

11-19-1999

SHEET

U.S. DEPARTMENT OF COMMERCE

Patent and Trademark

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101203408

11-17-99

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To the Honorable Commissioner of Patents and Trademarks, please record the attached original documents or copy thereof

## 1. Name of conveying party(ies):

Q Clubs Inc.  
8800 North Gainey Center Rd.  
Suite 280  
Scottsdale, AZ 85258

- ☐ Individual(s) ☐ Association  
☐ General Partnership ☐ Limited Partnership  
☒ Corporation-State  
☐ Other \_\_\_\_\_

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

## 3. Nature of conveyance:

- ☐ Assignment ☐ Merger  
☒ Security Agreement ☐ Change of Name  
☐ Other \_\_\_\_\_

Execution Date: November 2, 1999

## 2. Name and address of receiving party(ies):

Name: The Chase Manhattan Bank

Internal Address: \_\_\_\_\_

Street Address: 270 Park Avenue

City: New York State: NY ZIP: 10017

- ☐ Individual(s) citizenship \_\_\_\_\_  
☐ Association \_\_\_\_\_  
☐ General Partnership \_\_\_\_\_  
☐ Limited Partnership \_\_\_\_\_  
☒ Corporation-State NY  
☐ Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☒ No

Designations must be a separate document from Assignment

Additional name(s) & address(es) attached? ☐ Yes ☒ No

## 4. Application number(s) or registration number(s):

## A. Trademark Application No.(s)

75/566378

## B. Trademark registration No.(s)

2281000

Additional numbers attached? ☐ Yes ☒ No

## 5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Piero Giudice

Internal Address: \_\_\_\_\_

Cravath, Swaine &amp; Moore

Worldwide Plaza - 44th Floor

Street Address: 825 8th Avenue

City: New York State: NY ZIP: 10019

## 6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41): \$ 65<sup>00</sup>

- ☐ Enclosed  
☐ Authorized to be charged to deposit account

## 8. Deposit account number: \_\_\_\_\_

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

11/18/1999 DNGUYEN 00000227 75566378

01 FC:481  
02 FC:48240.00 DP  
25.00 DP

## 9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Piero Giudice

*Piero Giudice* TRADEMARK 11/12/99

REEL: 001990 FRAME: 0471

DOMESTIC SECURITY AGREEMENT dated as of November 2, 1999, among FITNESS HOLDINGS WORLDWIDE, INC., a Delaware corporation (the "Parent Borrower"), each Subsidiary of the Parent Borrower listed on Schedule I hereto (each such Subsidiary individually, a "Subsidiary Guarantor" and collectively, the "Subsidiary Guarantors"; the Subsidiary Guarantors and the Borrower are referred to collectively herein as the "Grantors"), and THE CHASE MANHATTAN BANK, a New York banking corporation ("Chase"), as collateral agent (in such capacity, the "Collateral Agent") for the Secured Parties (as defined herein).

Reference is made to (a) the Credit Agreement dated as of November 2, 1999 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Parent Borrower, the Borrowing Subsidiaries from time to time party thereto, the lenders from time to time party thereto and Chase, as administrative agent for the Lenders (in such capacity, the "Administrative Agent") and Bankers Trust Company, as syndication agent and Banque Nationale de Paris, as documentation agent, and (b) the Loan Documents referred to in the Credit Agreement to which any Domestic Credit Party is a party (the "Domestic Loan Documents").

The Tranche B Lenders, the Tranche C Lenders and the Revolving Dollar Lenders have agreed to make Term Loans and Revolving Dollar Loans to the Parent Borrower, and the Issuing Bank has agreed to issue Letters of Credit for the account of the Parent Borrower, pursuant to, and upon the terms and subject to the conditions specified in, the Credit Agreement. For the purposes of this Agreement (i) Term Loans and Revolving Dollar Loans shall be referred to collectively as "Loans" and (ii) the Tranche B Lenders, the Tranche C Lenders and the Revolving Dollar Lenders are referred to collectively as the "Lenders". Each of the Subsidiary Guarantors has agreed to guarantee, among other things, all the obligations of the Parent Borrower under the Credit Agreement. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit are conditioned upon, among other things, the execution and delivery by the Grantors of an agreement in the form hereof to secure (a) the due and punctual payment by the Parent Borrower of (i) the principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by the Parent Borrower under the Credit Agreement in respect of any Letter of Credit, when and as due, including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral and (iii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Domestic Credit Parties to the Secured Parties under the Credit Agreement and the other Domestic Loan Documents, (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of the Domestic Credit Parties under or pursuant to the Credit Agreement and the other Domestic Loan Documents, (c) unless otherwise agreed upon in writing by the applicable Lender a party thereto, the due and punctual payment and

performance of all obligations of each Domestic Credit Party monetary or otherwise, under each Hedging Agreement entered into with any counterparty that was a Lender (or an Affiliate thereof) at the time such Hedging Agreement was entered into and (d) the due and punctual payment and performance of all obligations in respect of overdrafts and related liabilities owed to the Administrative Agent or any of its Affiliates and arising from treasury, depository and cash management services or in connection with any automated clearing house transfers of funds (all the monetary and other obligations described in the preceding clauses (a) through (d) being referred to collectively as the "Obligations").

Accordingly, the Grantors and the Collateral Agent, on behalf of itself and each Secured Party (and each of their respective successors and assigns), hereby agree as follows:

## ARTICLE I

### Definitions

SECTION 1.01. Definition of Terms Used Herein. Unless the context otherwise requires, all capitalized terms used but not defined herein shall have the meanings set forth in the Credit Agreement.

SECTION 1.02. Definition of Certain Terms Used Herein. As used herein, the following terms shall have the following meanings:

"Account Debtor" means any Person who is or who may become obligated to any Grantor under, with respect to or on account of an Account.

"Accounts" means any and all right, title and interest of any Grantor to payment for goods and services (including fitness club memberships) sold or leased, including chattel paper or any such right evidenced by chattel paper, whether due or to become due, whether or not it has been earned by performance, and whether now or hereafter acquired or arising in the future, including accounts receivable from Affiliates of the Grantors and rights in respect of Credit Card Payments.

"Accounts Receivable" means all Accounts and all right, title and interest in any returned goods, together with all rights, titles, securities and guarantees with respect thereto, including any rights to stoppage in transit, replevin, reclamation and resales, and all related security interests, liens and pledges, whether voluntary or involuntary, in each case whether now existing or owned or hereafter arising or acquired.

"Collateral" means all (a) Accounts Receivable, (b) Documents, (c) Equipment, (d) General Intangibles, (e) Inventory, (f) cash and cash accounts (including the Collection Deposit Accounts), (g) Investment Property and (h) Proceeds. Notwithstanding the foregoing, the term "Collateral" shall not include any Investment Property constituting more than 65% of the issued and outstanding voting stock of any Foreign Subsidiary.

"Collection Deposit Accounts" means the respective collection deposit accounts maintained by the Collection Deposit Banks pursuant to the Collection Deposit Letter

Agreements (and prior to the execution of the Collection Deposit Letter Agreements, any other collection deposit accounts maintained by the Parent Borrower and the Subsidiary Guarantors) into which the Parent Borrower and the Subsidiary Guarantors will deposit all Daily Receipts and other payments on the Accounts Receivable or Inventory.

“Collection Deposit Bank” means, at any time, any financial institution then serving as a “Collection Deposit Bank” as provided in Section 5.01.

“Collection Deposit Letter Agreement” means an agreement among the Parent Borrower, each applicable Subsidiary Guarantor, a Collection Deposit Bank and the Collateral Agent, in substantially the form of Annex 1 hereto (with such changes thereto as are reasonably satisfactory to the Collateral Agent or in such other form as may be acceptable to the Collateral Agent), pursuant to which such Collection Deposit Bank shall maintain a Collection Deposit Account, as such Collection Deposit Letter Agreement may be amended, modified or supplemented from time to time.

“Commodity Account” means an account maintained by a Commodity Intermediary in which a Commodity Contract is carried out for a Commodity Customer.

“Commodity Contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option or any other contract that, in each case, is (a) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws or (b) traded on a foreign commodity board of trade, exchange or market, and is carried on the books of a Commodity Intermediary for a Commodity Customer.

“Commodity Customer” means a Person for whom a Commodity Intermediary carries a Commodity Contract on its books.

“Commodity Intermediary” means (a) a Person who is registered as a futures commission merchant under the federal commodities laws or (b) a Person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities laws.

“Copyright License” means any written agreement, now or hereafter in effect, granting any right to any third party under any Copyright now or hereafter owned by any Grantor or which such Grantor otherwise has the right to license, or granting any right to such Grantor under any Copyright now or hereafter owned by any third party, and all rights of such Grantor under any such agreement.

“Copyrights” means all of the following now owned or hereafter acquired by any Grantor: (a) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise, and (b) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, recordings, supplemental registrations and pending applications for registration in the United States Copyright Office, including those listed on Schedule I.

“Credit Agreement” has the meaning assigned to such term in the preliminary statement of this Agreement.

**“Credit Card Payments”** means all payments received or receivable by or on behalf of any Grantor in respect of sales of fitness memberships or any Inventory paid for by credit card charges, including payments from financial institutions that process credit card transactions for any of the Grantors.

**“Daily Receipts”** means all amounts received by the Parent Borrower and the Subsidiary Guarantors, whether in the form of cash, checks, any moneys received or receivable in respect of charges made by means of credit cards, and other negotiable instruments, in each case in the ordinary course of business. The term Daily Receipts shall include all Automated Clearing House transfers in respect of fitness club memberships.

**“Documents”** means all instruments, files, records, ledger sheets and documents and documents of title covering or relating to any of the Collateral.

**“Entitlement Holder”** means a Person identified in the records of a Securities Intermediary as the Person having a Security Entitlement against the Securities Intermediary. If a Person acquires a Security Entitlement by virtue of Section 8-501(b)(2) or (3) of the Uniform Commercial Code as in effect in the relevant jurisdiction, such Person is the Entitlement Holder.

