

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:		NEW ASSIGNMENT	
NATURE OF CONVEYANCE:		ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL	
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Body Dynamics, Inc		12/01/2009	CORPORATION: INDIANA
RECEIVING PARTY DATA			
Name:	Richard Deer		
Street Address:	9700 Michigan Road		
City:	Carmel		
State/Country:	INDIANA		
Postal Code:	46032		
Entity Type:	INDIVIDUAL: UNITED STATES		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Registration Number:	3574708	MINI	
Registration Number:	2502792	MINI THIN	
CORRESPONDENCE DATA			
Fax Number:	(317)822-0033		
Phone:	3178220033		
Email:	vic@iplawindiana.com		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Correspondent Name:	E. Victor Indiano		
Address Line 1:	1. N. Pennsylvania St. #1300		
Address Line 4:	Indianapolis, INDIANA 46204		
ATTORNEY DOCKET NUMBER:	KING RICHARD		
NAME OF SUBMITTER:	E. Victor Indiano		
Signature:	/E. Victor Indiano/		

OP \$65.00 3574708

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**TRADEMARK
 REEL: 004649 FRAME: 0738**

Date:

10/27/2011

Total Attachments: 22

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FORECLOSURE/SURRENDER AGREEMENT

This FORECLOSURE/SURRENDER AGREEMENT (the "Agreement") is entered into as of December 1, 2009, by and between **BODY DYNAMICS, INC.**, an Indiana limited liability company ("Debtor"), and **RICHARD DEER** ("Lender").

RECITALS

WHEREAS, Debtor and Lender entered into the following:

- A) A certain Loan Agreement dated May 17, 2004, in the revolving principal sum of not to exceed \$1,000,000.00; and
- B) First Loan Agreement Modification dated June, 2006; and
- C) Second Loan Agreement Modification dated May 15, 2008, in the original principal amount of \$1,252,000.00; and
- D) Note Purchase Agreement effective September 15, 2009, by and between Debtor, Lender and Fifth-Third Bank

pursuant to which Debtor owes Lender the aggregate principal sum of \$514,498.80 (Items A through D are, collectively, the "Credit Documents"); and

WHEREAS, on or about June 29, 2006, Debtor and Lender entered into a Security Agreement in order to secure the prompt payment and performance of all obligations owing by Debtor to Lender under the Credit Documents; and

WHEREAS, on December 20, 2006, Debtor and Fifth-Third Bank entered into a Security Agreement in order to secure the prompt payment and performance of all obligations owing by Debtor to Fifth-Third Bank under the Credit Documents. Fifth-Third Bank's interest in the Security Agreement was assigned to Lender effective September 15, 2009; and

WHEREAS, Lender perfected his security interest by way of the filing of a Financing Statement on or about July 14, 2006, under Instrument No. 200600006723460; and

WHEREAS, Fifth-Third Bank perfected its security interest by way of the filing of a Financing Statement on or about January 11, 2007, under Instrument No. 200700000381021. The Fifth-Third Bank Financial Statement was assigned to Lender, pursuant to an Assignment filed with the Indiana Secretary of State on September 17, 2009, as Instrument No. 200900007480030; and

WHEREAS, Debtor has acknowledged certain events of default to Lender, and the Debtor's inability to cure the default; and

WHEREAS, Lender has the right to enforce all of his remedies against Debtor and the Collateral, as that term is defined in the Security Agreement; and

WHEREAS, in order to exercise its rights under the Credit Documents, Security Agreement and the Uniform Commercial Code, as adopted in the State of Indiana ("UCC"), Lender holds a security interest in and lien upon all personal property of the Debtor and has the first and prior lien to the Collateral; and

WHEREAS, Lender has notified Debtor that he intends to foreclose his security interest in the Collateral; and

WHEREAS, Debtor agrees that there are no defenses to Lender's foreclosure and has agreed to cooperate with Lender to facilitate the transfer of the Collateral.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. **Notice to Debtor.** Debtor hereby acknowledges Lender's Notice of Default.
2. **Consent to Transfer and Waiver of Notice.** Debtor consents to the transfer to Lender of the Collateral in which Lender has a security interest, and further waives any right or entitlement to any additional notice thereof, including, without limitation, any right to notice of default or acceleration, notice of sale or other disposition, or any notice required under the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of Indiana. The Collateral to be transferred is listed in part in the report of Norman J. Gallivan, Inc. dated November 19, 2009.
3. **Cooperation and Peaceful Turnover.** Debtor agrees to cooperate with the turnover and to make immediate, direct delivery to Lender of possession and control of all the Collateral. Debtor further agrees to execute and all such documents or instruments as may reasonably necessary in order to effectuate the transaction contemplated hereby.
4. **Representation and Warranties by Debtor.** Debtor represents, warrants, acknowledges and agrees that the following are true and correct as of the date of this Agreement:
 - (a) That Lender holds a valid, perfected, secured security interest in all of the Collateral; and
 - (b) That Debtor is in default of its Obligations to Lender, that there are one or more Events of Default (as defined in the Credit Documents) existing under the Credit Documents and that all of the Obligations have been accelerated and are now immediately due and payable.
5. **Good Faith and Commercial Reasonableness.** Debtor acknowledges and agrees that Lender has acted in good faith and that every aspect of the transfer of the Collateral, including the method, manner, time and place of the transfer are commercially reasonable.

