

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF FUN AND FITNESS TRAMPOLINES INC., A
CORPORATION INCORPORATED UNDER THE CANADIAN
BUSINESS CORPORATIONS ACT

Estate No. 35-2677628

December 18, 2020 via teleconference

B. Bissell - debtor

Draft orders signed:

- ① approval + vesting order
- ② extension of time to file a proposal.

J Mitchell J.

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced in London, Ontario

MOTION RECORD

(Extension of Time to File a Proposal
and Approval and Vesting Order)
(returnable December 18, 2020)

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ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MADAM)
JUSTICE MITCHELL)
FRIDAY, THE 18TH
DAY OF DECEMBER, 2020

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF FUN AND FITNESS
TRAMPOLINES INC., A CORPORATION INCORPORATED
UNDER THE *CANADIAN BUSINESS CORPORATIONS ACT***

APPROVAL AND VESTING ORDER

THIS MOTION, made by Fun and Fitness Trampolines Inc. ("**FFT**") for an order approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement (the "**APA**") between FFT and 2786323 Ontario Inc. (the "**Purchaser**"), dated October 26, 2020 and appended to the second report (the "**Second Report**") of Crowe Soberman Inc. in its capacity as proposal trustee (the "**Trustee**") dated December 16, 2020, and vesting in the Purchaser FFT's right, title and interest in and to the Purchased Assets (as defined in the APA) was heard this day via teleconference due to the COVID-19 pandemic.

ON READING the Motion Record of FFT and the Second Report and on hearing the submissions of counsel for FFT, counsel for the Purchaser and counsel for the Trustee, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service filed:

1. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meaning given to them in the APA.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the APA by FFT is hereby ratified, with such minor amendments as FFT and

the Trustee may deem necessary. FFT and the Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS** that FFT is hereby authorized and directed to perform its obligations under the APA and any ancillary documents related thereto.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Trustee's Certificate**"), all of FFT's right, title and interest in and to the Purchased Assets described in the APA and the proceeds thereof (including for greater certainty, any funds received by the Purchaser on account of any Accounts Receivable but not the Purchase Price proceeds) shall vest in the Purchaser free and clear of and from any and all ownership claims, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts, constructive trusts, deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, claims (including, without limitation, any claim based on any theory that the Purchaser is a successor or continuation of FFT or FFT's business), demands, guarantees, restrictions, contractual commitments, right or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, legal, equitable, possessory or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Madam Justice Leitch dated November 6, 2020 and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**" which term shall not include the Permitted Encumbrances) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets..

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if

the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

7. **THIS COURT ORDERS** that the Trustee may rely on the written notice from FFT regarding fulfillment of conditions to closing under the APA and shall incur no liability with respect to the delivery of the Trustee's Certificate.

8. **THIS COURT ORDERS** that, provided that the APA has not been terminated, any proposal filed by FFT pursuant to Section 50.4(9) of the *Bankruptcy and Insolvency Act (Canada)* (the "BIA") shall not derogate or otherwise affect any right or obligation of FFT or the Purchaser under the APA unless otherwise agreed by FFT and the Purchaser.

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, FFT is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in FFT's records pertaining to FFT's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by FFT.

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

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of FFT and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of FFT;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of FFT and shall not be void or voidable by

creditors of FFT, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

ASSIGNMENT OF CONTRACTS

11. **THIS COURT ORDERS** that upon delivery of the Trustee's Certificate, (i) all of the rights and obligations of FFT under the Contracts listed in Schedule "B" hereto (collectively, the "**Assigned Contracts**") shall be assigned to the Purchaser pursuant to Section 3.2 of the APA and pursuant to Section 84.1 of the BIA; and (ii) FFT's right, title and interest in the Assigned Contracts shall vest absolutely in the Purchaser free and clear of all Encumbrances.

12. **THIS COURT ORDERS** that each counterparty to the Assigned Contracts is prohibited from exercising any right or remedy under the Assigned Contracts by reason of any defaults thereunder arising from the assignment of the Assigned Contracts, the insolvency of FFT, the commencement of these proceedings under the BIA or any failure of FFT to perform a non-monetary obligation under the Assigned Contracts.

13. **THIS COURT ORDERS** that the Cure Costs for the Assigned Contracts, if any, shall be in the amounts set out in Schedule "B" hereto and that upon Closing, the Purchaser shall pay any Cure Costs as set out therein with respect to each applicable Assigned Contract, in full and final satisfaction of any Cure Costs owing to the counterparty to the applicable Assigned Contract, by no later than the day that is ten (10) business days from the date that the Purchaser receives wire remittance instructions or other payment instructions from such counterparty.