**“Equipment”** means all equipment, furniture and furnishings, and all tangible personal property similar to any of the foregoing, including tools, parts and supplies of every kind and description, and all improvements, accessions or appurtenances thereto, that are now or hereafter owned by any Grantor. The term Equipment shall include Fixtures.

**“Financial Asset”** means (a) a Security, (b) an obligation of a Person or a share, participation or other interest in a Person or in property or an enterprise of a Person, which is, or is of a type, dealt with in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment or (c) any property that is held by a Securities Intermediary for another Person in a Securities Account if the Securities Intermediary has expressly agreed with the other Person that the property is to be treated as a Financial Asset under Article 8 of the Uniform Commercial Code as in effect in the relevant jurisdiction. As the context requires, the term Financial Asset shall mean either the interest itself or the means by which a Person's claim to it is evidenced, including a certificated or uncertificated Security, a certificate representing a Security or a Security Entitlement.

**“Fixtures”** means all items of Equipment, whether now owned or hereafter acquired, of any Grantor that become so related to particular real estate that an interest in them arises under any real estate law applicable thereto.

**“General Intangibles”** means all choses in action and causes of action and all other assignable intangible personal property of any Grantor of every kind and nature (other than Accounts Receivable) now owned or hereafter acquired by any Grantor, including limited partnership or limited liability company interests, corporate or other business records, indemnification claims, contract rights (including rights under leases, whether entered into as lessor or lessee, Hedging Agreements and other agreements) (other than rights under contracts that by their terms prohibit assignment or a grant of a security interest therein), Intellectual Property, goodwill, registrations, franchises, tax refund claims and any letter of credit, guarantee, claim, security interest or other security held by

or granted to any Grantor to secure payment by an Account Debtor of any of the Accounts Receivable.

**"Intellectual Property"** means all intellectual and similar property of any Grantor of every kind and nature now owned or hereafter acquired by any Grantor, including inventions, designs, Patents, Copyrights, Licenses, Trademarks, trade secrets, confidential or proprietary technical and business information, know-how, show-how or other data or information, software and databases and all embodiments or fixations thereof and related documentation, registrations and franchises, and all additions, improvements and accessions to, and books and records describing or used in connection with, any of the foregoing.

**"Inventory"** means all goods of any Grantor, whether now owned or hereafter acquired, held for sale or lease, or furnished or to be furnished by any Grantor under contracts of service, or consumed in any Grantor's business, including raw materials, intermediates, work in process, packaging materials, finished goods, semi-finished inventory, scrap inventory, manufacturing supplies and spare parts, and all such goods that have been returned to or repossessed by or on behalf of any Grantor.

**"Investment Property"** means all Securities (whether certificated or uncertificated), Financial Assets, Security Entitlements, Securities Accounts, Commodity Contracts and Commodity Accounts of any Grantor, whether now owned or hereafter acquired by any Grantor.

**"License"** means any Patent License, Trademark License, Copyright License or other license or sublicense to which any Grantor is a party, including those listed on Schedule II (other than those license agreements in existence on the date hereof and listed on Schedule II and those license agreements entered into after the date hereof, which by their terms prohibit assignment or a grant of a security interest by such Grantor as licensee thereunder).

**"Obligations"** has the meaning assigned to such term in the preliminary statement of this Agreement.

**"Patent License"** means any written agreement, now or hereafter in effect, granting to any third party any right to make, use or sell any invention on which a Patent, now or hereafter owned by any Grantor or which any Grantor otherwise has the right to license, is in existence, or granting to any Grantor any right to make, use or sell any invention on which a Patent, now or hereafter owned by any third party, is in existence, and all rights of any Grantor under any such agreement.

**"Patents"** means all of the following now owned or hereafter acquired by any Grantor: (a) all letters patent of the United States or any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or any other country, including registrations, recordings and pending applications in the United States Patent and Trademark Office or any similar offices in any other country, including those listed on Schedule III, and (b) all reissues, continuations, divisions, continuations-in-part, renewals or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein.

**"Perfection Certificate"** means a certificate substantially in the form of Annex 2 hereto, completed and supplemented with the schedules and attachments contemplated thereby, and duly executed by a Financial Officer and the chief legal officer of the Parent Borrower.

**"Permitted Liens"** means the Liens described in Section 6.02 of the Credit Agreement.

**"Proceeds"** means any consideration received from the sale, exchange, license, lease or other disposition of any asset or property that constitutes Collateral, any value received as a consequence of the possession of any Collateral and any payment received from any insurer or other Person as a result of the destruction, loss, theft, damage or other involuntary conversion of whatever nature of any asset or property which constitutes Collateral, and shall include (a) all cash and negotiable instruments received by or held on behalf of the Collateral Agent pursuant to Article V hereof, (b) any claim of any Grantor against any third party for (and the right to sue and recover for and the rights to damages or profits due or accrued arising out of or in connection with) (i) past, present or future infringement of any Patent now or hereafter owned by any Grantor, or licensed under a Patent License, (ii) past, present or future infringement or dilution of any Trademark now or hereafter owned by any Grantor or licensed under a Trademark License or injury to the goodwill associated with or symbolized by any Trademark now or hereafter owned by any Grantor, (iii) past, present or future breach of any License and (iv) past, present or future infringement of any Copyright now or hereafter owned by any Grantor or licensed under a Copyright License and (c) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

**"Secured Parties"** means (a) the Lenders, (b) the Administrative Agent, (c) the Collateral Agent, (d) the Issuing Bank, (e) each counterparty to a Hedging Agreement entered into with any Domestic Credit Party if such counterparty was a Lender (or an Affiliate thereof) at the time the Hedging Agreement was entered into, (f) the beneficiaries of each indemnification obligation undertaken by any Grantor under any Domestic Loan Document and (g) the successors and assigns of each of the foregoing.

**"Securities"** means any obligations of an issuer or any shares, participations or other interests in an issuer or in property or an enterprise of an issuer which (a) are represented by a certificate representing a security in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer, (b) are one of a class or series or by its terms is divisible into a class or series of shares, participations, interests or obligations and (c)(i) are, or are of a type, dealt with or traded on securities exchanges or securities markets or (ii) are a medium for investment and by their terms expressly provide that they are a security governed by Article 8 of the Uniform Commercial Code as in effect in the relevant jurisdiction.

**"Securities Account"** means an account to which a Financial Asset is or may be credited in accordance with an agreement under which the Person maintaining the account undertakes to treat the Person for whom the account is maintained as entitled to exercise rights that comprise the Financial Asset.

**"Securities Intermediary"** means (a) a clearing corporation or (b) a Person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

"Security Entitlements" means the rights and property interests of an Entitlement Holder with respect to a Financial Asset.

"Security Interest" has the meaning assigned to such term in Section 2.01.

"Trademark License" means any written agreement, now or hereafter in effect, granting to any third party any right to use any Trademark now or hereafter owned by any Grantor or which any Grantor otherwise has the right to license, or granting to any Grantor any right to use any Trademark now or hereafter owned by any third party, and all rights of any Grantor under any such agreement.

"Trademarks" means all of the following now owned or hereafter acquired by any Grantor: (a) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith (excluding intent to use applications), including registrations and registration applications in the United States Patent and Trademark Office (excluding intent to use applications), any State of the United States or any similar offices in any other country or any political subdivision thereof, and all extensions or renewals thereof, including those listed on Schedule IV, (b) all goodwill associated therewith or symbolized thereby and (c) all other assets, rights and interests that uniquely reflect or embody such goodwill.

SECTION 1.03. Rules of Interpretation. The rules of interpretation specified in Section 1.03 of the Credit Agreement shall be applicable to this Agreement.

## ARTICLE II

### Security Interest

SECTION 2.01. Security Interest. As security for the payment or performance, as the case may be, in full of the Obligations, each Grantor hereby bargains, sells, conveys, assigns, sets over, grants, mortgages, pledges, hypothecates and transfers to the Collateral Agent, its successors and assigns, for the ratable benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and assigns, for the ratable benefit of the Secured Parties, a security interest in all of such Grantor's right, title and interest in, to and under the Collateral (the "Security Interest"). Without limiting the foregoing, the Collateral Agent is hereby authorized to file one or more financing statements (including fixture filings), continuation statements, filings with the United States Patent and Trademark Office or United States Copyright Office (or any successor office or any similar office in any other country) or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the Security Interest granted by each Grantor, without the signature of any Grantor (unless required by applicable law), and naming any Grantor or the Grantors as debtors and the Collateral Agent as secured party.

SECTION 2.02. No Assumption of Liability. The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or



in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Collateral.

### ARTICLE III

#### Representations and Warranties

The Grantors jointly and severally represent and warrant to the Collateral Agent and the Secured Parties that:

**SECTION 3.01. Title and Authority.** Each Grantor has good and valid rights in and title to the Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent the Security Interest in such Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval which has been obtained.

**SECTION 3.02. Filings.** (a) The Perfection Certificate has been duly prepared, completed and executed and the information set forth therein is correct and complete. Fully executed Uniform Commercial Code financing statements (including fixture filings, as applicable) or other appropriate filings, recordings or registrations containing a description of the Collateral have been delivered to the Collateral Agent for filing in each governmental, municipal or other office specified in Schedule 6 to the Perfection Certificate, which are all the filings, recordings and registrations in the United States (or any political subdivision thereof) and its territories and possessions (other than filings required to be made in the United States Patent and Trademark Office and the United States Copyright Office in order to perfect the Security Interest in Collateral consisting of United States Intellectual Property) that are necessary to publish notice of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the ratable benefit of the Secured Parties) in respect of all Collateral (other than Intellectual Property as set forth above) in which the Security Interest may be perfected by filing, recording or registration in the United States (or any political subdivision thereof) and its territories and possessions, and no further or subsequent filing, refiling, recording, rerecording, registration or reregistration is necessary in any such jurisdiction, except as provided under applicable law with respect to the filing of continuation statements.

