July 9, 2020 the Swimco Group was granted a 45 day extension to the stay of proceedings pursuant to section 50.4(9) of the BIA, extending the Initial Stay Period from July 11, 2020 up to and including August 24, 2020 (the “**First Extension Period**”) and the consolidation of the NOI proceedings of SAS and SP for procedural purposes only.
8. On August 24, 2020, the Swimco Group was granted a second 45 day extension to the stay of proceedings pursuant to section 50.4(9) of the BIA (the “**Second Extension Order**”), extending the First Extension Period from August 24, 2020 up to and including October 9, 2020 (the “**Second Extension Period**”).
9. The Swimco Group was unable to make a viable proposal to its creditors before the expiration of the Second Extension Period and accordingly was thereupon deemed to have made an assignment into bankruptcy effective October 10, 2020 (“**Date of Bankruptcy**”). Deloitte was appointed as trustee in bankruptcy of each of the Swimco Group’s estates (in such capacity, the “**Trustee**”).
10. Immediately following the deemed assignment into bankruptcy, the Trustee, with the assistance of former employees and management, took steps to take possession and control of the Property. The Companies ceased in-store retail operations on the Date of Bankruptcy and the employees were also terminated effective on the Date of Bankruptcy. The Trustee continued ecommerce sales.

11. Subsequent to the deemed assignment into bankruptcy for the Swimco Group, the Holdcos were assigned into bankruptcy on November 16, 2020.

### Receivership application

12. The Companies' primary secured lender was Royal Bank of Canada ("**RBC**"), which was owed approximately \$3.02 million by the Companies and the Holdcos (collectively, the "**Debtors**") as of October 30, 2020.
13. On May 27, 2020, RBC issued a 10 day notice of intention to enforce its security pursuant to section 244 of the BIA. To permit the Swimco Group to restructure, RBC agreed to forbear from enforcing its rights and remedies during the proposal proceeding.
14. Subsequent to the Swimco Group's deemed assignment into bankruptcy, RBC made an application to the Court of Queen's Bench of Alberta (the "**Court**") seeking the appointment of Deloitte as the receiver and manager (in such capacity, the "**Receiver**") over the assets, undertakings and properties of the Debtors (collectively, the "**Debtors' Property**"). The application was made due to there being insufficient funds necessary to administer Swimco Group's estate through the bankruptcy proceedings and RBC was not prepared to extend any further credit, other than as receiver's borrowings secured by a corresponding charge.
15. On November 10, 2020, the Court issued an order appointing Deloitte as the Receiver over all of the Debtors' Property (the "**Receivership Order**").
16. On December 7, 2020, the Receiver filed its first report with the Court (the "**First Report**") which described, among other things, the Companies' primary assets and liabilities, the activities within the bankruptcy proceedings, the Receiver's activities to date, the asset realization process and the Receiver's interim statement of receipts and disbursements for the period from October 10, 2020 to November 30, 2020.
17. The Receiver concurrently filed a confidential supplement report to the First Report (the "**Confidential Supplement**"), which detailed the sales process and the terms and conditions of the proposed en bloc offer from DBH, who is a related party of the Swimco Group. The en bloc offer included the purchase of all of the Property, including inventory, the Building, furniture, fixtures, intellectual property and other ancillary items (the "**En Bloc Offer**").
18. Subsequent to filing the Confidential Supplement, the Receiver submitted to the Court a supplemental report to the Confidential Supplement (the "**Supplemental Report**") on December 14, 2020, which describes the results of the sales process and the Receiver's recommendation to accept the En Bloc Offer.
19. A sale approval and vesting order for the En Bloc Offer (the "**Sale Vesting Order**") as well as an order to seal and approve the interim distribution to RBC (the "**Sealing and Interim Distribution Order**") was issued by the Court on December 14, 2020. A copy of the Sale Vesting Order and the Sealing and Interim Distribution Order is attached as **Appendix "A"** and **Appendix "B"**, respectively. The En Bloc Offer was subsequently closed. A copy of the Receiver's Certificate evidencing closing of the transaction is attached as **Appendix "C"**.
20. The Receivership Order, the First Report, together with related Court documents and the notices sent to the creditors of the Debtors, were posted on the Deloitte's website: [www.insolvencies.deloitte.ca/en-ca/swimco](http://www.insolvencies.deloitte.ca/en-ca/swimco).



## Purpose of the Second Report

21. This is the Receiver's second report (the "**Second Report**"), the purpose of which is to:

- a) Provide an update on the receiver's activities since the First Report;
- b) Respectfully recommend this Honourable Court make an order to:
  - i. Approve the reported actions of the Receiver to date in respect of administering these proceedings;
  - ii. Approve the proposed distribution to DBH and other priority claims;
  - iii. Approve the final statement of receipts and disbursements for period October 10, 2020 to discharge;
  - iv. Approve the fees and disbursement of the Receiver and the Receiver's legal counsel from November 10, 2020 to Receiver's date of discharge;
  - v. Discharge Deloitte as Receiver effective upon the filing of the Receiver's discharge certificate, certifying that all remaining activities have been completed to the satisfaction of the Receiver; and
- c) Provide such further and other relief that the Court considers just and warranted in the circumstances.

## Terms of reference

22. In preparing the Second Report, the Receiver has relied upon, unaudited financial information prepared by the Debtors' management ("**Management**"), the Debtors' books and records, and discussions with Management. The Receiver 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 Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the information. The Receiver may refine or alter its observations as further information is obtained or brought to its attention after the date of the Second Report.
23. All dollar amounts in the Second Report are in Canadian dollars, unless otherwise indicated.
24. Capitalized terms used in this Second Report but not defined herein are as defined in the Receivership Order, the First Report, the Confidential Supplement, and the Supplemental Report.

## Receiver's activities

25. Since the First Report, the Receiver has undertaken and performed the following activities:

- a) Prepared and mailed out T4s and Records of Employment for the former employees of the Debtors;
- b) Attempted to coordinate with the Canada Revenue Agency ("**CRA**") a trust audit of the Debtors' books and records;
- c) Closed the En Bloc Offer with DBH, the purchaser, on December 17, 2020;
- d) Transferred certain service provider accounts to DBH or closed the accounts subsequent to the completion of the En Bloc Offer;
- e) Closed the inventory buy back sale with Smash and Tess Dreamwear Inc. on January 8, 2021 (the "**ST Inventory Buy Back Offer**");
- f) Cancelled insurance coverage upon the completion of the En Bloc Offer and the ST Inventory Buy Back Offer;
- g) Prepared and mailed out approximately 234 applications for the *Wage Earner Protection Program* ("**WEPP**") with Service Canada;
- h) Responded to former employee's various inquiries with the WEPP applications;
- i) Followed up with former staff for any outstanding applications with Service Canada;
- j) Applied for the Canada Emergency Wage Subsidy ("**CEWS**") for the period prior to the Date of Bankruptcy;
- k) Followed up with the CRA on numerous occasions on the Company's CEWS application;
- l) Updated the Receiver's website from time to time with relevant documents relating to the receivership proceedings;
- m) Administered receivership estate banking and related transactions and reconciliations;
- n) Reviewed receipts and disbursements of the receivership estate and arranged for payment of various invoices;
- o) Drafted, reviewed and finalized the Second Report;
- p) Corresponded with counsel on various legal matters relating to the receivership;
- q) Corresponded with creditors, former key employees and other stakeholders on an as needed basis; and
- r) Addressed additional matters as they arose from time to time.

## CRA Trust Audit

26. The Receiver contacted the CRA requesting a trust audit in October 2020.
27. Unfortunately, the CRA has suspended all trust audits until further notice as a result of the COVID-19 pandemic.
28. From the Date of Bankruptcy to the date of the Second Report, the Receiver regularly contacted the CRA for an update on trust audits. The CRA advised that all trust audits were still suspended.
29. On January 18, 2021, in anticipation of the Receiver seeking its discharge, the Receiver sent a letter to the CRA notifying them of the following (the "**CRA Letter**"):
  - a) The Receiver's anticipated application for discharge and that the CRA will no longer be able to conduct its trust audit on the estates subsequent to the Receiver's discharge; and
  - b) The Receiver's recommendation that CRA conduct its trust audit immediately or advise the Receiver that it will no longer be conducting a trust audit.
30. The Receiver has followed up on numerous occasions with the CRA subsequent to the CRA Letter; however, no response was received from the CRA.
31. Based on the Receiver's review of the books and records of the Swimco Group, the Receiver anticipates that a total of approximately \$102,600 will be subject to the CRA's statutory deemed trust, which amount is comprised of the following:
  - a) Unremitted source deductions – pre-bankruptcy SAS - \$79,800; and
  - b) Unremitted source deductions – pre-bankruptcy SP - \$22,800.
32. As the Receiver is seeking its discharge in advance of the CRA having conducted its trust audit, the Receiver is proposing to holdback funds in the amount of \$127,600 (the "**CRA Holdback Amount**") to satisfy the potential CRA priority amounts. The CRA Holdback Amount is comprised of the amount of the anticipated pre-filing source deductions (i.e. \$102,600) plus an additional amount of \$25,000 in the event the books and records of the Swimco Group are not accurate. The Receiver believes that \$25,000 is sufficient to address any issues in the event that the books and records are not accurate.

## Distribution to DBH and Priority Amounts

33. The Receiver obtained a security opinion from its legal counsel with respect to the security documentation of RBC and the Related Parties (the "**Security Opinion**") and, subject to the customary qualifications and assumptions contained therein, the Security Opinion opines the following:
- a) RBC holds a valid and enforceable security interest in and all of the present and after acquired personal property of the Swimco Group, which security interest has been properly perfected in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario;
  - b) The collateral mortgage held by RBC in the principal amount of \$2.14 million and registered against title of the Building creates a first priority financial charge in favour of RBC with respect to the Building;
  - c) Subject to qualifications and assumptions relating to sections 137 and 140.1 of the BIA, the Related Parties hold a valid and enforceable security interest in and to all of the present and after acquired personal property of SAS, which security interest has been properly perfected in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario;
  - d) Subject to qualifications and assumptions relating to section 137 and 140.1 of the BIA, the Related Parties hold a valid and enforceable security interest in and to all of the present and after acquired personal property of SP, which security interest has been properly perfected in Alberta; and
  - e) The Related Party security was registered subsequent in time to RBC's security.
34. RBC was the senior secured creditor to the Debtors and was owed approximately \$3.02 million as at October 30, 2020 (the "**RBC Indebtedness**").
35. As part of the Sealing and Interim Distribution Order, the Receiver distributed funds to settle the RBC Indebtedness in full.

### Distributions Pursuant to the En Bloc Offer

36. Terms not otherwise defined in paragraphs 37 to 39 shall have the meaning ascribed to them in the En Bloc Offer, a copy of which is appended as **Appendix "D"** to the Second Report.
37. As discussed in more detail above and in the First Report, a sale approval and vesting order for the En Bloc Offer was granted by this Honourable Court on December 15, 2020 and the En Bloc Offer has subsequently closed.
38. Pursuant to the En Bloc Offer, DBH purchased all of the SAS Assets and the SP Assets, which assets included without limitation all inventory, accounts receivable and the Swimco Group Cash (i.e. the cash held in the RBC accounts of SP and SAS). The En Bloc Offer also provided that \$650,000 of the Swimco Group Cash would be held back and used by the Receiver to satisfy the Bankruptcy Costs, the Receivership Costs, the SAS CRA Debt, the SP CRA Debt and any Post-Closing CRA Debt (collectively, the "**Priority Amounts**").

