

COURT FILE
NUMBERS

B201-731795
B201-731797
B201-731799

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

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

SALE APPROVAL AND VESTING ORDER

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

STIKEMAN ELLIOTT LLP
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888 – 3rd Street S.W.
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File No.: 137923-1006

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

**DATE ON WHICH ORDER WAS
PRONOUNCED:**

May 27, 2021

**NAME OF JUDGE WHO MADE THIS
ORDER:**

The Hon. Justice D.R. Mah

LOCATION OF HEARING:

Edmonton, Alberta via Webex



UPON THE APPLICATION of International Fitness Holdings Inc., International Fitness Holdings LP and World Health North LP (collectively, the "**Applicants**") for an order approving the sale transaction (the "**Transaction**") contemplated by an Asset Purchase Agreement (the "**APA**") between the Applicants and Spa Lady (West) Inc. (as vendors) and Ayrfit West Inc., Ayrfit Alberta Inc. and Ayrfit Edmonton Inc. (the "**Purchasers**") dated April 23, 2021, as amended on May 20, 2021 and vesting in

the Purchasers the Applicants' right, title and interest in and to the assets described in the APA (the "**Purchased Assets**"); **AND UPON HAVING READ** the Initial Order dated May 5, 2021 (the "**Initial Order**"), the Second Report of the KPMG Inc. (the "**Proposal Trustee**") dated May 21, 2021 (the "**Second Report**"); the Confidential Supplement to the Second Report; the Application of the Applicants, the Affidavit No. 3 of Peter Melnychuk affirmed on May 21, 2021, and the Affidavit of Service of Laureen Lamour, affirmed on May __, 2021; **AND UPON HEARING** submissions by counsel for the Applicants, the Proposal Trustee and any other counsel or other interest parties present; and no one appearing for any other person on the service list, although properly served as it appears from the Affidavit of Service, filed;

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.

EXTENSION OF STAY PERIOD

2. The Stay Period, as ordered and defined in paragraph 3 of the Initial Order, is hereby extended until and including June 30, 2021.

APPROVAL OF TRANSACTION

3. The Transaction and APA are commercially reasonable and in the best interest of the Applicants and its stakeholders. The Transaction is hereby approved and execution of the APA by the Applicants is hereby authorized and approved, with such minor amendments as the Applicants may deem necessary. The Applicants are 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 Purchasers.

VESTING OF PROPERTY

4. Upon delivery of a closing certificate from the Proposal Trustee to the Purchasers substantially in the form set out in **Schedule "A"** hereto (the "**Closing Certificate**"),
 - (a) With respect to Purchased Assets listed in **Schedule "B"** hereto, other than real property leases, all of the Applicants' right, title and interest in and to such Purchased Assets shall vest absolutely in the name of Ayrfit Alberta Inc., a wholly owned subsidiary of Ayrfit West Inc., and (ii) with respect to Purchased Assets listed in **Schedule "C"** hereto, other than real property leases, all of the Applicants' right, title

and interest in and to such Purchased Assets shall vest absolutely in the name of Ayrfit Edmonton Inc., a wholly owned subsidiary of Ayrfit West Inc.,

- (b) With respect with respect to the Purchased Assets in **Schedule "B" and "C"** that are real property leases, upon assignment of any such lease to the respective Purchasers (i) pursuant to a consent agreement with the applicable landlord and the Purchaser (ii) as may be otherwise permitted on the terms thereof; or (iii) pursuant to an order of the court assigning any such lease to the Purchaser, all of the Applicant's right, title and interest in and to such leases shall be assigned absolutely to the respective Purchasers,

in each case free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgments, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, 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:

- (c) any encumbrances or charges created by the Initial Order; and
- (d) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**");

and for greater certainty, this Court orders that all Claims, including Encumbrances other than Permitted Encumbrances as set out in **Schedule "D"** hereto (the "**Permitted Encumbrances**"), affecting or relating to the Purchased Assets are hereby expunged, discharged and terminated as against the Purchased Assets, provided however that, except as may otherwise may be agreed to by the applicable landlord to a real property lease included in the Purchased Assets and the Purchasers, nothing in this paragraph shall affect the rights and remedies and obligations of such landlord or the rights, remedies and obligations of the tenant that may exist or arise under or in respect of any such lease that is ultimately assigned to the Purchasers in connection with the Transaction.

