

COURT FILE NUMBERS B201 731795
B201 731797
B201 731799
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



61807

MATTERS IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, OF

INTERNATIONAL FITNESS HOLDINGS INC.
INTERNATIONAL FITNESS HOLDINGS LP
WORLD HEALTH NORTH LP

APPLICANTS INTERNATIONAL FITNESS HOLDINGS INC., INTERNATIONAL FITNESS HOLDINGS LP and WORLD HEALTH NORTH LP

DOCUMENT **ORDER (ASSIGNMENT OF ASSUMED LEASE)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Counsel for the Applicants, International Fitness Holdings Inc., International Fitness Holdings LP and World Health North LP

DATE ON WHICH ORDER WAS PRONOUNCED: June 17, 2021

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice M.J. Lema

LOCATION OF HEARING: Edmonton, Alberta

UPON THE APPLICATION of International Fitness Holdings Inc., International Fitness Holdings LP and World Health North LP (collectively, the "**Applicants**"); **AND UPON HAVING READ** the Third Report of the KPMG Inc. (the "**Proposal Trustee**") dated June 4, 2021 (the "**Third Report**"), the Affidavit

No. 3 of Peter Melnychuk sworn on May 21, 2021, the Affidavit No. 4 of Peter Melnychuk sworn on June 3, 2021 the Affidavit No. 5 of Peter Melnychuk sworn June 10, 2021, the transcript from the cross-examination of Jeffery Baker which took place on June 7, 2021, and the Affidavits of Service of Lorrelei Breton sworn on June 7, 2021 and June 11, 2021; **AND UPON HEARING** submissions by counsel for the Applicants, the Proposal Trustee and any other counsel or other interested parties present on June 11, 2021;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this application is properly returnable on this date.

INTERPRETATION

2. Unless otherwise stated, capitalized terms used but not otherwise defined in this Order shall have the meaning ascribed to such terms in the Sale Approval and Vesting Order of this Court dated May 27, 2021 (the "**SAVO**").

ASSIGNMENT OF ASSUMED LEASE

3. Upon delivery by the Proposal Trustee to the Applicants and the Purchaser of the Proposal Trustee's Certificate (as defined in the SAVO), all of the rights and obligations of the Applicants under and to the lease listed on Schedule "A" hereto (the "**Assigned Lease**") shall be assigned, conveyed and transferred to, and assumed by Ayrfit Alberta Inc. pursuant to section 84.1 of the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3*, as amended (the "**BIA**").
4. The assignment of the Assigned Lease is declared valid and binding upon all of the counterparties to the Assigned Lease notwithstanding any restriction, condition or prohibition contained in the Assigned Lease relating to the assignment thereof, including any provision requiring the consent of any party to the assignment.
5. The assignment and transfer of the Assigned Lease shall be subject to the provisions of the SAVO directing that all of the Applicants' right, title and interest in the Purchased Assets shall vest absolutely in the Purchaser free and clear of all Encumbrances (as defined in the SAVO) other than Permitted Encumbrances (as defined in the SAVO) in accordance with the provisions of the SAVO.
6. No counterparty under the Assigned Lease, nor any other person, upon the assignment and transfer to, and assumption by Ayrfit Alberta Inc. of the Assigned Lease hereunder shall make or

pursue any demand, claim, action or suit or exercise any right or remedy under the Assigned Lease against the Purchasers relating to:

- (a) the Applicants having sought or obtained relief under the BIA;
- (b) the insolvency of the Applicants; or
- (c) any failure by the Applicants to perform a non-monetary obligation under the Assigned Lease,

and all such counterparties and persons shall be forever barred and estopped from taking such action. For greater certainty, nothing herein shall limit or exempt the Purchasers in respect of obligations accruing, arising or continuing after the Closing Date (as defined in the APA) under the Assigned Lease other than in respect of items (a) – (c) above.

7. No counterparty to the Assigned Lease shall terminate the Assigned Lease as against the Purchasers as a result of the Applicants' insolvency or the Applicants' within BIA proceedings. In addition, no counterparty shall terminate the Assigned Lease as against the Purchasers as a result of the Applicants having breached a non-monetary obligation unless such non-monetary breach arises or continues after the Assigned Lease is assigned to the Purchasers, such non-monetary default is capable of being cured by the Purchasers and the Purchasers have failed to remedy the default after having received notice of such default pursuant to the terms of the Assigned Lease. For clarification purposes, no counterparty shall rely on a notice of default sent to the Applicants to terminate the Assigned Lease as against the Purchasers.

CURE COSTS

8. All monetary defaults in relation to the Assigned Lease existing prior to the Closing Date, if any, other than those arising by reason only of the insolvency of the Applicants, the commencement of these BIA proceedings or the failure to perform a non-monetary obligation under the Assigned Lease, shall be paid by the Purchasers to the applicable counterparty on the Closing Date (or to the Proposal Trustee in trust on Closing for distribution to the applicable counterparty as soon as practicable thereafter), or as otherwise agreed to by the parties.

MISCELLANEOUS MATTERS

9. For greater certainty and without limiting the terms of the SAVO, notwithstanding:
- (a) the pendency of these proceedings and any declaration of insolvency made herein;

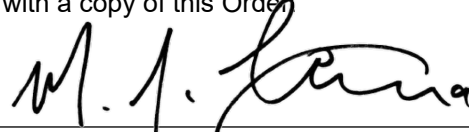
- (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the BIA, in respect of the Applicants, and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Applicants; and
- (d) the provisions of any federal or provincial statute;

the vesting of the Assigned Lease in Ayrfit Alberta Inc. pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, 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.

10. Notwithstanding any other provision of this Order, the Applicants shall continue to be entitled to exercise all of their rights to set-off (or any other contractual rights) and apply any and all post-filing amounts to which the Applicants owe or may come to owe to any party, as the case may be, as against any amounts that are owed by such party to the Applicants.
11. The Applicants and the Proposal Trustee shall be at liberty to apply for further advice, assistance and direction as may be necessary or desirable in order to give full force and effect to the terms of this Order, including without limitation, as necessary to effect the transfer of the Assigned Lease, the interpretation of this Order or the implementation thereof, and for any further order that may be required, on notice to any party likely to be affected by the order sought on such notice as this Court required.
12. 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, the United States of America or in any other foreign jurisdiction, to act in aid of and to be complementary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Applicants, the Proposal Trustee and their respective 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 Applicants and the Proposal Trustee, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants and its agents in carrying out the terms of this Order.

SERVICE OF ORDER

13. The Applicants shall serve this Order on the persons listed on the service list by any of email, facsimile, courier, registered mail, regular mail, or personal delivery, and no persons other than those on the service list are required to be served with a copy of this Order.



J.C.Q. B.A. or Clerk of the Court

SCHEDULE "A"

Canyon Meadows Lease

Lease dated July 17, 1997, as assigned and amended on August 31st, 2006, assigned on November 25, 2009 and assigned and amended on January 1st, 2018, between International Fitness Holdings Inc. (as successor of Spa Lady Inc., the assignee of the original tenant 21st Century Health Spas (Western) Ltd.) and 1710818 Alberta Ltd. (as successor to the original landlord 690569 Alberta Ltd.), with respect to the premises at the property located at 13226 Macleod Trail in Calgary, Alberta.