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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

MOTION RECORD

(returnable July 11, 2013)

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

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

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

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

NOTICE OF MOTION
(returnable July 11, 2013)

Extreme Fitness, Inc. (the "**Applicant**") will make a motion to a judge presiding over the Commercial List on Thursday, July 11, 2013 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

1. **THE MOTION IS FOR** an Order, among other things:

   (a) abridging the time for service and filing of this notice of motion and the motion record and dispensing with further service thereof;

   (b) approving the Fourth Report (the "**Fourth Report**") of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the Court-appointed monitor of the Applicant (in such capacity, the "**Monitor**"), and the actions of the Monitor described therein;

   (c) approving the fees and disbursements of the Monitor and its counsel, Goodmans LLP;

   (d) approving the agreement (the "**Paymentech Agreement**") dated June 24, 2013 among the Applicant, Falconhead Capital, LLC ("**Falconhead**"), Chase

Paymentech Solutions ("**Paymentech**") and National Bank of Canada ("**NBC**"), which governs the return of certain reserve funds that Paymentech was holding, and the transactions described therein;

(e) authorizing and directing the Applicant and any person in possession of any of the Applicant's Property (as defined in Initial Order (the **"Initial Order"**) of the Honourable Mr. Justice Campbell granted on February 7, 2013 in these proceedings) to distribute, without further Order of this Court, any of the Property, including any funds comprising such Property, remaining in, or that come into, the Applicant's or any other person's possession to NBC, as agent, on behalf of the lenders under the credit agreement dated May 20, 2011 (the "**NBC Lenders**") on account of the Applicant's outstanding indebtedness for principal, interest and costs, up to the amount of the Applicant's indebtedness to the NBC Lenders;

(f) upon the filing by the Monitor of a certificate certifying that all matters to be attended to in connection with the CCAA Proceedings have been completed to the satisfaction of the Monitor (the "**Monitor's Discharge Certificate**") with this Court, terminating: (i) the Administration Charge; (ii) the D&O Charge, with the exception that the D&O Charge shall continue soley as against the amount of $40,197.00 to be held by Aird & Berlis LLP in trust pending the resolution, following termination of the CCAA Proceedings, of the assessments issued by Canada Revenue Agency ("**CRA**") in respect of the Applicant for unpaid source deductions under the *Income Tax Act* (Canada) (the "**ITA**"); and (iii) the DIP Charge, each as defined in, and established by, the Initial Order;

(g) discharging FTI as Monitor and releasing FTI from any and all liability that FTI has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of FTI while acting in its capacity as Monitor, upon the filing by the Monitor of the Monitor's Discharge Certificate with this Court certifying that all matters to be attended to in connection with these proceedings (the "**CCAA Proceedings**") have been completed to the satisfaction of the Monitor;

(h) terminating the CCAA Proceedings, upon the filing of the Monitor's Discharge Certificate with this Court; and

(i) such further and other relief as counsel may advise and this Court may permit.

2. **THE GROUNDS FOR THE MOTION ARE:**

(a) the Applicant was a leading operator of fitness clubs in the greater Toronto area and surrounding region;

(b) on February 7, 2013, the Applicant made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") seeking court protection from its creditors, which protection was granted pursuant to the Initial Order;

(c) on March 7, 2013, upon a motion by the Applicant, this Court granted an order, among other things: (i) extending the Stay Period (as defined in the Initial Order) to and including April 5, 2013; (ii) approving the key employee retention plan offered by the Applicant to certain employees deemed critical to complete the proposed transaction with GoodLife Fitness Centres Inc. ("**GoodLife**"); and (iii) approving the First Report of the Monitor dated February 26, 2013, and the actions of the Monitor described therein;

(d) on March 27, 2013, upon a motion by the Applicant, this Court granted an order, among other things: (i) approving the Asset Purchase Agreement between the Applicant and GoodLife dated March 19, 2013 (the "**APA**"); and (ii) vesting the Applicant's right, title and interest in and to the Purchased Assets (as defined in the APA) in GoodLife;

(e) on March 27, 2013, upon a motion by the Applicant, this Court granted an order (the "**Ancillary Order**"), among other things: (i) extending the Stay Period to and including May 10, 2013; (ii) approving the assignment of a certain lease (the "**Danforth Lease**") to GoodLife pursuant to the APA; (iii) authorizing the Monitor to make certain interim distributions from the proceeds (the "**Sale**

Proceeds") of the Transaction (as defined below) to: (1) Golub Capital Incorporated ("**Golub**"), as agent, on behalf of the DIP Lender (as defined in the Initial Order) in respect of the amounts advanced to the Applicant under the DIP Credit Agreement plus interest and costs, (2) the Applicant in respect of its post-filing obligations, including liabilities intended to be protected by the Administration Charge and the D&O Charge, and any monetary defaults in respect of leases assigned to GoodLife, (3) Golub, as agent, on behalf of the lenders under the Priority Credit Agreement (as defined in the affidavit of Alan Hutchens sworn February 7, 2013 (the "**February 7 Affidavit**")) in respect of the amounts advanced to the Applicant under the Priority Agreement plus interest and costs and (4) NBC, as agent, on behalf of the NBC Lenders in partial satisfaction of the Applicant's outstanding indebtedness to the NBC Lenders (the "**Interim Distributions**"); (iv) authorizing the Monitor to make further distributions to NBC, as agent, on behalf of the NBC Lenders from any additional Sale Proceeds received by the Monitor under the APA and from any additional funds that come into the Monitor's possession in respect of the assets and property of the Applicant; and (v) approving the Second Report of the Monitor dated March 22, 2013 and the Supplemental Report to the Second Report of the Monitor dated March 26, 2013, and the actions of the Monitor described therein;

(f) the transactions contemplated in the APA (the "**Transaction**") provided for the sale or assignment of substantially all of the Applicant's assets to GoodLife (except the Excluded Assets, as that term is defined in the APA), including, without limitation, contracts regarding the Applicant's Members and Persons subject to Personal Training Contracts (as those terms are defined in the APA), personal property used in the Applicant's business and substantially all of the equipment leases and real property leases;

(g) the Transaction closed at 11:59 p.m. on March 31, 2013 and the Effective Time (as defined in the APA) was 12:01 a.m. on April 1, 2013;

(h) the consummation of the Transaction resulted in the preservation of approximately 70% of the jobs of the Applicant's employees, and provided for continued supplier relationships and continued business activity at all the locations from which the Applicant operated;

(i) pursuant to the Endorsement of the Honourable Justice Morawetz dated March 27, 2013, $430,000 from the proceeds from the Transaction was required to be held by the Monitor pending the determination or settlement of, among other things, the amount owing by the Applicant with respect to the Danforth Lease;

(j) following the closing of the Transaction, the Monitor completed the Interim Distributions in accordance with the Ancillary Order;

(k) on May 9, 2013, upon a motion by the Applicant, this Court granted an order (the "**May 9 Order**"), among other things: (i) extending the Stay Period to and including July 12, 2013; (ii) approving the Third Report of the Monitor dated May 1, 2013 (the "**Third Report**"), and the actions of the Monitor described therein; and (iii) releasing the amount of $430,000 being held by the Monitor in accordance with a settlement agreement and release dated May 9, 2013 (the "**Settlement Agreement**") between the Applicant and the landlord under the Danforth Lease (the "**Danforth Landlord**");

(l) pursuant to the May 9 Order, the Monitor released the settlement amount under the Settlement Agreement to the Danforth Landlord and distributed the remainder of the $430,000 in accordance with the Ancillary Order and May 9 Order;

(m) on June 24, 2013, the Applicant, Falconhead, Paymentech and NBC entered into the Paymentech Agreement to govern the return of a $900,000 reserve that Paymentech was holding pursuant to the terms of the Select Merchant Payment Card Processing Agreement dated February 2, 2011 between the Applicant and Paymentech, for itself and on behalf of The Bank of Nova Scotia and First Data Loan Company, Canada;

(n) the Applicant has approximately $800,000.00 in its possession, and the Monitor has approximately $5,779,000.00 in its possession, which will be distributed to NBC, as agent on behalf of the NBC Lenders, less the amount of $40,197.00 to be held by Aird & Berlis LLP in trust pending the resolution of the assessments issued by CRA in respect of the Applicant for unpaid source deductions under the ITA and less any fees and costs, in accordance with the requested Order and the Ancillary Order;

(o) following distribution to NBC of the remaining sale proceeds and funds, there are no material assets remaining;

(p) the Applicant and the Monitor have duly complied with their obligations and carried out their responsibilities under the CCAA and the Orders granted by this Court in the CCAA Proceedings and thus a discharge of the Monitor and the termination of the CCAA Proceedings, including the Administration Charge, the D&O Charge (except as set out above) and the DIP Charge, are appropriate at this time;

(q) the Applicant's senior secured creditors, Golub and NBC, support the relief being sought by the Applicant;

(r) the Monitor will file with the Court its Fourth Report outlining, among others things: (i) the actions of the Monitor since the date of its Third Report; (ii) the Applicant's financial situation; and (iii) the proposed termination of the CCAA Proceedings and the discharge of the Monitor;

(s) the Monitor supports the relief being sought by the Applicant;

(t) the other grounds set out in the Fourth Report;

(u) the CCAA and the inherent and equitable jurisdiction of this Court;

(v) rules 1.04, 2.03, 3.02, 16.08 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

(w) such further and other grounds as counsel may advise and this Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

(a) the affidavit of Alan Hutchens sworn July 4, 2013;

(b) the Fourth Report; and

(c) such further and other material as counsel may submit and this Court may permit.