6. Miscellaneous.

(a) The parties agree to act in good faith in the performance and enforcement of this Agreement and to execute such further documents and agreements as may be reasonably necessary to implement the purposes of this Agreement.

(b) This Agreement shall inure to the benefit of the parties and their respective successor and assigns.

(c) In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

(d) The terms and conditions of this Agreement will be construed in accordance with the internal laws of the State of Indiana (and not the laws of conflicts), except insofar as it will be mandatory by statute to apply the laws of another jurisdiction.

(e) Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and the parties wish applicable state and federal laws to apply (rather than arbitration rules), the parties desire that their disputes be resolved by a judge applying such applicable laws. EACH OF THE PARTIES HERETO SPECIFICALLY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, CROSS-CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR ANY OTHER CLAIM (COLLECTIVELY, "CLAIMS") ASSERTED BY ANY OF THE PARTIES AGAINST ONE OR MORE OF THE OTHERS. This waiver extends to all such Claims, including Claims that involve persons other than the parties hereto; Claims that arise out of or are in any way connected to the relationship between the parties hereto and any Claims for damages, breach of contract, specific performance or any equitable or legal relief of any kind, arising out of this Agreement.

(f) Debtor acknowledges that, because the transactions contemplated under this Agreement will result in the sale or disposition of substantially all of Debtor's assets, in the event of a breach by Debtor of any of its obligations hereunder, there will be no adequate remedy at law and Lender shall be entitled to specific performance by Debtor of each of the terms hereunder.

(g) The parties hereby acknowledge and agree that the consideration set forth herein represents fair consideration and reasonably equivalent value for the transactions, covenants and agreement herein set forth, which consideration was agreed upon as the result of arm's length, good-faith negotiations between the parties and their respective representatives.

(h) This Agreement, expressly including the Recitals, constitutes the entire agreement between the parties hereto relating to the foreclosure and transfer of the Collateral to the Lender.

(i) This Agreement, and the provisions herein, shall survive the execution and delivery of this Agreement.


(j) This Agreement may be executed in counterparts by original or facsimile signatures which, taken together, shall constitute one and same agreement.

(k) This Agreement shall not confer any rights or remedies upon any person other than the parties hereto and their respective successors and permitted assigns.

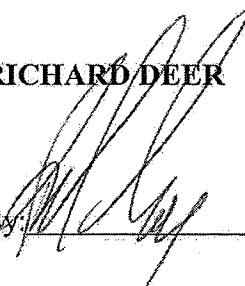
(l) Lender and Debtor acknowledge that, upon the transfer of the property to the Lender, the Lender may sell, transfer or otherwise dispose of the Collateral using the Lender's business judgment. The proceeds from the sale or other disposition of the Collateral shall be applied by Lender to reduce the indebtedness of Debtor to Lender.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first indicated above.

BODY DYNAMICS, INC.

By: 
Name: Laura King
Title: Vice President

RICHARD DEER

By: 

LOAN AGREEMENT

This Loan Agreement ("Agreement") is entered into as of May 17, 2004 between BODY DYNAMICS, INC., an Indiana corporation ("Borrower"), and RICHARD DEER ("Lender").

1. Revolving Credit Loan.

(a) Subject to the terms and conditions of this Agreement, Lender agrees to make a revolving credit loan ("Revolving Loan") to Borrower in a principal amount not to exceed \$1,000,000, which Borrower may borrow, repay and reborrow as provided in this Agreement.

(b) Each advance under the Revolving Loan will be made pursuant to a request authorized by the President of Borrower. Each request for an advance will specify the requested amount and the date on which Borrower desires that the advance be made. Lender, however, will not be required to make any requested advance unless and until the advance is approved by Lender.

2. Interest.

(a) The unpaid principal of each advance made under the Revolving Loan will bear interest at the Applicable Rate plus 4% per annum from the date of the advance until paid. "Applicable Rate" means the floating annual rate of interest published from time to time by the *Wall Street Journal* in its *Money Rate* column (or similar future column) as the Prime Rate, with each change in the Applicable Rate to be effective on the date that the changed Prime Rate is published in such column.

(b) All accrued and unpaid interest on the unpaid principal balance of the Revolving Loan will be payable on the 15th day of each calendar month.

(c) All payments made on the Revolving Loan will be applied first to payment of accrued and unpaid interest and second to payment of unpaid principal.

3. Maturity Date. The entire unpaid principal balance of the Revolving Loan and all accrued and unpaid interest on such principal will be payable in full on May 15, 2006.

4. Default and Remedies.

(a) All amounts payable under this Agreement will be payable without relief from valuation or appraisal laws.

(b) Borrower's failure to pay, when due, any payment required under this Agreement, and the continuance of such failure for ten (10) days after written notice from Lender, will constitute an Event of Default.

(c) In addition to all rights and remedies otherwise available to Lender under applicable law, upon the occurrence of any Event of Default, Lender may declare all or any part of

the unpaid principal balance of the Revolving Loan and all accrued and unpaid interest thereon immediately due and payable.