(b) Each Grantor shall have delivered or cause to be delivered to the Collateral Agent fully executed security agreements in the form hereof and containing a description of all Collateral consisting of Intellectual Property in appropriate form for filing and recording by the United States Patent and Trademark Office and the United States Copyright Office pursuant to 35 U.S.C. § 261, 15 U.S.C. § 1060 or 17 U.S.C. § 205 and the regulations thereunder, as applicable, within three months after the execution of this Agreement with respect to United States Patents and United States registered Trademarks (and Trademarks for which United States registration applications are pending) and within one month after the execution of this Agreement with respect to United States registered Copyrights. The filing of such security agreements (together with the filing of the UCC financing statements described above) is sufficient to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the ratable benefit of the Secured Parties) in respect of all Collateral consisting of Patents, Trademarks and Copyrights in which a security interest may be perfected by filing,

recording or registration in the United States (or any political subdivision thereof), and no further or subsequent filing, refile, recording, rerecording, registration or reregistration is necessary (other than such actions as are necessary to perfect the Security Interest with respect to any Collateral consisting of Patents, Trademarks and Copyrights (or registration or application for registration thereof) acquired or developed after the date hereof).

**SECTION 3.03. Validity of Security Interest.** The Security Interest constitutes (a) a legal and valid security interest in all the Collateral securing the payment and performance of the Obligations, (b) subject to the filings described in Section 3.02 above, a perfected security interest in all Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code or other applicable law in such jurisdictions and (c) a security interest that shall be perfected in all Collateral in which a security interest may be perfected upon the receipt and recording of this Agreement with the United States Patent and Trademark Office and the United States Copyright Office, as applicable, within the three month period (commencing as of the date hereof) pursuant to 35 U.S.C. § 261 or 15 U.S.C. § 1060 or the one month period (commencing as of the date hereof) pursuant to 17 U.S.C. § 205. The Security Interest is and shall be prior to any other Lien on any of the Collateral, other than (i) Permitted Liens and (ii) any other Lien in favor of the Secured Parties expressly contemplated by the Credit Agreement or any other Domestic Loan Document.

**SECTION 3.04. Absence of Other Liens.** The Collateral is owned by the Grantors free and clear of any Lien, except for (i) Permitted Liens and (ii) any other Lien in favor of the Secured Parties expressly contemplated by the Credit Agreement or any other Domestic Loan Document. No Grantor has filed or consented to the filing of (a) any financing statement or analogous document under the Uniform Commercial Code or any other applicable laws covering any Collateral, (b) any assignment in which any Grantor assigns any Collateral or any security agreement or similar instrument covering any Collateral with the United States Patent and Trademark Office or the United States Copyright Office or (c) any assignment in which any Grantor assigns any Collateral or any security agreement or similar instrument covering any Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for (i) Permitted Liens and (ii) any other Lien in favor of the Secured Parties expressly contemplated by the Credit Agreement or any other Domestic Loan Document.

## ARTICLE IV

### Covenants

**SECTION 4.01. Change of Name; Location of Collateral; Records; Place of Business.** (a) Each Grantor agrees to comply with the provisions of Section 5.03 of the Credit Agreement.

(b) Each Grantor agrees to maintain, at its own cost and expense, such complete and accurate records with respect to the Collateral owned by it as is consistent with its current practices and in accordance with such prudent and standard practices used in

industries that are the same as or similar to those in which such Grantor is engaged, but in any event to include complete accounting records indicating all payments and proceeds received with respect to any part of the Collateral, and, at such time or times as the Collateral Agent may reasonably request but not more than once a year so long as no Event of Default has occurred and is continuing, promptly to prepare and deliver to the Collateral Agent a duly certified schedule or schedules in form and detail satisfactory to the Collateral Agent showing the identity, amount and location of any and all Collateral.

**SECTION 4.02. Protection of Security.** Each Grantor shall, at its own cost and expense, take any and all actions reasonably necessary to defend title to the Collateral against all Persons and to defend the Security Interest of the Collateral Agent in the Collateral and the priority thereof against any Lien, except for (i) Permitted Liens and (ii) any other Lien in favor of the Secured Parties expressly contemplated by the Credit Agreement or any other Domestic Loan Document; provided, that this action need not be taken with respect to obsolete equipment valued at less than \$50,000 in the aggregate.

**SECTION 4.03. Further Assurances.** Each Grantor agrees, at its own cost and expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Collateral Agent may from time to time reasonably request that are reasonably necessary to assure, preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement, the granting of the Security Interest and the filing of any financing statements (including fixture filings) or other documents in connection herewith or therewith. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any promissory note or other instrument, such note or instrument shall be immediately pledged and delivered to the Collateral Agent, duly endorsed in a manner reasonably satisfactory to the Collateral Agent.

Without limiting the generality of the foregoing, each Grantor agrees to supplement this Agreement by supplementing Schedule I, II, III, IV or V hereto or adding additional schedules hereto to specifically identify any asset or item that may constitute registered Copyrights or applications therefor, Licenses that are material to the business of such Grantor, Patents or Trademarks; provided, however, that any Grantor shall have the right, exercisable within 10 days after it has notified the Collateral Agent of the specific identification of such Collateral, to advise the Collateral Agent in writing of any inaccuracy of the representations and warranties made by such Grantor hereunder with respect to such Collateral. Each Grantor agrees that it will use commercially reasonable efforts to take such action as shall be necessary in order that all representations and warranties hereunder shall be true and correct with respect to such Collateral within 30 days after the date it has notified the Collateral Agent of the specific identification of such Collateral. The Collateral Agent may supplement this Agreement as provided in the first sentence of this paragraph to the extent that any Grantor fails to do so promptly following any request of the Collateral Agent to do so.

**SECTION 4.04. Inspection and Verification.** The Collateral Agent, any Lender and such Persons as the Collateral Agent or any Lender may reasonably designate shall have the right, upon reasonable prior notice and at reasonable times during normal business hours, at the Grantors' own cost and expense, to inspect the Collateral, all records related thereto (and to make extracts and copies from such records) and the premises upon which any of the Collateral is located, to discuss the Grantors' affairs with the

officers of the Grantors and their independent accountants and to verify under reasonable procedures the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Collateral, including, in the case of Accounts or Collateral in the possession of any third person, by contacting Account Debtors or such third person possessing such Collateral for the purpose of making such a verification; provided that the Grantors shall be given the opportunity to be present at any meetings with their independent accountants or other third parties. The Collateral Agent and the Lenders shall have the absolute right to share any information it gains from such inspection or verification with any Secured Party and their agents and representatives, subject to Section 10.12 of the Credit Agreement.

SECTION 4.05. Taxes; Encumbrances. At its option the Collateral Agent may discharge past due Taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Collateral and not permitted pursuant to Section 6.02 of the Credit Agreement, and may pay for the maintenance and preservation of the Collateral to the extent any Grantor fails to do so as required by the Credit Agreement or this Agreement, and each Grantor jointly and severally agrees to reimburse the Collateral Agent on demand for any payment made or any reasonable out-of-pocket expense incurred by the Collateral Agent pursuant to the foregoing authorization; provided, however, that nothing in this Section 4.05 shall be interpreted as excusing any Grantor from the performance of, or imposing any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to Taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Domestic Loan Documents.

SECTION 4.06. Assignment of Security Interest. If at any time any Grantor shall take a security interest in any property of an Account Debtor or any other Person to secure payment and performance of an Account or Accounts totaling over \$50,000 in the aggregate for such Account Debtor, such Grantor shall promptly assign such security interest to the Collateral Agent. Such assignment need not be filed of public record unless necessary to continue the perfected status of the security interest against creditors of and transferees from the Account Debtor or any other Person granting the security interest.

SECTION 4.07. Continuing Obligations of the Grantors. Each Grantor shall remain liable to observe and perform all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Collateral, all in accordance with the terms and conditions thereof, and each Grantor jointly and severally agrees to indemnify and hold harmless the Collateral Agent and the Secured Parties from and against any and all liability for such performance.

SECTION 4.08. Use and Disposition of Collateral. None of the Grantors shall make or permit to be made an assignment, pledge or hypothecation of the Collateral or shall grant any other Lien in respect of the Collateral, except for (i) Permitted Liens and (ii) any other Lien in favor of the Secured Parties expressly contemplated by the Credit Agreement or any other Domestic Loan Document. None of the Grantors shall make or permit to be made any transfer of the Collateral and each Grantor shall remain at all times in possession of the Collateral owned by it, except that unless and until the Collateral Agent shall notify the Grantors that an Event of Default shall have occurred and be continuing and that during the continuance thereof the Grantors shall not sell, convey,

lease, assign, transfer or otherwise dispose of any Collateral (which notice may be given by telephone if promptly confirmed in writing), the Grantors may use and dispose of the Collateral in any lawful manner not prohibited by the provisions of this Agreement, the Credit Agreement or any other Domestic Loan Document. Without limiting the generality of the foregoing, each Grantor agrees (a) that if any Inventory of over \$50,000 in the aggregate is in the possession or control of any warehouseman, bailee or processor at any time, it will exercise commercially reasonable efforts to obtain a written agreement (in form and substance reasonably satisfactory to the Collateral Agent) pursuant to which such warehouseman, bailee or processor shall agree to hold the Inventory subject to the Security Interest and the instructions of the Collateral Agent and to waive and release any Lien held by it with respect to such Inventory, whether arising by operation of law or otherwise and (b) that if any Inventory of over \$50,000 in the aggregate is stored or otherwise located on or in any distribution center, store or other site that is not owned by a Grantor, it will exercise commercially reasonable efforts to obtain a written agreement (in form and substance reasonably satisfactory to the Collateral Agent) pursuant to which the applicable landlord shall agree to allow the Collateral Agent to have access to the premises and to waive and release any Lien held by it with respect to such Inventory, whether arising by operation of law or otherwise.

**SECTION 4.09. Limitation on Modification of Accounts.** None of the Grantors will, without the Collateral Agent's prior written consent, grant any extension of the time of payment of any of the Accounts Receivable, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any Person liable for the payment thereof or allow any credit or discount whatsoever thereon, other than extensions, credits, discounts, compromises or settlements granted or made in the ordinary course of business and consistent with its past practices and in accordance with such prudent and standard practices used in industries that are the same as or similar to those in which such Grantor is engaged.