Date: July 4, 2013

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TO: ATTACHED SERVICE LIST

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

NOTICE OF MOTION

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Tab 2

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	THURSDAY, THE 11TH DAY
	)	
JUSTICE BROWN	)	OF JULY, 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

ORDER
(Re: Discharge)

THIS MOTION, made by Extreme Fitness, Inc. (the "**Applicant**"), for an order, *inter alia*:

(a) approving the Fourth Report of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the Court-appointed monitor of the Applicant (in such capacity, the "**Monitor**"), dated July 4, 2013 (the "**Fourth Report**"), and the actions of the Monitor described therein;

(b) approving the fees and disbursements of the Monitor and its counsel, Goodmans LLP ("**Goodmans**");

(c) approving the agreement (the "**Paymentech Agreement**") dated June 24, 2013 among the Applicant, Falconhead Capital, LLC ("**Falconhead**"), Chase Paymentech

Solutions ("**Paymentech**") and National Bank of Canada ("**NBC**"), which governs the return of certain reserve funds that Paymentech was holding, and the transactions described therein;

(d) authorizing and directing the Applicant and any person in possession of any of the Applicant's Property (as defined in Initial Order (the **"Initial Order"**) of the Honourable Mr. Justice Campbell granted on February 7, 2013 in these proceedings) to distribute, without further Order of this Court, any of the Property, including any funds comprising such Property, remaining in, or that come into, the Applicant's or any other person's possession to NBC, as agent, on behalf of the lenders under the credit agreement dated May 20, 2011 (the "**NBC Lenders**") on account of the Applicant's outstanding indebtedness for principal, interest and costs, up to the amount of the Applicant's indebtedness to the NBC Lenders;

(e) upon the filing of the Monitor's Discharge Certificate (as defined herein) with this Court, terminating: (i) the Administration Charge; (ii) the D&O Charge, with the exception that the D&O Charge shall continue solely as against the amount of $40,197.00 to be held by Aird & Berlis LLP in trust pending the resolution, following the termination of these proceeds (the "**CCAA Proceedings**"), of the assessments issued by Canada Revenue Agency ("**CRA**") in respect of the Applicant for unpaid source deductions under the *Income Tax Act* (Canada) (the "**ITA**"); and (iii) the DIP Charge, each as defined in, and established by, the Initial Order;

(f) discharging FTI as Monitor and releasing FTI from any and all liability that FTI has or may hereafter have by reason of, or in any way arising out of, the acts or omissions

of FTI while acting in its capacity as Monitor, upon the filing of the Monitor's Discharge Certificate with this Court; and

(g) terminating the CCAA Proceedings, upon the filing of the Monitor's Discharge Certificate with this Court,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Alan Hutchens sworn July 4, 2013 and the Fourth Report, the affidavit of Paul Bishop sworn July 4, 2013 (the "**Bishop Affidavit**") and the affidavit of Melaney J. Wagner sworn July 4, 2013 (the "**Wagner Affidavit**"), and on hearing the submissions of counsel for the Applicant, counsel for the Monitor and counsel for NBC, no one appearing for any other person on the service list, although duly served as appears from the affidavit of Sara Szulc sworn July 4, 2013, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Fourth Report and the actions of the Monitor described therein be and are hereby approved.

3. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period February 7, 2013 to June 30, 2013, inclusive, and the Monitor's fees and disbursements, as estimated, to complete its remaining duties and the administration of these CCAA Proceedings, all as set out in the Bishop Affidavit and the Fourth Report, are hereby approved.

4. **THIS COURT ORDER** that the fees and disbursements of the Monitor's counsel, Goodmans, for the period January 22, 2013 to July 2, 2013, inclusive, and Goodmans' fees and disbursements, as estimated, in connection with the completion by the Monitor of its remaining duties and the administration of these CCAA Proceedings, all as set out in the Wagner Affidavit and the Fourth Report, are hereby approved.

5. **THIS COURT ORDERS** that the Paymentech Agreement and the transactions described therein be and are hereby approved and Paymentech is hereby authorized and directed to make each of the payments set out in the Paymentech Agreement to NBC, as agent, on behalf of the NBC Lenders, on account of the Applicant's outstanding indebtedness for principal, interest and costs up to the amount of the Applicant's indebtedness to the NBC Lenders.

6. **THIS COURT ORDERS** that the Applicant and any person in possession of the Applicant's Property are hereby authorized and directed to distribute, without further Order of this Court, any and all of the Applicant's Property, including any funds comprising such Property, remaining in, or that may come into, the Applicant's or any person's possession to NBC, as agent, on behalf of the NBC Lenders on account of the Applicant's outstanding indebtedness for principal, interest and costs, up to the amount of the Applicant's indebtedness to the NBC Lenders.

7. **THIS COURT ORDERS AND DECLARES** that, notwithstanding:

(a) the pendency of the CCAA Proceedings or the termination of the CCAA Proceedings;

(b) any application for a bankruptcy order or bankruptcy Order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (the "**BIA**") in respect of the Applicant; or

(c) any assignment in bankruptcy made in respect of the Applicant,

the distributions and payments made or to be made to NBC, as agent, on behalf of the NBC Lenders pursuant to the terms of this Order are final and irreversible and shall be binding upon 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 any such payments or distributions constitute or be deemed to be fraudulent preferences, assignments, fraudulent conveyances, or other reviewable transactions under the BIA or any other applicable federal or provincial law, nor shall they constitute conduct which is oppressive, unfairly prejudicial to or which unfairly disregards the interests of any person.

8. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Applicant regarding the satisfaction of all of the Applicant's duties and obligations pursuant to the CCAA and orders of the Court in respect of these CCAA Proceedings.

9. **THIS COURT ORDERS** that, upon the filing by the Monitor of a certificate with this Court substantially in the form attached as **Schedule "A"** hereto (the "**Monitor's Discharge Certificate**") certifying that all matters to be attended to in connection with the CCAA Proceedings have been completed to the satisfaction of the Monitor:

(a) FTI be and is hereby discharged and relieved from any further obligations, liabilities, responsibilities or duties in its capacity as Monitor pursuant to the Initial Order, any

other Order of this Court in the CCAA Proceedings, the *Companies' Creditors Arrangement Act* (the "**CCAA**") or otherwise;

(b) the Administration Charge, the D&O Charge and the DIP Charge (each as defined in, and established by, the Initial Order) be and are hereby terminated, released and discharged, with the exception that the D&O Charge shall continue solely as against the amount of $40,197.00 held by Aird & Berlis LLP in trust pending the resolution, following termination of the CCAA Proceedings, of the assessments issued by CRA in respect of the Applicant for unpaid source deductions under the ITA; and

(c) the CCAA Proceedings be and are hereby terminated.

10. **THIS COURT ORDERS** that, in addition to the protections in favour of the Monitor as set out in the Initial Order, any other Order of this Court or reasons provided by this Court in the CCAA Proceedings or the CCAA, the Monitor shall not be liable for any act or omission on the part of the Monitor, including with respect to any reliance thereof, including, without limitation, with respect to any information disclosed, any act or omission pertaining to the discharge of the Monitor's duties in the CCAA Proceedings or with respect to any other duties or obligations of the Monitor under the CCAA or otherwise, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Subject to the foregoing and in addition to the protections of the Monitor as set out in the Orders of this Court or any reasons provided by this Court in the CCAA Proceedings, any claims against the Monitor in connection with the performance of its duties as Monitor are hereby released, stayed, extinguished and forever barred and the Monitor shall have no liability in respect thereof.

11. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on seven (7) days prior written notice to the Monitor and such further order securing, as security for costs, the full indemnity costs of the Monitor in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

12. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, nothing contained in this Order shall affect, vary, derogate from or amend any of the rights, approvals and protections in favour of the Monitor pursuant to the Initial Order, any other Order of this Court or reasons provided by this Court in the CCAA Proceedings, the CCAA or otherwise, all of which are expressly continued and confirmed.

13. **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.

Schedule "A"
Form of Monitor's Discharge Certificate

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

MONITOR'S DISCHARGE CERTIFICATE

RECITALS

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

B. Pursuant to an Order of this Court dated July 11, 2013 (the "**Discharge Order**"), FTI was discharged as Monitor of the Applicant to be effective upon the filing by the Monitor of this certificate with this Court certifying that all matters to be attended to in connection with the CCAA Proceedings have been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order.

THE MONITOR CERTIFIES that all matters to be attended to in connection with the CCAA Proceedings have been completed to the satisfaction of the Monitor.

DATED at Toronto, Ontario, this ____ day of _____, 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

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER
(Re: Discharge)

AIRD & BERLIS LLP
Barristers and Solicitors
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181 Bay Street, Suite 1800
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Lawyers for Extreme Fitness, Inc.

Tab 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AFFIDAVIT OF ALAN HUTCHENS

(sworn July 4, 2013)

I, Alan Hutchens, of the Town of Oakville, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Interim Chief Financial Officer of Extreme Fitness, Inc. (the "**Applicant**"). As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

I. NATURE OF MOTION AND RELIEF SOUGHT

2. This Affidavit is sworn in support of a motion by the Applicant under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, among other things:

(a) approving the Fourth Report (the "**Fourth Report**") of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the Court-appointed monitor of the Applicant (in such capacity, the "**Monitor**"), and the actions of the Monitor described therein;

(b) approving the fees and disbursements of the Monitor and its counsel, Goodmans LLP;

(c) approving the agreement (the "**Paymentech Agreement**") dated June 24, 2013 among the Applicant, Falconhead Capital, LLC ("**Falconhead**"), Chase Paymentech Solutions ("**Paymentech**") and National Bank of Canada ("**NBC**"), which governs the return of certain reserve funds that Paymentech was holding, and the transactions described therein;

(d) authorizing and directing the Applicant and any person in possession of any of the Applicant's Property (as defined in Initial Order (the **"Initial Order"**) of the Honourable Mr. Justice Campbell granted on February 7, 2013 in these proceedings) to distribute, without further Order of this Court, any of the Property, including any funds comprising such Property, remaining in, or that come into, the Applicant's or any other person's possession to NBC, as agent, on behalf of the lenders under the credit agreement dated May 20, 2011 (the "**NBC Lenders**") on account of the Applicant's outstanding indebtedness for principal, interest and costs, up to the amount of the Applicant's indebtedness to the NBC Lenders;

(e) upon the filing by the Monitor of a certificate certifying that all matters to be attended to in connection with the CCAA Proceedings have been completed to the satisfaction of the Monitor (the "**Monitor's Discharge Certificate**") with this Court, terminating: (i) the Administration Charge; (ii) the D&O Charge, with the exception that the D&O Charge shall continue solely as against the amount of $40,197.00 to be held by Aird & Berlis LLP in trust pending the resolution, following termination of these proceedings (the "**CCAA Proceedings**"), of the assessments issued by Canada Revenue Agency ("**CRA**") in respect of the Applicant for unpaid source deductions under the *Income Tax Act* (Canada) (the "**ITA**"); and (iii) the DIP Charge, each as defined in, and established by, the Initial Order;

(f) discharging FTI as Monitor and releasing FTI from any and all liability that FTI has or may hereafter have by reason of, or in any way arising out of, the acts or

omissions of FTI while acting in its capacity as Monitor, upon the filing by the Monitor of the Monitor's Discharge Certificate with this Court; and

(g) terminating the CCAA Proceedings, upon the filing of the Monitor's Discharge Certificate with this Court.