(d) Borrower will pay on demand the reasonable costs and expenses of Lender in connection with the enforcement or attempted enforcement of this Agreement, including reasonable fees and out-of-pocket expenses of legal counsel.

5. Assignment. Borrower may not assign or delegate any of its rights or obligations under this Agreement.

6. Amendment; Entire Agreement. No term or provision of this Agreement may be modified, amended or waived except by an instrument in writing signed by the party against whom enforcement of the modification, amendment or waiver is sought. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes any prior negotiations, agreements, or understandings between them with respect to such subject matter.

Executed as of the date first written above.

Richard Deere

“LENDER”

BODY DYNAMICS, INC.

By: _____

Karen P. Windle-Burcham

President

“BORROWER”

543065_1.DOC

FIRST LOAN AGREEMENT MODIFICATION

THIS AGREEMENT made at Indianapolis, Indiana dated as of this ____ day of June, 2006, with an effective date of May 15, 2006, between **BODY DYNAMICS, INC.** (hereinafter referred to as "Borrower") and **RICHARD DEER** (hereinafter referred to as "Lender");

WHEREAS, Borrower executed and delivered to Lender a certain Loan Agreement dated May 17, 2004 (hereinafter referred to as "Note"), whereby Borrower promised to pay to the order of Lender, the Revolving Principal Sum not to exceed One Million Dollars and Zero Cents (\$1,000,000.00) with an original Maturity Date of May 15, 2006; and

WHEREAS, Borrower and Lender desire to amend the Note to extend the Maturity Date.

WHEREAS, Lender is willing to amend the Note only on the terms and conditions contained herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender, for themselves, their heirs, successors and assigns, hereby agree as follows:

1. The Note is hereby amended to mature on May 15, 2008, and the defined term "Maturity Date" appearing in the Note is defined as May 15, 2008.
2. The Note shall remain in full force and effect in all respects as if the unpaid balance of the principal, with the interest accrued thereon, had originally been payable as provided for therein. Nothing herein shall effect or impair any rights and powers which Lender may have hereunder.
3. All other terms and conditions of the Note not herein specifically amended are hereby ratified and shall remain in full force and effect.
4. In consideration of the financial accommodations provided to the Borrower by the Lender as contemplated by this Agreement, Borrower hereby waives, releases and forever discharges the Lender from and against any and all rights, claims or causes of action against the Lender arising out of the Lender's actions or inactions with respect to the Note or any security interest, lien or collateral in connection therewith, as well as any and all rights of set off, defenses, claims, causes of action and any other bar to the enforcement of the Note which exists as of the date hereof.
5. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, Borrower, and Lender have executed this Amendment Agreement as of the date first written above.

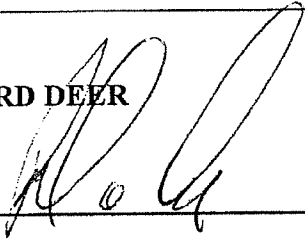
BORROWER:

BODY DYNAMICS, INC.

By: Karen P. Winkler-Kurshan

LENDER:

RICHARD DEER



SECOND LOAN AGREEMENT MODIFICATION

THIS AGREEMENT made at Indianapolis, Indiana, with an effective date of May 15, 2008, between **BODY DYNAMICS, INC.** (hereinafter referred to as "Borrower") and **RICHARD DEER** (hereinafter referred to as "Lender");

WHEREAS, Borrower executed and delivered to Lender a certain Loan Agreement dated May 17, 2004, as modified from time to time (hereinafter referred to as "Note"), whereby Borrower promised to pay to the order of Lender, the Revolving Principal Sum not to exceed One Million Dollars and Zero Cents (\$1,000,000.00) with an original Maturity Date of May 15, 2006; and

WHEREAS, Borrower executed and delivered to Lender a certain First Loan Agreement Modification; and

WHEREAS, Borrower and Lender desire to amend the Note to extend the Maturity Date; and

WHEREAS, Lender is willing to amend the Note only on the terms and conditions contained herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender, for themselves, their heirs, successors and assigns, hereby agree as follows:

1. The Note is hereby amended to mature on May 15, 2010, and the defined term "Maturity Date" appearing in the Note is defined as May 15, 2010.

2. The Note shall remain in full force and effect in all respects as if the unpaid balance of the principal, with the interest accrued thereon, had originally been payable as provided for therein. Nothing herein shall effect or impair any rights and powers which Lender may have hereunder.

3. All other terms and conditions of the Note not herein specifically amended are hereby ratified and shall remain in full force and effect.

4. In consideration of the financial accommodations provided to the Borrower by the Lender as contemplated by this Agreement, Borrower hereby waives, releases and forever discharges the Lender from and against any and all rights, claims or causes of action against the Lender arising out of the Lender's actions or inactions with respect to the Note or any security interest, lien or collateral in connection therewith, as well as any and all rights of set off, defenses, claims, causes of action and any other bar to the enforcement of the Note which exists as of the date hereof.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, Borrower, and Lender have executed this Amendment Agreement as of the date first written above.