**SECTION 4.10. Insurance.** The Grantors, at their own cost and expense, shall maintain or cause to be maintained insurance covering physical loss or damage to the Inventory and Equipment in accordance with Section 5.07 of the Credit Agreement. Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all designees of the Collateral Agent) as such Grantor's true and lawful agent (and attorney-in-fact) for the purpose, during the continuance of an Event of Default, of making, settling and adjusting claims in respect of Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto. In the event that any Grantor at any time or times shall fail to obtain or maintain any of the policies of insurance required hereby or to pay any premium in whole or part relating thereto, the Collateral Agent may, without waiving or releasing any obligation or liability of the Grantors hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Collateral Agent deems advisable. All sums disbursed by the Collateral Agent in connection with this Section 4.10, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Grantors to the Collateral Agent and shall be additional Obligations secured hereby.

**SECTION 4.11. Legend.** To the extent that it may be reasonably necessary, and that the Collateral Agent may reasonably request, in order to perfect the Security Interest

or to enable the Collateral Agent to exercise or enforce its rights and remedies hereunder, the Grantors shall mark conspicuously each item of chattel paper included in the Accounts with an appropriate reference to the fact that such Accounts Receivable have been assigned to the Collateral Agent for the benefit of the Secured Parties and that the Collateral Agent has a security interest therein.

**SECTION 4.12. Covenants Regarding Patent, Trademark and Copyright**

**Collateral.** (a) Each Grantor agrees that it will not, nor will it permit any of its licensees to, do any act, or omit to do any act, whereby any Patent which is material to the conduct of such Grantor's business may become invalidated or dedicated to the public and agrees that it shall continue to mark any products covered by a Patent with the relevant patent number as necessary and sufficient to establish and preserve its rights under applicable patent laws.

(b) Each Grantor (either itself or through its licensees or its sublicensees) will, for each Trademark material to the conduct of such Grantor's business, (i) maintain such Trademark in full force free from any valid claim of abandonment or invalidity for non-use, (ii) maintain a commercially reasonable standard of quality of products and services offered under such Trademark, (iii) display such Trademark with notice of Federal or foreign registration to the extent necessary and sufficient to establish and preserve its rights under applicable law and (iv) not knowingly use or knowingly permit the use of such Trademark in violation of any third party rights.

(c) Each Grantor (either itself or through its licensees or its sublicensees) will, for each work covered by a material Copyright, continue to publish, reproduce, display, adopt and distribute such work with appropriate copyright notice as necessary and sufficient to establish and preserve its rights under applicable copyright laws.

(d) Each Grantor shall notify the Collateral Agent promptly if it knows that any Patent, Trademark or Copyright material to the conduct of its business becomes abandoned, lost or dedicated to the public or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, United States Copyright Office or any court or similar office of any country) regarding such Grantor's ownership of any such Patent, Trademark or Copyright, its right to register the same or to keep and maintain the same.

(e) In no event shall any Grantor, either itself or through any agent, employee, licensee, sublicensee or designee, file an application for any Patent, Trademark or Copyright (or for the registration of any Trademark or Copyright) with the United States Patent and Trademark Office or United States Copyright Office, unless it promptly thereafter informs the Collateral Agent, and, upon request of the Collateral Agent, executes and delivers any and all agreements, instruments, documents and papers as the Collateral Agent may reasonably request to evidence the Collateral Agent's security interest in such Patent, Trademark or Copyright, and each Grantor hereby appoints the Collateral Agent as its attorney-in-fact to execute and file such writings for the foregoing purposes to the extent that such Grantor fails to do so, all acts of such attorney being hereby ratified and confirmed; such power, being coupled with an interest, is irrevocable except by termination of this Agreement.

(f) Each Grantor will take all necessary steps, consistent with the practice in any proceeding before the United States Patent and Trademark Office or United States Copyright Office, to maintain and pursue each application relating to the Patents, Trademarks and/or Copyrights that are material to the conduct of such Grantor's business (and to obtain the relevant grant or registration), to maintain each issued Patent and each registration of the Trademarks and Copyrights that is material to the conduct of such Grantor's business, including timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if consistent with reasonable business judgment, to initiate opposition, interference and cancellation proceedings against third parties.

(g) In the event that any Grantor has reason to believe that any Collateral consisting of a Patent, Trademark or Copyright material to the conduct of any Grantor's business has been infringed, misappropriated or diluted by a third party, such Grantor promptly shall notify the Collateral Agent and shall, if consistent with reasonable business judgment, take such actions as are reasonable and appropriate to protect such Collateral, including, without limitation, initiating suit for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution.

(h) Upon and during the continuance of an Event of Default, as and to the extent requested by the Collateral Agent, each Grantor shall use its commercially reasonable efforts to obtain all requisite consents or approvals by the licensor of each Copyright License, Patent License or Trademark License to effect the assignment of all of such Grantor's right, title and interest thereunder to the Collateral Agent or its designee.

## ARTICLE V

### Collections

SECTION 5.01. Cash Management Accounts. (a) Each Grantor agrees to establish and maintain one or more Collection Deposit Accounts, in each case with the Collateral Agent or with any financial institution that enters into a Collection Deposit Letter Agreement. Each financial institution with which a Collection Deposit Account is maintained is referred to herein as a "Collection Deposit Bank". The Collection Deposit Bank shall be selected by the Grantors, but must at all times be reasonably satisfactory to the Collateral Agent.

(b) From and after the Effective Date, each Grantor agrees to deposit, on each Business Day, all Daily Receipts and all other payments on the Accounts Receivable or Inventory into the applicable Collection Deposit Account. Each Grantor shall use all reasonable efforts to prevent any funds which are not Daily Receipts or other payments on the Accounts Receivable or Inventory from being deposited into, or otherwise commingled with, the funds held in the Collection Deposit Accounts.

(c) Unless and until the Collection Deposit Accounts are converted into closed accounts pursuant to paragraph (d) below, the Parent Borrower or the applicable Subsidiary Guarantor may at any time withdraw any of the funds contained in the Collection Deposit Accounts for use, subject to the provisions of the Credit Agreement for general corporate purposes.

(d) Upon the occurrence and during the continuance of an Event of Default, each Collection Deposit Account will, without any further action on the part of any Grantor, the Collateral Agent or any Collection Deposit Bank, convert into a closed account under the exclusive dominion and control of the Collateral Agent in which funds are held subject to the rights of the Collateral Agent hereunder. No Grantor shall thereafter have any right or power to withdraw any funds from any Collection Deposit Account without the prior written consent of the Collateral Agent until all Events of Default are cured or waived. The Grantors irrevocably authorize the Collateral Agent to notify each Collection Deposit Bank (i) of the occurrence of an Event of Default and (ii) of the matters referred to in this paragraph (d).

(e) In the event that a Grantor directly receives any remittances on the Accounts Receivable or Inventory, notwithstanding the arrangements for payment directly into the Collection Deposit Accounts pursuant to Section 5.02, such remittances shall be held for the benefit of the Collateral Agent and the Secured Parties and shall be segregated from other funds of such Grantor, subject to the Security Interest granted hereby, and such Grantor shall cause such remittances and payments to be deposited into a Collection Deposit Account, pursuant to Section 5.02, as soon as practicable after such Grantor's receipt thereof.

(f) All payments by any Grantor into any Collection Deposit Account pursuant to this Section 5.01, whether in the form of cash, checks, notes, drafts, bills of exchange, money orders or otherwise, shall be deposited in the relevant Collection Deposit Account in precisely the form in which received (but with any endorsements of such Grantor necessary for deposit or collection), and until they are so deposited such payments shall be held in trust by such Grantor for and as the property of the Collateral Agent.

**SECTION 5.02. Collections.** (a) From and after the Effective Date, each Grantor agrees to notify each Account Debtor and every other Person obligated to make payments with respect to the Accounts Receivable or Inventory to make all such payments to a Collection Deposit Account, which shall be established by it on or prior to the Effective Date. Each Grantor shall use all reasonable efforts to cause each Account Debtor and every other Person identified in the preceding sentence to make all payments with respect to the Accounts Receivable or Inventory directly to a Collection Deposit Account.

(b) Without the prior written consent of the Collateral Agent, no Grantor shall, under any circumstances whatsoever, change the general instructions given to Account Debtors regarding the deposit of payments with respect to the Accounts Receivable or Inventory in a Collection Deposit Account. Until the Collateral Agent shall have advised the Grantors to the contrary, each Grantor shall, and the Collateral Agent hereby authorizes each Grantor to, enforce and collect all amounts owing with respect to the Accounts Receivable or Inventory for the benefit and on behalf of the Collateral Agent and the other Secured Parties; provided, however, that such privilege may at the option of the Collateral Agent be terminated upon the occurrence and during the continuance of an Event of Default.

(c) Notwithstanding anything to the contrary in paragraph (a), (b) or (d) of Section 5.01 or paragraph (a) or (b) of this Section 5.02, (x) the Grantors may deposit Daily Receipts and other payments on the Accounts Receivable or Inventory in accounts that are not Collection Deposit Accounts and that are not maintained with financial institutions that are Collection Deposit Banks, provided that not more than 5% of the



aggregate annual Daily Receipts and other payments on the Accounts Receivable or Inventory of the Grantors are so deposited, and (y) the obligations of (i) all Grantors with respect to Daily Receipts and other payments on the Accounts Receivable or Inventory of the Grantors that are deposited into accounts maintained at Bank of America, N.A. and (ii) Q Clubs Inc. and its existing Subsidiaries, under Sections 5.01(b) and 5.02(a) will become effective 30 days after the Effective Date.