3. Capitalized terms not otherwise defined herein have the meaning given to them in my prior Affidavits filed with this Court.

II. BACKGROUND

4. The Applicant was a leading operator of fitness clubs in the greater Toronto area and surrounding region.

5. On February 7, 2013, the Applicant made an application under the CCAA seeking court protection from its creditors, which protection was granted pursuant to the Initial Order.

6. I swore an affidavit on February 7, 2013 (the "**February 7 Affidavit**") in support of the Initial Order, a copy of which (without exhibits) is attached as **Exhibit "A"** to this Affidavit. The February 7 Affidavit sets out the background of these CCAA proceedings, including the business of the Applicant and its financial difficulties, an overview of the Applicant's major stakeholders and the proposed sale of substantially all of the Applicant's assets, properties and undertakings to GoodLife Fitness Centres Inc. ("**GoodLife**").

7. On March 7, 2013, upon a motion by the Applicant, this Court granted an order, among other things: (i) extending the Stay Period to and including April 5, 2013; (ii) approving the key employee retention plan offered by the Applicant to certain employees deemed critical to complete the proposed transaction with GoodLife; and (iii) approving the First Report of the Monitor dated February 26, 2013, and the actions of the Monitor described therein.

8. On March 27, 2013, upon a motion by the Applicant, this Court granted an order, among other things: (i) approving the Asset Purchase Agreement between the Applicant and GoodLife dated March 19, 2013 (the "**APA**"); and (ii) vesting the Applicant's right, title and interest in and to the Purchased Assets (as defined in the APA) in GoodLife.

9. On March 27, 2013, upon a motion by the Applicant, this Court granted an order (the "**Ancillary Order**"), among other things: (i) extending the Stay Period to and including May 10, 2013; (ii) approving the assignment of a certain lease (the "**Danforth Lease**") to GoodLife pursuant to the APA; (iii) authorizing the Monitor to make certain interim distributions from the proceeds (the "**Sale Proceeds**") of the Transaction (as defined below) to: (1) Golub Capital Incorporated ("**Golub**"), as agent, on behalf of the DIP Lender (as defined in the Initial Order) in respect of the amounts advanced to the Applicant under the DIP Credit Agreement plus interest and costs, (2) the Applicant in respect of its post-filing obligations, including liabilities intended to be protected by the Administration Charge and the D&O Charge, and any monetary defaults in respect of leases assigned to GoodLife, (3) Golub, as agent, on behalf of the lenders under the Priority Credit Agreement (as defined in the February 7 Affidavit) in respect of the amounts advanced to the Applicant under the Priority Agreement plus interest and costs and (4) NBC, as agent, on behalf of the NBC Lenders in partial satisfaction of the Applicant's outstanding indebtedness to the NBC Lenders (the "**Interim Distributions**"); and (iv) authorizing the Monitor to make further distributions to NBC, as agent, on behalf of the NBC Lenders from any additional Sale Proceeds received by the Monitor under the APA and from any additional funds that come into the Monitor's possession in respect of the assets and property of the Applicant; and (v) approving the Second Report of the Monitor dated March 22, 2013 and the Supplemental Report to the Second Report of the Monitor dated March 26, 2013, and approving the actions of the Monitor described therein.

10. The transactions contemplated in the APA (the "**Transaction**") provided for the sale or assignment of substantially all of the Applicant's assets to GoodLife (except the Excluded Assets, as that term is defined in the APA), including, without limitation, contracts regarding the Applicant's Members and Persons subject to Personal Training Contracts (as those terms are defined in the APA), personal property used in the Applicant's business and substantially all of the equipment leases and real property leases.

11. The Transaction closed at 11:59 p.m. on March 31, 2013 and the Effective Time (as defined in the APA) was 12:01 a.m. on April 1, 2013.

12. The consummation of the Transaction resulted in the preservation of approximately 70% of the jobs of the Applicant's employees, and provided for continued supplier relationships and continued business activity at all the locations from which the Applicant operated.

13. Following the closing of the Transaction, the Monitor completed the Interim Distributions in accordance with the Ancillary Order.

14. The Applicant and GoodLife subsequently agreed that the Adjustment Amount (as defined in the APA) was $495,827, in GoodLife's favour. This amount has been distributed by the Monitor to GoodLife in accordance with the terms of the APA. In accordance with the terms of the APA and the consent of GoodLife, the remainder of the Holdback (as defined in the APA) was released to the Monitor for the benefit of the Applicant, after a payment of approximately $20,083 from the Holdback was made to Integrity Square LLC (financial advisor to the Applicant that assisted with the sale process) pursuant to its engagement agreement with the Applicant.

15. Pursuant to the Endorsement of the Honourable Justice Morawetz dated March 27, 2013, $430,000 from the proceeds from the Transaction was required to be held by the Monitor pending a hearing to determine, among other things, the amount owing by the Applicant with respect to the Danforth Lease.

16. On or about April 10, 2013, CRA assessed the Applicant for unpaid source deductions under the ITA in the aggregate amount of approximately $374,000, of which approximately $32,416 relates to the post-filing period. An amount of $40,197 will be held in trust in accordance with the requested Order to account for the amounts relating to the post-filing period plus estimated penalties and interest if the Applicants objection is unsuccessful. On July 2, 2013, the Applicant filed an objection with respect to the reassessments. The amounts owing by the Applicant, if any, have yet to be determined.

17. On May 9, 2013, upon a motion by the Applicant, this Court granted an order, among other things: (i) extending the Stay Period to and including July 12, 2013; (ii) approving the Third Report of the Monitor dated May 1, 2013, and the actions of the Monitor described therein; and (iii) releasing the amount of $430,000 being held by the Monitor in accordance with a

settlement agreement and release dated May 9, 2013 (the "**Settlement Agreement**") between the Applicant and the landlord under the Danforth Lease (the "**Danforth Landlord**").

18. Pursuant to the May 9 Order, the Monitor released the settlement amount under the Settlement Agreement to the Danforth Landlord and distributed the remainder of the $430,000 in accordance with the Ancillary Order and May 9 Order.

19. On or about April 24, 2013, the Applicant and Royal Bank of Canada ("**RBC**") entered into an agreement (the "**RBC Agreement**") to govern the return of a $500,000 reserve that RBC was holding pursuant to the terms of a letter agreement dated June 8, 2012 between the Applicant and RBC. Pursuant to the RBC Agreement, the balance of the funds are scheduled to be returned to the Applicant by July 8, 2013.

20. On June 24, 2013, Falconhead, Paymentech and NBC entered into the Paymentech Agreement to govern the return of a $900,000 reserve that Paymentech was holding pursuant to the terms of the Select Merchant Payment Card Processing Agreement dated February 2, 2011 between the Applicant and Paymentech, for itself and on behalf of The Bank of Nova Scotia and First Data Loan Company, Canada. A copy of the Paymentech Agreement is attached as **Exhibit "B"** to this Affidavit.

21. The Applicant has approximately $800,000.00 in its possession, and the Monitor has approximately $5,779,000.00 in its possession, which will be distributed to NBC, as agent on behalf of the NBC Lenders, less the amount of $40,197.00 to be held by Aird & Berlis LLP in trust pending the resolution of the assessments issued by CRA in respect of the Applicant for unpaid source deductions under the ITA and less any fees and costs, in accordance with the requested Order and the Ancillary Order.

22. Following distribution to NBC of the remaining sale proceeds and funds as described above, there are no material assets remaining.

III. THE TERMINATION OF THE CCAA PROCEEDINGS

23. The Applicant has duly complied with its obligations and carried out its responsibilities under the CCAA and the Orders granted by this Court in these CCAA Proceedings and believes

it is appropriate for this Court to terminate these CCAA Proceedings, including the Administration Charge, the D&O Charge (except as set out above) and the DIP Charge at this time.

24. It is the intention of Greg Karpel, the Interim Controller of the Applicant, and myself, in my capacity as the Interim Chief Financial Officer of the Applicant, to resign from our respective positions contemporaneously with the filing of the Monitor's Discharge Certificate with this Court.

25. The requested relief is supported by the Monitor and the Applicant's senior secured creditors, Golub and NBC.

26. This Affidavit is sworn in support of the relief requested by the Applicant and for no other or improper purposes.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 4th day of July, 2013.