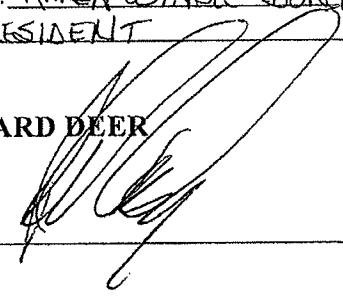
BORROWER:

BODY DYNAMICS, INC.

By: Karen Windle-Burcham
Printed: KAREN WINDLE-BURCHAM
Its: PRESIDENT

LENDER:

RICHARD DEER



A handwritten signature in black ink, appearing to read 'Richard Deer', is written over a horizontal line.

NOTE PURCHASE AGREEMENT

THIS NOTE PURCHASE AGREEMENT is entered into effective this 15th day of September, 2009 by and among Richard A. Deer ("Purchaser"), BODY DYNAMICS, INC., an Indiana corporation (the "Borrower") and FIFTH THIRD BANK (the "Bank").

WHEREAS, as of March 20, 2008, Borrower and Bank entered into a Revolving Note (the "Note") in the amount of Five Hundred Thousand Dollars (\$500,000) (the "Revolving Facility"). Bank has also made available to Borrower a letter of credit facility (the "Letter of Credit Facility"), under which the Bank has issued certain of letters of credit. In connection with the Revolving Facility and the Letter of Credit Facility, Bank and Borrower have entered into a number of loan documents, as amended (as amended, the "Loan Documents").

WHEREAS, Purchaser currently has an account with Bank with a balance of \$500,000 which is pledged as security for the Letter of Credit Facility (the "Account");

WHEREAS, Purchaser desires to purchase the Note, together with any related Loan Documents and security therefor, from Bank; and

WHEREAS, Borrower desires to consent to the foregoing transfer and to wind down the Letter of Credit Facility.

NOW, THEREFORE, in consideration of the premises, and the mutual promises herein contained, the parties agree as follows:

1. Bank hereby sells all of its right title and interest in the Note, together with any related Loan Documents or security therefor to Purchaser and Purchaser hereby purchases the Note together with any related Loan Documents or security therefor in exchange for (i) \$500,000 which Bank is hereby authorized to deduct from the Account plus (ii) \$[] which represents all accrued and unpaid interest thereon and which shall be paid by certified check or wire transfer by Purchaser on the date hereof. Bank shall execute the Allonge attached hereto as Exhibit A and any other documents necessary to transfer any interest in collateral securing the Revolving Facility. Purchaser acknowledges that it has received as of the date hereof, copies of the Note together with copies of all Loan Documents assigned hereby and Bank shall have no further obligation to deliver additional documents to Purchaser.

2. Borrower consents to the foregoing purchase of the Note by Purchaser. Borrower hereby agrees that it shall not be entitled to any further advances under the Letter of Credit Facility. Further, Borrower agrees that it shall maintain an account with Bank in an amount equal to the outstanding amounts on any letters of credit or acceptances issued under the Letter of Credit Facility currently in the amount of \$80,032.50 (the "Letter of Credit Security Account"). The Letter of Credit Security Account is hereby pledged to Bank as security for the Letter of Credit Facility and which Bank may place an immediate hold upon in the amount of the outstanding balances under the letters of credit, which hold amount shall be reduced from time to time as the letters of credit irrevocably expire without a claim thereon under their terms. Upon the irrevocable expiration of the final letter of credit without a claim thereon, the hold shall be

released and the Letter of Credit Facility shall be considered terminated. Purchaser agrees that notwithstanding any terms of the Loan Documents to the contrary, it shall not have a security interest in the Letter of Credit Security Account.

3. Purchaser represents and warrants the following to Seller:

- a. Bank has made no representations concerning the collectability of the Note, the condition of the Note, the Loan Documents or any security therefor, the financial condition of the Borrower or ability of Borrower to repay the Note. The Purchaser understands that the Note is being sold on an AS IS WHERE IS and nonrecourse basis. Purchaser has conducted its own investigation of the Note, the Loan Documents and the financial condition of the Borrower and is relying solely upon its investigation.
- b. Purchaser recognizes that the purchase of the Note entails substantial elements of risk and that Purchaser may lose its entire investment. Purchaser is an "accredited investor" under applicable state and federal securities laws. By virtue of the Purchaser's role as an officer and director of Borrower, Purchaser is able to evaluate the merits and risks of the purchase of the Note, has been provided with all information that has been requested by the Purchaser about the Note and the Borrower. The Purchaser understands that the Note has not been registered under the any federal or state securities laws; it is unlikely that they will ever be so registered; and the Borrower has not agreed to take any action necessary to make any exemptions for sale of the Note without registration available. The Purchaser is acquiring the Note for Purchaser's own account for investment, and not for distribution or transfer.

4. Purchaser shall reimburse Bank for any and all reasonable costs, charges and out-of-pocket expenses (including reasonable attorneys' fees and time charges of attorneys for Bank), paid or incurred by Bank in connection with the preparation, review, execution, delivery of this Agreement.

