

# Declaration by the directors of a holding company in relation to assistance for the acquisition of shares

# 155(6)b

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write in this  
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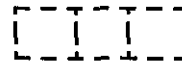
Pursuant to section 155(6) of the Companies Act 1985

Please complete  
legibly, preferably  
in black type, or  
bold block lettering

To the Registrar of Companies  
(Address overleaf - Note 5)

For official use

Company number



4699401

Name of company

\* Fitness First Holdings Limited

**Note**  
Please read the notes  
on page 3 before  
completing this form

\* insert full name  
of company

~~We~~ the persons named in Appendix A attached being

Ø insert name(s) and  
address(es) of all  
the directors

† delete as  
appropriate

~~We~~ [all the directors]† of the above company (hereinafter called 'this company') do  
solemnly and sincerely declare that:

§ delete whichever  
is inappropriate

The business of this company is:

- (a) ~~that of a person authorised under section 3 of the Insurance Companies Act 1982 to carry on insurance business in the United Kingdom~~
- (b) ~~that of a person authorised under section 3 of the Insurance Companies Act 1982 to carry on insurance business in the United Kingdom~~
- (c) something other than the above§

This company is ~~not~~ [a] holding company of\* Fitness First Limited  
(the "Assisting Company") which is  
proposing to give financial assistance in connection with the acquisition of shares  
in [this company] [ ~~the holding company of this company~~ ]

Presenter's name address and  
reference (if any) :

Dickson Minto W.S.  
Royal London House, 22-25  
Finsbury Square, London  
EC2A 1DX,

For official Use  
General Section



L02  
COMPANIES HOUSE

240  
01/02/2006

The assistance is for the purpose of ~~that acquisition~~ [reducing or discharging a liability incurred for the purpose of that acquisition].† (note 1)

Please do not write in this margin

Please complete legibly, preferably in black type, or bold block lettering

The number and class of the shares acquired or to be acquired is: See Appendix B attached

The assistance is to be given to: (note 2) Fitness First Finance Limited (Registered Number 5452198), 58 Fleets Lane, Poole, Dorset BH15 3BT

The assistance will take the form of:

See Appendix C attached

The person who [has acquired] ~~will acquire~~ the shares is:

Fitness First Finance Limited (Registered Number 5452198)

† delete as appropriate

The principal terms on which the assistance will be given are:

See Appendix D attached

The amount (if any) by which the net assets of the company which is giving the assistance will be reduced by giving it is NIL

The amount of cash to be transferred to the person assisted is £ See Appendix E attached

The value of any asset to be transferred to the person assisted is £ Nil

Please complete legibly, preferably in black type, or bold block lettering

~~X~~We have formed the opinion, as regards this company's initial situation immediately following the date on which the assistance is proposed to be given, that there will be no ground on which it could then be found to be unable to pay its debts. (note 3)

\* delete either (a) or (b) as appropriate

- (a) ~~X~~We have formed the opinion that this company will be able to pay its debts as they fall due during the year immediately following that date]\* (note 3)
- (b) ~~X~~It is intended to commence the winding up of this company within 12 months of that date, and ~~X~~~~We have formed the opinion that this company will be able to pay its debts in full within 12 months of the commencement of the winding up.~~\* (note 3)

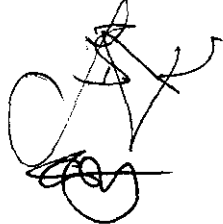
And ~~X~~we make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at LONDON

Declarants to sign below

on

Day	Month	Year
30	01	2006



before me Dr Williams

A Commissioner for Oaths or Notary Public or Justice of the Peace or a Solicitor having the powers conferred on a Commissioner for Oaths.

NOTES

- 1 For the meaning of "a person incurring a liability" and "reducing or discharging a liability" see section 152(3) of the Companies Act 1985.
- 2 Insert full name(s) and address(es) of the person(s) to whom assistance is to be given; if a recipient is a company the registered office address should be shown.
- 3 Contingent and prospective liabilities of the company are to be taken into account - see section 156(3) of the Companies Act 1985.
- 4 The auditors report required by section 156(4) of the Companies Act 1985 must be annexed to this form.
- 5 The address for companies registered in England and Wales or Wales is:-

The Registrar of Companies  
Companies House  
Crown Way  
Cardiff  
CF14 3UZ

or, for companies registered in Scotland:-

The Registrar of Companies  
Companies House  
37 Castle Terrace  
Edinburgh  
EH1 2EB

FITNESS FIRST HOLDINGS LIMITED  
(COMPANY NO: 4699401)

**APPENDICES TO FORM 155(6) b**

**APPENDIX A**

Directors' names and addresses are:

1. Limor Feingold, 23 Elms Avenue, Poole, Dorset BH14 8EE
2. Colin Douglas Waggett, 22 Edgar Road, Winchester SO23 9TW

Handwritten signatures of the two directors listed in the text. The first signature is for Limor Feingold and the second is for Colin Douglas Waggett.

**APPENDIX B**

The number of shares which have been acquired is:

749,725	A Ordinary Shares
90,275	B Ordinary Shares
17,430,220	B Preference Shares
160,000	C Ordinary Shares
1,440,000	C Preference Shares

(the "Shares")

*Handwritten initials:*  
B  
Ca  
AD

## APPENDIX C

The entering into of the following (or of the documents relating thereto) to which the Assisting Company is to be a party, as the same may be amended, varied, supplemented or substituted from time to time:

- (i) a guarantee and indemnity (the "**Senior Guarantee and Indemnity**") to be given under an accession letter (the "**Accession Letter**") by the Assisting Company to a secured senior term loan and revolving facilities agreement dated 4 November 2005 (the "**Senior Facilities Agreement**") between Fitness First Finance Limited (formerly DMWSL 462 Limited) (the "**Purchaser**") as Original Borrower, the Original Guarantors, Mizuho Corporate Bank, Ltd. as Mandated Lead Arranger, Mizuho Corporate Bank, Ltd. as Agent, Mizuho Bank, Ltd. as Security Agent, Mizuho Corporate Bank, Ltd. as Issuing Bank, Mizuho Corporate Bank, Ltd. as VLN Bank and the Original Lenders (each as defined therein) pursuant to which each of the Guarantors will:

- (i) guarantee the punctual performance by each other Obligor of all that Obligors obligations under the Senior Finance Documents, which guarantee will extend to a guarantee by the Assisting Company of monies borrowed by the Purchaser for the purpose of acquiring the Shares; and
- (ii) indemnify each Senior Finance Party immediately on demand against any cost, loss or liability suffered by that Senior Finance Party if any obligation guaranteed by it becomes unenforceable, invalid or illegal.

The Senior Term Facilities are made available to the relevant Borrowers for the purpose of:

- (a) payment to the Vendor of the purchase price for the Target Shares under the Acquisition Agreement;
- (b) payment of the Acquisition Costs;
- (c) refinancing any Financial Indebtedness of the Target and its Subsidiaries to third parties; and
- (d) payment to the holders of the D shares of the purchase price for such shares.

