

02-23-2006

DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office



8/15/06

RECORD/  
TRIAL 103184065

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies):

FitCorp Healthcare Centers, Inc.

- Individual(s)
- General Partnership
- Corporation- State: Massachusetts
- Other \_\_\_\_\_
- Association
- Limited Partnership

Citizenship (see guidelines) \_\_\_\_\_

Additional names of conveying parties attached?  Yes  No

3. Nature of conveyance )/Execution Date(s) :

Execution Date(s) February 10, 2006

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

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached?  Yes  No

Name: Citizens Bank of Massachusetts

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

Street Address: 28 State Street

City: Boston

State: Massachusetts

Country: USA Zip: 02109

- Association Citizenship \_\_\_\_\_
- General Partnership Citizenship \_\_\_\_\_
- Limited Partnership Citizenship \_\_\_\_\_
- Corporation Citizenship \_\_\_\_\_
- Other \_\_\_\_\_ Citizenship \_\_\_\_\_

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)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

Additional sheet(s) attached?  Yes  No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

Serial Number 78684421 Filing Date August 3, 2005

Standard Character Mark, Word Mark "FITCORP"

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

Name: W. Eric Swan

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

Street Address: Bartlett Hackett Feinberg P.C.  
155 Federal Street, 9th Floor

City: Boston

State: Massachusetts Zip: 02110

Phone Number: (617) 422-0200

Fax Number: (617) 896-6287

Email Address: wes@bostonbusinesslaw.com

6. Total number of applications and registrations involved:

1 (One)

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 40.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers \_\_\_\_\_  
Expiration Date \_\_\_\_\_

b. Deposit Account Number \_\_\_\_\_

Authorized User Name \_\_\_\_\_

02/16/2006 LMUELLER 00000194 78684421  
01 FC:0521

48.00 OP

9. Signature:

W. Eric Swan

Name of Person Signing

February 10, 2006  
Date

Total number of pages including cover sheet, attachments, and document: 1

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

TRADEMARK  
REEL: 003305 FRAME: 0391

## SUPPLEMENTAL TRADEMARK SECURITY AGREEMENT

THIS SUPPLEMENTAL TRADEMARK SECURITY AGREEMENT (this "Agreement") is made as of February 10, 2006, by Fitcorp Healthcare Centers, Inc., a Massachusetts corporation (the "Debtor"), to and with Citizens Bank of Massachusetts, a Massachusetts bank (the "Secured Party"), pursuant to the Security Agreement referred to below.

This Agreement is a supplemental to that certain Security Agreement of even date herewith by and between the Debtor and the Secured Party.

### RECITALS

A. Debtor has executed and delivered to the Secured Party a certain Security Agreement of even date herewith, as the same may be amended, renewed, restated or extended from time to time (the "General Security Agreement") by and between the Secured Party and the Debtor.

B. Debtor has agreed to enter into this Agreement in furtherance of the rights granted to the Secured Party under the General Security Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, the Debtor hereby agrees as follows:

**Section 1. Security Interest.** The Debtor hereby grants to the Secured Party a continuing security interest in, and a collateral assignment and pledge of, all trademarks, service marks and trade names now or hereafter owned by the Debtor, whether registered or unregistered, including, but not limited to, those trademarks of the Debtor listed on Schedule A attached hereto and made a part hereof (collectively, the "Trademarks"), together with the goodwill of the business associated with and symbolized by such Trademarks (collectively, the "Collateral"), as security for the Obligations (as defined in the General Security Agreement). The Debtor hereby requests that the U.S. Commissioner of Patents and Trademarks record this Agreement with respect to the Trademarks.

**Section 2. Representations and Warranties.** The Debtor represents and warrants that:

2.1 Schedule A sets forth as of the date hereof all United States trademark registrations and applications owned by the Debtor.

2.2 As of the date hereof, the Collateral set forth on Schedule A is subsisting and has not been adjudged invalid or unenforceable.

2.3 As of the date hereof, no claim has been made that the use of any of the Collateral violates the rights of any third person and the Debtor is not aware of any basis for any such claim to be asserted.

2.4 The Debtor is the sole and exclusive owner of the entire right, title and interest in and to the Collateral, free and clear of any lien, security interest or other encumbrances, including without limitation, pledges, assignments, licenses, registered user agreements and covenants by the Debtor not to sue third persons (other than the security interest granted hereby and any of the foregoing entered into in the ordinary course of business).

2.5 The Debtor has the full power and authority to enter into this Agreement and perform its terms.

2.6 The Debtor has used proper statutory notice in connection with its use of the Collateral to the extent commercially practicable and customary within the relevant industry.

**Section 3. Covenants.** The Debtor covenants and agrees as follows:

3.1 The Debtor will keep the Collateral free from any lien, security interest or encumbrance (except in favor of the Secured Party) and will defend the Collateral and the title thereto against all claims and demands of all other persons at any time claiming the same or any interest therein.