### Priority Amounts

39. The following creditors may have statutory priorities that constitute Priority Amounts, which are payable in priority to amounts payable to DBH. These claims are summarized below:

<b>Priority Amounts</b>	
<b>Creditor</b>	<b>Amount</b>
Unremitted source deductions - pre-bankruptcy SAS	79,800
Unremitted source deductions - pre-bankruptcy SP	22,800
Service Canada - WEPPA	78,800
CRA Holdback Amount	25,000
<b>Total Priority Amounts</b>	<b>206,400</b>

### Proposed Distributions

40. Based on the foregoing, the Receiver is proposing to make the following payments/distributions (the **"Proposed Distribution"**):

- a) a distribution to Service Canada in the amount of \$78,800 for prior WEPPA amounts;
- b) a distribution to CRA in the tentative amount of \$102,600 for statutory deemed trust claims. The distribution to CRA will be secured by the CRA Holdback Amount, which amount shall be held by the Receiver until such time as CRA completes its trust audits;
- c) payment of the Receivership Professional Fees (defined later in the Second Report); and
- d) a distribution to DBH of all residual funds held in the estate of the Swimco Group following the payments / distributions set out in paragraphs (a) - (c) above, which amount is currently estimated to be approximately \$400,000.

## Final statement of receipts and disbursements

41. The Receiver's disbursements primarily relate to the operations, maintenance and preservation of the Debtors' Property.
42. The final statement of receipts and disbursements reflects the receivership administration for the period October 10, 2020 to January 31, 2021 and a pro-forma statement of receipts and disbursements from February 1, 2021 to the Receiver's discharge (the "Final SRD"). A detailed Final SRD is attached as **Appendix "E"**. The Final SRD is summarized below:

### Final SRD from Oct 10, 2020 to discharge

	Oct 10, 2020 to Jan 31, 2021	Pro-forma Feb 1, 2021 to discharge	Total
<b>Receipts</b>			
Proceeds from the En Bloc Offer	2,388,910	-	2,388,910
Bank Drafts	1,243,040	1,760	1,244,799
E-commerce sales	360,524	-	360,524
Sales Tax Refund	-	218,363	218,363
Sales collected on behalf of D. Bacon Holdings	97,013	-	97,013
CEWS Claim	-	75,108	75,108
Moneris Hold Back	-	50,000	50,000
Sales Tax Collected	36,251	-	36,251
Other Receipts	26,029	-	26,029
ST Inventory Buy Back Offer	24,307	-	24,307
Mannequin Sales	7,397	-	7,397
<b>Total receipts</b>	<b>4,183,470</b>	<b>345,231</b>	<b>4,528,701</b>
<b>Disbursements</b>			
Distribution to RBC	3,038,910	-	3,038,910
Contractor Fees & Expenses	174,420	-	174,420
Professional fees - Bankruptcy & Receivership - Deloitte <sup>1</sup>	-	164,226	164,226
Professional fees - Bankruptcy & Receivership - Legal <sup>1</sup>	-	136,216	136,216
Operating expenses	98,041	27,515	125,556
Deemed Trust - Pre-filing Source Deductions	-	102,479	102,479
Sales collected on behalf of D. Bacon Holdings	97,012	-	97,012
WEPP Employee Priority Payment	-	78,775	78,775
Professional fees - Division I Proposal - Deloitte	51,101	-	51,101
Sales Tax Remittances	34,060	-	34,060
Sales tax on Professional Fees	4,307	22,807	27,114
Professional fees - Division I Proposal - Cassels	25,416	-	25,416
Pre-bankruptcy sales taxes	-	12,447	12,447
Professional fees - Division I Proposal - Field Law	9,606	-	9,606
Moneris Fees	9,242	-	9,242
Insurance	7,456	-	7,456
Sales Tax Paid	5,784	1,376	7,159
Filing Fees	1,817	-	1,817
Newspaper Ad	768	-	768
CRA Holdback Amount	-	25,000	25,000
<b>Total disbursements</b>	<b>3,557,940</b>	<b>570,841</b>	<b>4,128,780</b>
<b>Excess receipts over disbursements</b>	<b>625,530</b>	<b>(225,611)</b>	<b>399,921</b>
		<b>Amount for Proposed Distribution</b>	<b>(399,921)</b>
		<b>Final receipts over disbursements</b>	<b>-</b>
Note			
1 - Professional fees are subject to Court's approval.			

## Fees and disbursements of the Receiver and legal counsel

43. The Receiver’s professional fees and its legal counsel’s fees are based on hours spent at rates established by each professional based on qualifications and experience.
44. The Receiver’s professional fees and disbursements invoiced for the period October 1, 2020 to December 31, 2020 total approximately \$129,700 (excluding sales tax). The Receiver’s legal counsel’s fees and disbursements invoiced for the period October 1, 2020 to December 31, 2020 total approximately \$112,300 (excluding sales tax). Together, the total actual fees and disbursements is approximately \$242,000 (excluding sales tax) (the “**Total Fees to Date**”).
45. The Receiver estimates additional legal fees of approximately \$6,000 to complete the administration. The total estimate to discharge is approximately \$6,000 (the “**Total Discharge Estimate**”).
46. Pitblado Law was engaged by the Receiver’s legal counsel to assist with the Manitoba portion of the security review.
47. Summarized below are the Total Fees to Date plus the Total Discharge Estimate (together, the “**Receivership Professional Fees**”):

### Summary of Receivership Professional Fees

	Service Period		Fees and Disb.	Sales tax	Total
	Start	End			
<b>Deloitte Restructuring Inc.</b>					
	Oct 01 2020	Dec 31 2020	129,636	6,482	136,118
<b>Subtotal</b>			<b>129,636</b>	<b>6,482</b>	<b>136,118</b>
<b>Cassels Brock &amp; Blackwell LLP</b>					
	Oct 01 2020	Oct 31 2020	56,628	6,760	63,388
	Nov 01 2020	Nov 30 2020	20,831	2,485	23,316
	Dec 01 2020	Dec 31 2020	25,080	3,000	28,080
Estimate to discharge			6,000	300	6,300
<b>Subtotal</b>			<b>108,539</b>	<b>12,545</b>	<b>121,084</b>
<b>Pitblado LLP</b>					
	Oct 14 2020	Nov 13 2020	9,677	1,151	10,828
<b>Subtotal</b>			<b>9,677</b>	<b>1,151</b>	<b>10,828</b>
<b>Total Fees to Date</b>			<b>241,852</b>	<b>19,878</b>	<b>261,730</b>
<b>Total Discharge Estimate</b>			<b>6,000</b>	<b>300</b>	<b>6,300</b>
<b>Total Receivership Professional Fees</b>			<b>247,852</b>	<b>20,178</b>	<b>268,030</b>

48. Copies of the invoices will be made available to this Honourable Court upon request.
49. As documented in the First Report and the Second Report, the Receiver has had to incur considerable time and cost to perform primarily the following:
- Coordinate across various provinces to take possession of the Property with the assistance of former Swimco Group staff as contractors;
  - Coordinate with the contractors to move all the inventory located at the retail stores across Canada to a centralized location;
  - Maintain and facilitate online ecommerce sales;
  - Facilitate approximately 234 WEPP applications with Service Canada;
  - Conduct a sales process to solicit offers from non-related parties; and



- f) Prepare reports to the Court, along with associated application materials, seeking approval of the En Bloc Offer.
50. The Receiver is of view that, in light of nature, the extent and value of the assets, the degree of assistance from former key staff and Management of the Swimco Group and the responsibilities undertaken by the Receiver, the Professional Fees are fair and reasonable.
51. Upon the distribution of available funds to DBH, the administration of the Debtors' estate will be substantially completed, subject to a few additional administrative items.

## Conclusion and recommendation

52. Based on the foregoing, the Receiver respectfully requests that this Honourable Court:

- a) Approve the reported actions of the Receiver as applicable to date in respect of administering these proceedings;
- b) Approve the Proposed Distribution;
- c) Approve the Final SRD;
- d) Approve the Receivership Professional Fees;
- e) Discharge Deloitte as Receiver effective upon the filing of the Receiver's discharge certificate, certifying that all remaining activities have been completed to the satisfaction of the Receiver; and
- f) Provide such further and other relief that the Court considers just and warranted in the circumstances.

\* \* \*

All of which is respectfully submitted at Calgary, Alberta this 16<sup>th</sup> day of February 2021.

**DELOITTE RESTRUCTURING INC.,**

solely in its capacity as Court-appointed Receiver and Manager of  
Swimco Aquatic Supplies Ltd., Swimco Partnership,  
Blue Crush Bikini & Boardshort Company Ltd.,  
Lori Bacon Holdings Ltd., and Steve Forseth Holdings Ltd.,  
and not in its personal or corporate capacity

Per:



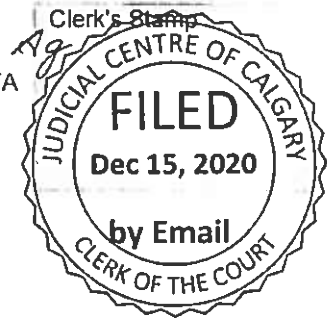
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Ryan Adlington, CPA, CA, CIRP, LIT  
Senior Vice-President

Appendix "A"

Approval and vesting order filed December  
15, 2020

COURT FILE NUMBER 2001-12759  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF ROYAL BANK OF CANADA  
DEFENDANT SWIMCO AQUATIC SUPPLIES LTD.,  
SWIMCO PARTNERSHIP, BLUE CRUSH  
BIKINI & BOARDSHORT COMPANY LTD.,  
STEVE FORSETH HOLDINGS LTD., STEVE  
FORSETH ENTERPRISES LTD., AND LORI  
JO HOLDINGS LTD.



102280

DOCUMENT APPROVAL AND VESTING ORDER  
(Sale by Receiver)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Cassels Brock & Blackwell LLP  
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Telephone 403-351-2920  
Facsimile 403-648-1151

File No. 49073-7

Attention: Jeffrey Oliver/Danielle Marechal

I hereby certify this to be a true copy of  
the original Order  
Dated this 15 day of Dec, 2020  
A. Coates  
for Clerk of the Court

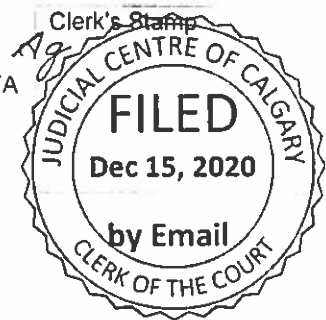
DATE ON WHICH ORDER WAS PRONOUNCED: Monday, December 14, 2020

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary Courts Centre, 601 – 5 Street SW, Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice A. D. Macleod

UPON THE APPLICATION by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver and manager (the "Receiver") of the undertakings, property and assets of Swimco Aquatic Supplies Ltd., Swimco Partnership, Blue Crush Bikini & Boardshorts Ltd., Lori Bacon Holdings Ltd. and Steve Forseth Holdings Ltd. (collectively the "Debtors") for an order approving the sale transaction (the "Transaction") contemplated by an offer to purchase and agreement of purchase and sale (the "Sale Agreement") between the Receiver and D. Bacon Holdings Ltd. (the "Purchaser") dated December 7, 2020 and appended in redacted form to the First Report of the Receiver dated December 7, 2020 (the "First Report") as Appendix "C", and vesting in the Purchaser (or its nominee) the Debtors' right, title and interest in and to the Property, as described and defined in the Sale Agreement (the "Purchased Assets"); AND UPON HAVING READ the Receivership Order dated November 10, 2020 (the "Receivership Order"), the Report, the First Confidential Report of the Receiver, dated December 7,

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BIKINI & BOARDSHORT COMPANY LTD.,  
STEVE FORSETH HOLDINGS LTD., STEVE  
FORSETH ENTERPRISES LTD., AND LORI  
JO HOLDINGS LTD.