5. BORROWER AND PURCHASER, FOR THEMSELVES AND EACH OF THEIR LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASING PARTIES"), HEREBY JOINTLY AND SEVERALLY RELEASE AND DISCHARGE THE BANK AND THEIR OFFICERS, DIRECTORS, AGENTS, SHAREHOLDERS, EMPLOYEES, ATTORNEYS, LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES") FROM ANY AND ALL CLAIMS, DAMAGES, CAUSES OF ACTION AND AFFIRMATIVE DEFENSES OR OTHERWISE, WHETHER KNOWN OR UNKNOWN, WHICH ANY OF THE RELEASING PARTIES HAVE ASSERTED OR CLAIMED OR MIGHT NOW ASSERT OR CLAIM AGAINST ALL OR ANY OF THE RELEASED PARTIES ARISING OUT OF, RELATED TO OR IN ANY WAY CONNECTED WITH OR BASED UPON ANY OF THE LOAN DOCUMENTS, THIS AGREEMENT, ANY DEFAULT THEREUNDER, THE FAILURE OF BANK TO EXTEND ADDITIONAL CREDIT TO BORROWER OR TO OTHERWISE MODIFY ANY OF THE LOAN DOCUMENTS AND ANY ACTION TAKEN

BY THE BANK TO OBTAIN PAYMENT OF THE INDEBTEDNESS EVIDENCED BY THE
LOAN DOCUMENTS.

6. This Agreement shall be binding on and, subject to the limitations expressed, shall inure to the benefit of the parties hereto, their successors, assigns, heirs and personal representatives.

7. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart.

8. This Agreement and the Assignment contain the entire agreement between the parties, and may not be changed, modified, or amended orally, but only by a written agreement signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

9. This Agreement will be governed in all respects, including validity, interpretation and enforcement, by the laws of the State of Indiana.

10. Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition or non-enforceability without invalidating the remaining provisions hereof, and any such prohibition or non-enforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties have hereunder set their hands on this 15th day of September, 2009.

FIFTH THIRD BANK

By: Barbara Tully
Barbara Tully, Vice President

BODY DYNAMICS, INC.

By: Karen Winkle Burcham
Karen Winkle Burcham, President

Richard A. Deek
RICHARD A. DEEK

ALLONGE

To Promissory Note, dated March 20, 2008, from Body Dynamics, Inc., in the original principal amount of Five Hundred Thousand Dollars and Zero Cents (\$500,000.00), payable to Fifth Third Bank.

Pay to the order of Richard A. Deer and Donna L. Deer, jointly as husband and wife, without recourse, representation or warranty of any kind.

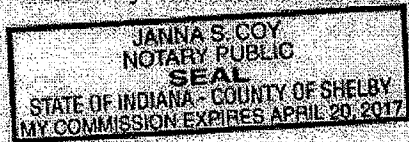
FIFTH THIRD BANK

By: *Barbara Tully*
Barbara Tully, Vice President

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for said County and State, personally appeared Barbara Tully, known to be a Vice President of Fifth Third Bank, and acknowledged the execution of the foregoing for and on behalf of said national banking association.

Witness my hand and Notarial Seal, this 16 day of September, 2009.



Janna S. Coy
Notary Public - Signature

Notary Public - Printed

My Commission Expires:

My County of Residence:

UCC FINANCING STATEMENT

NAME OF CONTACT AT FILER

GRETCHEN SNYDER

Indiana Secretary of State

200900007480030

Sep 17 2009 3:28PM

EMAIL ADDRESS

GSNYDER@BTLAW.COM

INITIAL FINANCING STATEMENT FILE

200700000381021

ASSIGNMENT

INDIVIDUAL'S LAST NAME

DEER

FIRST NAME

RICHARD

MIDDLE NAME

A.

SUFFIX

MAILING ADDRESS

9700 MICHIGAN ROAD

CITY

CARMEL

STATE

IN

POSTAL CODE

46032

COUNTRY

USA

NAME OF PARTY OF RECORD AUTHORIZING THIS AMENDMENT

ORGANIZATION'S NAME

FIFTH THIRD BANK

Additional Filer Reference

FILED WITH INDIANA SECRETARY OF STATE
DEBTOR: BODY DYNAMICS, INC.

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
Joshua P. Hollingsworth (317) 231-7854

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**Joshua P. Hollingsworth, Esq.
 Barnes & Thornburg LLP
 11 S. Meridian Street
 Indianapolis, IN 46204**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE # **200700000381021** Filed: **01/11/2007**

1b. This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS.

2. **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. **ASSIGNMENT (full or partial):** Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. **AMENDMENT (PARTY INFORMATION):** This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address; Please refer to the detailed instructions in regards to changing the name/address of a party. **DELETE** name: Give record name to be deleted in item 8a or 8b. **ADD** name: Complete item 7a or 7b, and also item 7c; also complete items 7e-7g (if applicable).

6. **CURRENT RECORD INFORMATION:**

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7. **CHANGED (NEW) OR ADDED INFORMATION:**

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME Deer	FIRST NAME Richard	MIDDLE NAME A.	SUFFIX
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7c. **MAILING ADDRESS**

CITY Carmel	STATE IN	POSTAL CODE 46032	COUNTRY USA
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7d. **SEE INSTRUCTIONS**

ADD'L INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE
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8. **AMENDMENT (COLLATERAL CHANGE):** check only one box.

Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned.

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT** (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME
Fifth Third Bank

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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10. **OPTIONAL FILER REFERENCE DATA**

Filed with **Indiana Secretary of State** Debtor: **Body Dynamics, Inc.**

SECURITY AGREEMENT Non-Consumer (General)

The undersigned, **Body Dynamics, Inc.** ("Debtor"), grants to **Richard Deer** ("Secured Party") a security interest in the following described property, together with all additions, accessions, accessories and replacements:

All now existing and hereafter existing Accounts, all Inventory, all Equipment, all General Intangibles, all Investment Property; All instrument, chattel paper, electronic chattel paper, documents, securities, moneys, cash, letters of credit, letters of credit rights, promissory notes, warrants dividends, distributions, contracts, agreements, contract rights or other property, owned by Debtor or in which Debtor has an interest, including but not limited to, those which now or hereafter are in the possession or control of Secured Party or in transit by mail or carrier to or in the possession of any third party acting on behalf of Secured Party, without regard to whether Secured Party received the same in pledge, for safekeeping, as agent for collection or transmission or otherwise or whether Secured Party had conditionally released the same, and the proceeds thereof, all right to repayment from, and all claims against Secured Party, and any deposit accounts of Debtor with Secured party, including all demand, time, savings, passbook or other accounts and all deposits therein; All assets and all personal property now owned or hereinafter acquired; all now owned and hereafter acquired inventory, equipment fixtures, goods, accounts, chattel paper, documents, instruments, farm products, general intangibles, supporting obligations, software, commercial tort claims, minerals, standing timber, growing crops and all rents, issues profits, products and proceeds thereof, wherever any of the foregoing is located (the "Collateral")

and in the proceeds thereof to secure the payment of a debt in the total revolving principal amount of One Million Dollars and Zero Cents (\$1,000,000.00), and also any liabilities, direct or indirect, absolute or contingent, now existing or hereafter arising from Debtor to Secured Party (all called the "Obligation"), all of which Debtor promises to pay with interest as provided in a Loan Agreement dated May 17, 2004, as may be modified from time to time, all without relief from valuation and appraisal laws and with reasonable attorneys' fees and all costs of collection.

If there is a purchase money security interest, Secured Party may disburse directly to the seller of the Collateral that portion of the loan proceeds being used to acquire the Collateral.

I. Debtor's Representations and Warranties. Debtor represents, warrants and covenants that:

- A. **Name.** Debtor's jurisdiction of incorporation or organization is Indiana and Debtor's exact legal name as registered in the jurisdiction in which Debtor is incorporated or organization is as set forth in the first paragraph of this Agreement.
- B. **Address.** Debtor's chief executive office is 9700 North Michigan Road, Carmel, Indiana 46032.
- C. **Location of Collateral.** The Collateral will be kept only at the following location and no other (without the written consent of Secured Party): 9700 North Michigan Road, Carmel, Indiana 46032.
- D. **Debtor's Title.** Debtor is the owner of the Collateral free from any liens, security interests or encumbrances other than the security interest herein granted to Secured Party. Debtor has good right to subject the Collateral to the security interest hereunder, and will defend the Collateral against all adverse claims and demands. No financing statement or other evidence of any other security interest covering any part of the Collateral or any proceeds thereof (other than any filed by Secured Party) is on file in any public office.
- E. **Status of Collateral as a Fixture.** The Collateral shall not be affixed to real estate unless a description of the real estate, its address and the name and address of any Owner other than Debtor, are inserted here: (Not applicable.)
- F. **Transfer of Collateral.** Other than the sale of inventory in the ordinary course of business, Debtor shall not sell, assign, transfer, encumber or otherwise dispose of the Collateral or any interest therein without the prior written consent of Secured Party. If any encumbrance is imposed under the Collateral by operation of law, Debtor shall give Secured Party immediate written notice of this fact.
- G. **Use of Collateral.** The Collateral shall be used only for the following purposes:
In the ordinary course of Debtor business. Debtor shall not hereafter change this use without Secured Party's prior written consent.
- H. **Preservation of Perfected Security Interest State of Formation.** Debtor shall immediately notify Secured Party in writing of any change of address from that shown in this Agreement. Debtor shall notify Secured Party in writing such notice to be received by the Secured Party at least thirty (30) days in advance of any change in its state of formation. Debtor will do such acts as Secured Party reasonably may request to establish and maintain in Secured Party a valid security interest in the Collateral, free of all other liens and claims. Debtor shall execute and deliver to Secured Party such as financing and continuation statements, and amendments there of or supplements thereto, and such other documents as Secured Party may from time to time require to perfect, preserve and protect the security interest granted herein. Debtor authorizes Secured Party to file financing and continuation statements, amendments and supplements thereto, relating to the Collateral signed only by Secured Party.
- I. **Insurance.** Debtor shall keep the Collateral at all times insured against risk of loss or damage by fire, theft, and such other casualties as Secured Party may reasonably require, all in such amounts, under such forms of policies, upon such

terms, for such periods and written by such companies as Secured Party may reasonable approve. Losses in all cases shall be payable to Secured Party and Debtor as their interest may appear. All policies of insurance shall provide for at least ten (10) days' prior written notice of cancellation to Secured Party. Debtor shall furnish to Secured Party satisfactory evidence of such insurance coverage. Debtor appoints Secured Party as attorney in fact for Debtor in making, adjusting and settling claims under, and canceling such insurance and endorsing. Debtor's name on any drafts drawn by insurers of the Collateral.