3.2 The Debtor shall not abandon any Collateral except such Collateral which could not reasonably be expected to have a material adverse effect on the business, operations, properties, assets or condition, financial or otherwise, of the Debtor.

3.3 The Debtor shall maintain all rights held by the Debtor relating to the Collateral except such Collateral which the failure to maintain could not reasonably be expected to have a material adverse effect on the business, operations, properties, assets or condition, financial or otherwise, of the Debtor.

3.4 Until all of the Obligations shall have been indefeasibly paid in full in cash and the termination of the commitments therefor, the Debtor shall not enter into any agreement (including a license agreement) which conflicts with the Debtor's obligations under this Agreement other than agreements that could not reasonably be expected to affect the value of the Collateral, without the Secured Party's prior written consent.

3.5 The Debtor will not sell or offer to sell or otherwise transfer the Collateral or any interest therein (other than non-exclusive licenses granted in the ordinary course of the Debtor's business) without the prior written consent of the Secured Party.

3.6 If the Debtor shall purchase, register or otherwise acquire rights to any new registrable or registered trademark, the provisions of Section 1 shall automatically apply thereto and at least annually the Debtor shall give to the Secured Party written notice thereof, and shall execute an amendment to **Schedule A** including such registrations and applications and shall take any other action reasonably necessary to record the Secured Party's interest in such trademarks with the U.S. Commissioner of Patents and Trademarks.

3.7 The Debtor will continue to use proper statutory notice in connection with its use of the Collateral to the extent commercially practicable and customary within the relevant industry.

3.8 The Debtor shall execute, or use its reasonable efforts at its reasonable expense to cause to be executed, such further documents as may be reasonably requested by the Secured Party in order to effectuate fully the grant of security interest set forth in Section 1 hereof.

**Section 4. Remedies.** After the occurrence and during the continuance of any Event of Default (as defined in the General Security Agreement), the Secured Party, may declare all Obligations secured hereby immediately due and payable and shall have the remedies set forth in Section 5 of the General Security Agreement and the remedies of a secured party under the Uniform Commercial Code.

**Section 5. Attorney-in-Fact.** The Debtor hereby appoints the Secured Party, as the Debtor's attorney-in-fact (with full power of substitution and resubstitution) with the power and authority, after the occurrence of any Event of Default, to execute and deliver, in the name of and on behalf of the Debtor, and to cause the recording of all such further assignments and other instruments as the Secured Party deems necessary or desirable in order to carry out the intent of the General Security Agreement. The

Debtor agrees that all third parties may conclusively rely on any such further assignment or other instrument so executed, delivered and recorded by the Secured Party (or the Secured Party's designee in accordance with the terms hereof) and on the statements made therein.

## **Section 6. General.**

6.1 No course of dealing between the Debtor and the Secured Party, nor any failure to exercise, nor any delay in exercising on the part of the Secured Party, any right, power or privilege hereunder or under the Credit Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any right, power or privilege. No waiver by the Secured Party of any default shall operate as a waiver of any other default or of a similar default on a future occasion.

6.2 All of the Secured Party's rights and remedies with respect to the Collateral, whether established hereby or by the General Security Agreement, or by any other agreement or by law shall be cumulative and may be exercised singularly or concurrently. This Agreement is in addition to, and is not limited by nor in limitation of, the provisions of the General Security Agreement or any other security agreement or other agreement now or hereafter existing between the Debtor and the Secured Party.

6.3 If any clause or provision of this Agreement shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

6.4 This Agreement is subject to modification only by a writing signed by the parties, except as otherwise provided in Section 3.6 hereof.

6.5 The benefits and obligations of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

6.6 The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws (other than the conflict of laws rules) of the Commonwealth of Massachusetts.

**Section 7. Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

**[Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF, the Debtor has caused this Agreement to be duly executed and delivered as a sealed instrument as of the date set forth above.

**Fitcorp Healthcare Centers, Inc.**

By: 

Name: Robert Schwartz

Title: SUP + CFO

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUPPLK

On this 10<sup>th</sup> day of February, 2006, before me appeared Robert Schwartz, to me personally known, who, being by me duly sworn, did say that he/she is the SUP + CFO of Fitcorp Healthcare Centers, Inc., a Massachusetts corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its \_\_\_\_\_, and he/she acknowledged said instrument to be the free act and deed of said limited liability company.



Notary Public Brian F. Plunkett  
Print Name NOTARY PUBLIC  
My Commission Expires My commission expires Feb. 5, 2010  
[Seal]

**SCHEDULE A  
TRADEMARKS**

<b>Trademark</b>	<b>Application Serial No.</b>	<b>Filing Date</b>
FITCORP	78684421	August 3, 2005

TRA 2118147v.2

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*Schedule A to Supplemental Trademark Security Agreement*

**RECORDED: 02/15/2006**

**TRADEMARK  
REEL: 003305 FRAME: 0396**