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DOCUMENT APPROVAL AND VESTING ORDER  
(Sale by Receiver)

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Suite 3810, Bankers Hall West  
888 3<sup>rd</sup> Street SW  
Calgary, Alberta, T2P 5C5

Telephone 403-351-2920  
Facsimile 403-648-1151

File No. 49073-7

Attention: Jeffrey Oliver/Danielle Marechal

DATE ON WHICH ORDER WAS PRONOUNCED: Monday, December 14, 2020

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary Courts Centre, 601 – 5 Street SW, Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice A. D. Macleod

UPON THE APPLICATION by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver and manager (the "Receiver") of the undertakings, property and assets of Swimco Aquatic Supplies Ltd., Swimco Partnership, Blue Crush Bikini & Boardshorts Ltd., Lori Bacon Holdings Ltd. and Steve Forseth Holdings Ltd. (collectively the "Debtors") for an order approving the sale transaction (the "Transaction") contemplated by an offer to purchase and agreement of purchase and sale (the "Sale Agreement") between the Receiver and D. Bacon Holdings Ltd. (the "Purchaser") dated December 7, 2020 and appended in redacted form to the First Report of the Receiver dated December 7, 2020 (the "First Report") as Appendix "C", and vesting in the Purchaser (or its nominee) the Debtors' right, title and interest in and to the Property, as described and defined in the Sale Agreement (the "Purchased Assets"); AND UPON HAVING READ the Receivership Order dated November 10, 2020 (the "Receivership Order"), the Report, the First Confidential Report of the Receiver, dated December 7,

2020 (the "Confidential Report"), the Supplement to the Confidential Report dated December 14, 2020 and the Affidavit of Service; **AND UPON HEARING** the submissions of counsel for the Receiver, and counsel for all other interested parties;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

**APPROVAL OF TRANSACTION**

2. The Transaction is hereby approved and execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for completion of the Transaction and conveyance of the Purchased Assets to the Purchaser (or its nominee).

**VESTING OF PROPERTY**

3. Upon delivery of a Receiver's certificate to the Purchaser (or its nominee) substantially in the form set out in Schedule "A" hereto (the "Receiver's Closing Certificate"), all of the Debtors' right, title and interest in and to the Purchased Assets shall vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, encumbrances, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise whatsoever, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "Claims") including, without limiting the generality of the foregoing:
  - (a) any encumbrances or charges created by the Receivership Order;
  - (b) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system;
  - (c) any liens or claims of lien under the *Builders' Lien Act* (Alberta); and
  - (d) those Claims listed in Schedule "B" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, caveats, interests, easements, and restrictive covenants listed in Schedule "C" (collectively, "Permitted Encumbrances")),

and for greater certainty, this Court orders that all Claims including Encumbrances other than Permitted Encumbrances, affecting or relating to the Purchased Assets are hereby expunged, discharged and terminated as against the Purchased Assets

4. Upon delivery of the Receiver's Closing Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "Governmental Authorities") are hereby authorized, requested and directed to accept delivery of such Receiver's Closing Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser or its nominee clear title to the Purchased Assets subject only to Permitted Encumbrances. Without limiting the foregoing:
- (a) the Registrar of Land Titles ("Land Titles Registrar") for the lands defined below shall and is hereby authorized, requested and directed to forthwith:
- (i) cancel existing Certificate of Title No. 991 153 510 for those lands and premises municipally described as 6403 Burbank Road SE, Calgary, Alberta, and legally described as:
- PLAN 1310LK  
BLOCK 1  
LOT 6  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
AREA 0.465 HECTARES (1.15 ACRES) MORE OR LESS
- (the "Lands")
- (ii) issue a new Certificate of Title for the Lands in the name of the Purchaser, namely, D. Bacon Holdings Ltd., or any nominee designated in writing by the Purchaser;
- (iii) transfer to the New Certificate of Title the existing instruments listed in Schedule "C", to this Order; and
- (iv) discharge and expunge the Encumbrances listed in Schedule "B" to this Order and discharge and expunge any Claims including Encumbrances (but excluding Permitted Encumbrances) which may have been registered either before or after the date of the Sale Agreement or before or after the date of this Order against the existing Certificate of Title to the Lands;
- (b) the Registrar of the Alberta Personal Property Registry (the "PPR Registrar") shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming

security interests (other than Permitted Encumbrances) in the estate or interest of the Debtors in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods.

5. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms and intent of this Order and the Sale Agreement. Presentment of this Order and the Receiver's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Purchased Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
6. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Receiver of the Sale Agreement.
7. Upon delivery of the Receiver's Closing Certificate together with a certified copy of this Order, this Order shall be immediately registered by the Land Titles Registrar notwithstanding the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c.L-7 and notwithstanding that the appeal period in respect of this Order has not elapsed. The Land Titles Registrar is hereby directed to accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtors and not in its personal or corporate capacity.
8. For the purposes of determining the nature and priority of Claims, net proceeds from sale of the Purchased Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Purchased Assets from and after delivery of the Receiver's Closing Certificate and all Claims including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber or otherwise form a charge, security interest, lien, or other Claim against the Purchased Assets and may be asserted against the net proceeds from sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale. Unless otherwise ordered (whether before or after the date of this Order), the Receiver shall not make any distributions to creditors of net proceeds from sale of the Purchased Assets without further order of this Court, provided however the Receiver may apply any part of such net proceeds to repay any amounts the Receiver has borrowed for which it has issued a Receiver's Certificate pursuant to the Receivership Order.



9. Except as expressly provided for in the Sale Agreement or by section 5 of the Alberta *Employment Standards Code*, the Purchaser (or its nominee) shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against the Debtors.
10. Upon completion of the Transaction, the Debtors and all persons who claim by, through or under the Debtors in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Purchased Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
11. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtors, or any person claiming by, through or against the Debtors.
12. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Receiver.
13. The Receiver is directed to file with the Court a copy of the Receiver's Closing Certificate forthwith after delivery thereof to the Purchaser (or its nominee).
14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) and section 20(e) of the Alberta *Personal Information Protection Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser (or its nominee) all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees. The Purchaser (or its nominee) 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) to which the Debtors were entitled.

#### **MISCELLANEOUS MATTERS**

15. Notwithstanding:
  - (a) the pendency of these proceedings and any declaration of insolvency made herein;
  - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "BIA"), in

respect of the Debtors, and any bankruptcy order issued pursuant to any such applications;

- (c) any assignment in bankruptcy made in respect of the Debtors; and
- (d) the provisions of any federal or provincial statute:

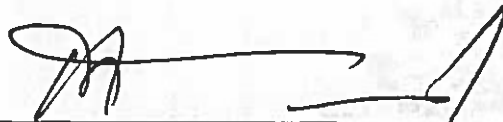
the vesting of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA 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.

- 16. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.
- 17. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Receiver 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 order and to provide such assistance to the Receiver, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
- 18. Service of this Order shall be deemed good and sufficient by:
  - (a) Serving the same on:
    - (i) the persons listed on the service list created in these proceedings;
    - (ii) any other person served with notice of the application for this Order;
    - (iii) any other parties attending or represented at the application for this Order;
    - (iv) the Purchaser or the Purchaser's solicitors; and
  - (b) Posting a copy of this Order on the Receiver's website at:
 

[www.insolvencies.deloitte.ca/en-ca/swimco](http://www.insolvencies.deloitte.ca/en-ca/swimco)

and service on any other person is hereby dispensed with.

19. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

A handwritten signature in black ink, consisting of a stylized initial 'M' followed by a long horizontal line and a sharp upward stroke at the end.

Justice of the Court of Queen's Bench of Alberta

## Schedule "A"

## Form of Receiver's Certificate

COURT FILE NUMBER	2001-12759
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ROYAL BANK OF CANADA
DEFENDANT	SWIMCO AQUATIC SUPPLIES LTD., SWIMCO PARTNERSHIP, BLUE CRUSH BIKINI & BOARDSHORT COMPANY LTD., STEVE FORSETH HOLDINGS LTD., STEVE FORSETH ENTERPRISES LTD., AND LORI JO HOLDINGS LTD.
DOCUMENT	RECEIVER'S CERTIFICATE
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Cassels Brock & Blackwell LLP Suite 3810, Bankers Hall West 888 3rd Street SW Calgary, Alberta, T2P 5C5  Telephone 403-351-2920 Facsimile 403-648-1151  File No. 49073-7  Attention: Jeffrey Oliver/Danielle Marechal

Clerk's Stamp

## RECITALS

- A. Pursuant to an Order of the Honourable Madam Justice B.E.C. Romaine of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "Court") dated November 10, 2020, Deloitte Restructuring Inc. was appointed as the receiver and manager (the "Receiver") of the undertakings, property and assets of Swimco Aquatic Supplies Ltd., Swimco Partnership, Blue Crush Bikini and Boardshorts Ltd., Lori Bacon Holdings Ltd. and Steve Forseth Holdings Ltd. (collectively, the "Debtors").
- B. Pursuant to an Order of the Court dated December 14, 2020, the Court approved the agreement of purchase and sale made as of December 9, 2020 (the "Sale Agreement") between the Receiver and D. Bacon Holdings Ltd. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 9 of the Sale

Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement.

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser (or its nominee); and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at [Time] on [Date].

**Deloitte Restructuring Inc., in its capacity as Receiver and Manager of the undertakings, property and assets of Swimco Aquatic Supplies Ltd., Swimco Partnership, Blue Crush Bikini and Boardshorts Ltd., Lori Bacon Holdings Ltd. and Steve Forseth Holdings Ltd., and not in its personal or corporate capacity.**

**Per;** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

COURT FILE NUMBER 1001 13822  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF(S)/  
DEFENDANT BY BRANDON SMITH (formerly Brandon  
COUNTERCALIM McDonald) and MARIA LAILINA SMITH  
(formerly Maria Lailina Schmidt) and SHE  
APPAREL INC.

DEFENDANT(S)/ PLAINTIFF TRENT TUCHSCHERER  
BY COUNTERCLAIM

DOCUMENT NOTICE OF CHANGE OF  
REPRESENTATION

ADDRESS FOR SERVICE AND Peterson & Purvis LLP  
537 – 7<sup>th</sup> Street South  
CONTACT INFORMATION OF Lethbridge, Alberta  
T1J 2G8  
PARTY FILING THIS DOCUMENT Telephone: 403-328-9667  
Fax: 403-320-1393  
Attention: Kevin D. Ronan



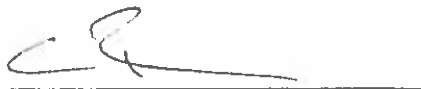
102273

Trent Tuchscherer, Defendant, Plaintiff by Counterclaim has changed the lawyer of record from Kevin D. Ronan, Peterson & Purvis LLP to Kevin D. Ronan, MMH Lawyers LLP as of January 1, 2021.

Legal Counsel for Trent Tuchscherer, Defendant, Plaintiff by Counterclaim:

Peterson & Purvis LLP:

Per:

  
\_\_\_\_\_  
KEVIN D. RONAN

**WARNING**

This change of representation takes effect after the affidavit of service of this document on each of the other parties is filed. After that date, no delivery of a pleading or other document relating to the action is effective service on the former lawyer of record or at any address for service previously provided by the former lawyer of record, or on the self-represented litigant.

**Schedule "B"****Encumbrances**

<b>Registration No.</b>	<b>Date</b>	<b>Description</b>
111 310 587	11/10/2018	MORTGAGE MORTGAGEE – ROYAL BANK OF CANADA. 180 WELLINGTON ST W, 3 FLOOR TORONTO ONTARIO M5J1J1 ORIGINAL PRINCIPAL AMOUNT: \$2,137,500
111 310 588	11/10/2018	CAVEAT RE : ASSIGNMENT OF RENTS AND LEASES CAVEATOR – ROYAL BANK OF CANADA. ATTN: MANAGER, COMMERCIAL FINANCIAL SERVICES 411 – 58 AVE SE CALGARY ALBERTA T2H0P5 AGENT – HARPREET NAHAL

## Schedule "C"

## Permitted Encumbrances

<u>Instrument No.</u>	<u>Date</u>	<u>Description</u>
6895LJ	05/10/1972	RESTRICTIVE COVENANT

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AND

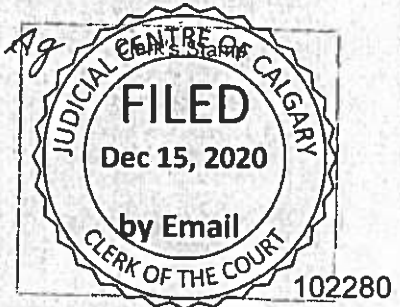
1. ANY REGISTRATIONS BY OR ON BEHALF OF THE PURCHASER;
2. THOSE IMPLIED BY LAW.