A commissioner of oaths, etc.
IAN AVERSA

ALAN HUTCHENS

Tab A

Attached is Exhibit "A"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 4th day of July, 2013

IAN AVERSA

Commissioner for taking Affidavits, etc

Court File No. CV-13-1000-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AFFIDAVIT OF ALAN HUTCHENS

(sworn February 7, 2013)

I, Alan Hutchens, of the Town of Oakville, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Interim Chief Financial Officer of Extreme Fitness, Inc. ("**Extreme**", the "**Company**" or the "**Applicant**"). As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

I. NATURE OF APPLICATION AND RELIEF SOUGHT

2. This Affidavit is sworn in support of an application by the Applicant under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, among other things:

(a) staying all proceedings and remedies taken or which might be taken in respect of the Applicant or any of its property, except upon the leave of the Court being granted, or as otherwise provided;

(b) authorizing the Applicant to prepare and file with the Court a plan of compromise or arrangement with its creditors;

(c) appointing FTI Consulting Canada Inc. ("**FTI**") as monitor of the Applicant (in such capacity, the "**Monitor**");

(d) authorizing debtor-in-possession ("**DIP**") financing for the Applicant;

(e) authorizing an administration charge (the "**Administration Charge**") over the assets of the Applicant to the benefit of the Monitor, Monitor's counsel, the Applicant's counsel and Alvarez & Marsal Canada ULC ("**A&M**") in its capacity as the Applicant's financial advisor (in such capacity, the "**Advisor**") and in its capacity as the Applicant's Interim Chief Financial Officer and Interim Controller (in such capacities, the "**Interim Officers**") to secure their fees and disbursements; and

(f) indemnifying the Applicant's directors, officers and Interim Officers for obligations and liabilities they may incur as directors and officers of the Applicant after the commencement of the CCAA proceedings and authorizing a charge over the assets of the Applicant as security for such indemnity.

3. The principal objectives of this proceeding are: (i) to ensure the ongoing operations of Extreme; (ii) to ensure the Company has the necessary availability of working capital funds to maximize the ongoing business of Extreme for the benefit of its stakeholders; and (iii) to complete a sale and transfer of substantially all of Extreme's assets and business as a going concern.

4. In connection with the potential sale of Extreme's assets and business, Extreme entered into a letter of intent with GoodLife Fitness Centres Inc. ("**GoodLife**"). The transaction is subject to the satisfaction of certain conditions, as described in greater detail below, and contemplates the completion of a transaction by March 31, 2013. The proposed transaction would involve the retention of most of Extreme's staff.

5. The anticipated scenario in this proceeding is a going concern sale of the Applicant's fitness facilities to GoodLife as set out herein. However, there is also the possibility that there could be a restructuring of the Applicant's business. Protection under the CCAA will allow for a

sale to happen, if possible, under the supervision of the Court for the benefit of all stakeholders and, if necessary, will also allow for the prospect of a restructuring.

II. BACKGROUND OF THE APPLICANT AND ITS BUSINESS

6. The Applicant is a privately held corporation formed by articles of amalgamation under the laws of the Province of Alberta on June 16, 2006. The Applicant is registered to carry on business in the Province of Ontario and all of its assets are located in Ontario. A copy of a corporation information report for Extreme is attached as **Exhibit "A"** to this Affidavit.

7. Through acquisitions and greenfield expansions, Extreme currently operates 13 fitness facilities in the GTA and surrounding region with approximately 57,500 members.

8. The Applicant's ownership structure as at October, 2012 is set out in the organizational chart, attached as **Exhibit "B"** to this Affidavit. On June 15, 2006, Falconhead Capital, LLC ("**Falconhead**"), a New York based private equity firm, purchased the Extreme business which, at the time, operated four fitness facilities in the greater Toronto area (the "**GTA**"). Falconhead is the Applicant's largest shareholder, directly or indirectly holding approximately 80% of the outstanding share capital of the Company.

9. As of the date of this Affidavit:

(a) the Applicant's directors are David Gubbay, Darko Pajovic and Taso Pappas (collectively, the "**Directors**"); and

(b) the Applicant's officers are Taso Pappas, President, Alan Hutchens, Interim Chief Financial Officer and Greg Karpel, Interim Controller (collectively, the "**Officers**"). Messrs. Hutchens and Karpel were appointed as Interim CFO and Interim Controller, respectively, effective May 1, 2012, pursuant to an engagement letter between the Applicant and A&M of even date.

10. The Applicant's former CFO and former Controller were placed on administrative leave effective April 26, 2012. The Applicant's former CEO resigned effective June 8, 2012. On the same date, Taso Pappas was appointed President of the Applicant.

11. DBP Maintenance ("**DBP**") is an independent contractor owned by, among others, Darko Pajovic. DBP currently provides janitorial and general maintenance services to Extreme's 13 fitness facilities.

12. The Applicant's revenues are comprised primarily of membership and personal training fees. The Applicant operates its 13 fitness facilities from the following leased locations:

(a) 80 Bloor Street West, Toronto ("**Bloor**");

(b) 3495 Lawrence Avenue East, Scarborough ("**Cedarbrae**");

(c) 635 Danforth Avenue, Toronto ("**Danforth**");

(d) 1521 Yonge Street, Toronto ("**Delisle**");

(e) 319 Yonge Street, Toronto ("**Dundas**");

(f) 110 Eglinton Avenue East, Toronto ("**Dunfield**");

(g) 90 Interchange Way, Vaughan ("**Interchange**");

(h) 4950 Yonge Street, Toronto ("**North York**");

(i) 1755 Pickering Parkway, Pickering ("**Pickering**");

(j) 267 Richmond Street West, Toronto ("**Richmond**");

(k) 8281 Yonge Street, Thornhill ("**Thornhill**");

(l) 111 Wellington Street West, Toronto ("**Wellington**"); and

(m) 75 Consumers Drive, Whitby ("**Whitby**").

13. The Applicant's registered office is 600, 12220 Stony Plain Road, Edmonton, Alberta. Its head office is located at 8281 Yonge Street, Thornhill, Ontario.

14. The Applicant has a 75% interest in the share capital of Halsa Studio Inc. ("**Halsa**"), a corporation incorporated pursuant to the laws of the Province of Ontario. Halsa previously

operated as a laser hair removal clinic at the Thornhill location. Halsa ceased operations on or about 2002.

15. The Applicant also has a 51% interest in the share capital of Juice (Whitby) Inc. ("**Juice**"), a corporation incorporated pursuant to the laws of the Province of Ontario. Juice previously operated as a juice bar located at the Whitby location. Juice ceased operations on or about 2007.

16. Nutrition (Whitby) Inc. ("**Nutrition**"), a corporation incorporated pursuant to the laws of the Province of Ontario, is a wholly-owned subsidiary of the Applicant. Nutrition previously operated as a nutritional supplements retailer at the Whitby location. Nutrition ceased operations on or about 2007.

17. As of the date of this Affidavit, none of Halsa, Juice and Nutrition have any material assets and are dormant companies. Accordingly, it is not currently contemplated that Halsa, Juice or Nutrition will be applicants in these proceedings.

III. THE APPLICANT'S FINANCIAL SITUATION

18. In early April, 2012, Extreme's former CEO became aware that the Company was experiencing liquidity difficulties and that certain discrepancies and irregularities existed in the Company's books and records. Accordingly, the Applicant took immediate steps to investigate the situation by, among other things, engaging A&M on April 9, 2012, to provide consulting services in connection with, among other things, efforts to improve the Company's financial and operating performance and to assist in evaluating difficulties with the Company's accounting, financial and operating reporting.

19. In mid-April, 2012, in order to address the Company's liquidity needs, certain of its stakeholders, with the cooperation of National Bank of Canada (the Applicant's senior secured lender), extended the Applicant a priority credit facility, as further detailed below.

20. The Company and A&M worked throughout April and May, 2012 to identify, review and assess the impact of the discrepancies and irregularities that existed in the Company's books and records. As this work progressed, it became evident that the Company's financial statements for

the fiscal years ending December 31, 2010 and 2011, and its monthly financial statements for January to April, 2012 required restatement. The primary financial statement items that had been misstated, included, but were not limited to:

(a) personal training revenue, accounts receivable and deferred revenue;

(b) allowance for doubtful accounts;

(c) membership revenues; and

(d) GST/HST liabilities.

21. The financial statement restatement work was concluded in mid-June, 2012 which entailed, but was not limited to:

(a) restatement of the Applicant's financial statements for the fiscal years ending December 31, 2010 and December 31, 2011 and its balance sheet as at December 31, 2009;

(b) reconciliation of the Applicant's personal training records for fiscal years 2009 to 2011;

(c) recalculation and restatement of the Applicant's bad debt expense for fiscal years 2010 and 2011;

(d) filing the Applicant's amended 2010 income tax return; and

(e) restating the Applicant's GST/HST liability in conjunction with the filing of amended returns under the Canada Revenue Agency's Voluntary Disclosures Program ("**VDP**"), as further described herein.

22. Attached hereto as **Confidential Exhibit "C"** to this Affidavit is a copy of the Applicant's unaudited financial statements for the fiscal year ended December 31, 2011 and copy of the Applicant's unaudited third-quarter financial statements for the period ended September 30, 2012 (the "**2012 Q3 Financials**"). The 2012 Q3 Financials reflect a loss from operations of

$7,072,813. The Applicant is requesting a sealing of this exhibit as it contains commercially sensitive information, the release of which could prejudice the stakeholders of the Company.

23. The Applicant's liabilities total approximately $57 million, $44 million of which are secured (including capital lease obligations).

IV. STAKEHOLDERS

(a) National Bank of Canada

24. The Applicant and National Bank of Canada ("**National Bank**") are parties to a credit agreement dated May 20, 2011 (the "**National Bank Credit Agreement**"), pursuant to which National Bank agreed to provide a revolving term credit facility in the principal amount of $3,000,000, a non-revolving term loan facility in the principal amount of $15,000,000, a non-revolving term loan facility in the principal amount of $7,000,000 and a Business MasterCard facility in the principal amount of $500,000 (collectively, the "**National Bank Facilities**"). A copy of the National Bank Credit Agreement is attached as **Exhibit "D"** to this Affidavit.

25. The Applicant executed and delivered a general security agreement in favour of National Bank dated May 20, 2011 (the "**National Bank GSA**"), registration in respect of which was made pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**") on March 25, 2011, pursuant to financing statement number 20110325 0910 1862 5333 and reference file number 668533329. A copy of the National Bank GSA is attached as **Exhibit "E"** to this Affidavit.

26. As further security to support the National Bank Credit Agreement, the Applicant executed and delivered a securities pledge agreement in favour of National Bank (the "**National Bank SPA**") and a fixed and floating charged debenture in the principal amount of $50,000,000 (the "**National Bank Debenture**").