Each capitalised term used in this paragraph is as defined in the Senior Facilities Agreement;

- (ii) a guarantee and indemnity (the "**Mezzanine Guarantee and Indemnity**") to be given under an accession letter by the Assisting Company to a mezzanine facilities agreement dated 4 November 2005 (the "**Mezzanine Facilities Agreement**") between the Purchaser as Borrower, the Original Guarantors, Mizuho Corporate Bank, Ltd. as the Mezzanine Agent, Mizuho Corporate Bank, Ltd. as Mezzanine Arranger, the Security Agent and the Lenders (each as defined therein) pursuant to which each of the Mezzanine Guarantors will
- (i) guarantee the punctual performance by each other Obligor of all that Obligors obligations under the Mezzanine Finance Documents, which guarantee will extend to a guarantee by the

*Handwritten notes:*  
 \$X  
 Ca  
 HK

Assisting Company of monies borrowed by the Purchaser for the purpose of acquiring the Shares; and

- (ii) indemnify each Mezzanine Finance Party immediately on demand against any cost, loss or liability suffered by that Mezzanine Finance Party if any obligation guaranteed by it becomes unenforceable, invalid or illegal.

The Mezzanine Facilities are made available to the Borrower for the purposes of:

- (a) payment to the Vendor of the purchase price for the Target Shares under the Acquisition Agreement;
- (b) payment of the Acquisition Costs; and
- (c) refinancing any Financial Indebtedness of the Target and its Subsidiaries to third parties.

Each capitalised term used in this paragraph is as defined in the Mezzanine Facilities Agreement;

- (iii) a deed of accession and supplemental charge to the debenture (the "**Security Agreement**") creating fixed and floating charges over certain property, assets and undertaking of the Assisting Company in security for the Secured Sums in favour of Mizuho Corporate Bank, Ltd. (as Security Agent for the Beneficiaries) (as defined therein) to secure the liabilities;
- (iv) a deed of accession to the inter company funding agreement to be entered into between, *inter alios*, the Purchaser as borrower (the "**ICLA Borrower**") and the Assisting Company as lender (the "**Inter Company Funding Accession Letter**") pursuant to which the Assisting Company will make available to the ICLA Borrower a revolving credit facility to be used by the ICLA Borrower, *inter alia*, in meeting their payment obligations under the Senior Finance Documents and the Mezzanine Finance Documents, to meet the costs and expenses associated with the Acquisition and for other general corporate purposes of the Group;
- (v) priority and subordination arrangements to be given by the Assisting Company pursuant to the Accession Letter entered into between, amongst others, the Finance Parties, the Obligors, the Senior Creditors, the Mezzanine Creditors, the Hedge Counterparties, the Intercompany Debtors and the Intercompany Creditors (each as defined therein), pursuant to an intercreditor agreement (the "**Intercreditor Agreement**");
- (vi) an inter company loan agreement to be entered into between, *inter alios*, DMWSL 477 Limited, Fitness Preferred Limited and Fitness First Loan Stock Limited as borrowers (the "**Newco Borrowers**") and, amongst others, the Assisting Company as lender (the "**Newco Inter Company Loan Agreement**") pursuant to which the Assisting Company will make available to the Newco Borrowers a revolving credit facility to be used by the Newco Borrowers, to pay certain costs and expenses of the Acquisition; and
- (vii) a share pledge between the Assisting Company and ARCA 8 Vermögensverwaltungs-und-beteiligungs GmbH ("**ARCA 8**") as Pledgors and Mizuho Corporate Bank, Ltd as Security Agent over the shares owned by

the Assisting Company and ARCA 8 in Fitness Company Freizeitanlagen GmbH (the **"FCF Share Pledge"**);

- (viii) a share pledge between the Assisting Company as Pledgor and Mizuho Corporate Bank, Ltd. as Security Agent over the shares owned by the Assisting Company in ARCA 8 (the **"ARCA Share Pledge"**);
- (ix) a share pledge between the Assisting Company as Pledgor and Mizuho Corporate Bank, Ltd. as Security Agent over the shares owned by the Assisting Company in Passage Invest NV (the **"Passage Invest Pledge"**);
- (x) a share charge between the Assisting Company as Chargor and Mizuho Corporate Bank, Ltd. as Security Agent over the shares owned by the Assisting Company in SPORTathlon Holdings Limited (**"SPORTathlon Holdings Charge"**);
- (xi) a share pledge between the Assisting Company as Pledgor, Mizuho Corporate Bank, Ltd. as Security Agent, and Fitness First Nederland BV as the Company over the shares owned by the Assisting Company in Fitness First Nederland BV (the **"Fitness First Nederland Pledge"**);and
- (xii) a share charge in favour of Mizuho Corporate Bank, Ltd. as Security Agent over the shares owned by the Assisting Company in Fitness First Properties Pty Limited (the **"FFP Share Charge"**).

*[Handwritten initials and signature]*



## APPENDIX D

The principal terms on which the assistance will be given are:

1. SECURITY AGREEMENT

By executing the Deed of Accession and Supplemental Charge to the Security Agreement:

- (1) The Assisting Company, amongst others, (as primary obligor and not merely as surety) covenants with the Security Agent that it will pay or discharge the Secured Sums at the times and in the manner provided in the relevant Finance Documents.
- (2) The Assisting Company, with full title guarantee, as security for the payment or discharge of all Secured Sums, assigns to the Security Agent:
  - (a) all of its rights, title and interest from time to time in respect of any sums payable to it pursuant to the Insurance Policies;
  - (b) all its rights, title and interest from time to time in respect of the Hedging Agreements; and
  - (c) all its rights, title and interest from time to time in respect of any Structural Intra-Group Loans.
- (3) The Assisting Company, with full title guarantee, as security for the payment or discharge of all Secured Sums, charges to the Security Agent:
  - (a) by way of legal mortgage, all Class A Leases in England and Wales now vested in the Assisting Company in each case as described in Schedule 2 of the Security Agreement (Registered Land to be Mortgaged);
  - (b) by way of fixed charge:
    - (i) all Class A Leases which are now, or in the future become, its property;
    - (ii) all other Land which is now, or in the future becomes, its property other than :
      - (1) Class B Leases; or
      - (2) Class C Leases;
    - (iii) all interests and rights in or relating to Land except for the Class B Leases and the Class C Leases or the proceeds of sale of Land now or in the future belonging to it;
    - (iv) all plant and machinery now or in the future attached to any Land which, or an interest in which, is charged by it under the preceding provisions of this Clause 5.1 of the Security Agreement;

- (v) all rental and other income and all debts and claims now or in the future due or owing to it under or in connection with any lease, agreement or licence relating to Land;
- (vi) all Specified Investments which are now, or in the future become, its property;
- (vii) all Derivative Rights now or in the future accruing in respect of its Specified Investments;
- (viii) all insurance or assurance contracts or policies now or in the future held by or otherwise benefiting it which relate to Fixed Security Assets or which are now or in the future deposited by it with the Security Agent, together with all its rights and interests in such contracts and policies (including the benefit of all claims arising and all money payable under them) apart from any claims which are otherwise subject to a fixed charge or assignment (at law or in equity) in the Security Agreement;
- (ix) all its goodwill and uncalled capital for the time being;
- (x) all Specified Intellectual Property belonging to it;
- (xi) all other Intellectual Property presently belonging to it, including any Intellectual Property to which it is not absolutely entitled or to which it is entitled together with others;
- (xii) all Intellectual Property that may be acquired by or belong to it in the future, including any such Intellectual Property to which it is not absolutely entitled or to which it is entitled together with others;
- (xiii) the benefit of all agreements and licences now or in the future entered into or enjoyed by it relating to the use or exploitation of any Intellectual Property in any part of the world;
- (xiv) all its rights now or in the future in relation to trade secrets, confidential information and knowhow in any part of the world;
- (xv) all its rights and causes of action in respect of infringement(s) (past, present or future) of the rights referred to in sub-paragraphs (c)(x) to (xiv) inclusive;
- (xvi) all trade debts now or in the future owing to it;
- (xvii) all debts owing to it as described in Schedule 7 of (*Details of Debts Owing to a Chargor by another member of the Group which are subject to a fixed charge*) the Principal Deed;
- (xviii) all other debts now or in the future owing to it, excluding those arising on fluctuating accounts with other members of the Group;