**SECTION 5.03. Power of Attorney.** Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all designees of the Collateral Agent) as such Grantor's true and lawful agent and attorney-in-fact, and in such capacity the Collateral Agent shall have the right, with full power of substitution for each Grantor and in each Grantor's name or otherwise, for the use and benefit of the Collateral Agent and the Secured Parties, upon the occurrence and during the continuance of an Event of Default (a) to receive, endorse, assign and/or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof; (b) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral; (c) to sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral; (d) to send verifications of Accounts Receivable to any Account Debtor; (e) to commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral; (f) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral; (g) to notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Collateral Agent; and (h) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes; provided, however, that nothing herein contained shall be construed as requiring or obligating the Collateral Agent or any Secured Party to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent or any Secured Party, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby, and no action taken or omitted to be taken by the Collateral Agent or any Secured Party with respect to the Collateral or any part thereof shall give rise to any defense, counterclaim or offset in favor of any Grantor or to any claim or action against the Collateral Agent or any Secured Party. It is understood and agreed that the appointment of the Collateral Agent as the agent and attorney-in-fact of the Grantors for the purposes set forth above is coupled with an interest and is irrevocable. The provisions of this Section shall in no event relieve any Grantor of any of its obligations hereunder or under any other Domestic Loan Document with respect to the Collateral or any part thereof or impose any obligation on the Collateral Agent or any Secured Party to proceed in any particular manner with respect to the Collateral or any part thereof, or in any way limit the exercise by the Collateral Agent or any Secured Party of any other or further right which it may have on the date of this Agreement or hereafter, whether hereunder, under any other Domestic Loan Document, by law or otherwise.

## ARTICLE VI

### Remedies

SECTION 6.01. Remedies upon Default. Upon the occurrence and during the continuance of an Event of Default, each Grantor agrees, upon the request of the Collateral Agent, to assemble all or any part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at any place of business of such Grantor or any other location reasonably designated by the Collateral Agent, and it is understood and agreed that the Collateral Agent shall have the right, to the maximum extent permitted by applicable law, to take any of or all the following actions at the same or different times: (a) with respect to any Collateral consisting of Intellectual Property, on demand, to cause the Security Interest to become an assignment, transfer and conveyance of any part of or all such Collateral by the applicable Grantors to the Collateral Agent, or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any such Collateral throughout the world on such terms and conditions and in such manner as the Collateral Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers cannot be obtained) and (b) with or without legal process and with or without prior notice or demand for performance, to take possession of the Collateral and without liability to any Grantor for trespass to enter any premises where the Collateral may be located for the purpose of taking possession of or removing the Collateral and, generally, to exercise any and all rights afforded to a secured party under the Uniform Commercial Code or other applicable law. Without limiting the generality of the foregoing, each Grantor agrees that the Collateral Agent shall have the right, subject to the mandatory requirements of applicable law and notice as provided below, to sell or otherwise dispose of all or any part of the Collateral, at public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem commercially reasonable. The Collateral Agent shall be authorized at any such sale (if it deems it advisable to do so) to restrict the prospective bidders or purchasers to Persons who will represent and agree that they are purchasing the Collateral for their own account for investment and not with a view to the distribution or sale thereof. Upon consummation of any such sale the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by law) all rights of redemption, stay and appraisal which such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

The Collateral Agent shall give the Grantors at least 15 days' written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-504(3) of the Uniform Commercial Code as in effect in the State of New York or its equivalent in other jurisdictions) of the Collateral Agent's intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange and for any other private sale shall state the time and date after which such sale may commence. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the public notice (if any) of such

sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by law, private) sale made pursuant to this Section 6.01, any Secured Party may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all said rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any Obligations then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Grantor therefor. For purposes hereof, a written agreement entered into during the continuance of an Event of Default to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver.

**SECTION 6.02. Application of Proceeds.** The Collateral Agent shall apply the proceeds of any collection or sale of all or any part of the Collateral, as well as any Collateral consisting of cash, as follows:

FIRST, to the payment of all costs and expenses incurred by the Administrative Agent or the Collateral Agent (in its capacity as such hereunder or under any other Domestic Loan Document) in connection with such collection or sale or otherwise in connection with this Agreement, any other Domestic Loan Document or any of the Obligations, including all court costs and the reasonable fees and expenses of their agents and legal counsel, the repayment of all advances made by the Collateral Agent hereunder or under any other Domestic Loan Document on behalf of any Grantor and any other costs or expenses incurred by the Collateral Agent or the Administrative Agent in connection with the exercise of any right or remedy hereunder or under any other Domestic Loan Document;

SECOND, to the payment in full of the Obligations (the amounts so applied to be distributed among the Secured Parties pro rata in accordance with

the amounts of such Obligations owed to them on the date of any such distribution); and

THIRD, to the Grantors, their successors and assigns or as a court of competent jurisdiction may otherwise direct.

The Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of the Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the purchase money by the Collateral Agent or the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof.

SECTION 6.03. Grant of License to Use Intellectual Property. For the purpose of enabling the Collateral Agent to exercise rights and remedies under this Article at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent an irrevocable (until the termination of this Agreement), non-exclusive license (exercisable without payment of royalty or other compensation to the Grantors) to use, license or sublicense any of the Collateral consisting of Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located, and including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof; provided that such license shall be subject to such rights of quality control and inspection and such other provisions as shall be reasonably required to maintain the validity and enforceability of any and all Intellectual Property subject thereto. Notwithstanding the foregoing, the Collateral Agent may (but shall not have any obligation to) utilize and exploit such license only upon the occurrence and during the continuance of an Event of Default; provided that any license, sublicense or other transaction entered into by the Collateral Agent in accordance herewith (a) shall be binding upon the Grantors notwithstanding any subsequent cure of an Event of Default and (b) shall be subject to such rights of quality control and inspection and contain such other provisions as shall be reasonably required to maintain the validity and enforceability of the Intellectual Property subject thereto.

## ARTICLE VII

### Miscellaneous

SECTION 7.01. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 10.01 of the Credit Agreement. All communications and notices hereunder to any Subsidiary Guarantor shall be given to it at the address or telecopy number set forth next to such Subsidiary Guarantor's name on Schedule I or, in the case of Subsidiary Guarantors that become parties to this agreement after the date hereof, provided by such Subsidiary Guarantor in the instrument referred to in Section 7.15, with a copy to the Parent Borrower.

SECTION 7.02. Security Interest Absolute. All rights of the Collateral Agent hereunder, the Security Interest and all Obligations of the Grantors hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Domestic Loan Document, any agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Domestic Loan Document or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Obligations or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Obligations or this Agreement.

SECTION 7.03. Survival of Agreement. All covenants, agreements, representations and warranties made by any Grantor herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the Secured Parties and shall survive the making by the Lenders of the Loans, and the execution and delivery to the Lenders of any notes evidencing such Loans, regardless of any investigation made by the Lenders or on their behalf, and shall continue in full force and effect until this Agreement shall terminate.

SECTION 7.04. Binding Effect; Several Agreement. This Agreement shall become effective as to any Grantor when a counterpart hereof executed on behalf of such Grantor shall have been delivered to the Collateral Agent and a counterpart hereof shall have been executed on behalf of the Collateral Agent, and thereafter shall be binding upon such Grantor and the Collateral Agent and their respective successors and assigns, and shall inure to the benefit of such Grantor, the Collateral Agent and the other Secured Parties and their respective successors and assigns, except that no Grantor shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement or the Credit Agreement. This Agreement shall be construed as a separate agreement with respect to each Grantor and may be amended, modified, supplemented, waived or released with respect to any Grantor without the approval of any other Grantor and without affecting the obligations of any other Grantor hereunder.

SECTION 7.05. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of any Grantor or the Collateral Agent that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

SECTION 7.06. Collateral Agent's Fees and Expenses; Indemnification. (a) Each Grantor jointly and severally agrees to pay upon demand to the Collateral Agent the amount of any and all out-of-pocket expenses, including the reasonable fees, disbursements and other charges of its counsel and of any experts or agents, which the Collateral Agent may incur in connection with (i) the administration of this Agreement, (ii) the custody or preservation of, or the sale of, collection from or other realization upon any of the Collateral, (iii) the exercise, enforcement or protection of any of the rights of

the Collateral Agent hereunder or (iv) the failure of any Grantor to perform or observe any of the provisions hereof.

(b) Without limitation of its indemnification obligations under the other Domestic Loan Documents, each Grantor jointly and severally agrees to indemnify the Collateral Agent and the other Indemnitees against, and hold each of them harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable fees, disbursements and other charges of counsel, incurred by or asserted against any of them arising out of, in any way connected with, or as a result of, the execution, delivery or performance of this Agreement or any claim, litigation, investigation or proceeding relating hereto or to the Collateral, whether or not any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnitee.

(c) Any such amounts payable as provided hereunder shall be additional Obligations secured hereby and by the other Security Documents. The provisions of this Section 7.06 shall remain operative and in full force and effect regardless of the termination of this Agreement or any other Domestic Loan Document, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the invalidity or unenforceability of any term or provision of this Agreement or any other Domestic Loan Document or any investigation made by or on behalf of the Collateral Agent or any Lender. All amounts due under this Section 7.06 shall be payable on written demand therefor.

**SECTION 7.07. GOVERNING LAW. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.**

SECTION 7.08. Waivers; Amendment. (a) No failure or delay of the Collateral Agent in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Collateral Agent hereunder and of the Collateral Agent, the Issuing Bank, the Administrative Agent and the Lenders under the other Domestic Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provisions of this Agreement or any other Domestic Loan Document or consent to any departure by any Grantor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any Grantor in any case shall entitle such Grantor or any other Grantor to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Grantor or Grantors with respect to which such waiver, amendment or modification is to apply, subject to any consents required in accordance with Section 10.02 of the Credit Agreement.

SECTION 7.09. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER DOMESTIC LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER DOMESTIC LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.09.

SECTION 7.10. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 7.11 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 7.04. Delivery of an executed signature page to this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 7.12. Headings. Article and Section headings used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 7.13. Jurisdiction; Consent to Service of Process. (a) Each Grantor hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Domestic Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Collateral Agent, the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or the other Domestic Loan Documents against any Grantor or its properties in the courts of any jurisdiction.