27. The Applicant was in default of certain of its obligations under the National Bank Credit Agreement and, accordingly, entered into a forbearance letter agreement with National Bank dated April 18, 2012 (as amended, the "**National Bank Forbearance Agreement**"). The National Bank Forbearance Agreement operated to forbear enforcement of National Bank's security until October 31, 2012, conditional on certain terms and conditions as set out in the

National Bank Forbearance Agreement. Through a series of extensions to the National Bank Forbearance Agreement, the forbearance date was extended to January 31, 2013. A copy of the National Bank Forbearance Agreement is attached as **Exhibit "F"** to this Affidavit.

28. The total indebtedness of the Applicant to National Bank outstanding as at the date hereof is approximately $18,734,943, including a $300,000 letter of credit provided by National Bank as security for the Applicant's lease of the Interchange location.

(b) Golub Capital Incorporated

29. The Applicant and Golub Capital Incorporated ("**Golub**"), as agent for the benefit of itself and the lenders described in the agreement, are parties to an amended and restated credit agreement dated May 20, 2011 (the "**Golub Credit Agreement**"), pursuant to which Golub agreed to provide a term facility to the Applicant in the principal amount of $16,500,000 (the "**Golub Facility**"). A copy of the Golub Credit Agreement is attached as **Exhibit "G"** to this Affidavit.

30. The Applicant executed and delivered a general security agreement in favour of Golub (the "**Golub GSA**"), registration in respect of which was made pursuant to the PPSA on June 5, 2006, pursuant to financing statement number 20060605 1112 1862 3005 and reference file number 625817394, as amended by financing statement numbers 20110426 0803 1862 7632 and 20110513 1051 1862 9118. This registration has been postponed by operation of financing statement number 20110511 0950 1862 8866 in favour of National Bank's PPSA registration against the Applicant under financing statement number 20110325 0910 1862 5333 and reference number 668533329. A copy of the Golub GSA is attached as **Exhibit "H"** to this Affidavit.

31. The Applicant was in default of certain of its obligations under the Golub Credit Agreement and, accordingly, executed a forbearance letter agreement with Golub, as agent for the benefit of itself and the lenders described therein, dated April 18, 2012 (as amended, the "**Golub Forbearance Agreement**"). The Golub Forbearance Agreement operated to forbear enforcement of Golub's security to October 31, 2012, conditional on certain terms and conditions substantively similar to those set out in the National Bank Forbearance Agreement.

Through a series of extensions to the Golub Forbearance Agreement, the forbearance date was extended to February 15, 2013. A copy of the Golub Forbearance Agreement is attached as **Exhibit "I"** to this Affidavit.

32. The total indebtedness of the Applicant to Golub under the Golub Credit Agreement outstanding as at December 31, 2012 is approximately USD$18,728,587, including amounts owing for accrued interest.

Priority Credit Facility

33. As stated above, in order to address its liquidity difficulties, the Applicant entered into a priority credit facility agreement with Golub, as agent for the benefit of itself and the lenders described therein (the "**Priority Lenders**"), dated April 18, 2012 (as amended, the "**Priority Credit Agreement**"), under which the Priority Lenders agreed to provide a credit facility in the principal amount of USD$6,000,000, to be increased up to a maximum amount of USD$8,000,000 at the discretion of the Priority Lenders. The Priority Credit Agreement was provided to the Applicant expressly to provide liquidity sufficient to satisfy certain of its payroll and other operating expenses pursuant to approved cash flow statements. As of the date of this Affidavit, the Applicant has drawn the aggregate of USD$8,000,000 under the Priority Credit Agreement. A copy of the Priority Credit Agreement is attached as **Exhibit "J"** to this Affidavit.

34. The Applicant executed and delivered, as an acknowledgment party, an intercreditor agreement between Golub, in its joint capacities as agent for itself and on behalf of each of the senior creditors and junior creditors (as defined therein) dated April 18, 2012 (the "**Golub Intercreditor**"), under which the Applicant's obligations to Golub and the junior creditors under the Golub Credit Agreement were subordinated in favour of those of Golub and the senior creditors under the Priority Credit Agreement up to an amount equal to USD$8,000,000, plus interest and costs. A copy of the Golub Intercreditor is attached as **Exhibit "K"** to this Affidavit.

35. The Applicant executed and delivered, as an acknowledgment party, an intercreditor agreement between Golub, as agent for and on behalf of the senior creditors (as defined therein), and National Bank, as agent for and on behalf of the junior creditors (as defined therein), dated April 18, 2012 (the "**National Bank / Golub Intercreditor**"), under which the Applicant's

obligations to National Bank and the junior creditors under the National Bank Credit Agreement were subordinated in favour of those of Golub and the senior creditors under the Priority Credit Agreement up to an amount equal to USD$8,000,000, plus interest and costs. A copy of the National Bank / Golub Intercreditor is attached as **Exhibit "L"** to this Affidavit.

36. Other than the creditors described above and RBC (as defined and described below), I am not aware of any other creditors with general security over the Applicant's assets.

(c) Other Secured Creditors

37. Each of CIT Financial Ltd., Life Fitness International Sales, Inc., Heffner Leasing Limited, Heffner Auto Sales and Leasing Inc., Heffner Auto Finance Corp., Coinamatic Commercial Laundry Inc., Indcom Leasing Inc., Essex Capital Leasing Corp., CLE Leasing Enterprises Ltd., DSM Leasing Ltd., Enercare Solutions Limited Partnership, Dell Financial Services Canada Limited, BMW Canada Inc. and De Lage Laden Financial Services Canada Inc. have made PPSA security registrations against the Applicant in respect to specific leased equipment and motor vehicles, as applicable.

38. A summary of PPSA registrations made against the Applicant is attached as **Exhibit "M"** to this Affidavit.

(d) Cash Management System / Payment Processors: National Bank of Canada, Royal Bank of Canada and Chase Paymentech Solutions

39. The Applicant maintains the following bank accounts:

(a) two accounts with its primary operating bank, National Bank, being one Canadian dollar account and one U.S. dollar account (together, the "**National Bank Accounts**"); and

(b) 14 accounts with Royal Bank of Canada ("**RBC**"), being one account for each of the Applicant's 13 fitness facilities and one master account (collectively, the "**RBC Bank Accounts**").

40. The Canadian dollar National Bank account (the "**CAD National Bank Account**") is the Applicant's primary operating account where Visa and Master Card credit card payments and Interac direct deposit payments made in favour of the Applicant are deposited. Approximately 76.5% of the Company's aggregate cash receipts are deposited into the CAD National Bank Account, including cash and cheque payments received directly at the Applicant's 13 fitness facilities and delivered to the Company's head office for deposit. The Company utilizes the cash in the CAD National Bank Account to fund its payroll and to pay all of its landlord, supplier and other Canadian dollar obligations. The U.S. dollar National Bank account (the "**USD National Bank Account**") is used periodically to pay the Applicant's U.S. dollar obligations. Funds are electronically transferred by management of the Applicant from the CAD National Bank Account to the USD National Bank Account on an as-needed basis.

41. The RBC Bank Accounts are the Applicant's secondary operating accounts where pre-authorized debits ("**PADs**") and American Express credit card payments made in favour of the Applicant are deposited. Approximately 23.5% of the Company's aggregate cash receipts are deposited into the RBC Bank Accounts. The funds held in the RBC Bank Accounts are periodically aggregated into the RBC master account and subsequently transferred at the request of management of the Applicant from the RBC master account to the CAD National Bank Account on an as-needed basis. The Applicant does not make any other disbursements to any other parties from the RBC Bank Accounts.

42. As security for its services and the obligations of the Applicant under its agreement with RBC, the Company is required to maintain a minimum aggregate cash balance in its RBC accounts of $500,000. RBC has a PPSA registration against the Applicant by way of financing statement number 20080709 1945 1531 7923 and reference file number 646777251 over inventory, equipment, accounts, other and motor-vehicle.

43. The Applicant also has an existing agreement with Chase Paymentech Solutions, for itself and on behalf of The Bank of Nova Scotia and First Data Loan Company, Canada (collectively, "**Paymentech**"), dated February 2, 2011 (the "**Paymentech Agreement**"), pursuant to which Paymentech provides processing services for Visa and Master Card credit card payments and Interac direct deposit payments made in favour of the Applicant. Paymentech

currently processes approximately 70% of all cash receipts of the Company. As security for its services and the obligations of the Applicant under the Paymentech Agreement, the Applicant has provided to Paymentech a cash deposit in an amount of $900,000. A copy of the Paymentech Agreement (without schedules) is attached as **Exhibit "N"** to this Affidavit.

(e) Landlords

44. The Applicant has existing lease agreements with the following landlords:

(a) Krugarand Corporation, in respect to the Bloor location;

(b) First Capital (Cedarbrae) Corporation, in respect to the Cedarbrae location;

(c) 1079268 Ontario Inc., in respect to the Danforth location;

(d) 1521 Yonge Street Limited, in respect to the Delisle location;

(e) 10 Dundas Street Ltd., in respect to the Dundas location;

(f) 110 Eglinton Avenue East Inc., in respect to the Dunfield location;

(g) 2748355 Canada Inc., in respect to the Interchange location;

(h) Redbourne Madison Property Inc. and Redbourne Madison LP Inc., in respect to the North York location;

(i) Pickering Brock Centre Inc., in respect to the Pickering location;

(j) Festival Hall Developments Inc., in respect to the Richmond location;

(k) 2079843 Ontario Inc. and 2044922 Ontario Ltd., in respect to the Thornhill location and corresponding parking lot lease;

(l) 2125879 Ontario Inc., in respect to the Wellington location; and

(m) Whitby Entertainment Holdings Inc., in respect to the Whitby location.

(f) Government of Canada / Canada Revenue Agency

45. On April 23, 2012, the Company's legal counsel wrote to the CRA to initiate a voluntary disclosure under CRA's VDP relating to under reported GST/HST collections and overstated input tax credits for fiscal years 2009, 2010 and 2011. In a letter dated May 10, 2012, CRA assigned a VDP case number to Extreme and confirmed that the effective date of the voluntary disclosure was April 23, 2012.