14. **THIS COURT ORDERS AND DIRECTS** FFT to send a copy of this Order to all of the counterparties to the Assigned Contracts.

GENERAL

15. **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 Trustee 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 Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.



JUSTICE A.K. MITCHELL

Schedule A – Form of Trustee’s Certificate

Estate No. 35-2677628

ONTARIO

SUPERIOR COURT OF JUSTICE

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF FUN AND FITNESS
TRAMPOLINES INC., A CORPORATION INCORPORATED
UNDER THE *CANADIAN BUSINESS CORPORATIONS ACT***

PROPOSAL TRUSTEE’S CERTIFICATE

RECITALS

- A. Fun and Fitness Trampolines Inc. (“FFT”) commenced these proceedings by filing a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”), on October 3, 2020 (the “NOI”).
- B. Crowe Soberman Inc. was named proposal trustee (the “**Proposal Trustee**”) under the NOI.
- C. Pursuant to an Order of the Court dated December ●, 2020, the Court approved the asset purchase agreement made as of October 26, 2020 (the “APA”) between FFT and 2786323 Ontario Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of FFT’s right, title and interest in and to the Purchased Assets (as defined in the APA), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the cash consideration under Section • of the APA; (ii) that the conditions to Closing as set out in the APA been satisfied or waived by FFT and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.
- D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the APA.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. FFT and the Purchaser have each delivered written notice to the Proposal Trustee that all applicable conditions under the APA have been satisfied and/or waived, as applicable;
2. The Proposal Trustee has received the cash consideration under Section 3.4 of the APA;
and
3. The Transaction has been completed to the satisfaction of the Proposal Trustee.

This Certificate was delivered by the Proposal Trustee at _____ on _____, 2020.

**Crowe Soberman Inc. in its capacity
as Proposal Trustee in the proposal
proceedings of Fun and Fitness
Trampolines Inc., and not in its
personal or corporate capacity**

Per: _____

Name:

Title:

Schedule "B" – Assigned Contracts

Assumption of the current lease dated February 26th, 2020, between Beaconridge Developments Inc. and Fun & Fitness Trampolines Inc., concerning 150 Gateway Park Drive, Kitchener, Ontario.

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced in LONDON

APPROVAL AND VESTING ORDER

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MADAM)
)
JUSTICE MITCHELL)
)
FRIDAY, THE 18th
DAY OF DECEMBER, 2020

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF FUN AND FITNESS
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**ORDER
(Extension of Time to File a Proposal and Fee Approval)**

THIS MOTION, made by Fun and Fitness Trampolines Inc. (“**FFT**”), pursuant to Section 50.4(9) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), for an order, among other things, extending the time for the Trustee (as defined below) to file with the Official Receiver, on behalf of FFT, a proposal to creditors pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”), was heard this day via teleconference due to the COVID-19 pandemic.

ON READING the Motion Record of FFT, the second report of Crowe Soberman Inc., in its capacity as proposal trustee of FFT (the “**Trustee**”), dated December 16, 2020 (the “**Second Report**”) and the Appendices thereto including the affidavits of Hans Rizarri and Bart Sarsh sworn December 16, 2020 (the “**Fee Affidavits**”), and on hearing the submissions of counsel for FFT, counsel for the Proposal Trustee, no one else appearing although duly served as appears from the Affidavit of Service of Katie Parent sworn December 15, 2020, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the motion record in respect of this motion and the Second Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

EXTENSION OF TIME TO FILE A PROPOSAL

2. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the BIA, the period within which FFT may file a proposal be and is hereby extended to January 21, 2021.

APPROVAL OF PROFESSIONAL FEES

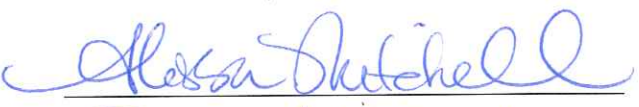
3. **THIS COURT ORDERS** that the fees and disbursements of the Trustee and its counsel, as set out in the Second Report and the Fee Affidavits, are hereby approved.

GENERAL

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

5. **THIS COURT ORDERS** that each of FFT, the Trustee and the Purchaser shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

6. **THIS COURT ORDERS** that this Order is effective from today's date and is not required to be entered.


JUSTICE A. K. MITCHELL

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ORDER

(Extension of Time to File a Proposal and Fee Approval)

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