(b) Each Grantor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Domestic Loan Documents in any court referred to in paragraph (a) of this Section 7.13. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 7.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

**SECTION 7.14. Termination.** (a) This Agreement and the Security Interest shall terminate when all the Obligations have been indefeasibly paid in full in cash, the Lenders have no further commitment to lend, the LC Exposure has been reduced to zero and the Issuing Bank has no further commitment to issue Letters of Credit under the Credit Agreement, at which time the Collateral Agent shall return to the Grantors any Collateral in the Collateral Agent's possession and execute and deliver to the Grantors, at the Grantors' expense, all Uniform Commercial Code termination statements and similar documents which the Grantors shall reasonably request to evidence such termination. Any execution and delivery of termination statements or documents pursuant to this Section 7.14 shall be without recourse to or warranty by the Collateral Agent.

(b) A Subsidiary Guarantor shall automatically be released from its obligations hereunder and the Security Interest in the Collateral of such Subsidiary Guarantor shall be automatically released in the event that such Subsidiary Guarantor ceases to be a Subsidiary pursuant to a transaction permitted by the Credit Agreement; provided that to the extent that the Lenders' consent was required in connection with such transaction, the terms of such consent did not provide otherwise.

(c) Upon any sale or other transfer by any Grantor of any Collateral that is permitted under the Credit Agreement to any Person that is not a Grantor, or upon the effectiveness of any written consent to the release of the security interest granted hereby in any Collateral pursuant to Section 10.02(b) of the Credit Agreement, the security Interest in such Collateral shall be automatically released.

**SECTION 7.15. Additional Grantors.** Pursuant to Section 5.13 of the Credit Agreement each Subsidiary incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia that was not a Subsidiary or was not in existence on the date of the Credit Agreement is required to enter into this Agreement as a Subsidiary Guarantor upon becoming a Subsidiary. Upon execution and delivery by the Collateral Agent and a Subsidiary of an instrument in the form of Annex 3 hereto, such Subsidiary shall become a Grantor hereunder with the same force and effect as if originally named as a Grantor herein. The execution and delivery of any such instrument shall not require the consent of any Grantor hereunder. The rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Agreement.



IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement  
as of the day and year first above written.

FITNESS HOLDINGS WORLDWIDE,  
INC.,

by 

Name: Mark Mastrov  
Title: President and Chief  
Executive Officer

24 HOUR FITNESS, INC.,

by 

Name: Mark Mastrov  
Title: President and Chief  
Executive Officer

NEW FHI CORP.,

by 

Name: Mark Mastrov  
Title: President

FITNESS HOLDINGS INTERNATIONAL  
CORP.,

by 

Name: Mark Mastrov  
Title: President

Q CLUBS INC.,

by 

Name: Mark Mastrov  
Title: Director

SPORTS & FITNESS CLUBS OF  
AMERICA, INC.,

by 

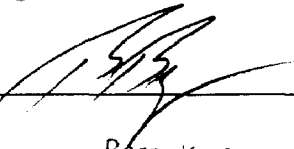
Name: Gilbert K. Freeman  
Title: Vice President

THE CHASE MANHATTAN BANK, as  
Collateral Agent,

by

Name:

Title:

  
Barry K. Bergman  
Vice President

**SUBSIDIARY GUARANTORS**

<b><u>Name</u></b>	<b><u>Address</u></b>
New FHI Corp.	5020 Franklin Drive Pleasanton, CA 94588
24 Hour Fitness, Inc.	5020 Franklin Drive Pleasanton, CA 94588
Q Clubs Inc.	8800 North Gainey Center Rd., Suite 280 Scottsdale, AZ 85258
Sports and Fitness Clubs of America, Inc.	395 Springside Drive, Akron, OH 44333
Fitness Holdings International Corp.	5020 Franklin Drive Pleasanton, CA 94588

SCHEDULE II to  
the Domestic Security Agreement

**COPYRIGHTS**

None.

**LICENSES**

<b>License Agreement</b>	<b>Date</b>
Agreement by and between The Step Company and 24 Hour Fitness, Inc.	05/20/98
Agreement by and between Apex Fitness, Inc. and 24 Hour Fitness, Inc.	07/29/98
Agreement by and between Melita International Corporation and 24 Hour Fitness, Inc.	05/26/99
Agreement by and between Oracle Corporation and 24 Hour Fitness, Inc.	02/26/98
Agreement by and between International Business Machines Corp. and 24 Hour Fitness, Inc.	04/24/98
Agreement by and between MCI Telecommunications Corp. and 24 Hour Fitness, Inc.	06/14/99
Agreement by and between PeopleSoft USA, Inc. and 24 Hour Fitness, Inc.	12/23/97
Agreement by and between Quma Software, Inc. and 24 Hour Fitness, Inc.	undated
Agreement by and between Remedy Corp. and 24 Hour Fitness, Inc.	undated

**SCHEDULE IV**  
**to Domestic Security Agreement**

**PATENTS**

None

**Q CLUBS INC.**  
**Active Trademark Registration and Pending Trademark Application**  
(as of 09/99)

<b>Our No.</b>	<b>Jurisdiction</b>	<b>Mark</b>	<b>Class</b>	<b>Goods</b>	<b>App. No.</b>	<b>Filed</b>	<b>Reg. No.</b>	<b>Issued</b>	<b>Status</b>
	USA	Q The Sports Club Design		T-shirts, polo shirts, shirts, sweat shirts, henley shirts, shorts, jackets, pants and baseball caps; health and exercise club services; supervised physical fitness instruction	--	--	2281000	09/28/99	registered
	USA	Q 4 KIDS		child care centers and physical fitness consultation	75/566378	--			pending

COLLECTION DEPOSIT LETTER AGREEMENT dated as of November [ ], 1999, among FITNESS HOLDINGS WORLDWIDE, INC., a Delaware corporation (the "Parent Borrower"), [Each applicable Subsidiary Guarantor], THE CHASE MANHATTAN BANK, a New York banking corporation ("Chase"), as collateral agent (the "Collateral Agent") for the Secured Parties (as defined in the Domestic Security Agreement referred to below), and [ ], a [ ] (the "Collection Deposit Bank").

A. Reference is made to (a) the Credit Agreement dated as of November 2, 1999 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Parent Borrower, the Borrowing Subsidiaries from time to time party thereto, the lenders from time to time party thereto (the "Lenders") and Chase, as administrative agent for the Lenders (in such capacity, the "Administrative Agent") and Bankers Trust Company, as syndication agent and Banque Nationale de Paris, as documentation agent, and (b) the Domestic Security Agreement dated as of November 2, 1999 (as amended, supplemented or otherwise modified from time to time, the "Domestic Security Agreement"), among the Parent Borrower, the Subsidiary Guarantors (the Subsidiary Guarantors and the Parent Borrower being collectively referred to herein as the "Grantors") and the Collateral Agent. Pursuant to the terms of the Domestic Security Agreement, the Grantors have granted to the Collateral Agent, for the benefit of the Secured Parties, a Security Interest in the Grantors' Accounts Receivable and other Collateral to secure the payment and performance of the Obligations. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Domestic Security Agreement.

B. The Collection Deposit Bank has agreed to receive on behalf of the Collateral Agent (a) Daily Receipts and (b) other payments on the Accounts Receivable or Inventory, on the terms and subject to the conditions set forth herein.

C. The parties hereto desire to define hereunder certain rights and obligations among them with respect to the appointment of the Collection Deposit Bank.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. The Collateral Agent hereby authorizes the Collection Deposit Bank, on the terms and subject to the conditions set forth herein, to receive (a) Daily Receipts and (b) payments on the Accounts Receivable or Inventory.

2. Prior to or contemporaneously with the execution and delivery by the Collection Deposit Bank of this Agreement, and for the purposes of this Agreement, the Collection Deposit Bank has established and shall maintain (except as otherwise provided in paragraph 8 below) in the name of the Parent Borrower and for the benefit of the Collateral Agent one or more collection accounts (all such accounts, collectively, the "Collection Deposit Account"). Daily Receipts received by the Collection Deposit Bank and any other payments received by the Collection Deposit Bank in respect of the Accounts Receivable or Inventory shall not be commingled with other funds of any Grantor. All funds at any time on deposit in the Collection Deposit Account shall be held



by the Collection Deposit Bank subject to the terms of this Agreement. The Collection Deposit Bank agrees to give the Collateral Agent, the Parent Borrower and the applicable Grantors (if other than the Parent Borrower) prompt notice if the Collection Deposit Bank receives notice that the Collection Deposit Account is subject to any writ, judgment, warrant of attachment, execution or similar process. As security for the payment and performance of the Obligations, the Parent Borrower hereby pledges, assigns and transfers to the Collateral Agent, for the benefit of the Secured Parties, and hereby creates and grants to the Collateral Agent, for the benefit of the Secured Parties, a security interest in the Collection Deposit Account and all property and assets held therein. The Collection Deposit Bank acknowledges the security interest of the Collateral Agent for the benefit of the Secured Parties in the Collection Deposit Account and agrees to act as sub-agent of the Collateral Agent for purposes hereof.

3. The Collateral Agent hereby authorizes the Collection Deposit Bank to permit the Parent Borrower to make withdrawals from the Collection Deposit Account, so long as the Collection Deposit Bank has not received notice from the Collateral Agent pursuant to the next succeeding sentence. Upon receipt of written, telex, facsimile or telephonic notice from the Collateral Agent so directing the Collection Deposit Bank at any time (which direction may be given by the Collateral Agent only upon the occurrence and during the continuation of an Event of Default), except to the extent and subject to such terms as may be specified in such notice, the Collection Deposit Bank shall no longer permit withdrawals from the Collection Deposit Account to be made by the Parent Borrower or the applicable Grantor.

4. At any time during the term of this Agreement (as provided in paragraph 13 hereof), the Collection Deposit Bank shall, if requested by the Collateral Agent or the Parent Borrower, furnish the Collateral Agent and/or the Parent Borrower with monthly statements, in the form and manner typical for the Collection Deposit Bank, of amounts of deposits in, and amounts withdrawn from, the Collection Deposit Account and such other information relating to the Collection Deposit Account at such times as shall be reasonably requested by the Collateral Agent or the Parent Borrower. Upon the occurrence and during the continuance of an Event of Default, the Collection Deposit Bank shall, with no further action required on the part of the Collateral Agent, furnish the Collateral Agent with such monthly statements.