## Appendix "B"

Order - Sealing and approving interim distribution  
filed December 15, 2020

COURT FILE NO.: 2001-12759  
 COURT COURT OF QUEEN'S BENCH OF ALBERTA  
 JUDICIAL CENTRE CALGARY  
 APPLICANT ROYAL BANK OF CANADA



RESPONDENTS SWIMCO AQUATICS SUPPLIES LTD., SWIMCO PARTNERSHIP,  
 BLUE CRUSH BIKINI & BOARDSHORT COMPANY LTD., LORI  
 BACON HOLDINGS LTD. and STEVE FORSETH HOLDINGS LTD.

DOCUMENT ORDER -- SEALING AND APPROVING INTERIM DISTRIBUTION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
 Cassels Brock & Blackwell LLP  
 Suite 3810, Bankers Hall West  
 888 3rd Street SW  
 Calgary, Alberta, T2P 5C5  
 Telephone: (403) 351-2920  
 Facsimile: (403) 648-1151  
 File No.: 49073-7

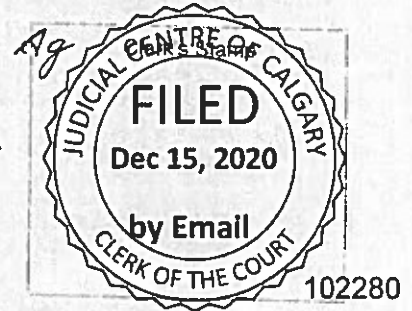
I hereby certify this to be a true copy of the original only  
 Dated this 15 day of Dec 2020  
A. Grant  
 for Clerk of the Court

Attention: Jeffrey Oliver/Danielle Marechal

DATE ON WHICH ORDER WAS PRONOUNCED: December 14, 2020  
 NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice A.D. Macleod  
 LOCATION OF HEARING: Calgary, Alberta

UPON THE APPLICATION of Deloitte Restructuring Inc. in its capacity as receiver and manager (in such capacity, the "Receiver") of the assets, properties and undertakings of Swimco Aquatics Supplies Ltd. ("SAS"), Swimco Partnership ("SP" and together with SAS the "Companies"), Blue Crush Bikini & Boardshort Company Ltd., Lori Bacon Holdings Ltd. and Steve Forseth Holdings Ltd. for an Order, among other things: (i) approving an Offer to Purchase and Agreement of Purchase and Sale between the Receiver and D. Bacon Holdings Ltd.; (ii) approving an interim distribution to Royal Bank of Canada ("RBC"); (iii) approving of the activities of the Trustee (as defined in the Report) and the Receiver; and (iv) sealing the Confidential Supplement to the First Report of the Receiver dated December 7, 2020 (the "Confidential Report") and the Supplement to the Confidential Report dated December 14, 2020 (the "Supplement to the Confidential Report" and together with the Confidential Report, the "Confidential Supplements"); AND UPON HAVING read the Receivership Order granted by the Honourable Madam Justice B.E.C. Romaine on November 10, 2020, the First Report of the Receiver

COURT FILE NO.: 2001-12759  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANT ROYAL BANK OF CANADA



RESPONDENTS SWIMCO AQUATICS SUPPLIES LTD., SWIMCO PARTNERSHIP,  
BLUE CRUSH BIKINI & BOARDSHORT COMPANY LTD., LORI  
BACON HOLDINGS LTD. and STEVE FORSETH HOLDINGS LTD.

DOCUMENT **ORDER -- SEALING AND APPROVING INTERIM DISTRIBUTION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West  
888 3<sup>rd</sup> Street SW  
Calgary, Alberta, T2P 5C5  
Telephone: (403) 351-2920  
Facsimile: (403) 648-1151  
File No.: 49073-7

Attention: Jeffrey Oliver/Danielle Marechal

DATE ON WHICH ORDER WAS PRONOUNCED: December 14, 2020  
NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice A.D. Macleod  
LOCATION OF HEARING: Calgary, Alberta

UPON THE APPLICATION of Deloitte Restructuring Inc. in its capacity as receiver and manager (in such capacity, the "Receiver") of the assets, properties and undertakings of Swimco Aquatics Supplies Ltd. ("SAS"), Swimco Partnership ("SP" and together with SAS the "Companies"), Blue Crush Bikini & Boardshort Company Ltd., Lori Bacon Holdings Ltd. and Steve Forseth Holdings Ltd. for an Order, among other things: (i) approving an Offer to Purchase and Agreement of Purchase and Sale between the Receiver and D. Bacon Holdings Ltd.; (ii) approving an interim distribution to Royal Bank of Canada ("RBC"); (iii) approving of the activities of the Trustee (as defined in the Report) and the Receiver; and (iv) sealing the Confidential Supplement to the First Report of the Receiver dated December 7, 2020 (the "Confidential Report") and the Supplement to the Confidential Report dated December 14, 2020 (the "Supplement to the Confidential Report" and together with the Confidential Report, the "Confidential Supplements"); AND UPON HAVING read the Receivership Order granted by the Honourable Madam Justice B.E.C. Romaine on November 10, 2020, the First Report of the Receiver



dated December 7, 2020 (the "Report") and the Confidential Supplements; AND UPON HEARING counsel for the Receiver, counsel for RBC, counsel for the Companies and all other interested parties present;

IT IS HEREBY ORDERED THAT:

Service

1. Service of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

Interim Distribution

2. The Receiver is hereby authorized, empowered and directed to make a distribution to RBC up to the maximum amount required to repay the indebtedness owing by the Companies to RBC under RBC's secured facilities in full.

Sealing Order

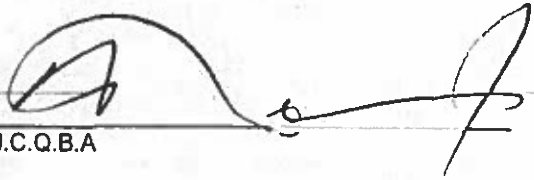
3. Division 4 Part 6 of the *Alberta Rules of Court* does not apply to this Application.
4. The Confidential Supplements shall, until the discharge of the Receiver, or until further order of this Honourable Court, be sealed and kept confidential, to be shown only to a Justice of the Court of Queen's Bench of Alberta, and accordingly, shall be filed with the Clerk of the Court who shall keep the Confidential Supplements in a sealed envelope, which shall clearly be marked "SEALED PURSUANT TO THE ORDER OF THE HON. JUSTICE A.D. MACLEOD DATED DECEMBER 14, 2020".
5. Any party may apply to set aside paragraph 4 of this order upon providing the Receiver and all other interest parties with five (5) days notice of such application.

Approval of Actions of Receiver

6. The activities of the Trustee and the Receiver, as described in the Report, are hereby ratified and approved.
7. The Interim Statement of Receipts and Disbursements attached as Appendix "D" to the Report is hereby ratified and approved.

8. This Order must be served only upon those interested parties attending or presented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
9. Service of this Order on any party not attending this application is hereby dispensed with.

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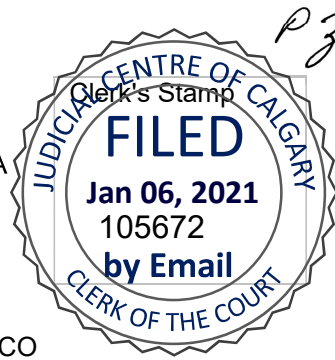


J.C.Q.B.A

Appendix "C"

Receiver's certificate filed January 6, 2021

COURT FILE NUMBER 2001-12759  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF ROYAL BANK OF CANADA  
DEFENDANT SWIMCO AQUATIC SUPPLIES LTD., SWIMCO PARTNERSHIP, BLUE CRUSH BIKINI & BOARDSHORT COMPANY LTD., STEVE FORSETH HOLDINGS LTD., STEVE FORSETH ENTERPRISES LTD., AND LORI JO HOLDINGS LTD.  
DOCUMENT **RECEIVER'S CERTIFICATE**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West  
888 3rd Street SW  
Calgary, Alberta, T2P 5C5

Telephone 403-351-2920  
Facsimile 403-648-1151

File No. 49073-7

Attention: Jeffrey Oliver/Danielle Marechal

**RECITALS**

- A. Pursuant to an Order of the Honourable Madam Justice B.E.C. Romaine of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated November 10, 2020, Deloitte Restructuring Inc. was appointed as the receiver and manager (the "**Receiver**") of the undertakings, property and assets of Swimco Aquatic Supplies Ltd., Swimco Partnership, Blue Crush Bikini and Boardshorts Ltd., Lori Bacon Holdings Ltd. and Steve Forseth Holdings Ltd. (collectively, the "**Debtors**").
- B. Pursuant to an Order of the Court dated December 14, 2020, the Court approved the agreement of purchase and sale made as of December 7, 2020 (the "**Sale Agreement**") between the Receiver and D. Bacon Holdings Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 7 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement.

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 7 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser (or its nominee); and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver on December 17, 2020.

**Deloitte Restructuring Inc., in its capacity as Receiver and Manager of the undertakings, property and assets of Swimco Aquatic Supplies Ltd., Swimco Partnership, Blue Crush Bikini and Boardshorts Ltd., Lori Bacon Holdings Ltd. and Steve Forseth Holdings Ltd., and not in its personal or corporate capacity.**

Per:  \_\_\_\_\_

**Name:** Ryan Adlington

**Title:** Senior Vice-President



## Appendix "D"

En Bloc Offer dated December 7, 2020 between D.  
Bacon Holdings Ltd. and the Receiver

**OFFER TO PURCHASE  
AND AGREEMENT OF PURCHASE AND SALE**

**BETWEEN:**

**DELOITTE RESTRUCTURING INC.,**  
in its capacity as the Court-appointed receiver and manager of  
**SWIMCO AQUATIC SUPPLIES LTD., SWIMCO PARTNERSHIP, BLUE CRUSH BIKINI AND BOARDSHORT  
COMPANY LTD., LORI BACON HOLDINGS LTD. and STEVE FORSETH HOLDINGS LTD.**  
and not in its personal or corporate capacity  
**("Vendor")**

- and -

**D. BACON HOLDINGS LTD.**  
a corporation incorporated pursuant to the laws of the Province of Alberta  
**("Purchaser")**

**ARTICLE 1  
OFFER AND ACCEPTANCE**

**1.1 Offer**

Purchaser hereby offers to purchase from Vendor the Purchased Assets on the Closing Date for the Purchase Price.

**1.2 Acceptance**

This offer is open for acceptance by the Vendor by its signing the acceptance provided in this offer and delivering a copy of this offer with executed acceptance to the Purchaser no later than 4:00 pm (Calgary time) on the 8<sup>th</sup> day of December, 2020. ACCEPTANCE OF THIS OFFER BY THE VENDOR SHALL CONSTITUTE AN AGREEMENT OF PURCHASE AND SALE BETWEEN THE PARTIES SUBJECT TO THE TERMS AND CONDITIONS HEREIN CONTAINED.