46. On July 20, 2012, the Company's legal counsel wrote to CRA to submit amended monthly GST/HST returns prepared by the Company for fiscal years 2009, 2010 and 2011. The amended returns show an aggregate GST/HST liability for those years of approximately $3.4 million, subject to assessment by CRA. In addition, while the Company did not file amended returns for January and February, 2012, the combined liability of approximately $624,000 for those months has not been paid to CRA.

47. The Company received Notices of Re-Assessment (the "**NORAs**") from CRA dated January 11, 2013, which delineated the Applicant's HST obligations flowing from the amended tax returns filed under the VDP. The aggregate HST liability owing pursuant to the NORAs is $4,548,819, including the above-noted liabilities for January and February, 2012 and interest and penalties of $369,845.

(g) Employees

48. The Applicant presently employs approximately 160 full-time employees, 700 part-time employees, and 30 independent contractors in Ontario. The 30 independent contractors provide services related to group fitness classes at each of the Applicant's 13 fitness facilities. The Applicant's employees are not unionized and do not have a collective bargaining agent. Wages and benefits total approximately $1,700,000 per month.

49. Based on the Applicant's current cash position, its pro-forma cash flows and its access to the DIP Credit Facility (as defined herein), it has sufficient cash to continue to pay wages to its remaining employees, contractors and its other obligations arising post-filing until the completion of the proposed sale transaction or restructuring.

50. As of the date of this Affidavit, all source deductions related to the Applicant's employees were current, including, without limitation, income tax withholdings, employee health tax, worker's compensation, Canada Pension Plan and employment insurance.

51. The Applicant has no pension plans.

(h) Trade Creditors

52. As at February 5, 2013, the Applicant's other unsecured liabilities, including trade debt, totalled approximately $850,000, which amount does not include outstanding February rent payments of approximately $890,000. Since the Applicant's business does not require significant consumable supplies or services, its trade creditor debt is generally small and is usually satisfied in the ordinary course of business.

V. PRIOR MARKETING AND SALE PROCESS

53. On July 4, 2012, the Company engaged Integrity Square LLC ("**ISQ**"), a specialty financial advisory firm based in New York that focuses on the fitness and wellness sector, to provide financial advisory services with respect to a sale of the Company or certain of its 13 fitness facilities.

54. Commencing in mid-August, 2012, ISQ contacted numerous potential purchasers that either already had operations in the fitness facility sector or that ISQ believed would have interest in Extreme. Of these parties, several executed non-disclosure agreements and received the confidential information memorandum prepared by ISQ, which memorandum described Extreme's business.

55. Several parties subsequently accessed the confidential electronic data room established to assist with due diligence. October 10, 2012 was set as the date for potential purchasers to submit written non-binding indications of interest that were to include, among other things, information regarding purchase price, form of consideration, financing sources and due diligence requirements.

56. The Applicant and ISQ concluded that the potential realizations from the offers generated by the solicitation process described above were insufficient and, accordingly, no offers were

accepted. A financial summary of the offers tendered under the ISQ sale process is attached hereto as **Confidential Exhibit "O"**. The Applicant is requesting a sealing of this exhibit as it contains commercially sensitive information, the release of which could prejudice the stakeholders of the Company.

VI. SALE UNDER CCAA PROTECTION

57. Based on the information set out above and attached hereto, the Applicant is insolvent as the aggregate of its property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations, due and accruing due.

58. In addition, without the additional financing made available under the Priority Credit Agreement, the Applicant would be unable to meet its obligations as they fell due.

59. In order for the Applicant to ensure the best possible recovery for its stakeholders, including, without limitation, its creditors, employees, customers and landlords, the Applicant has determined that a sale of its business is required.

60. On January 18, 2013, the Applicant entered into a letter of intent (the "**LOI**") with GoodLife. A copy of the LOI is attached hereto as **Confidential Exhibit "P"**. The Applicant is requesting a sealing of this exhibit as it contains confidential, competitively sensitive information that, if disclosed, could harm the Applicant and its stakeholders. The LOI contemplates the sale of substantially all of the Applicant's assets for an aggregate amount greater than any one or more of the other offers proffered under the ISQ sales process and maximizes value for all stakeholders.

61. The sale transaction contemplated in the LOI must, according to its terms, close on or before March 31, 2013 or such other date as the parties thereto agree. Certain conditions precedent must be satisfied prior to the conclusion of the sale, including, but not limited to:

(a) GoodLife concluding its due diligence with respect to the Applicant on or before March 4, 2013;

(b) the execution of a binding asset purchase agreement in respect of substantially all of the Applicant's assets (the "**APA**") by no later than March 18, 2013; and

(c) approval of the APA by the Court.

62. Pursuant to the LOI, until the earlier of: (i) the date on which the APA is executed; and (ii) the date on which GoodLife terminates negotiations under the LOI, the Applicant, the Applicant's shareholders, National Bank and Golub are precluded from directly or indirectly soliciting or engaging in discussions or negotiations with any third party seeking to purchase the Applicant's assets.

63. The parties to the LOI are diligently working towards satisfying the conditions set out in the LOI and, to the extent that such conditions are satisfied, will enter into an APA, return to Court to seek approval of the APA and ultimately distribute the realizations from said transaction to the Applicant's creditors entitled thereto in accordance with their priority assuming the transaction closes.

VII. STAY OF PROCEEDINGS

64. A CCAA stay of proceeding is needed to ensure that the Applicant's business can be sold in an efficient and orderly way under the protection of the Court without the threat of proceedings or discontinuation of essential services. A stay of proceedings will restrain temporarily the exercise of rights and remedies under the various agreements to which the Applicant is a party, preserve the status quo, and restrain existing creditors from taking unfair advantage in the circumstances. Importantly, a stay of proceedings will allow the Applicant to fulfil its obligations related to GoodLife's due diligence review of the Applicant under the terms and conditions of the LOI with the view of ultimately entering into and completing the APA.

65. The Applicant believes that a stay of proceedings will not materially prejudice any of the existing creditors when compared to the consequences if a stay of proceedings is not granted. Golub, as agent for the benefit of itself and three lenders (collectively, in such capacity, the "**DIP Lender**") has agreed to provide the Applicant with the DIP Facility and has agreed to continue funding necessary post-filing expenses during the CCAA proceedings, the details of which are

set out below. I believe that the alternative to a stay of proceedings is the forced sale and/or liquidation of the Applicant and its assets.

VIII. THE PROPOSED MONITOR

66. FTI has been serving as a consultant to National Bank with respect to its lending arrangements with Extreme and has assisted the Applicant in preparing for this CCAA application, including reviewing the cash flow projections of the Applicant for the next 9 weeks, assuming the relief sought is granted (the "**Cash Flow Projection**"). The amounts set out in the Cash Flow Projection reflect, among other things, the minimum payments required to maintain the Applicant's business during the initial thirty day stay period and to the anticipated closing of a sale transaction, as well as professional fees. A copy of the Cash Flow Projection together with a report containing the prescribed representations of the Applicant regarding the preparation of the Cash Flow Projection is attached as **Exhibit "Q"** to this Affidavit.

67. Management believes that it is in the best interests of all stakeholders if this Court appoints FTI as the Court-appointed monitor of the Applicant. As a result of FTI's involvement with the Applicant and certain of its major stakeholders, including, but not limited to, National Bank, in advance of and in preparation for this filing, FTI has gained insight into the Applicant's business and will be in a position to perform the monitoring duties effectively and without delay.

68. FTI has consented to act as monitor of the Applicant in accordance with the requirements of the CCAA, subject to the Court's approval. A copy of FTI's consent is included in the Application Record in these proceedings.

IX. FINANCING DURING CCAA PROCEEDINGS

69. The DIP Lender will provide the Applicant with financing during these proceedings through a new credit facility (the "**DIP Facility**") allowing for one or more advances to a maximum amount of USD$2,000,000 pursuant to a DIP Credit Agreement dated February 7, 2013 (the "**DIP Credit Agreement**"), a copy of the form of which is attached as **Exhibit "R"** to this Affidavit. The repayment date under the DIP Credit Agreement is the earlier of: (i) the date of demand by the DIP Lender; (ii) the date on which all or substantially all of the assets of the Applicant are sold; and (iii) March 31, 2013. The original scheduled repayment date of March

31, 2013 may be extended at the discretion of the DIP Lender. The Cash Flow Projection demonstrates that, with the funding available under the DIP Facility, the Applicant will have sufficient cash flow to fund the Applicant's operations for the initial 9 week period, the anticipated period to complete a sale transaction.

70. The Applicant has been offered the DIP Facility from certain of its existing lenders under the Priority Credit Agreement and on what the Applicant views as reasonable terms in the circumstances. In addition, National Bank has consented to the DIP Facility. As a result, the Applicant did not canvas the market for other potential lenders. Because this offer for the DIP Facility does not require any alteration of the Company's accounts, the Applicant believes that there was no commercial advantage to pursuing other possible providers of a DIP Facility. In addition, the DIP Lender is already familiar with Extreme's business and financial profile as well as its restructuring options. Any other offer from other lenders would require a great deal of time and expense to pursue, could require a new cash management system and would have to deal with the security granted in connection with the credit facilities provided by Golub and National Bank.

71. As provided in the DIP Credit Agreement, the DIP Facility is conditional on the Applicant obtaining, as part of the initial Order sought in these proceedings (the "**Initial Order**"), a charge in favour of the DIP Lender (the "**DIP Charge**") over all of the Applicant's assets, ranking first in priority to any existing security other than the Administration Charge and the D&O Charge (as defined below). The Service List includes all parties with a security interest registered under the PPSA.

72. The Applicant believes that the terms of the DIP Facility are favourable to it having regard to the circumstances and that the amount of the DIP Facility is necessary and reasonable in the circumstances to ensure the Applicant has a prudent and responsible level of liquidity to meet its post-filing obligations as they become due for the period of the initial stay and to complete the proposed sale. The Applicant will not be able to continue its operations or initiate going-concern sale efforts without access to the DIP Facility.