5. For purposes of this Agreement, any officer of the Collateral Agent shall be authorized to act, and to give instructions and notice, for the purposes set forth in this Agreement on behalf of the Collateral Agent hereunder.

6. The fees for the services of the Collection Deposit Bank shall be mutually agreed upon between the Parent Borrower and the Collection Deposit Bank. The Collateral Agent shall not have any responsibility or liability for the payment of any such fee.

7. The Collection Deposit Bank may perform any of its duties hereunder by or through its agents, officers or employees and shall be entitled to rely upon the advice of counsel as to its duties. The Collection Deposit Bank shall not be liable to the Collateral Agent for any action required of the Collection Deposit Bank under the terms of this Agreement, if such action was taken or omitted to be taken by it in the absence of gross negligence or wilful misconduct, nor shall the Collection Deposit Bank be responsible to the Collateral Agent or the Parent Borrower for the consequences of any

oversight or error of judgment or be answerable to the Collateral Agent for the same unless the same shall happen through its gross negligence or wilful misconduct.

8. The Parent Borrower consents to the appointment of the Collection Deposit Bank and agrees that it is not entitled to withdraw, or request to withdraw, any funds from the Collection Deposit Account, except as permitted under paragraph 3 hereof. The Parent Borrower acknowledges that the Collection Deposit Bank shall incur no liability to the Parent Borrower as a result of any action taken pursuant to an instruction given by the Collateral Agent in accordance with the provisions of this Agreement.

9. The Collection Deposit Bank undertakes to perform only such duties as are expressly set forth in this Agreement.

10. The Collection Deposit Bank accepts its obligations as set forth in this Agreement upon the terms and conditions hereof, including the following, to all of which the Parent Borrower and the Collateral Agent agree:

(a) The Parent Borrower shall promptly pay the Collection Deposit Bank the compensation, if any, to be mutually agreed upon with the Parent Borrower for all services rendered by the Collection Deposit Bank in connection with this Agreement and to reimburse the Collection Deposit Bank for reasonable out-of-pocket expenses (including reasonable counsel fees) incurred by the Collection Deposit Bank in connection with the services rendered hereunder by the Collection Deposit Bank.

(b) The Parent Borrower agrees to and does hereby indemnify and hold harmless the Collection Deposit Bank from and against any loss, liability, claim, action, cost or expense incurred hereunder or arising directly from its action as Collection Deposit Bank hereunder, except for any action or omission caused by its gross negligence or wilful misconduct (collectively, a "Loss"). The Collection Deposit Bank shall promptly notify the Parent Borrower of the commencement of any claim giving rise to a potential Loss and of the proceedings relating thereto. The Borrower may, at its option, undertake to defend any such claim against the Collection Deposit Bank.

(c) The Collection Deposit Bank may consult with one or more legal counsel satisfactory to it, and in no event shall it be liable for action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion of such counsel.

(d) The Collection Deposit Bank shall be protected from and shall incur no liability for or in respect of any action taken or damage suffered by it in reliance upon any certification, notice, direction, consent, affidavit, statement or other paper or document reasonably believed by it to be genuine and to have been presented or signed by the proper parties, and the Collection Deposit Bank shall be under no duty whatsoever to inquire into or investigate the authenticity, validity, accuracy or content of any such item.

(e) The Collection Deposit Bank shall have no responsibility, and shall incur no liability, with respect to the validity of this Agreement or any document related hereto.

(f) The Collection Deposit Bank shall not be under any duty to give the items held by it hereunder any greater degree of care than it gives its own similar property, shall not, unless separately agreed to with the Parent Borrower, be required to invest any funds held hereunder and shall be under no duty to take any action with respect to the funds held in the Collection Deposit Account, except to keep the same safe and to release and deliver the same in accordance with this Agreement. Whether or not the funds held hereunder earn interest is subject to a separate agreement, between the Collection Deposit Bank and the Parent Borrower, which is not affected or modified in any way by this Agreement. The Collection Deposit Bank's duties and responsibilities shall be limited to the specific duties stated in this Agreement.

(g) The Collection Deposit Bank shall act hereunder as a depository only and shall not be liable or responsible in any manner for the sufficiency, correctness, genuineness or validity of any certificate or information delivered to it, or for the identity or authority of any Person making any deposit hereunder.

11. The Collection Deposit Bank shall be entitled to rely on the information furnished to it for all purposes in connection with carrying out its duties and obligations as the Collection Deposit Bank hereunder, notwithstanding any knowledge that the Collection Deposit Bank may have (in any capacity) that conflicts with the information so provided.

12. (a) The Collection Deposit Bank may at any time resign as such by giving written notice to the Parent Borrower and the Collateral Agent of such intention on its part, specifying the date on which its desired resignation shall become effective; provided, however, that such date shall not be less than 45 days after the date on which such notice is given unless the Parent Borrower and the Collateral Agent agree to accept less notice.

(b) In the event that the Collection Deposit Bank shall resign or the Parent Borrower shall replace the Collection Deposit Bank (of which the Parent Borrower shall notify the Collateral Agent in advance), the Collection Deposit Bank or the Parent Borrower, as applicable, will (i) immediately upon the effectiveness of such resignation or replacement transmit to a successor collection deposit bank (which shall be reasonably acceptable to the Collateral Agent) specified in writing by the Parent Borrower to the Collateral Agent and the Collection Deposit Bank (such successor collection deposit bank, the "Successor Collection Deposit Bank"), at the office specified in writing by the Parent Borrower to the Collateral Agent and the Collection Deposit Bank, all funds, if any, then on deposit in, or otherwise to the credit of, the Collection Deposit Account, provided that funds on deposit which are subject to collection shall be transmitted promptly upon collection, (ii) deliver directly to the Successor Collection Deposit Bank, at the office specified in writing by the Parent Borrower to the Collateral Agent and the Collection Deposit Bank, all Daily Receipts and all checks, drafts and other instruments for the payment of money relating to the Accounts Receivable or Inventory in the possession of the Collection Deposit Bank, without depositing such Daily Receipts or checks, drafts or other instruments in the Collection Deposit Account or any other

account and (iii) deliver any Daily Receipts or payments relating to the Accounts Receivable or Inventory received by the Collection Deposit Bank after such replacement, in whatever form received, directly to the Successor Collection Deposit Bank, at the office specified in writing to the Collateral Agent and the Collection Deposit Bank. Any Successor Collection Deposit Bank shall enter into an agreement substantially in the form hereof.

13. The term of this Agreement shall extend from the date hereof until the earlier of (a) the date on which the Security Interest under the Domestic Security Agreement terminates and (b) any date on which the Collection Deposit Bank shall not be serving in its capacity hereunder as provided in paragraph 12 above. The obligations of the Collection Deposit Bank contained in clause (b) of paragraph 12 above shall survive the termination of this Agreement.

14. All notices and communications hereunder shall be in writing (except where telephonic instructions or notices are authorized herein) and shall be deemed to have been received and shall be effective on the day on which delivered (including delivery by telex or telecopy) (a) in the case of the Collateral Agent, addressed to The Chase Manhattan Bank, Loan and Agency Services Group, One Chase Manhattan Plaza, 8th Floor, New York, New York 10081, to the attention of [Janet Belden] (Telecopy No. (212) [552-5658]), with a copy to The Chase Manhattan Bank, 270 Park Avenue, [48th] Floor, New York, New York 10017, to the attention of [ ] (Telecopy No. (212) 270-[ ]); (b) in the case of the Collection Deposit Bank, addressed to [ ], to the attention of [ ] (Telecopy No. [ ]); and (c) in the case of the Parent Borrower, addressed to it c/o Fitness Holdings Worldwide, Inc., 5020 Franklin Drive, Pleasanton, CA 94588, to the attention of [Gil Freeman, Chief Financial Officer] (Telecopy No. (925) 416-7398).

15. The Collection Deposit Bank will not (except as contemplated in paragraph 12 of this Agreement) assign or transfer any of its rights or obligations hereunder (other than to the Collateral Agent) without the prior written consent of the other parties hereto.

16. This Agreement may be amended only by a written instrument executed by the Collateral Agent, the Collection Deposit Bank and each applicable Subsidiary Guarantor, acting by their representative officers thereunto duly authorized.

17. Except as otherwise provided in the Credit Agreement with respect to rights of set-off available to the Collection Deposit Bank in the event that it is also a Lender under the Credit Agreement, the Collection Deposit Bank hereby irrevocably waives any right to set-off against, or otherwise deduct from, any funds at any time held in the Collection Deposit Account for any Indebtedness or other claim owed by any of the Parent Borrower or any other Grantor to the Collection Deposit Bank.

18. Except to the extent the laws of the State of [ ] govern the Collection Deposit Account, this Agreement shall be construed in accordance with and governed by the laws of the State of New York.

19. This Agreement (a) shall inure to the benefit of and be binding upon the Collateral Agent, the Collection Deposit Bank and the Parent Borrower and their respective successors and assigns and (b) may be executed simultaneously in two or more

counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

FITNESS HOLDINGS WORLDWIDE,  
INC.,

by

\_\_\_\_\_  
Name:

Title:

[APPLICABLE GRANTORS]

[by

\_\_\_\_\_] [Name:

] [Title:

THE CHASE MANHATTAN BANK, as  
Collateral Agent,

by

\_\_\_\_\_  
Name:

Title:

[ \_\_\_\_\_ ],  
as Collection Deposit Bank,

by

\_\_\_\_\_  
Name:

Title:

[Form Of]  
PERFECTION CERTIFICATE

Reference is made to the Credit Agreement dated as of November 2, 1999 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Fitness Holdings Worldwide, Inc. (the "Parent Borrower"), the Borrowing Subsidiaries from time to time party thereto, the lenders from time to time party thereto (the "Lenders") and The Chase Manhattan Bank, as administrative agent for the Lenders (in such capacity, the "Administrative Agent") and Bankers Trust Company, as syndication agent and Banque Nationale de Paris, as documentation agent.