**ARTICLE 2  
DEFINITIONS**

**2.1 Definitions**

In this Agreement, the words and phrases set forth below will have the meanings set out below:

- (a) **"Accounts Receivable"** means any and all (i) accounts receivable, notes receivable and other amounts of indebtedness owed to the Swimco Group or the Vendor (whether current or non-current), together with all security or collateral therefor and any interest or unpaid financing charges accrued thereon; (ii) amounts that are or may become owing or payable to the Swimco Group or the Vendor from any governmental authority including any refunds, rebates, credits, payments available to the Swimco Group or the Vendor in relation to the Business; and (iii) other amounts due to the Swimco Group or the Vendor which have historically been classified as accounts receivable on the balance sheet of the Swimco Group;

- (b) **"Adjustment Date"** has the meaning set out in Section 4.3;
- (c) **"Agreement"** means this offer to purchase and agreement of purchase and sale and any schedules attached hereto which are referred to in this agreement, together with any amendment or supplement thereto;
- (d) **"Approval and Vesting Order"** means an order to be granted by the Court which authorizes, approves and confirms this Agreement and the sale of the Purchased Assets by the Vendor to the Purchaser in accordance with the terms and conditions contained herein, and vests beneficial title to the Purchased Assets in the Purchaser free and clear of all encumbrances, liens, security interests or claims, other than the Permitted Encumbrances;
- (e) **"Assumed Liabilities"** means:
  - (i) property taxes with respect to the Property;
  - (ii) amounts owing in respect of utilities related to the Property;
  - (iii) liabilities in respect of the Intellectual Property and relating to its transfer from Vendor to Purchaser; and
  - (iv) any other liability the Vendor and Purchaser may agree to in writing on or prior to the Closing Date,and shall not include any liability, obligation, payment or responsibility of any nature except as expressly described herein.
- (f) **"Bankruptcy Costs"** means all of the reasonable taxable fees, costs and expenses associated with the Trustee's administration of the bankrupt estates of the Debtors, including, without limitation, the Trustee's Fees and the Employee Priority Payments;
- (g) **"BIA"** means the *Bankruptcy and Insolvency Act (Canada)*;
- (h) **"Business"** means the business of the Debtors, including but not limited to the operation of retail stores in Canada under the name Swimco selling swimsuits, beachwear and related accessories, and the acquisition, warehousing and supplying of inventory for such retail stores;
- (i) **"Business Day"** means any day other than a Saturday, Sunday or a statutory holiday in the Province of Alberta;
- (j) **"Cash Payment"** means an amount equal to the RBC Debt;
- (k) **"Closing Date"** means December 15, 2020 or the first Business Day after the day on which the Approval and Vesting Order is granted by the Court, whichever is later, or such other date as may be agreed to between the Parties in writing or ordered by the Court;

- (l) "**Collateral Property**" means all goods, chattels, machinery, equipment, furniture, appliances, tools and other similar such items situate on the Lands and used in the operation, management, use or maintenance of the Property, except for those items of personal property set forth in Schedule "C" hereto;
- (m) "**Confidential Information**" means this Agreement and all information, data and knowledge relating to the Purchased Assets, whether factual or interpretive, disclosed to the Purchaser pursuant to Section 6.2 hereof, or otherwise, or discovered by the Purchaser in the course of exercising any of its rights hereunder, including without limitation, pursuant to Section 6.2 hereof;
- (n) "**Court**" means the Alberta Court of Queen's Bench;
- (o) "**CRA**" means the Canada Revenue Agency;
- (p) "**Credit Bid Amount**" means the sum of [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (the "**SP Credit Bid Portion**"), plus (ii) the sum of [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (the "**SAS Credit Bid Portion**");
- (q) "**Debtors**" means Swimco Aquatic Supplies Ltd., Swimco Partnership, Blue Crush Bikini and Boardshort Company Ltd., Lori Bacon Holdings Ltd. and Steve Forseth Holdings Ltd.;
- (r) "**Deficiency Payment**" has the meaning set out in Section 4.3(e);
- (s) "**Deposit**" means the sum of [REDACTED];
- (t) "**Dollars**" and "**\$**" means dollars of the lawful money of Canada;
- (u) "**Employee Priority Payments**" means all super priority amounts payable by the Debtors' bankrupt estates to former employees of the Debtors under WEPPA and under ss. 81.3 and 81.4 of the BIA that rank in priority to the SP Security and the SAS Security (up to a maximum of \$2,000 per employee);
- (v) "**Holdback Amount**" means the Swimco Group Cash, less the sum of six hundred and fifty thousand (\$650,000.00) dollars, to be held and used by the Vendor to satisfy the Bankruptcy Costs, the Receivership Costs, the SAS CRA Debt, the SP CRA Debt and any Post-Closing CRA Debt;
- (w) "**Intellectual Property**" means all intellectual property of any kind used in the Business protected or protectable in any jurisdiction throughout the World, including but not limited to all literary, graphical, pictorial, artistic, audio visual and other works,

including webpages and designs, trademarks, trade names, service marks, trade dress, logos and other marks and associated goodwill, all registered domain names, systems, methods, processes, inventions, industrial designs, confidential information, proprietary information, trade secrets and know how, and any other works or other subject matter subject to intellectual property protection under the laws of any jurisdiction throughout the World, whether or not registrable, registered or the subject of applications for registration, and for greater certainty includes those assets set forth in Schedule "D" attached hereto;

- (x) "**Inventory**" means all inventory of SP used in the Business, wherever located, including but not limited to swimsuits, beachwear and related accessories;
- (y) "**Lands**" means those lands legally described in Schedule "A" attached hereto;
- (z) "**NOI Administration Charge**" means the Administration Charge granted in the Order issued by the Court on July 9, 2020 in BK NO: 25-2651361 and BK NO: 25-265362;
- (aa) "**Party**" means a party to this Agreement and "**Parties**" means both the Vendor and the Purchaser;
- (bb) "**Permitted Encumbrances**" means the encumbrances set forth in Schedule "B" attached hereto;
- (cc) "**Post-Closing CRA Debt**" means any amounts the CRA may assess against SP or SAS in excess of the SP CRA Debt and SAS CRA Debt as a result of an audit after the Closing Date that rank in priority to the SP Security and the SAS Security;
- (dd) "**Property**" means the Lands and all buildings, erections, structures, systems, fixtures and other improvements to and located on the Lands;
- (ee) "**Purchased Assets**" means the SP Assets and the SAS Assets;
- (ff) "**Purchase Price**" has the meaning set out in Section 4.1;
- (gg) "**Purchaser's Lawyer**" means Field Law, 400 – 444 7 Avenue SW, Calgary, AB T2P 0X8, Attention: Trevor Batty;
- (hh) "**RBC Debt**" means the sum of all amounts owing from the Swimco Group to the Royal Bank of Canada as of the Closing Date;
- (ii) "**Receiver**" means Deloitte Restructuring Inc. in its capacity as Receiver and Manager of the Debtors;
- (jj) "**Receiver's Certificate**" means a certificate to be delivered to the Purchaser by the Vendor on the Closing Date upon receipt of the entire Purchase Price, as defined in the Approval and Vesting Order;
- (kk) "**Receiver's Borrowing Charge**" shall have the meaning given to such term in the Receivership Order;

- (ll) **“Receiver’s Charge”** shall have the meaning given to such term in the Receivership Order;
- (mm) **“Receiver’s Fees”** means the fees and disbursements of the Receiver and the Vendor’s Lawyer incurred in the Receivership of the Swimco Group, secured by the Receiver’s Charge, as approved by the Court from time to time;
- (nn) **“Receivership Costs”** means all of the reasonable taxable fees, costs and expenses associated with the Receiver’s administration of the Debtors’ estates pursuant to the Receivership Order, including without limitation the Receiver’s Fees and all amounts secured by the Receiver’s Charge, the Receiver’s Borrowing Charge, and the NOI Administration Charge, the Employee Priority Payments, and all costs associated with the Receiver’s efforts to collect outstanding Accounts Receivable, including for certainty, all efforts to collect any tax refunds the Swimco Group may be entitled to from the CRA;
- (oo) **“Receivership Order”** means the Receivership Order granted on November 10, 2020 in Court of Queen’s Bench of Alberta Action No. 2001-12759;
- (pp) **“Remainder Amount”** has the meaning set out in Section 4.3(d);
- (qq) **“SAS”** means Swimco Aquatic Supplies Ltd.;
- (rr) **“SAS Assets”** means all of the assets of SAS including but not limited to (i) the fixtures and leasehold improvements set forth in Schedule “E” attached hereto; (ii) the Intellectual Property; and (iii) the portion of the Swimco Group Cash held in an account in the name of SAS;
- (ss) **“SAS CRA Debt”** means those deemed trust amounts validly owing from SAS to the CRA as of the Closing Date, that are in priority to the SAS Security, in the total sum of seventy-nine thousand seven hundred and thirty-three dollars and fifty-nine (\$79,733.59) cents;
- (tt) **“SAS Credit Bid Portion”** has the meaning given to that term in Section (p)2.1(p);
- (uu) **“SAS Promissory Notes”** means the following Promissory Notes all dated September 30, 2018: (i) originally issued by SAS in favour of D. Bacon Holdings Ltd. in the principal sum of three hundred and twenty thousand four hundred and twenty-four (\$320,424.00) dollars; (ii) in favour of Lori Jo Holdings Ltd. in the principal sum of two hundred and sixty thousand four hundred and twenty-four (\$260,424.00) dollars; and (iii) in favour of Steve Forseth Enterprises Ltd. in the principal sum of three hundred and twenty thousand four hundred and twenty-four (\$320,424.00) dollars, and currently held by the Purchaser;
- (vv) **“SAS Security”** means the security interest granted by SAS in favour of the Purchaser over all of SAS’ present and after acquired personal property;
- (ww) **“SP”** means Swimco Partnership and its partners, Blue Crush Bikini and Boardshort Company Ltd., Lori Bacon Holdings Ltd. and Steve Forseth Holdings Ltd.;

- (xx) **“SP Assets”** means (i) the Property and the Collateral Property; (ii) the portion of the Swimco Group Cash held in an account in the name of SP; (iii) the Inventory; (iv) the Intellectual Property; and (v) Accounts Receivable.
- (yy) **“SP CRA Debt”** means those deemed trust amounts validly owing from SP to the CRA as of the Closing Date, that are in priority to the SP Security, in the total sum of twenty-two thousand seven hundred and forty-five dollars and ninety (\$22,745.90) cents;
- (zz) **“SP Credit Bid Portion”** has the meaning given to that term in Section 2.1(p);
- (aaa) **“SP Promissory Notes”** means the following Promissory Notes: (i) dated June 3, 2019, in favour of D. Bacon Holdings Ltd. in the principal sum of one million two hundred thousand (\$1,200,000.00) dollars; (ii) dated April 3, 2019 in favour of Steve Forseth Enterprises Ltd. in the principal sum of one million one hundred and seventy-five thousand (\$1,175,000.00) dollars, and; (iii) October 1, 2019 in favour of Lori Jo Holdings Ltd. in the principal sum of five hundred thousand (\$500,000.00) dollars, all of which are currently held by the Purchaser;
- (bbb) **“SP Security”** means the security interest granted by SP in favour of the Purchaser over all of SP’s present and after acquired personal property;
- (ccc) **“Swimco Group”** means SP and SAS;
- (ddd) **“Swimco Group Cash”** means all cash and cash equivalents being held by Royal Bank of Canada on the Closing Date in (i) account registered in the name of SP; and (ii) in an account registered in the name of SAS;
- (eee) **“Taxes”** means all taxes, assessments, charges, dues, duties, rates, fees, levies and similar charges of any kind lawfully levied, assessed or imposed by any governmental authority under any applicable tax legislation including Federal, Provincial, municipal or other income, capital, goods and services, sales, harmonized ales, use, consumption, excise, value added, business, real property, personal property, transfer, withholding, payroll, or employer health taxes, customer, import, Canada Pension Plan contributions, employment insurance premiums and provincial workers compensation payments, including any interest, penalties and fines associated therewith;
- (fff) **“Transfer Taxes”** means all present and future transfer taxes, sales taxes, harmonized sales taxes, use taxes, production taxes, value added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets to the Purchaser, including under the *Excise Tax Act* (Canada) and any other provincial tax legislation but excluding any taxes imposed or payable under the *Income Tax Act* (Canada) and any other similar income tax legislation;
- (ggg) **“Trustee”** means Deloitte Restructuring Inc., in its capacity as Trustee in bankruptcy of the Debtors

- (hhh) **"Trustee's Fees"** means the fees and disbursements of the Trustee and Vendor's counsel incurred in the administration of the bankruptcies of the Debtors;
- (iii) **"Vendor's Condition"** means the Vendor's condition set out in Section 7.1 hereof;
- (jjj) **"Vendor's Lawyer"** means Cassels Brock & Blackwell LLP, Suite 3810 Bankers Hall West, 888 3rd Street SW, Calgary, AB T2P 5C5, Attention: Jeffrey Oliver; and
- (kkk) **"WEPPA"** means the Wage Earner Protection Program Act (Canada) and associated regulations.