5. Upon delivery of the 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 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 Purchasers clear title to the Purchased Assets subject only to Permitted Encumbrances. Without limiting the foregoing:

- (a) 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 Applicants in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods; and
 - (b) the Canadian Intellectual Property Office shall and is hereby directed to forthwith: (i) transfer any trademarks in any of the IP Assets listed in **Schedule "E"** to this Order and as described in Section 1.1(oo) of the APA standing in the name of the Applicants to the Purchasers, and (ii) amend the Canadian trademark register to reflect the foregoing transfers.
6. Nothing in this order shall amend or vary, or be deemed to amend or vary, the terms of a real property lease included in the Purchased Assets that are assigned on consent. For greater clarity, none of the real property leases described in the Transaction are transferred, conveyed, assigned or vested in the Purchasers by operation of this Order
7. 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 of this Order and the APA. Presentment of this Order and the 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.
8. 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 Proposal Trustee of the APA.
9. 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 Proposal Trustee) shall stand in the place and stead of the Purchased Assets from and after delivery of the 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. No distributions of net proceeds from sale of the Purchased Assets shall be made other than in accordance with further orders of this Court.

10. Except as expressly provided for in the APA or by section 5 of the Alberta *Employment Standards Code*, the Purchasers shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against the Applicants.
11. Upon completion of the Transaction, the Applicants and all persons who claim by, through or under the Applicants 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 Purchasers.
12. The Purchasers shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for their own use and benefit without any interference of or by the Applicants, or any person claiming by, through or against the Applicants.
13. The Purchasers shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Applicants, other than as described in the APA.
14. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Applicants or the Proposal Trustee.
15. The Proposal Trustee is directed to file with the Court a copy of the Closing Certificate forthwith after delivery thereof to the Purchasers.
16. 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 Applicants is authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Applicants' records pertaining to the Applicants' past and current employees. The Purchasers shall maintain and protect the privacy of such information and shall

be entitled to use the personal information provided to them in a manner which is in all material respects identical to the prior use (of such information) to which the Applicants was entitled.

MISCELLANEOUS MATTERS

17. The Applicants are authorized and empowered, in respect of the Purchased Assets, to execute and deliver:
- (a) such additional, related and ancillary documents and assurances governing or giving effect to the conveyance of the Purchased Assets which, in the Applicants' discretion, are reasonably necessary or advisable to conclude the Transaction contemplated in or in furtherance of the transfer of the Purchased Assets and/or this Order; and
 - (b) any and all instruments and documents in respect of the Purchased Assets as may be deemed necessary by the Applicants.

18. 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 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 Purchased Assets (other than real property leases) in the Purchasers pursuant to this Order and the assignment of any real property leases, 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.

19. The Applicants, Proposal Trustee, Purchasers 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.

20. 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 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 to 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, the Proposal Trustee, and their respective agents in carrying out the terms of this Order.
21. 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 Purchasers or the Purchasers' solicitors; and
 - (b) posting a copy of this Order on the Proposal Trustee's website at:
<https://home.kpmg/ca/en/home/services/advisory/deal-advisory/creditorlinks/internationalfitness.html>
- and service on any other person is hereby dispensed with.
22. 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.



Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"

Form of Proposal Trustee's Certificate

COURT FILE NUMBERS	B201 731795 B201 731797 B201 731799	CLERK'S STAMP:
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
MATTERS	IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE <i>BANKRUPTCY AND INSOLVENCY ACT</i> , R.S.C. 1985, c. B-3, AS AMENDED, OF INTERNATIONAL FITNESS HOLDINGS INC. INTERNATIONAL FITNESS HOLDINGS LP WORLD HEALTH NORTH LP	
DOCUMENT	PROPOSAL TRUSTEE'S CERTIFICATE	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	STIKEMAN ELLIOTT LLP 4300 Bankers Hall West 888 – 3 rd Street S.W. T2P 5C5 Solicitor: Karen Fellowes, Q.C. / Elizabeth Pillon Phone Number: (403) 724-9469 / (416) 869-5623 Email: kfellowes@stikeman.com / lpillon@stikeman.com Fax Number: (403) 266-9034 File No.: 137923-1006 Counsel for the Applicants, International Fitness Holdings Inc., International Fitness Holdings LP and World Health North LP	

RECITALS

- A. Pursuant to an Order of the Honourable Madam Justice Ho of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated May 5, 2021, KPMG was appointed as the Proposal Trustee (the "**Proposal Trustee**") of International Fitness Holdings LP, International Fitness Holdings Inc., International Fitness Holdings LP and World Health North LP (collectively, the "**Applicants**").

- B. Pursuant to an Order of the Court dated [●], the Court approved the asset purchase agreement made as of April 23, 2021, as amended on May 20, 2021 (the “**APA**”) between the Applicants and Ayrfit West Inc., Ayrfit Alberta Inc. and Ayrfit Edmonton Inc. (the “**Purchasers**”) and provided for the vesting in the Purchasers of the Applicants’ 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 Proposal Trustee to the Purchasers of a certificate confirming (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the APA have been satisfied or waived by the Applicants and the Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.
- C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the APA.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchasers have paid or has otherwise satisfied in full the Purchase Price for the Purchased Assets in accordance with the APA;
2. The conditions to Closing as set out in the APA have been satisfied or waived by the Applicants and the Purchasers;
3. The Transaction has been completed to the satisfaction of the Proposal Trustee; and
4. This Certificate was delivered by the Proposal Trustee at [Time] on [Date].

**KPMG Inc., in its capacity as the
Proposal Trustee of the Applicants,
and not in its personal capacity.**

Per: _____

Name: [●]

Title: [●]

SCHEDULE “B”**Purchased Assets - Ayrfit Alberta Inc.**

All capitalized terms not otherwise defined herein, Schedule and Section references shall bear the meanings given them in the asset purchase agreement (the “**APA**”) between the Applicants and Purchaser dated April 23, 2021, as amended.

All of the Vendors’ right, title and interest in and to all of the Vendors’ property and assets (other than the Excluded Assets), whether real or personal, tangible or intangible, of every kind and description and wheresoever situate including the following (other than those assets described below that specifically relate to World Health North LP as listed in Schedule “C” attached to this Order):

1. Assumed Leases and the rights under the Leases at all of the Required Locations including all leasehold improvements and fixtures owned by a Vendor forming part of the leased real property thereunder;
2. Personal Property, including all equipment listed in Schedule 2.1(b) to the APA (other than equipment that specifically relates to World Health North LP situate at fitness facilities referred to as Mayfield, Glenora, Gateway, Kensington, St. Alberta Trail, Clareview and Edmonton City Centre);
3. Inventories;
4. Accounts Receivable;
5. IP Assets, including the IP Assets listed in Schedule “E” to this Order;
6. Books and Records (except in the case of those required by Applicable Law to be retained by a Vendor, copies thereof);
7. All goodwill, together with the exclusive right of the Purchaser to represent itself as carrying on the Business;
8. All rights to deposits and prepaid expenses, including related claims for refunds and rights of set-off that are not excluded pursuant to Sections 2.2(a) and 2.2(c) to the APA or that are not listed on Schedule 2.2 to the APA (and excluding any pre-paid deposits for membership payments and pre-paid personal training sessions and similar); and
9. The list of email addresses of members of the Vendors.

in each case, for greater certainty, excluding the Excluded Assets and all Purchased Assets referred to in Schedule “C” to this Order.

SCHEDULE “C”

Purchased Assets - Ayrfit Edmonton Inc.