The undersigned, a Financial Officer and a legal officer, respectively, of the Parent Borrower, hereby certify to the Collateral Agent and each other Secured Party as follows:

1. Names. (a) The exact corporate name of each Grantor, as such name appears in its respective certificate of incorporation, is as follows:  
  
(b) Set forth below is each other corporate name each Grantor has had in the past five years, together with the date of the relevant change:  
  
(c) Except as set forth in Schedule 1 hereto, no Grantor has changed its identity or corporate structure in any way within the past five years. Changes in identity or corporate structure would include mergers, consolidations and acquisitions, as well as any change in the form, nature or jurisdiction of corporate organization. If any such change has occurred, include in Schedule 1 the information required by Sections 1 and 2 of this certificate as to each acquiree or constituent party to a merger or consolidation.  
  
(d) The following is a list of all other names (including trade names or similar appellations) used by each Grantor or any of its divisions or other business units in connection with the conduct of its business or the ownership of its properties at any time since December 31, 1994:  
  
(e) Set forth below is the Federal Taxpayer Identification Number of each Grantor:

2. Current Locations. (a) The chief executive office of each Grantor is located at the address set forth opposite its name below:

<u>Grantor</u>	<u>Mailing Address</u>	<u>County</u>	<u>State</u>
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(b) Set forth below opposite the name of each Grantor are all locations where such Grantor maintains any books or records relating to any Accounts Receivable (with each location at which chattel paper, if any, is kept being indicated by an “\*”):

<u>Grantor</u>	<u>Mailing Address</u>	<u>County</u>	<u>State</u>
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(c) Set forth below opposite the name of each Grantor are all the places of business of such Grantor not identified in paragraph (a) or (b) above:

<u>Grantor</u>	<u>Mailing Address</u>	<u>County</u>	<u>State</u>
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(d) Set forth below opposite the name of each Grantor are all the locations where such Grantor maintains any Collateral not identified above:

<u>Grantor</u>	<u>Mailing Address</u>	<u>County</u>	<u>State</u>
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(e) Set forth below opposite the name of each Grantor are the names and addresses of all Persons other than such Grantor that have possession of any of the Collateral of such Grantor:

<u>Grantor</u>	<u>Mailing Address</u>	<u>County</u>	<u>State</u>
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3. Unusual Transactions. All Accounts Receivable have been originated by the Grantors and all Inventory has been acquired by the Grantors in the ordinary course of business.

4. File Search Reports. Attached hereto as Schedule 4(A) are true copies of file search reports from the Uniform Commercial Code filing offices where filings described in Sections 5 and 6 hereof are to be made. Attached hereto as Schedule 4(B) is a true copy of each financing statement or other filing identified in such file search reports.

5. UCC Filings. Duly signed financing statements on Form UCC-1 in substantially the form of Schedule 5 hereto have been prepared for filing in the Uniform Commercial Code filing office in each jurisdiction where a Grantor has Collateral as identified in Section 2 hereof.

6. Schedule of Filings. Attached hereto as Schedule 6 is a schedule setting forth, with respect to the filings described in Section 5 above, each filing and the filing office in which such filing is to be made.

7. Filing Fees. All filing fees and taxes payable in connection with the filings described in Sections 5 and 6 above have been paid or duly provided for.

8. Stock Ownership. Attached hereto as Schedule 8 is a true and correct list of all the duly authorized, issued and outstanding stock of each Subsidiary and the record and beneficial owners of such stock. Also set forth on Schedule 8 is each equity investment of the Parent Borrower and each Subsidiary that represents 50% or less of the equity of the entity in which such investment was made.

9. Notes. Attached hereto as Schedule 9 is a true and correct list of all promissory notes held by the Parent Borrower and each of its Subsidiaries and all intercompany notes between the Parent Borrower and each of its Subsidiaries and between each Subsidiary of the Parent Borrower and each other such Subsidiary.

10. Advances. Attached hereto as Schedule 10 is (a) a true and correct list of all advances made by the Parent Borrower to any of its Subsidiaries or made by any Subsidiary of the Parent Borrower to the Parent Borrower or any other Subsidiary of the Parent Borrower, which advances will be on and after the date hereof evidenced by one or more intercompany notes pledged to the Collateral Agent under the Pledge Agreement, and (b) a true and correct list of all unpaid intercompany transfers of goods sold and delivered by or to the Parent Borrower or any Subsidiary of the Parent Borrower.

IN WITNESS WHEREOF, the undersigned have duly executed this certificate on this [ ] day of [ ].

FITNESS HOLDINGS WORLDWIDE, INC.,

by \_\_\_\_\_  
Name:  
Title: [Financial Officer]

by \_\_\_\_\_  
Name:  
Title: [Legal Officer]



SUPPLEMENT NO. \_\_\_ dated as of [ ], to the DOMESTIC SECURITY AGREEMENT dated as of November 2, 1999 (as amended, supplemented or otherwise modified from time to time, the "Domestic Security Agreement"), among FITNESS HOLDINGS WORLDWIDE, INC., a Delaware corporation (the "Parent Borrower"), each Subsidiary that has become a party thereto (each such subsidiary, individually, a "Subsidiary Guarantor" and, collectively, the "Subsidiary Guarantors"; the Subsidiary Guarantors and the Borrower are referred to collectively herein as the "Grantors") and THE CHASE MANHATTAN BANK, a New York banking corporation ("Chase"), as collateral agent (in such capacity, the "Collateral Agent") for the Secured Parties (as defined therein).

A. Reference is made to (a) the Credit Agreement dated as of November 2, 1999 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Parent Borrower, the Borrowing Subsidiaries from time to time party thereto, the lenders from time to time party thereto and Chase, as administrative agent for the Lenders (in such capacity, the "Administrative Agent") and Bankers Trust Company, as syndication agent and Banque Nationale de Paris, as documentation agent, and (b) the other Loan Documents referred to in the Credit Agreement to which any Domestic Credit Party is a party (the "Domestic Loan Documents").

B. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

C. The Grantors have entered into the Domestic Security Agreement in order to induce the Tranche B Lenders, the Tranche C Lenders and the Revolving Dollar Lenders to make Term Loans and Revolving Dollar Loans and the Issuing Bank to issue Letters of Credit. For the purposes of this Supplement (i) Term Loans and Revolving Dollar Loans shall be referred to collectively as "Loans" and (ii) the Tranche B Lenders, the Tranche C Lenders and the Revolving Dollar Lenders are referred to collectively as the "Lenders". Pursuant to Section 5.13 of the Credit Agreement each Subsidiary incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia that was not a Subsidiary or in existence on the date of the Credit Agreement is required to enter into the Domestic Security Agreement as a Subsidiary Guarantor upon becoming a Subsidiary. Section 7.15 of the Domestic Security Agreement provides that additional Subsidiaries of the Parent Borrower may become Grantors under the Domestic Security Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the "New Grantor") is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Grantor under the Domestic Security Agreement in order to induce the Lenders to make additional Loans and the Issuing Bank to issue additional Letters of Credit and as consideration for Loans previously made and Letters of Credit previously issued.

Accordingly, the Collateral Agent and the New Grantor agree as follows:

SECTION 1. In accordance with Section 7.15 of the Domestic Security Agreement, the New Grantor by its signature below becomes a Grantor under the Domestic Security Agreement with the same force and effect as if originally named therein as a Grantor and the New Grantor hereby (a) agrees to all the terms and provisions of the Domestic Security Agreement applicable to it as a Grantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Grantor thereunder are true and correct in all material respects on and as of the date hereof. In furtherance of the foregoing, the New Grantor, as security for the payment and performance in full of the Obligations (as defined in the Domestic Security Agreement), does hereby create and grant to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, their successors and assigns, a security interest in and lien on all of the New Grantor's right, title and interest in and to the Collateral (as defined in the Domestic Security Agreement) of the New Grantor. Each reference to a "Grantor" in the Domestic Security Agreement shall be deemed to include the New Grantor. The Domestic Security Agreement is hereby incorporated herein by reference.

SECTION 2. The New Grantor represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3. This Supplement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Collateral Agent shall have received counterparts of this Supplement that, when taken together, bear the signatures of the New Grantor and the Collateral Agent. Delivery of an executed signature page to this Supplement by telecopy shall be as effective as delivery of a manually signed counterpart of this Supplement.

SECTION 4. The New Grantor hereby represents and warrants that (a) set forth on Schedule I attached hereto is a true and correct schedule of the location of any and all Collateral of the New Grantor, (b) set forth as Schedules II through V attached hereto are the true and correct schedules identifying the Intellectual Property of the New Grantor and (c) set forth under its signature hereto is the true and correct location of the chief executive office of the New Grantor.

SECTION 5. Except as expressly supplemented hereby, the Domestic Security Agreement shall remain in full force and effect.

**SECTION 6. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

SECTION 7. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and

enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 8. All communications and notices hereunder shall be in writing and given as provided in Section 7.01 of the Domestic Security Agreement. All communications and notices hereunder to the New Grantor shall be given to it at the address set forth under its signature below.

IN WITNESS WHEREOF, the New Grantor and the Collateral Agent have duly executed this Supplement to the Domestic Security Agreement as of the day and year first above written.

[Name Of New Grantor],

by

\_\_\_\_\_  
Name:

Title:

Address:

THE CHASE MANHATTAN BANK,  
as Collateral Agent,

by

\_\_\_\_\_  
Name:

Title:

SCHEDULE I  
to Supplement No. \_\_\_\_ to the  
Domestic Security Agreement

LOCATION OF COLLATERAL

Description

Location

SCHEDULE II  
to Supplement No. \_\_\_\_ to the  
Domestic Security Agreement

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REEL: 001990 FRAME: 0518



SCHEDULE V  
to Supplement No. \_\_\_\_ to the  
Domestic Security Agreement

TRADEMARKS

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RECORDED: 11/17/1999

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