- (xix) the benefit of all instruments, guarantees, charges, pledges and other security and all other rights and remedies available to it in respect of any Fixed Security Asset except to the extent that such items are for the time being effectively assigned under Clause 3.1 of the Security Agreement (*Assignments*);
  - (xx) all its interests and rights (if any) in or to any money at any time standing to the credit of any Collection Account;
  - (xxi) any beneficial interest, claim or entitlement it has to any pension fund now or in the future;
  - (xxii) all rights, money or property accruing or payable to it now or in the future under or by virtue of a Fixed Security Asset except to the extent that such rights, money or property are for the time being effectively assigned or charged by fixed charge under the foregoing provisions of the Security Agreement; and
    - (xxiii) the benefit of all licences, consents and authorisations held in connection with its business or the use of any Asset and the right to recover and receive all compensation which may be payable in respect of them.
- (4) The Assisting Company, with full title guarantee, charges to the Security Agent as security for the payment or discharge of all Secured Sums, by way of floating charge:
- (a) all its Assets, except to the extent that such Assets are for the time being effectively assigned by way of security by virtue of Clause 3.1 of the Security Agreement (*Assignments*) or charged by any fixed charge contained in Clause 5.1 of the Security Agreement (*Fixed security*), including any Assets comprised within a charge which is reconverted under Clause 4.5 of the Principal Deed (*Reconversion*); and
  - (b) without exception, all its Assets in so far as they are for the time being situated in Scotland,
- but in each case so that the Assisting Company shall not create any Security over any such Asset (whether having priority over, or ranking *pari passu* with or subject to, this floating charge) or take any other step referred to in Clause 7 of the Principal Deed (*Negative pledge and other restrictions*) with respect to any such Asset, and the Assisting Company shall not, without the consent of the Security Agent, sell, transfer, part with or dispose of any such Asset except by way of sale in the ordinary course of its business.
- (5) (a) Any fixed Security created by the Assisting Company and subsisting in favour of the Security Agent shall (save as the Security Agent may otherwise declare at or after the time of its creation) have priority over the floating charge created by Clause 3.3 of the Principal Deed (*Creation of floating charge*).

- (b) Any Security created in the future by the Assisting Company (except in favour of the Security Agent) shall be expressed to be subject to the Principal Deed and shall rank in order of priority behind the charges created by the Principal Deed.
- (6) The floating charge created by the Assisting Company in Clause 6.1 of the Security Agreement (*Creation of floating charge*) may, subject to Clause 4.5 of the Principal Deed (*Moratorium Assets*), be crystallised into a fixed charge by notice in writing given at any time by the Security Agent to the Assisting Company (or to the Purchaser on its behalf) if:
  - (a) a Declared Default has occurred;
  - (b) the Security Agent in good faith considers that a Default under Clause 28.6 (*Insolvency*) or Clause 28.7 (*Insolvency Proceedings*) of the Senior Facilities Agreement or Clause 24.6 (*Insolvency*) or Clause 24.7 (*Insolvency Proceedings*) of the Mezzanine Facilities Agreement has occurred and is continuing; or
  - (c) the Security Agent in good faith considers that any of the Floating Charge Assets expressed to be charged to the Security Agent by the Security Agreement may be in jeopardy or in danger of being seized or sold pursuant to any form of legal process; or
  - (d) a circumstance envisaged by paragraph (a) of Clause 4.2 of the Principal Deed (*Automatic Crystallisation*) occurs and the Security Agent in good faith considers that such crystallisation is desirable in order to protect the priority of its security.

Crystallisation shall take effect over the Floating Charge Assets or class of Assets specified in the notice. If no Floating Charge Assets are specified, it shall take effect over all Floating Charge Assets of the Assisting Company.

- (7) If, without the Security Agent's prior written consent:
  - (a) the Assisting Company resolves to take or takes any step other than in the ordinary course of business or as expressly permitted by the Finance Documents to:
    - (i) charge or otherwise encumber (other than by way of Permitted Security) any of its Floating Charge Assets;
    - (ii) create a trust over any of its Floating Charge Assets except as permitted in the Senior Facilities Agreement; or
    - (iii) dispose of any Floating Charge Asset, except by way of sale in the ordinary course of the Assisting Company business; or
  - (b) any person resolves to take or takes any step to seize or sell any Floating Charge Asset pursuant to any form of legal process; or
  - (c) a resolution is passed by the Assisting Company or documents are filed at Court by the Assisting Company for the winding up of the Assisting Company or any liquidator, receiver, administrator or other similar officer is appointed in respect of the Assisting Company,

then the floating charge created by Clause 3.3 of the Principal Deed (*Creation of floating charge*) shall, subject to Clause 4.5 of the Principal Deed (*Moratorium Assets*), be automatically and instantly crystallised (without the necessity of notice) into a fixed charge over such Floating Charge Asset or, in the case of paragraph (b) above into a fixed charge over all Floating Charge Assets of the Assisting Company.

- (8) Except as otherwise stated in any notice given under Clause 4.1 of the Principal Deed (*Crystallisation by notice*) or unless the crystallisation relates to all its Floating Charge Assets, prospective Floating Charge Assets acquired by the Assisting Company after crystallisation has occurred under Clause 4.1 (*Crystallisation by notice*) or 4.2 (*Automatic crystallisation*) of the Principal Deed shall become subject to the floating charge created by Clause 3.3 of the Principal Deed (*Creation of floating charge*), so that the crystallisation shall be effective only as to the specific Floating Charge Assets affected by the crystallisation.

Any charge which has crystallised under Clause 4.1 (*Crystallisation by notice*) or 4.2 (*Automatic crystallisation*) of the Principal Deed may, by notice in writing given at any time by the Security Agent to the Assisting Company (or to the Parent on its behalf), be reconverted into a floating charge in relation to the Assets specified in such notice.

The floating charge created by the Assisting Company in Clause 3.3 of the Principal Deed (*Creation of floating charge*) may not be converted into a fixed charge on Assets for which a moratorium is in force if and for so long as such conversion would breach paragraph 13 in Schedule A1 of the Insolvency Act 1986.

