UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LIFECORE FITNESS, INC.
d/b/a ASSAULT FITNESS
Petitioner,

v.

WOODWAY USA, INC.
Patent Owner.

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U.S. Patent No. 9,039,580 to Bayerlein et al.

Case No.: IPR2023-00836

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**PETITIONER'S MOTION TO FILE UNDER SEAL**

Pursuant to 37 C.F.R. §42.54, LifeCore Fitness, LLC, formerly LifeCore Fitness, Inc., d/b/a Assault Fitness ("Petitioner") hereby submits this Motion to Seal the Petitioner Reply and Exhibits 1037, 1045, and 1047. Filed herewith are (i) a redacted version of the Petitioner Reply designated as available to the public, and (ii) unredacted versions of the Petitioner Reply and Exhibits 1037, 1045, and 1047 designated as available to the Filing Party and Board only. Petitioner will file redacted versions of Exhibits 1037, 1045, and 1047 at a later date. It is understood that, once the protective order (Ex. 2073) has been entered, both parties will be provided with access to the confidential information, subject to the provisions of the protective order. Patent Owner's Proposed Protective Order was filed as Exhibit 2073 on January 31, 2024, with a version showing redlines as against the Board's Default Protective Order filed as Exhibit 2074. Petitioner consented to Patent Owner's Proposed Protective Order.

## I. Good Cause Exists for Sealing Certain Confidential Information

The Office Patent Trial Practice Guide provides that "the rules aim to strike a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). These rules "identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or

other confidential research, development, or commercial information." *Id.* (citing 37 C.F.R. § 42.54).

Here, good cause exists to support the sealing of the Petitioner Reply and Exhibits 1037, 1045, 1047 as detailed below.

### A. Exhibits 1037, 1045, 1047 – Documents Containing Confidential Business and Financial Information of Patent Owner or Petitioner

Exhibits 1037, 1045, and 1047 are documents that describe confidential, sensitive, and/or proprietary business and financial information. Petitioner asserts that the entirety of these documents comprise confidential information, and as such, redacted public versions have not been submitted.

Exhibit 1037 is a deposition transcript of Eric A. Weber, Patent Owner's Director of Sales and Marketing regarding his declaration Ex. 2020.

Exhibit 1045 is deposition transcript excerpts of Traci Bates, Petitioner's former Co-CEO in the related litigation, regarding Patent Owner's Exhibit 271 which includes confidential information.

Exhibit 1047 is a DRAFT AirRunner Manual Treadmill Owner's Manual Assault Fitness Release v.01 (20.February,17) which includes confidential information.

### B. Certain Portions of Petitioner Reply

Certain portions of the Petitioner Reply show and describe confidential

commercial, sales, and and/or customer information. Specifically, portions of the Reply that address Secondary Considerations regarding Commercial Success and Copying that incorporates confidential information from Exhibits 1037, 1045, and 1047, including the information described above. These portions of the Petitioner Reply should remain confidential for the reasons stated above with respect to Exhibits 1037, 1045, and 1047. A redacted public version of the Petitioner Reply is submitted herewith.

## II. Certification of Non-Publication

On behalf of Petitioner, the undersigned counsel certifies that, to the best of his knowledge, the information sought to be sealed by this Motion to Seal has not been published or otherwise made public, except impermissibly by Patent Owner as Exhibit 2071 in this proceeding, which Petitioner has asked Patent Owner to correct. Efforts to maintain the confidentiality of this information have also been undertaken by Petitioner in related district court proceedings in *Woodway USA, Inc. v. LifeCORE Fitness, Inc.*, Case No. 3:22-cv- 00492-JO-BLM (S.D. Cal.).

In the district court proceeding, information of the kind that Petitioner now moves to seal has been produced pursuant to a Stipulated Protective Order agreed upon by the Patent Owner and Petitioner, and entered by the district court.

Such information has been designated as “Confidential” or “Confidential – For Counsel Only” pursuant to that Stipulated Protective Order.

## III. Proposed Protective Order

Patent Owner submitted a Proposed Protective Order as Exhibit 2073 on January 31, 2024. The Proposed Protective Order includes modifications to the Default Protective Order from the Trial Practice Guide. A version of the Proposed Protective Order showing redline changes as compared to the Board default protective order was submitted as Exhibit 2074. Petitioner consented to Patent Owner's Proposed Protective Order.

## IV. Certification of Conference with Opposing Party Pursuant to 37 C.F.R. § 42.54

Petitioner conferred with Patent Owner, and Petitioner agreed to entry of the Proposed Protective Order submitted as Exhibit 2073 and Patent Owner does not oppose this motion to seal.

## V. Conclusion

For the foregoing reasons, Petitioner respectfully requests that the unredacted Petitioner Reply and Exhibits 1037, 1045, and 1047 remain under seal.

Respectfully submitted,

Dated: April 24, 2024 / Andrew B. Turner /

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## Certificate of Service

The undersigned hereby certifies that on April 24, 2024, a complete and entire copy of **PETITIONER'S MOTION TO SEAL**, was served via electronic mail to the attorneys listed below:

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|---|---|
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