X. PAYMENTS DURING THE CCAA PROCEEDINGS

73. During the course of these CCAA proceedings, the Applicant intends to make payments for goods and services supplied post-filing in the ordinary course as set out in the Cash Flow Projection described above and as permitted by the Initial Order.

74. It is also contemplated by the Cash Flow Projection that: (a) employee wage obligations relating to active employment will be paid in the ordinary course, whether such obligations are incurred pre-filing or post-filing; and (b) outstanding and future amounts owing to independent contractors may be paid in the ordinary course, if in the opinion of the Company and the Monitor, the individual contractor is critical to Extreme's business and ongoing operations.

75. In addition, the Cash Flow Projection contemplates payment of scheduled interest payments under the Priority Credit Agreement.

XI. ADMINISTRATION CHARGE

76. The Applicant's legal counsel, the Monitor, the Monitor's legal counsel and A&M have indicated that their respective ongoing involvement is conditional upon the granting of an order under the CCAA which grants the Administration Charge on the Applicant's property, assets and undertaking in the maximum amount of $500,000 to secure their professional fees and disbursements.

77. I believe that that the following factors support the granting of the Administration Charge:

(a) the beneficiaries of the Administration Charge will provide essential legal and financial advice and support to the Applicant throughout the CCAA proceedings;

(b) the roles of the Applicant's legal counsel, the Monitor, the Monitor's legal counsel and A&M are distinct and there is no anticipated unwarranted duplication; and

(c) the Administration Charge does not purport to prime any secured party who has not received notice of this motion.

78. Accordingly, I believe that this is an appropriate case in which to grant the Administration Charge. Each of the proposed beneficiaries of the Administration Charge will play a critical role in the Applicant's restructuring and proposed sale, and it is unlikely that the above-noted advisors will participate in these CCAA proceedings unless the Administration Charge is granted to secure their fees and disbursements.

XII. DIRECTORS' AND OFFICERS' CHARGE

79. The Directors, Officers and Interim Officers have indicated that their respective ongoing involvement is conditional upon the granting of an order under the CCAA which grants a charge on the Applicant's property in the maximum amount of $2,880,000 (the "**D&O Charge**"), approximately equal to 4 weeks wages plus accrued vacation pay plus 2 months of estimated HST obligations, as security for the Applicant's indemnification for possible liabilities which may be incurred by such Directors, Officers and Interim Officers, which would rank second in priority behind the Administration Charge.

80. The Applicant maintains a Management Liability Insurance policy with Lloyd's Underwriters (the "**Policy**"). The Policy provides coverage to the Applicant, any subsidiary or joint-venture of the Applicant, the Directors and Officers, the Interim Officers and the retired directors and officers of the Applicant. The aggregate limit of liability coverage provided for under the Policy is $5,000,000.

81. Management of the Applicant has made inquiries with the Applicant's current insurance broker and am advised that a comparable level of insurance coverage is not available through any other insurance provider at rates more favourable than those in place as of the date of this Affidavit.

82. The Policy contains several exclusions and limitations to the coverage it provides and there is a potential for there to be insufficient coverage in respect of the potential liabilities for which the Directors, Officers and Interim Officers may be found responsible.

83. The D&O Charge is required in order to provide a level of protection to the Directors, Officers and Interim Officers with respect to the possible liabilities imposed on individuals in their capacity as directors and officers of the Applicant. I believe that the request of the

Directors, Officers and Interim Officers to receive adequate protection in the form of the D&O Charge is fair and reasonable and advances the integral need of the Applicant to have fully functional, experienced and qualified advisors, board of directors and officers.

XIII. CONCLUSION

84. It is in the best interests of all stakeholders of the Applicant for this Court to grant the relief sought by the Applicant. It will allow the Applicant, with the support of the DIP Lender and the Monitor, to realize upon the business in a way that maximizes value for all stakeholders. I believe this is preferable to the Applicant's assets becoming subject to bankruptcy or receivership proceedings.

85. This Affidavit is sworn in support of the relief requested by the Applicant and for no other or improper purposes.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 7th day of February, 2013.

A commissioner of oaths, etc.
IAN AVERSA

ALAN HUTCHENS

Tab B

Attached is Exhibit "B"

Referred to in the

Affidavit of Alan Hutchens

Sworn before me

this 4th day of July, 2013

IAN AVERSA

Commissioner for taking Affidavits, etc

AGREEMENT

This Agreement made this 24th day of June, 2013.

A M O N G :

EXTREME FITNESS, INC.

("Extreme")

- and -

FALCONHEAD CAPITAL, LLC

("Falconhead")

- and -

CHASE PAYMENTECH SOLUTIONS

("Paymentech")

- and -

NATIONAL BANK OF CANADA

("NBC")

WHEREAS on February 7, 2013, Extreme made an application under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") and an initial order (the "**Initial Order**") was granted by the Honourable Justice Campbell of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granting, among other things, a stay of proceedings against Extreme and appointing FTI Consulting Canada Inc. as the monitor (the "**Monitor**"), upon and subject to the terms of the Initial Order (the "**CCAA Proceedings**");

AND WHEREAS on March 27, 2013, upon a motion by Extreme, the Court granted orders, among other things: (i) approving the Asset Purchase Agreement between Extreme and GoodLife Fitness Centres Inc. ("**GoodLife**") dated March 19, 2013 (the "**APA**"), and vesting Extreme's right, title and interest in and to the Purchased Assets (as defined in the APA) in GoodLife; (ii) authorizing the Monitor to make interim distributions from the proceeds of the APA to Golub Capital Incorporated, as agent, on behalf of the DIP Lender (as defined in the Initial Order), Extreme, Golub Capital Incorporated, as agent, on behalf of the lenders under the Priority Credit Agreement (as defined in the affidavit of Alan Hutchens sworn February 7, 2013 (the "**February 7 Affidavit**")) and NBC, as agent, on behalf of the lenders under the National Bank Credit Agreement (as defined in the February 7 Affidavit); and (iii) authorizing the Monitor to make further distributions to NBC up to the amount of Extreme's indebtedness to NBC;

AND WHEREAS the transactions contemplated in the APA (the "**Transaction**") provided for the sale or assignment of substantially all of Extreme's assets to GoodLife (except the Excluded Assets, as that term is defined in the APA), including, without limitation, contracts regarding Extreme's Members and Persons subject to Personal Training Contracts (as those terms are defined in the APA), personal property used in Extreme's business and substantially all of the equipment leases and real property leases;

AND WHEREAS the Transaction closed at 11:59 p.m. on March 31, 2013;

AND WHEREAS on May 9, 2013, upon a motion by Extreme, the Court granted an order, among other things, extending the Stay Period (as defined in the Initial Order) to and including July 12, 2013;

AND WHEREAS Extreme and Paymentech, for itself and on behalf of The Bank of Nova Scotia and First Data Loan Company, Canada, are parties to a Select Merchant Payment Card Processing Agreement dated February 2, 2011 (the "**Merchant Agreement**") pursuant to which Paymentech established a merchant account (the "**Merchant Account**") through which it provided payment card processing services to Extreme;

AND WHEREAS pursuant to section 4.6 of the Merchant Agreement, Paymentech required the establishment of a cash **Reserve Account** (as defined therein and so referred to herein) in the amount of $1,100,000 (the "**Required Reserve Amount**") to protect Paymentech against certain risks, including, without limitation, chargebacks, and to satisfy Extreme's other obligations under the Merchant Agreement (collectively, the "**Merchant Obligations**");

AND WHEREAS pursuant to the Funding of Escrow Account Agreement between Falconhead and Paymentech dated June 14, 2010 (the "**Escrow Account Agreement**"), Falconhead deposited the sum of $1,100,000 in lieu of Extreme funding the Reserve Account in the manner contemplated by the Merchant Agreement (the "**Falconhead Advance**");

AND WHEREAS pursuant to the Escrow Account Agreement, Paymentech is entitled (but not required) to apply all or any portion of the Falconhead Advance towards all or any portion of the Merchant Obligations then outstanding and unpaid or any other amounts due to Paymentech under the Merchant Agreement;

AND WHEREAS the Escrow Account Agreement required Paymentech to repay the Falconhead Advance to Falconhead if and to the extent that Extreme funded the Reserve Account in accordance with the Merchant Agreement or when all Merchant Obligations have been discharged;

AND WHEREAS Extreme has not funded the Reserve Account;

AND WHEREAS on or about February 13, 2012, Paymentech paid the sum of $200,000 to Extreme, intending such sum to be applied in repayment of a like amount of the Falconhead Advance (the "**Partial Repayment**"), leaving a balance of $900,000;

AND WHEREAS Extreme, Paymentech and Falconhead have agreed that the Falconhead Advance shall be repaid upon and subject to the terms of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties) the parties hereto agree as follows:

ARTICLE I
INTERPRETATION

1.01 Definitions

In this Agreement, the following terms shall have the meanings set out below unless the context requires otherwise:

"**Agreement**" means this agreement, as amended from time to time;

"**APA**" has the meaning given in the recitals above;

"**Article**" "**Section**" or "**Schedule**" mean the specified Article, Section of, or Schedule to this Agreement and the expressions "**hereof**", "**herein**", "**hereto**", "**hereunder**", "**hereby**" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

"**Business Day**" means a day on which banks are open for business in the City of Toronto, but does not include a Saturday, Sunday or statutory holiday recognized in the Province of Ontario;

"**CCAA**" has the meaning given in the recitals above;

"**CCAA Proceedings**" has the meaning given in the recitals above;

"**Court**" has the meaning given in the recitals above;

"**Escrow Account Agreement**" has the meaning given in the recitals above;

"**Falconhead Advance**" has the meaning given in the recitals above;

"**February 7 Affidavit**" has the meaning given in the recitals above;

"**GoodLife**" has the meaning given in the recitals above;

"**Initial Order**" has the meaning given in the recitals above;

"**Merchant Account**" has the meaning given in the recitals above;

"**Merchant Agreement**" has the meaning given in the recitals above;

"**Merchant Obligations**" has the meaning given in the recitals above;

"**Monitor**" has the meaning given in the recitals above;

"**Partial Repayment**" has the meaning given in the recitals above;

"**Required Reserve Amount**" has the meaning given in the recitals above;

"**Reserve Account**" has the meaning given in the recitals above;

"**Settlement Account**" has the meaning given in Section 2.01(a); and

"**Transaction**" has the meaning given in the recitals above.