- (9) The Principal Deed shall be a continuing security for the Beneficiaries, notwithstanding any intermediate payment or settlement of accounts or other matter whatever, and shall be in addition to and shall not prejudice or be prejudiced by any right of set-off, combination, lien or other rights exercisable by any Beneficiary as banker against the Assisting Company or any security, guarantee, indemnity and/or negotiable instrument now or in the future held by any Beneficiary.
- (10) The Assisting Company shall, at the cost of the Assisting Company:
- (a) provide Property Details of the Unspecified Leases to the Security Agent as soon as possible after the date of the Security Agreement and in any event, within 10 days of the date of the Security Agreement;
  - (b) in relation to the Class A Leases:
    - (i) which are Unspecified Leases at the date of the Security Agreement and once the relevant Property Details are provided, promptly following receipt of such details; and
    - (ii) which are acquired after the date of the Security Agreement, promptly following such acquisition,

execute and deliver to the Security Agent in such form as the Security Agent may reasonably require, a first legal mortgage of all such Class A Leases which

are not already the subject of a legal mortgage in favour of the Security Agent;  
and

(c) in relation to Class B Leases:

- (i) which are owned by the Assisting Company and are not Unspecified Leases in each case at the date of the Security Agreement; or
- (ii) which are owned by the Assisting Company and are Unspecified Leases in each case at the date of the Security Agreement; or
- (iii) which are acquired after the date of the Security Agreement,

promptly following the date of the Security Agreement or, in the case of an Unspecified Lease, promptly following receipt of the relevant Property Details or, in the case of an acquisition of such a Lease, promptly following the acquisition of such Lease:

- (iv) use all reasonable endeavours (including payment of reasonable fees, costs and expenses) to obtain the consent of landlords and the consent of any third party to the creation of a first legal mortgage over such Class B Leases;
- (v) keep the Security Agent informed on request of the progress of its negotiations with the landlord and to produce to the Security Agent a copy of each consent forthwith; and
- (vi) if the consent referred to in Clause 7.1(c)(iv) of the Security Agreement is obtained, promptly execute and deliver to the Security Agent in such form as the Security Agent may reasonably require, a first legal mortgage of each such Class B Lease.

The Assisting Company shall (and the Purchaser shall procure that the Assisting Company will) promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices (except notification to debtors of the Security created by the Security Agreement over Receivables which may only be given after the occurrence of a Declared Default), forms and instructions) as the Security Agent may reasonably specify and in such form as the Security Agent may reasonably require (in favour of the Security Agent or its nominee(s)) in order to confer on the Security Agent or confer on the Beneficiaries, Security over any Assets of the Assisting Company located in any jurisdiction outside England and Wales, including, for the avoidance of doubt, Assets referred to in Clause 9 of the Security Agreement, which is (to the extent permitted by local law) equivalent or similar to the Security intended to be conferred by or pursuant to the Security Agreement.

- (11) Any provision of the Principal Deed or the Security Agreement which is or becomes illegal, invalid or unenforceable shall be ineffective only to the extent of such illegality, invalidity and unenforceability, without invalidating the remaining provisions of the Principal Deed or Security Agreement.

(12) After the occurrence of an Event of Default, a Beneficiary may (but is not obliged to) retain any money standing to the credit of the Assisting Company with such Beneficiary in any currency upon any account or otherwise (whether or not in such Assisting Company's name) as cover for any Secured Sums and/or at any time or times without notice to such Assisting Company's combine or consolidate all or any of such money with all or such part of the Secured Sums due or owing by it as such Beneficiary may select and such Beneficiary may purchase with any such money any other currency required to effect such combination or consolidation.

(13) The Assisting Company agrees that:

(a) subject to clause 9(b) of the Security Agreement, any asset or other property which is held by the Assisting Company as at the date of execution of the Security Agreement and which is located, or taken for the purposes of any stamp duty legislation of any state or territory of Australia ("**Applicable Legislation**") to be located, in any state or territory of Australia; and

(b) any land which is located, or taken for the purposes of any Applicable Legislation to be located in New South Wales, Queensland, Western Australia, or Tasmania and which is acquired by the Assisting Company during the period of 12 months and one day from the date of execution of the Security Agreement,

is not charged under the Security Agreement.

The Assisting Company agrees that any asset or other property of the Assisting Company which is located, or taken for the purposes of the Applicable Legislation to be located, in any state or territory of Australia which is the subject of a written notification ("**Notification**") given by the Assisting Company to the Security Agent on any day after the date of execution of the Security Agreement is charged under the Security Agreement as and from the date of the Notification.

## 2. SENIOR GUARANTEE AND INDEMNITY

By executing the Accession Letter to the Senior Facilities Agreement the Assisting Company, amongst other things:

- (i) irrevocably and unconditionally jointly and severally with each other Senior Guarantor:
  - (a) guarantees to each Senior Finance Party punctual performance by each Senior Obligor of all that Senior Obligor's obligations under the Senior Finance Documents;
  - (b) undertakes with each Senior Finance Party that whenever a Senior Obligor does not pay any amount when due under or in connection with any Senior Finance Document, that Senior Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and

- (c) indemnifies each Senior Finance Party immediately on demand against any cost, loss or liability suffered by that Senior Finance Party if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which that Senior Finance Party would otherwise have been entitled to recover.

The guarantee under the Senior Guarantee and Indemnity is a continuing guarantee and will extend to the ultimate balance of sums payable by any Senior Obligor under the Senior Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

The guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party in respect of any Obligor's obligations under the Finance Documents.

- (ii) gives various representations and warranties, undertakings and indemnities to the Finance Parties to enable the Finance Parties to make the facilities under the Senior Facilities Agreement available and agree to pay certain costs, fees and expenses to the Finance Parties.

### 3. MEZZANINE GUARANTEE AND INDEMNITY

By executing the Accession Letter to the Mezzanine Facilities Agreement, the Assisting Company amongst other things:

- (i) the Assisting Company irrevocably and unconditionally jointly and severally with each other Mezzanine Guarantor:
  - (a) guarantees to each Mezzanine Finance Party punctual performance by each Mezzanine Obligor of all that Mezzanine Obligor's obligations under the Mezzanine Finance Documents;
  - (b) undertakes with each Mezzanine Finance Party that whenever a Mezzanine Obligor does not pay any amount when due under or in connection with any Mezzanine Finance Document, that Mezzanine Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
  - (c) indemnifies each Mezzanine Finance Party immediately on demand against any cost, loss or liability suffered by that Mezzanine Finance Party if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which that Mezzanine Finance Party would otherwise have been entitled to recover.

The guarantee under the Mezzanine Guarantee and Indemnity is a continuing guarantee and will extend to the ultimate balance of sums payable by any Mezzanine Obligor under the Mezzanine Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

The guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party in respect of any Obligor's obligations under the Finance Documents.



- (ii) gives various representations and warranties, undertakings and indemnities to the Finance Parties to enable the Finance Parties to make the Facility available and agree to pay certain costs, fees and expenses to the Finance Parties.

#### 4. INTER COMPANY FUNDING AGREEMENT

By executing the Inter Company Funding Accession Letter the Assisting Company will provide loan funds in sufficient amounts to the ICLA Borrower to be used by the ICLA Borrower, *inter alia*, in meeting its payment obligations under the Senior Finance Documents and the Mezzanine Finance Documents, to meet the costs and expenses associated with the Acquisition and for other general corporate purposes of the Group. Outstandings under the Inter Company Funding Agreement will be repayable on the Company's first demand and will bear interests at the rate referred to therein.

#### 5. INTERCREDITOR AGREEMENT

By executing the Accession Deed to the Intercreditor Agreement, the Assisting Company (amongst other things):

- (i) will covenant to pay the amounts owing under the Secured Documents and agree that any sums owed to it by way of intra-group loan by any other member of its group will be subordinated to sums owed by such members of the group to the Finance Parties and will indemnify the Lenders and the Security Agent for certain costs, claims, expenses and liabilities under the Intercreditor Agreement;
- (ii) acknowledges (amongst other things) the arrangements made between the Beneficiaries and Holdco which regulate the ability of the Company to make certain payments to those parties and the priorities between the parties thereto;
- (iii) gives various representations and warranties, undertakings, covenants and indemnities, and agree to pay certain costs, fees and expenses to the Finance Parties; and
- (iv) jointly and severally and irrevocably and unconditionally guarantees to each Hedge Counterparty, and indemnify each Hedge Counterparty in respect of, payment in full of the Hedging Debt owed to it by any other Obligor on the same terms as set out in the guarantee contained in the Senior Facilities Agreement.