### **ARTICLE 3 AGREEMENT**

#### **3.1 Purchase and Sale**

On the Closing Date, and subject to the terms and conditions set forth herein and in accordance with the Approval and Vesting Order, the Vendor shall sell, assign and transfer to Purchaser, and Purchaser shall purchase from the Vendor, all of Vendor's right, title and interest in and to the Purchased Assets, free and clear of all encumbrances other than the Permitted Encumbrances.

#### **3.2 Assumed Liabilities**

On the Closing Date, subject to the terms and conditions set forth herein, the Purchaser shall assume and shall pay, discharge, honour and perform, as the case may be and as and when due, from and after the Closing Date, the Assumed Liabilities.

#### **3.3 Exclusion of Liabilities**

For certainty, the Purchaser shall not, at Closing or otherwise, assume or be liable for any liabilities of the Swimco Group whatsoever other than the Assumed Liabilities from and following the Closing Date.

### **ARTICLE 4 PURCHASE PRICE**

#### **4.1 Determination of Purchase Price**

Subject to adjustment as provided for in Section **Error! Reference source not found.**, the Purchase Price payable for the Purchased Assets, exclusive of all Transfer Taxes, shall be the aggregate of the following (the **"Purchase Price"**):

- (a) In respect of the SP Assets:
  - (i) the SP Credit Bid Portion;
  - (ii) the Cash Payment;
  - (iii) less the Remainder Amount, if any;



- (iv) plus the Deficiency Payment, if any.
- (b) in respect of the SAS Assets:
  - (i) the SAS Credit Bid Portion.

#### **4.2 Satisfaction of Purchase Price**

The Purchase Price shall be paid and satisfied as follows:

- (a) by the Vendor providing a credit to the Purchaser in the amount of the Deposit on the date of the acceptance of this offer by the Vendor, which amount shall be applied to the Purchase Price from the SAS Credit Bid Portion, or otherwise dealt with as provided for herein; and
- (b) the balance of the Purchase Price shall be paid by the Purchaser to the Vendor and satisfied on Closing as follows:
  - (i) by the Vendor providing a credit in the amount of the Credit Bid Amount less the Deposit against the Swimco Group's obligations under the SP Security and SAS Security;
  - (ii) a cash amount equal to the Cash Payment, with \$650,000 to be paid from the Swimco Group Cash and the balance paid by the Purchaser by certified cheque, bank draft or guaranteed electronic funds on or before the Closing Date; and
  - (iii) the Holdback Amount, being the balance of the Swimco Group Cash, to be held by Vendor to satisfy any adjustments to the Purchase Price, as set forth in Section 4.3.

#### **4.3 Determination of Final Purchase Price and Adjustment**

In order to determine the final amount of the Purchase Price:

- (a) The Parties acknowledge that adjustments will be required after the Closing Date to finally determine the Purchase Price once the total amount of the Receivership Costs, the Bankruptcy Costs and Post-Closing CRA Debt, if any, are known. The Purchase Price shall be finally determined on the date that the Receiver files a Discharge Certificate and is fully and finally discharged pursuant to a Discharge Order issued by the Court, or such earlier date as may be agreed between the Parties (the "**Adjustment Date**");
- (b) The Parties further acknowledge and agree that immediately following Closing, the Vendor shall be at liberty and entitled to use any portion or all of the Holdback Amount that is necessary for payment of the Bankruptcy Costs, the Receivership Costs, the SP CRA Debt, the SAS CRA Debt and the Post-Closing CRA Debt. On the Adjustment Date, the Vendor shall provide the Purchaser with a full accounting of the use of the Holdback, and any remaining amounts to be paid from the Holdback;

- (c) Notwithstanding anything in this Agreement, the Purchaser, as a secured creditor of the Swimco Group, shall have the right and ability to seek an assessment of the Receiver's Fees or the Trustee's Fees by a Justice of the Commercial Court in the Judicial District of Calgary prior to the Adjustment Date;
- (d) Any remainder of the Holdback Amount after the accounting is completed on the Adjustment Date (the "**Remainder Amount**") shall be reimbursed to the Purchaser forthwith; and
- (e) In the event the Holdback Amount is not sufficient to satisfy the Bankruptcy Costs, the Receivership Costs, the SP CRA Debt, the SAS CRA Debt and the Post-Closing CRA Debt, the Purchaser shall forthwith pay to the Vendor the amount necessary to rectify the deficiency (the "**Deficiency Payment**") by way of certified cheque, bank draft or guaranteed electronic funds.

#### **4.4 Deposit**

- (a) If by reason of the default of the Purchaser the purchase and sale transaction contemplated herein is not completed, all or any portion of the Deposit held by the Vendor will become forfeited to the Vendor as liquidated damages and not as a penalty and without prejudice to any other rights or remedies the Vendor may have at law or in equity against the Purchaser for such default.
- (b) If by reason of the default of the Vendor the purchase and sale transaction contemplated herein is not completed, all or any portion of the Deposit applied as a credit by the Vendor shall be adjusted and credited back to the Purchaser without prejudice to any other rights or remedies the Purchaser may have at law or in equity against the Vendor for such default.

#### **4.5 Allocation of Purchase Price**

The Parties agree to allocate the Purchase Price among the Purchased Assets in such manner as they mutually agree to prior to the Closing Date. The Parties shall report the sale and purchase of the Purchased Assets for all tax purposes in a manner consistent with such allocation, and will complete all tax returns (including amended returns and claims for refunds), designations and elections in a manner consistent with such allocations for all tax purposes.

### **ARTICLE 5 TAXES**

#### **5.1 Transfer Taxes**

The Parties agree that the Purchase Price payable by the Purchaser to the Vendor does not include any Transfer Taxes and all Transfer Taxes are the responsibility of and for the account of the Purchaser. The Purchaser and the Vendor agree to cooperate to determine the amount of Transfer Taxes payable in connection with the transaction contemplated herein. If the Vendor is required by law to collect any applicable Transfer Taxes from the Purchaser, the Purchaser shall pay such Transfer Taxes to the Vendor on the Closing Date, unless the Purchaser qualifies for an exemption from any such applicable Transfer Taxes, in which case the Vendor shall not collect any such applicable Transfer Taxes from the Purchaser,

provided that the Purchaser, in lieu of payment of such applicable Transfer Taxes to the Vendor, deliver to the Vendor such certificates, elections or other documents required by law to substantiate and affect the exemption claimed by the Purchaser. The Purchaser shall indemnify the Vendor, SP and SAS against any claims which may arise in connection with such Transfer Taxes.

## **5.2 Tax Elections**

With respect to the Taxes:

- (a) the Purchaser and the Vendor agree to each other such information and assistance related to the Purchased Assets as is reasonably necessary for the filing of any tax return, claim or refund or other filings relating to tax matters for the preparation for and proof of facts during any tax audit, for the prosecution of any proceedings relating to tax matters and for the answer to any governmental or regulatory inquiry relating to tax matters;
- (b) if applicable, on the Closing Date, as may be reasonably requested by the Purchaser, the Swimco Group and the Vendor shall jointly execute an election under Section 167(1)(b) of the *Excise Tax Act* (Canada) to have subsection 167(1.1) apply in respect of all or any part of the sale of the Vendor's right, title and interest in the Purchased Assets under this Agreement;
- (c) the Vendor and the Purchaser shall as soon as possible after the Closing Date jointly execute an election under section 22 of the *Income Tax Act* with respect to the sale of the Accounts Receivable and shall designate therein the Purchase Price allocated to the Accounts Receivable under section 2.07 as consideration paid by the Purchaser for the Accounts Receivable, and the Vendor and the Purchaser shall each file such elections forthwith after the execution thereof;
- (d) the Purchaser and the Vendor shall also execute and deliver such other tax elections and forms as they mutually agree upon;
- (e) notwithstanding the foregoing, the Purchaser hereby agrees to indemnify the Vendor for any assessment of any Transfer Taxes made against the Vendor as a result of the making of the elections hereunder by the Parties with respect to the acquisition of the Purchased Assets by the Purchaser.

## **ARTICLE 6 DELIVERY OF DOCUMENTS**

**6.1** The Purchaser acknowledges that prior to entering into this Agreement, the Vendor has delivered to Purchaser the following:

- (a) copies of any available real property reports; and
- (b) copies of any existing environmental reports relating to the Property and environmental or soil reports in the possession or control of the Vendor.

**6.2** Unless disclosure is required by law, all Confidential Information shall be kept in strict confidence by the Purchaser and shall only be disclosed to its directors, officers, professional advisors and proposed mortgage lenders on a "need to know" basis for the sole purpose of evaluating the acquisition of the Purchased Assets by the Purchaser in accordance with this Agreement. Before making any disclosure required by law, a party that is required to make such disclosure shall notify the Vendor in advance so as to give the Vendor time to seek a protective order. The Purchaser covenants and agrees with the Vendor that when providing Confidential Information to any person it will ensure that such person is bound by the confidentiality provisions contained herein and that such person shall not disclose or further transmit any Confidential Information. If the Purchaser does not proceed with the acquisition of the Purchased Assets in accordance with this Agreement, the Purchaser shall not use any Confidential Information and shall promptly deliver to the Vendor all originals and any copies or other reproductions of any Confidential Information and shall destroy or deliver to the Vendor such notes, reports and all other written material whatsoever prepared by the Purchaser, or on behalf of the Purchaser, in connection with its review of such Confidential Information. The rights and obligations of the Parties set forth in this Section shall survive any termination of this Agreement for a period of two (2) years from the date of such termination.

## **ARTICLE 7 CONDITIONS TO CLOSING**

**7.1** This Agreement is being made subject to ongoing receivership proceedings in the Court and is conditional upon the approval thereof of the Court in the form of an Approval and Vesting Order (the "**Vendor's Condition**"). The Purchaser acknowledges that in the event that the Vendor is unable to satisfy the Vendor's Condition by obtaining an Approval and Vesting Order then this Agreement shall be at an end and the Deposit will be credited back to the Purchaser without interest or deduction and the Parties will have no further obligations hereunder. The Purchaser further acknowledges and agrees that until the Agreement is approved by the Court pursuant to the Approval and Vesting Order, the Vendor's obligations under the Agreement are limited to considering it and, if accepted by the Vendor, putting the Agreement before the Court for approval. Thereafter, the Purchaser acknowledges that the Vendor is subject to the jurisdiction and discretion of the Court to entertain other offers and any further orders the Court may make regarding the Purchased Assets. Given the Vendor's position as receiver and manager, the Vendor may be compelled to advocate that the Court consider other offers in order to obtain the highest price for the Purchased Assets. The Vendor gives no assurances or undertaking to advocate the approval of this Agreement by the Court. The Purchaser acknowledges that it must make its own arrangements to support the approval of this Agreement in Court.

**7.2** Immediately upon acceptance by the Vendor, this Agreement shall become unconditional subject to the satisfaction of Section 7.1 and:

- (a) the Deposit, once paid in accordance with Section 4.2(a), shall become non-refundable subject to Section 4.4(b) hereof; and
- (b) as soon as commercially reasonable, the Vendor shall commence the process of applying to the Court for the Approval and Vesting Order.

**ARTICLE 8  
REPRESENTATIONS AND WARRANTIES**

**8.1 Representations and Warranties of the Vendor**

The Vendor hereby represents and warrants to the Purchaser (which representations and warranties, unless otherwise indicated, are true now and will be true from this date to and including the Closing Date) that:

- (a) the Vendor has been appointed by the Court as receiver of the Purchased Assets pursuant to the Receivership Order; and
- (b) subject to the Approval and Vesting Order, the Vendor has all necessary power, authority, right and capacity to authority to enter into this Agreement and carry out the transactions contemplated hereby; and
- (c) subject to obtaining the Approval and Vesting Order, this Agreement constitutes a legal, valid and binding obligation of the Vendor enforceable against it in accordance with its terms, subject to any limitations imposed by law.

