

Court File No. CV-13-10000-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 27TH DAY
JUSTICE MORAWETZ) OF MARCH, 2013

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EXTREME FITNESS, INC.**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

APPROVAL AND VESTING ORDER

THIS MOTION, made by Extreme Fitness, Inc. (the "**Applicant**"), for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement between the Applicant and GoodLife Fitness Centres Inc. (the "**Purchaser**") dated March 19, 2013 (the "**APA**") and appended, in redacted form, to the affidavit of Alan Hutchens sworn March 22, 2013, filed (the "**Hutchens Affidavit**"), and included, in unredacted form, in the Confidential Supplement to the Second Report of FTI Consulting Canada Inc., in its capacity as the Court-appointed monitor of the Applicant (in such capacity, the "**Monitor**") dated March 22, 2013, filed (the "**Second Report**"), and vesting in the Purchaser the Applicant's right, title and interest in and to the Purchased Assets (as defined in the APA), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Hutchens Affidavit and the Second Report, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for the Purchaser, counsel for Golub Capital Incorporated and counsel for National Bank of Canada, no one appearing for any other person on the service list, although duly served as appears from the affidavit of Eunice Baltkois sworn March 22, 2013, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the APA by the Applicant is hereby authorized and approved, with such minor amendments as the Applicant, with the consent of the Monitor, may deem necessary. The Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Monitor's Certificate**"), all of the Applicant's right, title and interest in and to the Purchased Assets shall vest ~~absolutely~~ ^{AR} in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of this Court in the within proceedings; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; but excluding the Permitted Encumbrances (as defined in the

APA) (all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS AND DECLARES** that, for greater certainty, the Assumed Realty Leases (as defined in the APA) shall vest ~~absolutely~~ ^{absolutely} in the Purchaser in the manner set forth in paragraph 2 of this Order, subject to the terms of any consent to assignment or lease amending agreement between the Purchaser and any of the respective landlords of the Assumed Realty Leases.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall be paid to the Monitor and shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the 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.

5. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Applicant and the Purchaser regarding fulfillment of conditions to closing under the APA and shall incur no liability with respect to the delivery of the Monitor’s Certificate.

6. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor’s Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Applicant is authorized and permitted to disclose and transfer to the Purchaser: (i) all human resources and payroll information in the Applicant's records pertaining to the Applicant's Transferred Employees (as defined in the APA); and (ii) all personal information in the Applicant's records pertaining to the Applicant's Members and to Persons subject to Personal Training Contracts (as those terms are defined in the APA). The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicant.

8. **THIS COURT ORDERS** that, notwithstanding:

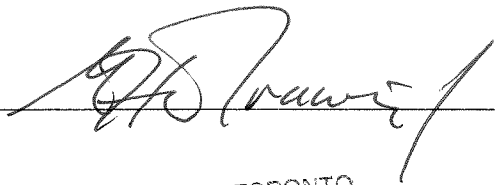
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicant,

the APA, the Transaction and the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) 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.

9. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicant and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 27 2013

MB

Schedule "A"
Form of Monitor's Certificate

Court File No. CV-13-10000-00CL

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MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (the "**Court**") dated February 7, 2013, Extreme Fitness, Inc. (the "**Applicant**") was declared a company to which the *Companies' Creditors Arrangement Act* applied and FTI Consulting Canada Inc. was appointed as the Monitor of the Applicant (the "**Monitor**").

B. Pursuant to an Order of the Court dated March 27, 2013, the Court approved the asset purchase agreement between the Applicant and GoodLife Fitness Centres Inc. (the "**Purchaser**") dated March 19, 2013 (the "**APA**") and provided for the vesting in the Purchaser of the Applicant's 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 Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of that portion of the Purchase Price for the Purchased Assets payable on the Closing; (ii) that the conditions to Closing as set out in

Article IV of the APA have been satisfied or waived by the Applicant and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals shall have the meanings ascribed to them in the APA.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and Monitor has received that portion of the Purchase Price for the Purchased Assets payable on Closing pursuant to the APA;
2. The conditions to Closing as set out in section Article IV of the APA have been satisfied or waived by the Applicant and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Monitor; and
4. This Certificate was delivered by the Monitor at _____ on _____, 2013.

FTI Consulting Canada Inc., in its capacity as the Court-appointed Monitor of Extreme Fitness, Inc., and not in its personal or corporate capacity

Per: _____
Name: Steven Bissell
Title: Managing Director

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Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

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