#### 6. NEWCO INTER COMPANY LOAN AGREEMENT

Under the terms of the Newco Inter Company Loan Agreement the Assisting Company will provide loan funds in sufficient amounts to the Newco Borrowers, to be used by the Newco Borrowers, in paying certain costs and expenses of the Acquisition. Outstandings under the Newco Inter Company Loan Agreement will be repayable on the Assisting Company's first demand and will bear interest at the rate referred to therein.

#### 7. FCF SHARE PLEDGE

Under the terms of the FCF Share Pledge, in order to secure the Secured Sums, the Assisting Company pledges to the Security Agent 1 share of 636,000 DEM in the share capital of Fitness Company Freizeitanlagen GmbH ("FCFG") (together with any future

shares held by the Assisting Company, the "**FCF Shares**"). If the nominal amounts of the FCF Shares are different from the nominal amounts mentioned in the recitals to the FCF Share Pledge, in particular if the Assisting Company hold a greater number of FCF Shares having nominal values different from the above, then, in any event, all FCF Shares in FCFG in whatever nominal amount owned or held by the Assisting Company shall be pledged to the Security Agent.

Included in the FCF Share Pledge are all present and future rights attached to the FCF Shares, in particular (but without limitation)

- (a) all present and future claims of profit attributable to the present and future shares pledged hereunder,
- (b) all future shares which the Assisting Company may acquire in FCFG, all combined or increased shares, all rights for subscription to new shares, and
- (c) all liquidation or dissolution proceeds, any compensation in case of amortisation of shares or exclusion or withdrawal of a shareholder and all claims for repayment of capital.

#### 8. **ARCA SHARE PLEDGE**

Under the terms of the ARCA Share Pledge, in order to secure the Secured Sums, the Assisting Company pledges to the Security Agent 1 share of 25,000 Euro and 1 share of 2,475,000 Euro each in the share capital of ARCA, Achte Vermögensverwaltungs- und beteiligungs GmbH ("**ARCA**") (together with any future shares held by the Assisting Company, the "**ARCA Shares**"). If the nominal amounts of the ARCA Shares are different from the nominal amounts mentioned in the recitals to the ARCA Share Pledge, in particular if the Assisting Company hold a greater number of ARCA Shares having nominal values different from the above, then, in any event, all ARCA Shares in ARCA in whatever nominal amount owned or held by the Assisting Company shall be pledged to the Security Agent.

Included in the ARCA Share Pledge are all present and future rights attached to the ARCA Shares, in particular (but without limitation)

- (a) all present and future claims of profit attributable to the present and future shares pledged hereunder,
- (b) all future shares which the Assisting Company may acquire in ARCA, all combined or increased shares, all rights for subscription to new shares, and
- (c) all liquidation or dissolution proceeds, any compensation in case of amortisation of shares or exclusion or withdrawal of a shareholder and all claims for repayment of capital.

## 9. PASSAGE INVEST PLEDGE

Under the terms of the Passage Invest Pledge, in order to secure the Secured Sums, the Assisting Company grants to the Security Agent a first ranking pledge over the following:

- (i) the 18, 128, 482 registered shares in Passage Invest NV owned by the Assisting Company;
- (ii) any and all rights to acquire shares in the capital of Passage Invest NV, which rights the Assisting Company has at present; and
- (iii) any and all other rights pertaining to the shares from the date of their pledge under the Passage Invest Pledge, including, inter alia, the right to receive all interest, dividend rights, rights to distributions out of the reserves, rights to the remaining balance upon winding-up of the Assisting Company and the right to remittances and other payments pertaining to such shares from Passage Invest NV.

((i), (ii) and (iii) together the "**Passage Invest Shares**").

If the Assisting Company acquires in any manner any:

- (i) shares in the capital of Passage Invest NV which the Assisting Company may in the future acquire;
- (ii) all rights to acquire shares in the capital of Passage Invest NV, which rights the Assisting Company may acquire; and
- (iii) any and all other rights pertaining to the shares in Passage Invest NV which the Assisting Company may in the future acquire, including, inter alia, the right to receive all interest, dividend rights, rights to distributions out of the reserves, rights to the remaining balance upon winding-up of the Assisting Company and the right to remittances and other payments pertaining to such shares from the Assisting Company;

((i), (ii) and (iii) together the "**Future Shares**"),

which are not included within the pledge contain in Clause 2.1 of the Passage Invest Pledge, it shall grant a first ranking pledge to the Security Agent to secure the Secured Sums in substantially the same form as the Passage Invest Pledge over all such Future Shares. The Assisting Company shall execute all such documents and take all such further action which may be reasonably necessary or appropriate to create and perfect such first ranking pledge over the Future Shares.

The Assisting Company shall, at its own expense at any time if and when required in writing by the Security Agent (acting reasonably), execute any such further documents, and do all acts and things for perfecting its security over the Passage Invest Shares or to facilitate realisation of the pledge over the Passage Invest Shares, or the exercise of the powers conferred on the Security Agent.

#### 10. SPORTATHLON HOLDINGS CHARGE

Under the terms of the SPORTathlon Share Charge, the Assisting Company as beneficial owner charges to the Security Agent by way of first fixed charge as continuing security for the payment and discharge of the Secured Sums:

- (a) the 1,895,316 shares of HK\$1 each in the issued share capital of SPORTathlon Holdings Limited ("SHL") owned by the Assisting Company and all other shares in SHL owned by the Assisting Company while any Secured Sums are outstanding (the "SHL Shares"); and
- (b)
  - (i) allotments, rights money or property arising from the SHL Shares by way of conversion, exchange, redemption, bonus, preference, option or otherwise;
  - (ii) dividends, distributions, interest and other income from the SHL Shares; and
  - (iii) stock, shares and securities offered in addition to or in substitution for the SHL Shares

(together "Security Assets")

and includes all rights, benefits and sums now or in the future accruing to the Assisting Company as a result of any Security Asset being held in any system or facility (wherever situated) providing for the deposit of, and clearance of transactions in, the Security Assets.

The Assisting Company shall on written demand by the Security Agent promptly sign, seal, deliver and complete all Documents (as defined in the SPORTathlon Holdings Charge), give such instructions or directions as the Security Agent may reasonably require to protect or preserve its security to perfect its title to and security over any Security Assets, to vest or to enable it to vest any Security Assets in itself or its nominee or in any purchaser or to facilitate the sale or other disposal of any of the Security Assets or the exercise of any of the rights or powers attaching to any Security Asset or hereby conferred on the Security Agent, such Documents to be prepared by or on behalf of the Security Agent at the cost of the Assisting Company and to be in such form as the Security Agent may reasonably require, provided that prior to a Declared Default (as defined in the SPORTathlon Holdings Charge) occurring, the Assisting Company shall not be required to perform any further assurance or perfection obligation under the SPORTathlon Holdings Charge if such performance would have a material adverse effect on the ability of the Assisting Company to conduct its operations or business in the ordinary course as otherwise permitted by the Finance Documents.