**8.2 Representations and Warranties of the Purchaser**

The Purchaser hereby represents and warrants to the Vendor (which representations and warranties, unless otherwise indicated, are true now and will be true from this date to and including the Closing Date) that:

- (a) the Purchaser is a corporation duly incorporated and existing under the laws of the Province of Alberta, or is otherwise a validly registered extra-provincial corporation in the Province of Alberta, and has the power, authority, right and capacity to enter into this Agreement and to carry out the transactions contemplated hereby, all of which has been duly and validly authorized by all requisite corporate actions and proceedings;
- (b) neither the execution of this Agreement nor its performance by the Purchaser will result in a breach of any term or provision or constitute a default under any indenture, mortgage, deed of trust or any other agreement to which the Purchaser is a party or by which it is bound which breach could materially affect the ability of the Purchaser to perform its obligations hereunder; and
- (c) this Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser and is enforceable against the Purchaser in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws relating to creditors' rights generally.

**8.3** The foregoing representations and warranties set forth in this Article 8 shall be, and shall be deemed to be, continuing representations and warranties by the Vendor and the Purchaser, and shall survive the completion of the matters contemplated herein for a period of two (2) years from the Closing Date.

**ARTICLE 9**  
**ACQUISITION ON AS IS, WHERE IS BASIS**

- 9.1** The Purchaser hereby acknowledges and agrees that it is purchasing the Purchased Assets on an "as is, where is" basis. The Purchaser acknowledges and confirms that it is relying on its own investigations concerning the Purchased Assets and it has not relied on advice from the Vendor or any of its agents or representatives with respect to the condition of or title to the Purchased Assets. The Purchaser acknowledges and agrees that it is familiar with the condition of the Purchased Assets, including the past and present use of the Purchased Assets and that the Vendor has provided the Purchaser with a reasonable opportunity to inspect the Purchased Assets at the sole cost, risk and expense of the Purchaser (insofar as the Vendor could reasonably provide access) and that the Purchaser is not relying upon any representation or warranty of the Vendor as to the condition, environmental or otherwise, of the Purchased Assets.
- 9.2** The Purchaser hereby acknowledges that neither the Vendor, nor its agents or representatives, have made any representations or warranties with respect to the Purchased Assets. Without limiting the generality of the foregoing, the Purchaser agrees and acknowledges that neither the Vendor nor its agents or representatives have made any representations or warranties with respect to:
- (a) the condition of any buildings or improvements located on the Lands;
  - (b) the existence or condition of any Collateral Property included under this Agreement or otherwise sold with the Property;
  - (c) whether the Lands comply with any existing land use bylaws or regulations, or municipal development agreements or plans;
  - (d) the location of any buildings or other improvements on the Lands and whether such location complies with any applicable municipal bylaws or regulations;
  - (e) whether or not any buildings or improvements located on the Lands encroach onto any neighbouring lands or any easements or rights of way;
  - (f) whether or not any buildings or improvements located on neighbouring lands encroach onto the Lands;
  - (g) the size and dimensions of the Lands or any buildings or improvements located thereon;
  - (h) whether or not the Lands are contaminated with any hazardous substance within the meaning of the *Environmental Protection and Enhancement Act* (Alberta); and
  - (i) whether or not any of the buildings or other improvements located on the Lands have been insulated with urea formaldehyde insulation.

The Purchaser shall not call for compliance with, or satisfaction of, any work orders, deficiency notices, orders to comply, or any other Building Code, Fire Code or regulations, whether environmental, or otherwise, and whether imposed by law, equity or any regulatory authority.

- 9.3** Except for its express rights under this Agreement, the Purchaser hereby waives all rights and remedies (whether now existing or hereinafter arising and including all equitable, common law, tort, contractual and statutory rights and remedies) against the Vendor, its agents and representatives in respect of the Purchased Assets or this Agreement or any representations or statements made, direct or indirect, express or implied, or information or data furnished to the Purchaser or its representatives, in connection herewith (whether made or furnished orally or by electronic, faxed, written or other means).

#### **ARTICLE 10 POSSESSION**

- 10.1** The Purchaser shall be entitled to possession of the Purchased Assets on and after the Closing Date. The Purchaser will have vacant possession of the Property on the Closing Date; however the Purchaser acknowledges that it is obligated to file for a new certificate of title and discharge all encumbrances other than the Permitted Encumbrances in accordance with Section 11.5 hereof. The Vendor shall deliver to the Purchaser on the Closing Date all keys, combinations, codes, authorizations, consents, approvals and other similar such items and information as the Purchaser may require relating to the Purchased Assets.

#### **ARTICLE 11 CLOSING**

- 11.1** The Vendor shall provide to the Purchaser or to the Purchaser's Lawyer, as agreed, all closing documents necessary to obtain, pursuant to Section 11.5, a new certificate of title to the Lands subject only to the Permitted Encumbrances and all collateral documents necessary to complete the transaction in accordance with this Agreement, including the following, properly executed and acknowledged, where applicable:
- (a) a certified copy of the Approval and Vesting Order;
  - (b) the Receiver's Certificate;
  - (c) the elections referred to in Section 5.2(b) and 5.2(c) executed by the Vendor and/or the Swimco Group, to the extent such elections are applicable to the transactions herein and available to the Purchaser;
  - (d) bill of sale and general conveyance in respect of the Purchased Assets which shall provide that except for the express representations and warranties contained in this Agreement, the Purchased Assets are being conveyed on an "as is, where is" basis;
  - (e) an assignment transferring all of the Vendor's right, title and interest in the Intellectual Property to the Purchaser;
  - (f) any other documents, resolutions and certificates necessary or reasonably required and requested in advance of the Closing Date by the Purchaser's Lawyer to establish

the validity of all proceedings to effectively transfer the Purchased Assets by the Vendor to the Purchaser.

**11.2** On the Closing Date the Purchaser shall deliver to the Vendor the following, properly executed and acknowledged:

- (a) a certified cheque, bank draft or guaranteed electronic funds made payable to the Vendor in trust in the amount due to the Vendor on the Closing Date in accordance Section 4.2(b)(ii);
- (b) an indemnity from the Purchaser in favour of the Vendor with respect to the Purchaser's payment of Transfer Taxes set out in Section 5;
- (c) the elections referred to in Section 5.2(b) executed by the Purchaser, to the extent such elections are applicable to the transactions herein and available to the Purchaser;
- (d) an indemnity from the Purchaser in favour of the Vendor with respect to the Purchaser's efforts to collect Accounts Receivable as set out in Section 11.6;
- (e) all documents listed in Section 11.1(d), 11.1(e) and 11.1(f) which contemplate execution by the Purchaser, executed by the Purchaser; and
- (f) any other documents, resolutions and certificates necessary or reasonably required and requested in advance of the Closing Date by the Vendor's Lawyer to establish the validity of all proceedings to effectively transfer the Purchased Assets by the Vendor to the Purchaser.

**11.3** The documents and other instruments to be delivered to the Purchaser's Lawyer and the Vendor in accordance with this Article may be delivered in trust on such reasonable trust conditions as would customarily be imposed in a similar transaction in Alberta which shall include, without limitation, that the Purchaser shall not make any use of the closing documents unless and until the Purchase Price has been unconditionally released to the Vendor.

**11.4** Unless this Agreement expressly provides to the contrary, the Vendor and the Purchaser shall be responsible for each of their respective costs in respect of this transaction. The closing documents with respect to the Purchased Assets shall be prepared by the Vendor's Lawyer at the Vendor's sole cost and expense.

**11.5** The Purchaser acknowledges that in order to obtain a new certificate of title for the Property and to register such discharges as may be required to convey clear title to the Property, the Purchaser is required to file the Receiver's Certificate and a certified copy of the Approval and Vesting Order together with any applicable registration fees to the Registrar of Land Titles of Alberta. The Vendor shall not be responsible for the discharge of any encumbrances that are not the Permitted Encumbrances. The Purchaser is responsible for all such discharges by the process set out in the Approval and Vesting Order.

**11.6** The Vendor shall cooperate with the Purchaser and shall use its reasonable best efforts to collect any Accounts Receivable after the Closing Date, and will remit all payments received on



such Accounts Receivable after the Closing Date to the Purchaser. The Vendor shall execute any necessary documents and follow any reasonable procedures required to accommodate the collection of any Accounts Receivable after the Closing Date. The Purchaser indemnifies the Vendor for all claims, costs and expenses arising in connection with the Receiver's obligations under this Section.

## **ARTICLE 12 NOTICE**

**12.1** Any notice, direction or other instrument required or permitted to be given pursuant this Agreement shall be in writing and shall be sufficiently given if personally delivered, sent by pre-paid ordinary and registered mail, or sent by email to the Parties as follows:

(a) to the Purchaser:

D. Bacon Holdings Ltd.  
900, 332 6<sup>th</sup> Avenue SW  
Calgary, AB T2P 0B2  
Attention: David Bacon

Email: [dbacon@swimco.com](mailto:dbacon@swimco.com)

with a copy to:

Field Law  
400 – 444 7 Avenue SW  
Calgary, AB T2P 0X8

Email: [tbatty@fieldlaw.com](mailto:tbatty@fieldlaw.com)

(b) to the Vendor:

Deloitte Restructuring Inc.  
700 Bankers Court  
850 – 2<sup>nd</sup> Street SW  
Calgary, AB T2P 0R8  
Attention: Ryan Adlington

Email: [radlington@deloitte.ca](mailto:radlington@deloitte.ca)

with a copy to:

Cassels Brock & Blackwell LLP  
Suite 3810 Bankers Hall West  
888 3<sup>rd</sup> Street SW  
Calgary, AB T2P 5C5  
Attention: Jeffrey Oliver

Email: [joliver@casselsbrock.com](mailto:joliver@casselsbrock.com)

or to such other address as any party may from time to time designate, by notice to the other(s).

Any notice personally delivered or sent by email in accordance with this Section shall be deemed to have been given and received on the day it is so delivered or transmitted, provided that if such day is not a Business Day then the notice shall be deemed to have been given and received on the Business Day next following such day. Any notice mailed in accordance with this Section shall be deemed to have been given and received on the fifth Business Day next following the date of its mailing in Alberta.

### **ARTICLE 13 GENERAL**

- 13.1** For purposes of this Agreement: (a) the words "include", "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein", "hereof", "hereby", "hereto" and "hereunder" refer to this Agreement as a whole; (d) whenever the singular is used herein, the same shall include the plural, and, whenever the plural is used herein, the same shall include the singular, where appropriate; and (e) whenever the masculine is used herein, the same shall include the feminine and neuter genders, whenever the feminine is used herein, the same shall include the masculine and neuter genders, whenever the neuter is used herein, the same shall include the masculine and feminine where appropriate. The definitions given for any defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Unless the context otherwise requires, references herein: to Articles, Sections and Schedules mean the Articles, Sections of and Schedules attached to, this Agreement; to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and to legislation means such legislation as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. Unless otherwise stated in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian currency.
- 13.2** Both before and after the Closing Date, the Parties will execute and do all such further deeds, acts, things and assurances as may be reasonably requisite to carry out the intent of this Agreement.
- 13.3** Time shall be of the essence of this Agreement.
- 13.4** Any tender of documents or money hereunder may be made upon the Purchaser's Lawyer or the Vendor's Lawyer, as the case may be, acting for the party on whom tender is desired.
- 13.5** If the date for making payment or doing any act hereunder shall be a Saturday, Sunday or a statutory holiday in the Province of Alberta, such date shall be extended to the first Business Day following such date.