- J. **Condition of Collateral.** Debtor shall keep the Collateral in good repair, shall not permit the Collateral or any part thereof to be wasted or destroyed, and shall not use the Collateral or permit its use in violation of any applicable law, regulation or policy of insurance thereon. Debtor shall furnish the Secured Party such reports and other information concerning the Collateral as Secured Party reasonably may request from time to time. Secured Party may examine and inspect the Collateral and Debtor's records pertaining to the Collateral wherever located at any reasonable time or times.
- K. **Taxes and Assessments.** Debtor shall pay promptly as they become due and payable, all taxes and assessments imposed upon the Collateral or for its use or operation or upon this Agreement.
- L. **Notice of Commercial Tort Claims.** Debtor shall promptly notify Secured Party in writing of the existence of any commercial tort claims.

II. **Payment of Encumbrances; Possession.** If Debtor shall not discharge taxes and other liens, security interest or encumbrances at any time levied or placed on the Collateral, or does not pay premiums for insurance on the Collateral, within 24 hours before any such charges become delinquent, Secured Party may, at its discretion, pay such charges. Secured Party may also at its discretion, order and pay for the repair, maintenance preservation of the Collateral and insure it. Upon demand Debtor shall reimburse Secured Party for any payment made or any expense incurred by Secured Party pursuant to the foregoing authorizations, together with interest on the amount of such payment or expense from the date paid or incurred at the Delinquent Rate. Until default, Debtor shall be entitled to possession of the Collateral and may use it in any lawful manner not inconsistent with this Agreement.

III. **Events of Default.** Time is of the essence of this Agreement. The occurrence of any of the following shall constitute a default under this Agreement:

- A. Nonpayment or nonperformance of any of the Obligations of Debtor or of any warranty, representation or covenant under this Agreement, or any under other agreement executed in connection with this Agreement.
- B. Any warranty, representation covenant or statement made or furnished to Secured Party by, or on behalf of, Debtor in connection with this Agreement or to induce Secured Party to make any loan, advancement or other extension of credit to Debtor is untrue or misleading in any material respect as of the date when made or furnished.

- C. Any substantial insured loss, theft, damage or destruction of the Collateral, or the making of any levy, seizure or attachment against it.
 - D. The death, dissolution or termination of existence of Debtor (except a technical dissolution which is cured within 30 days); or the insolvency or business failure of Debtor; or the admission of Debtor in writing of an inability to pay Debtor's debts as they become due; or the appointment of a receiver or trustee for any part of the property of Debtor; or any assignment for the benefit of Debtor's creditors; or the commencement of any proceeding under any bankruptcy, reorganizations liquidation or other insolvency laws against Debtor or against any guarantor or surety for Debtor, remaining undismissed for sixty (60) days after commencement of any insolvency proceeding, any bankruptcy, reorganization, or liquidation or proceedings under any other insolvency laws by Debtor or guarantor.
 - E. A material default by a lessee in the performance of any lease of the Collateral made by Debtor as lessor and assigned by Debtor to Secured Party to further secure Debtor's Obligations.
 - F. Default by Debtor in the payment of any indebtedness of Debtor for borrowed money other than any of the Obligations, or the acceleration of the maturity date of any such indebtedness of Debtor.
 - G. Secured Party's in good faith deeming payment or performance of any of the Obligations to be insecure for any other reason.
- IV. **Remedies Upon Default.** Upon any default, Secured Party, at its option and without notice or demand, may declare all Obligations of Debtor secured hereby immediately to be due and payable, and shall have all the remedies of a secured party available under Indiana law, as well as all other applicable rights and remedies allowed by applicable law, regardless of whether such remedies are provided by the law of the jurisdiction where such rights are asserted and such remedies are sought. These remedies include, without limitation, the right to take possession of the Collateral, and for that purpose Secured Party may enter upon any premises on which the Collateral or any part of it may be situated and remove it. Secured Party may require Debtor make the Collateral available to Secured Party at a place to be designated by Secured Party which is reasonably convenient to both parties. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party shall give Debtor at least ten (10) days' prior written notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. Expense of retaking, holding, preparing for sale, selling and the like shall include the Secured Party's reasonable attorney's fees and legal expenses.
- V. **Termination; Nonwaiver; Joint and Several Obligations.** This Agreement and the security interest in the Collateral created hereby shall terminate when: (1) the Obligations have been fully satisfied and paid in full; and (2) after Debtor has requested and Secured Party agreed in writing that the Agreement be canceled and any financing statements terminated. No waiver by Secured Party of any default shall be effective unless in writing, or operate as a waiver of any other default or of the same default on a future occasion. If there is more than one Debtor, their obligations hereunder shall be joint and several.