All capitalized terms not otherwise defined herein, Schedule and Section references shall bear the meanings given them in the asset purchase agreement (the “**APA**”) between the Applicants and Purchaser dated April 23, 2021, as amended.

All of World Health North LP’s right, title and interest in and to all of World Health North LP’s property and assets (other than the Excluded Assets), whether real or personal, tangible or intangible, of every kind and description situated at the fitness facility locations referred to as Mayfield, Glenora, Gateway, Kensington, St. Alberta Trail, Clareview and Edmonton City Centre, including the following (but only with respect to such locations):

1. Assumed Leases and the rights under the Leases at all of such locations that are Required Locations including all leasehold improvements and fixtures owned by World Health North LP forming part of the leased real property thereunder;
2. Personal Property, including all equipment listed in Schedule 2.1(b) to the APA that relates to World Health North LP situate at fitness facilities referred to as Mayfield, Glenora, Gateway, Kensington, St. Alberta Trail, Clareview and Edmonton City Centre;
3. Inventories;
4. Accounts Receivable;
5. IP Assets listed in Part 2 of Schedule “E” attached to this Order;
6. Books and Records (except in the case of those required by Applicable Law to be retained by a Vendor, copies thereof);
7. All goodwill, together with the exclusive right of the Purchaser to represent itself as carrying on the Business;
8. All rights to deposits and prepaid expenses, including related claims for refunds and rights of set-off that are not excluded pursuant to Sections 2.2(a) and 2.2(c) of the APA or that are not listed on Schedule 2.2 to the APA (and excluding any pre-paid deposits for membership payments and pre-paid personal training sessions and similar); and
9. The list of email addresses of members of World Health North LP.

in each case, for greater certainty, excluding the Excluded Assets and all Purchased Assets referred to in Schedule “B” to this Order.

SCHEDULE "D"

Permitted Encumbrances

SCHEDULE “E”**IP Assets**

The following trademarks form part of the IP Assets:

Part 1 – Ayrfit Alberta Inc.

Trademark Name	Registration Date	Expiry Date	Country of Registration	Registration Number
SPA LADY	1980-02-22	2025-02-22	Canada	TMA240041
FITNESS 2000	1996-01-26	2026-01-26	Canada	TMA453041
WORLD HEALTH CLUB	2009-10-06	2024-10-06	Canada	TMA749460
WORLD HEALTH CLUB & Design 	2009-10-01	2024-10-01	Canada	TMA749231
WORLD HEALTH CLUB & Oval Design 	2009-10-01	2024-10-01	Canada	TMA749230
SPA KIDZ	2010-11-04	2025-11-04	Canada	TMA781670
EXPERIENCE YOUR BEST	2011-05-16	2026-05-16	Canada	TMA797625
EXCEPTIONAL RESULTS	2011-05-16	2026-05-16	Canada	TMA797636
EXCEPTIONAL EXPERIENCE	2011-05-16	2026-05-16	Canada	TMA797637
WORLD HEALTH	2011-08-24	2026-08-24	Canada	TMA805146
WORLD HEALTH & Design	2011-08-24	2026-08-24	Canada	TMA805147

				
WORLD HEALTH Logo (Colour) 	2011-08-24	2026-08-24	Canada	TMA805148
GYMVMT	"Formalized" 2019-09-13	Not yet registered.	Canada	Application No. 1983817
PWR X LAB	"formalized" 2019-12-20	Not yet registered.	Canada	Application No. 1998829

Part 2 - IP Assets – Ayrfit Edmonton Inc.

Trademark Name	Registration Date	Expiry Date	Country of Registration	Registration Number
Fresh Fit Foods	N/A	N/A	Canada	Abandoned Trademark Application 1654674
Live Life Light	2016-08-15	2031-08-15	Canada	TM946148
Tru Ride	2018-05-15	2033-05-15	Canada	TMA996651
CLUB FIT	2003-04-29	2033-04-29	Canada	TMA580175
	2003-04-29	2033-04-29	Canada	TMA580148

The following domain names:

(a) www.clubfit.ca

(b) www.clubfit.mobi