ARTICLE II
RETURN OF FALCONHEAD ADVANCE AND EQUIPMENT

2.01 Settlement Account

(a) NBC and Extreme agree with Paymentech that until the CCAA Proceedings are terminated, Extreme's deposit account maintained with NBC (the "**Settlement Account**") shall remain open for the purpose of processing chargebacks, service fees and fees, fines and penalties assessed by the payment brands related to transactions that have been processed through the Merchant Account.

(b) Throughout the CCAA Proceedings, paragraph 5 of the Initial Order shall continue to apply to the Settlement Account and the Reserve Account.

(c) Falconhead and Extreme acknowledge and agree that the Partial Repayment was intended to, and did repay the Falconhead Advance to the extent of $200,000 and that Extreme has no right, title or interest in the Partial Repayment.

2.02 Return of Falconhead Advance

For the purposes of this Agreement, the outstanding balance of the Falconhead Advance shall be regarded as the Reserve Account for the purposes of the Merchant Agreement and, for the purposes of the Escrow Account Agreement, all references to repaying or returning the Reserve Account to Extreme or NBC shall be deemed to be references to repayment of the Falconhead Advance to Falconhead.

Paymentech shall repay the Reserve Account to Extreme on a staggered basis by irrevocably authorizing the payment of the funds to Extreme (and Falconhead and Extreme expressly acknowledge and agree that, for the purposes of the Escrow Account Agreement, payment of such funds to Extreme or NBC, as applicable, shall constitute repayment of the Falconhead Advance in the same amount and to the same extent) in accordance with the following timeline:

(a) $500,000 on or before June 25, 2013;

(b) $100,000 on or before July 15, 2013;

(c) $100,000 on or before August 15, 2013; and

(d) $100,000 on or before September 15, 2013,

subject to any deductions for the purpose of processing chargebacks, service fees and fees, fines and penalties assessed by the payment brands related to transactions that have been processed through the Merchant Account that exceed the amounts in the Settlement Account. The parties acknowledge and agree that the funds that are authorized to be released pursuant to the terms hereof will not be received in the Settlement Account on the same Business Day as the date on which they are authorized to be released.

Subject to Paymentech conducting a final risk review prior to October 15, 2013 and determining that there is no continuing risk on the Merchant Account for amounts owing pursuant to the terms of the Merchant Agreement, Paymentech will repay the final $100,000 on or before October 15, 2013. In the event that Paymentech reasonably determines that there is a continuing risk on the Merchant Account, it shall notify Extreme, Falconhead and NBC in writing forthwith and discuss its rationale for so determining. For greater certainty, after Paymentech reasonably determines that there is no continuing risk on the Merchant Account, any amounts it continues to hold shall be returned to Extreme or NBC, as applicable.

In the event that Extreme does not intend to obtain an order from the Court extending the Stay Period, it shall notify Paymentech in writing five (5) Business Days prior to the expiration of the Stay Period.

After the expiry of the Stay Period, (a) Paymentech shall set off and deduct the amounts it is entitled to deduct pursuant to this Section related to transactions that have been processed through the Merchant Account directly from the Reserve Account; and (b) any funds in the Reserve Account to be returned pursuant to this Section shall be paid by Paymentech directly to NBC. Paymentech shall provide normal course reporting to NBC with respect to same. For clarity, the amounts to be released pursuant to the timeline set out above shall be reduced by any amounts deducted from the Reserve Account pursuant to this Section.

Extreme and Falconhead agree that the funds paid to Extreme pursuant to this Agreement shall be applied as a partial reduction to Extreme's indebtedness to NBC.

2.03 Return of Equipment

Without limiting the generality of Section 2.02, Extreme shall reimburse Paymentech in full for the amount of any point-of-sale equipment that has not been returned to Paymentech. As of the date of this Agreement, such amount has been determined to be $2,810.00.

ARTICLE III
GENERAL

3.01 Headings and Sections

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

3.02 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

3.03 Currency

Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian dollars.

3.04 Statute References

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

3.05 Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

3.06 No Strict Construction

The language used in this Agreement is the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party, including, without limitation, the doctrine of *contra proferentem*.

3.07 Expenses

Each of the parties hereto shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the transactions contemplated in this Agreement, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement.

3.08 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile:

(a) in the case of a notice to Extreme at:

Extreme Fitness, Inc.
8281 Yonge Street
Thornhill, ON L3T 2C7

Attention: Alan Hutchens
Fax No: (416) 847-5201

with a copy to:

Aird & Berlis LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Attention: Steven Graff and Ian Aversa
Fax No: (416) 863-1515

with a copy to the Monitor:

FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON M5K 1G8

Attention: Steven Bissell
Fax No: (416) 649-8101

with a copy to:

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Attention: Melaney Wagner
Fax No: (416) 979-1234

(b) in the case of a notice to Paymentech at:

Chase Paymentech Solutions
14221 Dallas Parkway
Dallas, Texas 75254

Attention: Rick Garcia
Fax No: (214) 849-3105

with a copy to:

Chase Paymentech Solutions

100 Consilium Place, Suite 1700
Toronto, ON M1H 3E3

Attention: Michelle Sloan
Fax No: (416) 940-6028

(c) in the case of a notice to NBC at:

National Bank of Canada
130 King Street West
Toronto, ON M5X 1K9

Attention: Sonia de Lorenzi
Fax No: (416) 367-1312

with a copy to:

Thornton Grout Finnigan LLP
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7

Attention: Grant Moffat
Fax No: (416) 304-0599

(d) in the case of a notice to Falconhead at:

Falconhead Capital, LLC
450 Park Avenue #3
New York, NY 10022

Attention: Dave Gubbay
Fax No: (561) 431-5943

Any notice delivered or transmitted to a party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

Any party hereto may, from time to time, change its address by giving notice to the other parties hereto in accordance with the provisions of this Section.

3.09 Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the parties hereto. This Agreement may not be assigned by any of the parties hereto without the prior written consent of all the other parties.

3.10 Time of the Essence

Time shall be of the essence of this Agreement.

3.11 Amendment

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any party, shall be binding unless executed in writing by the party to be bound thereby.

3.12 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

3.13 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties hereto irrevocably attorns to the non-exclusive jurisdiction of the Courts of the Province of Ontario. The parties hereto consent to the jurisdiction and venue of the Court for the resolution of any such disputes, regardless of whether such disputes arose under this Agreement.

3.14 Execution and Delivery

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed and delivered either in original or faxed form or by electronic delivery in portable document format (PDF) and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other parties an original of the signed copy of this Agreement which was so faxed or electronically delivered.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above mentioned.

EXTREME FITNESS, INC.

Per: _____
Name: Alan Hutchens
Title: Interim Chief Financial Officer

FALCONHEAD CAPITAL, LLC

Per: _____
Name:
Title:

CHASE PAYMENTECH SOLUTIONS

Per: _____
Name:
Title:

NATIONAL BANK OF CANADA

Per: _____
Name:
Title:

Acknowledged and agreed to solely for the purposes of Section 2.01(b) of this Agreement this _____ day of June, 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

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above mentioned.

EXTREME FITNESS, INC.

Per: _____
Name: Alan Hutcheon
Title: Interim Chief Financial Officer

FALCONHEAD CAPITAL, LLC

Per: _____
Name:
Title:

CHASE PAYMENTECH SOLUTIONS

Per: _____
Name:
Title:

NATIONAL BANK OF CANADA

Per: _____
Name:
Title:

Acknowledged and agreed to solely for the purposes of Section 2.01(b) of this Agreement this ____ day of June, 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

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above mentioned.

EXTREME FITNESS, INC.

Per: _____
Name: Alan Hutchens
Title: Interim Chief Financial Officer

FALCONHEAD CAPITAL, LLC

Per: _____
Name:
Title:

CHASE PAYMENTECH SOLUTIONS

Per: _____
Name: NICHOLAS SAMURKAS
Title: PRESIDENT

NATIONAL BANK OF CANADA

Per: _____
Name:
Title:

Acknowledged and agreed to solely for the purposes of Section 2.01(b) of this Agreement this _____ day of June, 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

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above mentioned.

EXTREME FITNESS, INC.

Per: _____
Name: Alan Hutchens
Title: Interim Chief Financial Officer

FALCONHEAD CAPITAL, LLC

Per: _____
Name:
Title:

CHASE PAYMENTECH SOLUTIONS

Per: _____
Name:
Title:

NATIONAL BANK OF CANADA

Per: _____
Name: SONIA DE LORENZO
Title: MANAGER

Acknowledged and agreed to solely for the purposes of Section 2.01(b) of this Agreement this _____ day of June, 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

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above mentioned.

EXTREME FITNESS, INC.

Per: _____
Name: Alan Hutchens
Title: Interim Chief Financial Officer

FALCONHEAD CAPITAL, LLC

Per: _____
Name:
Title:

CHASE PAYMENTECH SOLUTIONS

Per: _____
Name:
Title:

NATIONAL BANK OF CANADA

Per: _____
Name:
Title:

Acknowledged and agreed to solely for the purposes of Section 2.01(b) of this Agreement this 25 day of June, 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: Paul Bishop
Title: Senior Managing Director

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF ALAN HUTCHENS

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Barristers and Solicitors
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Lawyers for Extreme Fitness, Inc.

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

MOTION RECORD
(returnable July 11, 2013)

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Barristers and Solicitors
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Email: jdesjardins@airdberlis.com

Lawyers for Extreme Fitness, Inc.