- 13.6** The Purchaser may assign its interest in whole or part under this Agreement solely to a corporation, partnership or entity controlled by the Purchaser, provided however that the Purchaser shall remain liable for the Purchaser's covenants and obligations herein until the Closing Date and provided that notice of such assignment is provided to the Vendor forthwith. Such assignee shall then inherit all of the Purchaser's rights and obligations under this agreement.
- 13.7** This Agreement shall enure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.
- 13.8** The headings in this Agreement are for reference only and are not intended to form part of this Agreement or to affect the meaning of any clause contained herein.
- 13.9** This Agreement constitutes the entire agreement of the Parties to this Agreement with respect to the subject matter contemplated herein and there are no other additional or collateral terms, conditions, agreements, representations or warranties, express or implied, relating to the matters contemplated herein except as expressly stated in this Agreement. This Agreement supersedes all prior and contemporaneous oral and written agreements and understandings of the Parties, or any one of them in relation to the matters contemplated herein.
- 13.10** This Agreement shall not be modified, amended, or waived except by an instrument in writing duly executed and delivered by the Parties or by their respective successors and permitted assigns.
- 13.11** If any provision of this Agreement is determined to be invalid, illegal or unenforceable, such provision shall be severable from the remainder of this Agreement which shall continue to remain in full force and effect.
- 13.12** This offer and Agreement shall in all respects be subject to and be interpreted and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.
- 13.13** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

*[Remainder of this page intentionally left blank. Signature page follows.]*

**DATED** at the City of Calgary, in the Province of Alberta, this 7<sup>th</sup> day of December, 2020.

**D. BACON HOLDINGS LTD.**

Per:

Name: \_\_\_\_\_  
David Bacon

Title: President

**ACCEPTANCE**

The undersigned Vendor hereby accepts the offer as set out above.

**DATED** at the City of Calgary, in the Province of Alberta, this 7<sup>th</sup> day of December, 2020.

**DELOITTE RESTRUCTURING INC.**, in its capacity as Court-appointed receiver and manager of **SWIMCO AQUATIC SUPPLIES LTD., SWIMCO PARTNERSHIP, BLUE CRUSH BIKINI AND BOARDSHORT COMPANY LTD., LORI BACON HOLDINGS LTD.** and **STEVE FORSETH HOLDINGS LTD.** and not in its personal or corporate capacity

Per:

Name: \_\_\_\_\_  
Ryan Adlington

**SCHEDULE A  
LANDS**

PLAN 1310LK

BLOCK 1

LOT 6

EXCEPTING THEREOUT ALL MINES AND MINERALS

AREA 0.465 HECTARES (1.15 ACRES) MORE OR LESS

**SCHEDULE B  
PERMITTED ENCUMBRANCES**

1. Restrictive Covenant registered 05/10/1972 as instrument number 6895LJ

**SCHEDULE C  
EXCLUDED ITEMS OF PERSONAL PROPERTY**

Nil

**SCHEDULE D  
LIST OF INTELLECTUAL PROPERTY**

Canadian Registered or Pending Trademarks Rights:

APPLIC. NO.	MARK	TYPE	STATUS
1731484	FEEL GOOD HALF NAKED	Word	REGISTERED
0555109	SWIMCO SUN & FUN FASHIONS & DESIGN 	Design	REGISTERED
1986392	STORI	Standard Characters	FORMALIZED
1935985	INARA	Word	FORMALIZED
1286646	Flower Design 	Design	REGISTERED
1286642	SWIMCO	Word	REGISTERED
1286647	Swimco Design 	Design	REGISTERED
1286641	SOLEIL SWIM	Word	REGISTERED



Unregistered Trademark Rights / Trade Names:



Blue Crush / Blue Crush Bikini and Boardshort Company

Other Intellectual Property:

Customer lists, customer mailing lists, registered customer lists, and marketing lists

The internet domain name <SWIMCO.COM>

All other domain names used in or registered for the Business, whether or not trade-marks, registered in any top-level domain

The website content and code for the swimco.com website and related content, marketing collateral, brochures, media and images on the website, customer reviews and images,

Operating manuals, written employee manuals and policy documents

Product designs, proprietary clothing and swimsuit designs

Social media accounts listed below and any other social media accounts, account passwords and logins, and the content found thereon and related thereto, and URLs

- <https://www.pinterest.ca/swimco/>
- <https://www.youtube.com/swimcoforswimwear>
- <https://www.twitter.com/swimco>
- <https://www.facebook.com/swimco>
- <https://www.instagram.com/swimco>

**SCHEDULE "E"**  
**SAS FIXTURES AND EQUIPMENT LIST**

See attached.

## Appendix "E"

Final statement of receipts and disbursements  
from October 10, 2020 to discharge

**In the Matter of the Receivership of the Swimco Group of Companies**  
**Final Statement of Receipts and Disbursements and Pro-forma Statement of Receipts and Disbursements**  
**For the period October 10, 2020 to discharge**

Final statement of receipts and disbursements from Oct 10, 2020 to January 31, 2021										Forecasted		
	Swimco Aquatic Supplies Ltd. (In Bankruptcy)	Swimco Partnership (In Bankruptcy)	Swimco Aquatic Supplies Ltd. (In Receivership)	Swimco Partnership (In Receivership)	Blue Crush Bikini & Boardshort Company Ltd.	Lori Bacon Holdings Ltd.	Steve Foreseth Holdings Ltd.	Total	Pro-Forma SRD	Total		
<b>RECEIPTS</b>	<b>Notes</b>											
Proceeds from the En Bloc Offer	-	-	1,490,534	898,376	-	-	-	2,388,910	-	2,388,910		
Bank Drafts	124,815	1,115,878	2,347	-	-	-	-	1,243,040	1,760	1,244,799		
E-commerce sales	50,172	117,067	57,985	135,299	-	-	-	360,524	-	360,524		
Sales Tax Refund	-	-	-	-	-	-	-	-	218,363	218,363		
Sales collected on behalf of D. Bacon Holdings	97,013	-	-	-	-	-	-	97,013	-	97,013		
CEWS Claim	-	-	-	-	-	-	-	-	75,108	75,108		
Moneris Hold Back	-	-	-	-	-	-	-	-	50,000	50,000		
Sales Tax Collected	-	23,078	-	13,173	-	-	-	36,251	-	36,251		
Other Receipts	-	24,610	509	-	303	303	303	26,029	-	26,029		
ST Inventory Buy Back Offer	-	-	-	24,307	-	-	-	24,307	-	24,307		
Mannequin Sales	6,735	662	-	-	-	-	-	7,397	-	7,397		
Transfers	(172,330)	(179,913)	172,330	179,913	-	-	-	-	-	-		
<b>Total Receipts</b>	<b>106,404</b>	<b>1,101,382</b>	<b>1,723,705</b>	<b>1,251,068</b>	<b>303</b>	<b>303</b>	<b>303</b>	<b>4,183,470</b>	<b>345,231</b>	<b>4,528,701</b>		
<b>DISBURSEMENTS</b>												
Distribution to RBC	-	650,000	1,490,534	898,376	-	-	-	3,038,910	-	3,038,910		
Contractor Fees & Expenses	-	174,420	-	-	-	-	-	174,420	-	174,420		
Professional fees - Bankruptcy & Receivership - Deloitte	-	-	-	-	-	-	-	-	164,226	164,226		
Professional fees - Bankruptcy & Receivership - Legal	-	-	-	-	-	-	-	-	136,216	136,216		
Operating expenses	-	98,041	-	-	-	-	-	98,041	27,514	125,555		
Deemed Trust - Pre-filing Source Deductions	-	-	-	-	-	-	-	-	102,479	102,479		
Sales collected on behalf of D. Bacon Holdings	97,012	-	-	-	-	-	-	97,012	-	97,012		
WEPP Employee Priority Payment	-	-	-	-	-	-	-	-	78,775	78,775		
Professional fees - Division I Proposal - Deloitte	-	51,101	-	-	-	-	-	51,101	-	51,101		
Sales Tax Remittances	-	32,502	-	1,558	-	-	-	34,060	-	34,060		
Sales tax on Professional Fees	-	4,307	-	-	-	-	-	4,307	22,807	27,114		
Professional fees - Division I Proposal - Cassels	-	25,416	-	-	-	-	-	25,416	-	25,416		
Pre-bankruptcy sales taxes	-	-	-	-	-	-	-	-	12,447	12,447		
Professional fees - Division I Proposal - Field Law	-	9,606	-	-	-	-	-	9,606	-	9,606		
Moneris Fees	9,242	-	-	-	-	-	-	9,242	-	9,242		
Insurance	-	7,456	-	-	-	-	-	7,456	-	7,456		
Sales Tax Paid	-	5,784	-	-	-	-	-	5,784	1,376	7,159		
Filing Fees	150	1,060	-	-	303	-	303	1,817	-	1,817		
Newspaper Ad	263	505	-	-	-	-	-	768	-	768		
CRA Holdback Amount	-	-	-	-	-	-	-	-	25,000	25,000		
<b>Total Disbursements</b>	<b>106,667</b>	<b>1,060,198</b>	<b>1,490,534</b>	<b>899,934</b>	<b>303</b>	<b>-</b>	<b>303</b>	<b>3,557,940</b>	<b>570,840</b>	<b>4,128,780</b>		
<b>Net Estate Balance</b>	<b>(263)</b>	<b>41,185</b>	<b>233,171</b>	<b>351,134</b>	<b>-</b>	<b>303</b>	<b>-</b>	<b>625,530</b>	<b>(225,610)</b>	<b>399,921</b>		
									Amount for Proposed Distribution	(399,921)		
									<b>Final receipts over disbursements</b>	<b>-</b>		

**Notes:**

- 1** A sale approval and vesting order for the En Bloc Offer was issued by the Court on December 14, 2020. The En Bloc Offer was subsequently closed on December 17, 2020.
- 2** Approximately \$11,000 has been reclassified from bank drafts to operating income as eCommerce sales on October 13, 14 and 15, 2020 were deposited into the RBC account prior to the funds being transferred to Deloitte's trust estate account.
- 3** A. Operating receipts from eCommerce sales from October 10, 2020 to December 16, 2020.  
B. Moneris, a service provider that processes e-commerce Visa and Mastercard sales, has a policy to withhold 25% of the e-commerce sales to a maximum of \$50,000. The nature of the Moneris holdback is to deal with any future card holder disputes. The Receiver does not expect any disputes with the holdback amount as the e-commerce sales are conducted on an "as is where is" basis and no refunds were permitted. Moneris has advised the Receiver that funds will be released 90 - 120 days after the accounts are closed.
- 4** Subsequent to the completion of the En Bloc Offer, certain sales were collected in the receivership account by Moneris due to timing. As such, sales collected subsequent to the En Bloc Offer was transferred to the Purchaser.
- 5** The Receiver applied for the Canada Emergency Wage Subsidy relief program ("CEWS") for pre-bankruptcy wages paid for the period September 27, 2020 up to and including October 9, 2020. The CEWS claim is currently being reviewed by the Canada Revenue Agency (the "CRA"). The receipt of approximately \$75,100 is subject to the CRA's approval.
- 6** Other receipts include approximately:  
A. \$22,000 from Richter for refunding the retainer as financial advisor during the NOI proceeding;  
B. \$2,100 refund from Uline Canada Corporation for unused credits;  
C. \$300 received by each Holdco, transferred by Swimco Partnership for Bankruptcy filing fees. \$910 is included in Swimco Partnership's filing fee; and  
D. \$1,000 refund from Intact Insurance and Shaw Communications Inc.
- 7** On November 10, 2020, Deloitte Restructuring Inc. was appointed as the Receiver of the Swimco Group. Following the receivership appointed the funds were transferred from the bankruptcy estates to the respective receivership estates.
- 8** The Receiver engaged with ten former employees as contractors to assist with e-commerce sales during the bankruptcy and receivership period.
- 9** Operating expenses includes various costs to close retail stores, shipping inventory to the warehouse, Canada post, third party services provided for the e-commerce site, utilities, internet, website hosting and security.
- 10** Fees charged by Visa, Master Card and Moneris to process e-commerce payments.
- 11** Filing fees for bankruptcies of Swimco Aquatic Supplies Ltd., Swimco Partnership, Blue Crush Bikini & Boardshort Company, Lori Bacon Holdings Ltd., and Steve Foreseth Holdings Ltd. Approximately \$900 was transferred from Swimco Partnership to the Holdcos for their bankruptcy filing fees.
- 12** Hold back amount of \$25,000 to deal with any unforeseen matters, including any adjustments from CRA's trust audit subsequent to filing the Second Report.



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