#### 11. FITNESS FIRST NEDERLAND PLEDGE

Under the terms of the Fitness First Netherlands Pledge, in order to secure and provide for the payment of all Secured Obligations (as defined in the Fitness First Netherlands Pledge), the Assisting Company pledges to the Security Agent by way of a first right of

pledge, free and clear of all encumbrances and attachments all five thousand issued and outstanding shares, numbered 1 up to and including 5,000, each with a nominal value of one hundred Euro (EUR 100) in the share capital of Fitness First Nederlands BV ("FFNBV"), and registered in the name of the Assisting Company (the "FFN Shares").

To secure and provide for the payment of all Secured Obligations, the Assisting Company pledges, and if and in so far the same cannot yet be pledged on the date of the Fitness First Nederlands Pledge, pledges in advance, to the Security Agent by way of a first priority right of pledge, free and clear of all encumbrances and attachments, all:

- (i) all dividends and distributions for the time being in respect of the FFN Shares;
- (ii) all other rights, monies and other assets accruing, distributed, issued or offered at any time in respect of (a) the FFN Shares or (b) the dividends and distributions referred to in (i) above, whether in kind or in cash, by way of redemption, repurchase, dividend, bonus, agio, premium, preference, pre-emption, conversion, capitalization of profits or reserves, substitution, exchange, option right or otherwise; and
- (iii) all proceeds of any and all of the foregoing including all 'burgerlijke vruchten' and other proceeds that constitute assets of the types described above, all of the foregoing whether already declared or not, established or not, approved) or not or issued) or not,

(together the "**Related Assets**"), pertaining to the FFN Shares.

To secure and provide for the payment of all Secured Obligations, the Assisting Company pledges, and if and in so far the same cannot yet be pledged on the date of the Fitness First Nederlands Pledge, pledges in advance, to the Security Agent by way of a first right of pledge, free and clear of all encumbrances and attachments, any shares in the capital of FFNBV issued after the execution of the Fitness First Nederlands Pledge, regardless of whether the resolution to issue these shares was adopted prior to execution of the Fitness First Nederlands Pledge (the "**Future Shares**") and all Related Assets not already pledged pursuant to any of the previous provisions.

The FFN Shares and the Future Shares together the "**Shares**".

In as far as it is legally possible to create the type of pledge created by the Fitness First Nederlands Pledge, the rights of pledge (*pandrechten*) created hereunder and pursuant hereto will be created by way of possessory or disclosed pledge (*vuistpandrecht* of *openbaar pandrecht*), as relevant, and insofar as no possessory or disclosed pledge is not or cannot (yet) be effectively created, the same is created by way of non-possessory or non-disclosed pledge (*bezitloos* or *stil pandrecht*), whereas the Assisting Company undertakes to forthwith hand over each Pledged Asset to the Security Assets which is capable of being encumbered with a possessory right of pledge.

If any of the Shares or Related Assets are changed, classified or reclassified,

subdivided, consolidated or converted through a variation of the Articles of Association, a (statutory) merger or split up or in any other way, the shares or other assets (*goederen*) resulting from such event are hereby pledged and shall automatically become subject to the pledge (*pandrecht*) hereby created and to the extent required to create such pledge the same are hereby pledged as set out in clauses 3.1, 3.2 and 3.3 of the Fitness First Nederland Pledge and such pledge is hereby accepted by the Security Agent. Nothing in this clause 3.5 of the Fitness First Nederland Pledge should be construed as to imply or contain the consent of the Security Agent to change the Shares or the Related Assets as set out in the first sentence of this clause 3.5 of the Fitness First Nederland Pledge.

Where (i) a disclosed right of pledge (*openbaar pandrecht*) or (ii) a possessory right of pledge (*vuistpandrecht*) is envisaged to be created hereunder or pursuant hereto, the Parties (as defined in the Fitness First Nederland Pledge) agree that (i) pending notification to the relevant party a non-disclosed right of pledge (*stil pandrecht*), and (ii) pending possession or control by the Security Agent, a non-possessory right of pledge (*bezitloos pandrecht*) respectively, will also be created and each covenant, undertaking, obligation and provision of the Fitness First Nederland Pledge will be construed accordingly.

Subject to the paragraph below being clause 6.2 of the Fitness First Nederland Pledge, each of the Assisting Company and FFNBV shall, at its own cost, if required by the Security Agent, promptly sign, deliver and complete all documents and do all acts and things which the Security Agent may reasonably require:

- (a) at any time and from time to time, to create, perfect or protect security over any of the Future Shares, the FFN Shares, the Related Assets and all other assets, rights, receivables, claims or other property of whatever kind and nature of the Assisting Company in which the Security Agent from time to time acquires a security interest under or pursuant to the Fitness First Nederland Pledge or, if the context permits, in which the Security Agent is entitled to acquire or should have acquired such security interest (the "**Pledged Assets**") or any part of the Pledged Assets or to facilitate the collection of the Pledged Assets;
- (b) when a Declared Default (as defined in the Fitness First Nederland Pledge) occurs, to facilitate the sale or other disposal of the Pledged Assets or any part of the Pledged Assets; and
- (c) in relation to the exercise of all powers, authorities and discretions vested in the Security Agent in respect of the Pledged Assets or any part of the Pledged Assets,

and furthermore FFNBV shall, at its own cost and expense, facilitate all of the foregoing.

Prior to the occurrence of a Declared Default, the Assisting Company shall not be required to perform any further assurance or perfection obligation under the Fitness First Nederland Pledge if such performance would have a material adverse effect on

the ability of the Assisting Company to conduct its operations or business in the ordinary course as otherwise permitted by the Senior Facilities Agreement and the Mezzanine Facilities Agreement.

## 12. FFP Share Charge

The Assisting Company as beneficial owner mortgages and assigns all of the Assisting Company's present and future interest in:

- (a) any Marketable Security (as defined in the FFP Share Charge) in the capital of any corporation registered or taken to be registered in Australia, a copy of whose constitution is deposited with or delivered to the Security Agent (or any partner or employee of any firm of lawyers acting on its behalf) for the purposes of the FFP Share Charge (including any Marketable Security included in the Additional Rights) held by the Assisting Company on or after the Deposit Date (as defined in the FFP Share Charge) (the "**FFP Shares**");
- (b) all present and future rights and property interests attaching to or arising out of or otherwise in respect of the holding of an interest in:
  - (i) the FFP Shares;
  - (ii) any money owing now or in the future in respect of the FFP Shares and includes, but is not limited to, a cash dividend or other monetary distribution (the "**Distributions**"), paid or payable, any bonus shares or other Marketable Securities issued, and any rights to take up Marketable Securities, in respect of the FFP Shares;
  - (iii) any proceeds of, or from the disposal of, any FFP Shares;
  - (iv) any Marketable Security resulting from the conversion, consolidation or subdivision of any FFP Share; and
  - (v) any in specie distribution in respect of any FFP Shares; and
- (c) the bank account opened by the Assisting Company in accordance with clause 5.2 of the FFP Share Charge (the "**Designated Account**") and any chose in action in respect of the Designated Account;

((a), (b) and (c) together the "**Mortgaged Property**")

to the Security Agent as security for the due and punctual payment of the Secured Sums.

The Assisting Company must, whenever requested by the Security Agent acting reasonably, do or cause to be done anything which:

- (a) more satisfactorily mortgages, secures the priority of the FFP Share Charge or assures to the Security Agent the Mortgaged Property or any part of it in a manner not inconsistent with any provision of any Finance Document; or
- (b) aids in the exercise of any Power (as defined in the FFP Share Charge),

including, but not limited to, the execution of any document or the execution and delivery of blank transfers.