VI. **Applicable Law.** Should applicable law confer any rights or impose any duties inconsistent with, or in addition to, any of the provisions of this Agreement, the affected provisions of this Agreement shall be considered amended to conform to such law, but all other provisions hereof shall remain in full force and effect without modification. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana.

VII. **Notices.** Any notice required to be given by either party to the other under the provisions of this Agreement or under applicable law shall be sufficient if given either in person or by certified or registered mail, return receipt requested, addressed to the address indicated in this paragraph or to such other address as either party may have last specified by written notice to the other. These addresses are:

AS TO DEBTOR, the following:

9700 North Michigan Road
Carmel, Indiana 46032

AS TO SECURED PARTY, the following:

Unless a different period is required by law, notice of a future event shall be sufficient if mailed or delivered at least ten (10) days prior to the event.

DEBTOR ACKNOWLEDGES RECEIPT OF A TRUE COPY OF THIS INSTRUMENT.

BODY DYNAMICS, INC.

By Karen P. Windle-Burham
Printed KAREN P. WINDLE-BURHAM
Title PRESIDENT

"Debtor"

Date: 29 June 06

UCC FINANCING STATEMENT

NAME OF CONTACT AT FILER

MELISSA A. WAKEFIELD FOR DAVID J. JURKIEWICZ

Indiana Secretary of State
200600006723460
Jul 14 2006 1:56PM

EMAIL ADDRESS

MWAKEFIELD@BOSELAW.COM

DEBTOR'S EXACT FULL LEGAL NAME

ORGANIZATION'S NAME

BODY DYNAMICS, INC.

MAILING ADDRESS

9700 NORTH MICHIGAN
ROAD

CITY

CARMEL

STATE

IN

POSTAL CODE

46032

COUNTRY

TYPE OF ORGANIZATION

CORPORATION

JURISDICTION OF ORGANIZATION

INDIANA

ORGANIZATION ID

198112-62

SECURED PARTY'S NAME

INDIVIDUAL'S LAST NAME

DEER

FIRST NAME

RICHARD

MIDDLE NAME

SUFFIX

MAILING ADDRESS

9700 MICHIGAN ROAD
NORTH

CITY

CARMEL

STATE

IN

POSTAL CODE

46032

COUNTRY

THIS FINANCING STATEMENT covers the following collateral:

ALL NOW EXISTING AND HEREAFTER EXISTING ACCOUNTS, ALL INVENTORY, ALL EQUIPMENT, ALL GENERAL INTANGIBLES, ALL INVESTMENT PROPERTY; ALL INSTRUMENT, CHATTEL PAPER, ELECTRONIC CHATTEL PAPER, DOCUMENTS, SECURITIES, MONEYS, CASH, LETTERS OF CREDIT, LETTERS OF CREDIT RIGHTS, PROMISSORY NOTES, WARRANTS DIVIDENDS, DISTRIBUTIONS, CONTRACTS, AGREEMENTS, CONTRACT RIGHTS OR OTHER PROPERTY, OWNED BY DEBTOR OR IN WHICH DEBTOR HAS AN INTEREST, INCLUDING BUT NOT LIMITED TO, THOSE WHICH NOW OR HEREAFTER ARE IN THE POSSESSION OR CONTROL OF SECURED PARTY OR IN TRANSIT BY MAIL OR CARRIER TO OR IN THE POSSESSION OF ANY THIRD PARTY ACTING ON BEHALF OF SECURED PARTY, WITHOUT REGARD TO WHETHER SECURED PARTY RECEIVED THE SAME IN PLEDGE, FOR SAFEKEEPING, AS AGENT FOR COLLECTION OR TRANSMISSION OR OTHERWISE OR WHETHER SECURED PARTY HAD CONDITIONALLY RELEASED THE SAME, AND THE PROCEEDS THEREOF, ALL RIGHT TO REPAYMENT FROM, AND ALL CLAIMS AGAINST SECURED PARTY, AND ANY DEPOSIT ACCOUNTS OF DEBTOR WITH SECURED PARTY, INCLUDING ALL DEMAND, TIME, SAVINGS, PASSBOOK OR OTHER ACCOUNTS AND ALL DEPOSITS THEREIN; ALL ASSETS AND ALL PERSONAL PROPERTY NOW OWNED OR HEREINAFTER ACQUIRED; ALL NOW OWNED AND HEREAFTER ACQUIRED INVENTORY, EQUIPMENT FIXTURES, GOODS, ACCOUNTS, CHATTEL PAPER, DOCUMENTS, INSTRUMENTS, FARM PRODUCTS, GENERAL INTANGIBLES, SUPPORTING OBLIGATIONS, SOFTWARE, COMMERCIAL TORT CLAIMS, MINERALS, STANDING TIMBER, GROWING CROPS AND ALL RENTS, ISSUES PROFITS, PRODUCTS AND PROCEEDS THEREOF, WHEREVER ANY OF THE FOREGOING IS LOCATED (THE "COLLATERAL")

Additional Filer Reference

9210-58 DJJ/MAW