Without limiting the above paragraph being clause 5.3(a) of the FFP Share Charge, the Assisting Company must, at the request of the Security Agent, execute a legal mortgage over any of the Mortgaged Property.

Any mortgage executed under the above paragraph being clause 5.3(b) of the FFP Share Charge must be:

- (a) in favour of the Security Agent; and
- (b) in the form and substance required by the Security Agent, but the Security Agent cannot require an obligation which is more onerous than any obligation contained in any Finance Document.

### 13. DEFINITIONS

**"Account Bank"** means Mizuho Corporate Bank, Ltd. acting through its branch at River Plate House, 7-11 Finsbury Circus, London, EC2M 7DH or such other bank as the Security Agent may from time to time specify.

**"Acquisition"** means the acquisition by the Purchaser of the Target Shares on the terms of the Acquisition Documents.

**"Acquisition Agreement"** means the sale and purchase agreement dated 22 September 2005 relating to the sale and purchase of the Target Shares and made between the Company and the Vendors.

**"Acquisition Documents"** means the Acquisition Agreement, the Disclosure Letter, the Warranty Deed, the Deutsche Undertaking (each as defined in the Senior Facilities Agreement) and any other document designated as "Acquisition Document" by the Agent and the Company.

**"Act"** means the Companies Act 1985.

**"Ancillaries Lender"** means each Approved Ancillaries Lender which becomes a party to the Senior Facilities Agreement as an Ancillaries Lender in accordance with Clause 9.3 of the Senior Facilities Agreement.

**"Approved Ancillaries Lender"** means The Royal Bank of Scotland plc and The Governor and Company of the Bank of Scotland and any other proposed Ancillaries Lender which is approved by the Majority Lenders and the Arranger.

**"Arranger"** means Mizuho Corporate Bank, Ltd.

**"Assets"** means in relation to the Assisting Company, all its undertaking, property, assets, revenues and rights of every description, or any part of them.

**"Beneficiary"** means each Senior Finance Party, each Mezzanine Finance Party and each Hedge Counterparty.



**"Borrower"** means an Original Borrower and an Additional Borrower (as defined in the Senior Facilities Agreement).

**"Chargor"** means an Original Chargor or an Additional (as defined in the Senior Facilities Agreement).

**"Class A Leases"** means any any lease, licence or other agreement whereby any Land is used or occupied (a **"Lease"**) now or in the future becoming the property of the Assisting Company which:

- (a) is registered at the Land Registry; and
- (b) does not contain a prohibition on charging; and
- (c) does not require Landlord's consent to charge;

**"Class B Leases"** means any means a Lease which either was granted at a premium or is a Rack Rent Lease which was granted for a term of more than 35 years (a **"Valuable Lease"**) now or in the future becoming the property of a Assisting Company which is registered at the Land Registry and:

- (a) contains a prohibition on charging; and/or
- (b) requires Landlord's consent to charge;

**"Class C Leases"** means any Lease now or in the future becoming the property of a Assisting Company which:

- (a) is not registered at the Land Registry; or
- (b) is registered at the Land Registry and which satisfies the following criteria:
  - (i) the Lease contains a prohibition on charging and/or requires Landlord's consent to charge; and
  - (ii) is not a Valuable Lease;

**"Collection Account"** means in relation to the Assisting Company, its account with the Account Bank into which it is required to pay its Receivables pursuant to Clause 6.1 the Security Agreement (*Collection Account*).

**"Declared Default"** means the Agent and/or the Mezzanine Agent (as the case may be) first exercising its respective rights under paragraphs (b) of Clause 28.16 (*Acceleration*) of the Senior Facilities Agreement and/or under paragraph (b) of Clause 24.16 (*Acceleration*) of the Mezzanine Facility Agreement.

**"Default"** means a Default under and as defined in the Facilities Agreement and/or a Default under and as defined in the Mezzanine Facility Agreement.

**"Derivative Rights"** means all dividends, interest or distributions and all other rights and benefits of an income nature accruing at any time in respect of any Investments.

**"Event of Default"** means an Event of Default under and as defined in the Senior Facilities Agreement and/or an Event of Default under and as defined in the Mezzanine Facility Agreement.

**"Finance Document"** means each Senior Finance Document, each Mezzanine Finance Document and each Hedging Document.

**"Fixed Security Asset"** means an Asset for the time being comprised within an assignment created by Clause 3.1 of the Security Agreement (*Assignments*) or within a mortgage or fixed charge created by Clause 3.2 of the Security Agreement (*Fixed security*).

**"Floating Charge Asset"** means an Asset for the time being comprised within the floating charge created by Clause 3.3 of the Security Agreement (*Creation of Floating Charge*) but, in relation to Assets situated in Scotland and charged by clause 3.3(b) only in so far as concerns the floating charge over that Asset.

**"Group"** means the Purchaser and its Subsidiaries for the time being.

**"Guarantor"** means an Original Guarantor or an Additional Guarantor (as defined in the Senior Facilities Agreement).

**"Hedge Counterparty"** means has the meaning given to that term in the Intercreditor Agreement.

**"Hedging Agreements"** has the meaning given to that term in the Intercreditor Agreement.

**"Hedging Document"** has the meaning given to that term in the Intercreditor Agreement.

**"Insurance Policy"** means any contract or policy of insurance of the Assisting Company (including all cover notes) of whatever nature which are from time to time taken out by or on behalf of the Assisting Company or (to the extent of its interest) in which the Assisting Company has an interest at any time.

**"Intellectual Property"** means patents (including supplementary protection certificates), utility models, registered and unregistered trade marks (including service marks), rights in passing off, copyright, database rights, registered and unregistered rights in designs (including in relation to semiconductor products) anywhere in the world and, in each case, any extensions and renewals of, and any applications for, such rights.

**"Intellectual Property Rights"** in relation to the Assisting Company, means all and any of its Intellectual Property and all other intellectual property rights, causes of action, interests and assets charged by it pursuant to paragraphs (c), (ix) to (xiv) inclusive of Clause 3.2 of the Security Agreement (*Fixed security*).

**"Investments"** means all shares, stock, debentures, debenture stock, bonds and other investments (as listed in Schedule 2, Part II of the Financial Services and Markets Act 2000), whether certificated or uncertificated and whether in registered or bearer form, including all depository interests representing any of them and including all rights and benefits of a capital nature accruing at any time in respect of any Investments by way of redemption, repayment, substitution, exchange, bonus or preference, option, rights or otherwise.

**"Issuing Bank"** means Mizuho Corporate Bank, Ltd.

**"Land"** means freehold and leasehold, and any other estate in, land and (outside England and Wales) immovable property and in each case all buildings and structures upon and all things affixed to Land (including trade and tenant's fixtures).

**"Lenders"** means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party (as defined in the Senior Facilities Agreement) in accordance with Clause 29 of the Senior Facilities Agreement which in each case has not ceased to be a Party (as defined in the Senior Facilities Agreement) in accordance with the terms of the Senior Facilities Agreement.

**"Majority Lenders"** has the meaning given to that term in the Senior Facilities Agreement.

**"Mezzanine Finance Documents"** means the Mezzanine Facilities Agreement, any accession letter under the Mezzanine Facilities Agreement, the Intercreditor Agreement, the Mandate Letter, the Syndication Letter (each as defined in the Mezzanine Facilities Agreement), any fee letters setting out any of the fees referred to in Clause 13 (*Fees*) of the Mezzanine Facilities Agreement, any utilisation request or request relating to the selection of an interest period for a utilisation made under the Mezzanine Facilities Agreement and any other document which is designated a "Mezzanine Finance Document" or "Finance Document" by the Purchaser, the mezzanine agent under the Mezzanine Facilities Agreement and the Agent.

**"Mezzanine Finance Party"** means the Mezzanine Agent, the Lenders (as defined in the Mezzanine Facilities Agreement), the Security Agent and the Arranger (as defined in the Mezzanine Facilities Agreement).

**"Obligor"** means the Purchaser, a Borrower, a Guarantor or a Chargor.

**"Original Lender"** means the financial institutions listed in Part 2 and Part 3 of Schedule 1 of the Senior Facilities Agreement as Lenders.

**"Party"** means a party to the Security Agreement.

**"Principal Deed"** means the Debenture dated 4 November 2005 between (1) the Purchaser and (2) the Security Agent as agent and trustee for the Beneficiaries named in the Principal Deed

**"Property Details"** means, in relation to a Lease, full details of that Lease, including its title number (if registered at the Land Registry), whether there are any restrictions or consent requirements on charging the Lease and whether or not open market rent is payable on the Lease;

**"Purchaser"** means Fitness First Finance Limited (formerly DMWSL 462 Limited) a limited liability company incorporated in England and Wales under the Act with registered number 5452198.

**"Rack Rent Lease"** means a Lease at a rent which a lessee might reasonably expect to pay in the open market;

**"Receivables"** in relation to the Assisting Company, means all sums of money receivable by it at any time consisting of or payable under or derived from any Asset described in Clause 3.2 of the Security Agreement (*Fixed security*).

**"Receiver"** means a receiver and manager appointed under Clause 16 of the Security Agreement (*Appointment of a Receiver or an Administrator*) including (where the context requires or permits) any substituted receiver and manager of the Security Agreement.

**"Secured Sums"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of the Assisting Company to all or any of the Beneficiaries under each or any of the Finance Documents, in each case together with:

- (a) all costs, charges and expenses incurred by any Beneficiary in connection with the protection, preservation or enforcement of its rights under any Finance Document; and
- (b) all moneys, obligations and liabilities due, owing or incurred in respect of any variations or increases in the amount or composition of the facilities provided under any Finance Document or the obligations and liabilities imposed under such documents.

**"Security"** means mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Security Agent"** means Mizuho Corporate Bank, Ltd. acting as security agent and trustee for the Beneficiaries including any successor appointed by the Beneficiaries pursuant to the Finance Documents.

**"Secured Parties"** means each Finance Party from time to time party to the Senior Facilities Agreement, any Receiver or Delegate (as defined in the Senior Facilities Agreement) and each agent and lender time to time party to the Mezzanine Facilities Agreement.

**"Senior Finance Document"** means the Senior Facilities Agreement, the Mandate Letter, the Syndicate Letter, any Fee Letter, any Accession Letter, any Transaction Security Documents, the Intercreditor Agreement, any Selection Notice, any Ancillaries Document, any Letter of Credit, any Compliance Certificate, any Hedging Agreement, any Utilisation Request (each as defined in the Senior Facilities Agreement) and any other document designated as such by the Agent and the Company.

**"Senior Finance Party"** means the Agent, the Security Agent, the Arranger, a Lender, the Issuing Bank, the VLN Bank, a Hedge Counterparty or any Ancillaries Lender.

**"Specified Intellectual Property"** means the Intellectual Property listed in Schedule 5 of the Security Agreement (**Specified Intellectual Property**).

**"Specified Investments"** means, in relation to the Assisting Company, all Investments which at any time:

- (a) represent a holding in a Subsidiary (as defined in the Senior Facilities Agreement) of the Assisting Company or an undertaking which would be its subsidiary undertaking if in section 258(2)(a) of the Act "30 per cent or more" were substituted for "a majority";
- (b) are held in the name of the Security Agent or its nominee or to its order; or
- (c) the Assisting Company has deposited certificates for with the Security Agent or which, if uncertificated, are held in an escrow or other account in favour of the Security Agent or its nominee.

**"Structural Intra-Group Loans"** means the loans made by one member of the Group to another member of the Group specified in the Structure Memorandum.

**"Structure Memorandum"** means the structure paper entitled "Project Rocket, Memorandum on Structure" and dated 2 November 2005 describing the Group and the Acquisition and prepared by PriceWaterhouse Coopers LLP in the agreed form and addressed to, and/or capable of being relied upon by the Arranger and the other Secured Parties, together with the Australian Structure Memorandum and the German Structure Memorandum.

**"Target"** means Fitness First Holdings Limited, a limited liability company incorporated in England and Wales with registered number 4099401.

**"Target Shares"** means all of the shares of Target.

**"Unspecified Lease"** means in respect of Leases owned by the Assisting Company at the date of the Security Agreement and at any time, any Lease for which Property Details have not been received by the Security Agent at that time;

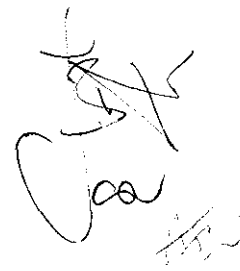
**"Vendor"** means each of the persons or partnerships listed in column 1 of each part of Schedule 2 of the Acquisition Agreement.

"VLN Bank" means Mizuho Corporate Bank, Ltd. in its capacity as provider of the VLN Guarantee.

Handwritten signature and initials in the bottom right corner of the page. The signature appears to be "Cao" with a stylized flourish above it, and the initials "HE" are written below it.

## APPENDIX E

Cash to be transferred at the time of giving of the financial assistance is nil. However, the Assisting Company has entered into a commitment under the terms of the Inter Company Funding Agreement to make loan facilities available to the ICLA Borrower in certain circumstances up to a maximum principal amount of £1,900,000,000 and under the terms of the Newco Inter Company Loan Agreement to make loan facilities available to the Newco Borrowers in certain circumstances up to a maximum principle amount of £1,000,000,000.

Handwritten signature and initials, possibly "Caa" and "1/11/11", in the bottom right corner.

**APPENDIX F**

On a date to be not later than 8 weeks from the date of this statutory declaration.

Handwritten signature and initials in the bottom right corner. The signature appears to be "J. K." with a large flourish, and below it are the initials "J. K." and "M. K.".



## **INDEPENDENT AUDITORS' REPORT TO THE DIRECTORS OF FITNESS FIRST HOLDINGS LIMITED ("THE COMPANY") PURSUANT TO SECTION 156(4) OF THE COMPANIES ACT 1985**

We have examined the attached statutory declaration of the directors of the Company dated 30 January 2006 in connection with the proposal that the Company's wholly owned subsidiary, Fitness First Limited, should give financial assistance for the purposes of reducing or discharging a liability incurred for the purpose of the purchase of the Company's A, B and C ordinary shares and B and C preference shares.

This report is made solely to the directors of the Company for the purpose of section 156(4) of the Companies Act 1985. Our work has been undertaken so that we might state to the directors of the Company those matters that we are required to state to them in an auditors' report under that section and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Company or the Company's directors, for our work, for this report, or for the opinions that we have formed.

### **Basis of opinion**

We have enquired into the state of the Company's affairs in order to review the bases for the statutory declaration.

### **Opinion**

We are not aware of anything to indicate that the opinion expressed by the directors in their declaration as to any of the matters mentioned in section 156(2) of the Companies Act is unreasonable in all the circumstances.

*Deloitte & Touche LLP*

Deloitte & Touche LLP  
Chartered Accountants and Registered Auditors

30 January 2006