

03-25-1999



100994232

To the Honorable Commissioner of Patents

and original documents or copy thereof.

1. Name of conveying party(ies):
Spring Air Partners - North America, Inc.

Individual(s) Association
 General Partnership Limited Liability
 Corporation (New Jersey)
 Other _____

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

2. Name and address of receiving party(ies):
Name: Finova Capital Corporation
Internal Address: 1000 First Avenue, First Floor
City: King of Prussia State: Pennsylvania ZIP: 19406

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State Delaware
 Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
 (Designations must be a separate document from Assignment)
 Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: February 17, 1999

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

A. Trademark Application No.(s)
SEE ATTACHED SCHEDULE A

B. Trademark registration No.(s)
SEE ATTACHED SCHEDULE B

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: VEDDER,PRICE, KAUFMAN & KAMMHOLZ
Attention: Tammy S. Settle
Internal Address:

Street Address: 222 North LaSalle Street Suite 2600
City: Chicago State: IL ZIP: 60601

6. Total number of applications and registrations involved: 18

7. Total Fee (37 CFR 3.41) \$ 465.00
 Enclosed
 Authorized to be charged to deposit account (Any Deficiencies)

8. Deposit account number: 22-0259
 (Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

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

Tammy S. Settle *Tammy S. Settle* March 19, 1999
Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and document: 13

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

03/24/1999 DNGUYEN 00000150 75353919

01 FC:481
02 FC:482

40.00 OP
425.00 OP

TRADEMARK
REEL: 1873 FRAME: 0764

1. Additional names of conveying party(ies).

Spring Air Partners - New Jersey, Inc., a New Jersey Corporation

Spring Air Partners - Pennsylvania, Inc. - a New Jersey Corporation

**SCHEDULE A
TRADEMARK AND LICENSE SECURITY AGREEMENT**

MARK	APPLICATION NO.
DURA-ZONE	75/353,919

**SCHEDULE B
TRADEMARK AND LICENSE SECURITY AGREEMENT**

MARK	REGISTRATION NO.
FIFTH AVENUE COLLECTION	1,267,156
SPINE-SAVER	693,844
SELECT-A-PEDIC	785,203
CUSTOM REST	1,397,684
PERM-A-QUILT	826,859
ULTRA-PEDIC	820,743
VITA-REST	820,742
DUAL PEDIC	905,518
HAMILTON J. SNOOZE	1,231,469
POSTURE CORRECTOR	1,695,612
STRESS RELIEVER	1,675,119
COMFORT ENHANCER	1,748,523
SPINAL ADJUSTER	1,666,766
CUSTOM CUSHION	1,666,767
ORTHO FITNESS	1,610,590
GERIATRIC FITNESS	1,568,413
PEDIATRIC FITNESS	1,562,197

TRADEMARK AND LICENSE SECURITY AGREEMENT

TRADEMARK AND LICENSE SECURITY AGREEMENT ("**Agreement**") dated as of **February 17, 1999**, made by **Spring Air Partners - North America, Inc.**, a New Jersey corporation ("**SAP**"), **Spring Air Partners - New Jersey, Inc.**, a New Jersey corporation ("**NJ**") and **Spring Air Partners - Pennsylvania, Inc.**, a New Jersey corporation ("**PA**"), (individually and collectively and jointly and severally, the "**Borrower**") in favor of **FINOVA Capital Corporation**, a Delaware corporation, whose address is 1000 First Avenue, First Floor, King of Prussia, Pennsylvania 19406 ("**FINOVA**").

W I T N E S S E T H:

WHEREAS, FINOVA and Borrower have entered into that certain Loan and Security Agreement, dated of even date herewith (the "**Loan Agreement**") pursuant to which, among other things, the Borrower has granted to FINOVA, a security interest in substantially all of its assets to secure the Borrower's prompt and complete payment, performance and/or observance of all of the Borrower's obligations and liabilities under or in connection with the Loan Agreement and the Borrower's obligations and liabilities under any other Loan Document (the "**Obligations**");

WHEREAS, FINOVA has required, as a further condition to entering into the Loan Agreement and to secure the Obligations thereunder that the Borrower execute this Agreement; and

WHEREAS, FINOVA has required, as a further condition to entering into the Loan Agreement and to secure the Obligations thereunder that Borrower enter into that certain Collateral Assignment of Trademark License Agreement, dated of even date herewith.

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

1. Defined Terms.

- (i) Unless otherwise defined herein, the capitalized terms used herein which are defined in the Loan Agreement shall have the meanings specified in the Loan Agreement.
- (ii) The words "hereof," "herein" and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and schedule references are to this Agreement unless otherwise specified.

- (iii) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified.

2. Security Interest in Trademarks. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, Borrower hereby grants to FINOVA a first priority security interest, having priority over all other security interests, with power of sale (to the extent permitted by applicable law) in all of Borrower's interest in now owned or existing and filed and hereafter acquired or arising and filed:

- (i) trademarks, registered trademarks and trademark applications, trademark registrations, trade names, service marks, registered service marks, service mark applications, and service mark registrations, including, without limitation, the registered trademarks, trademark applications, registered service marks and service mark applications listed on Schedule A, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (c) the right to sue for past, present and future infringements and dilutions thereof, and (d) all of Borrower's rights corresponding thereto throughout the world (all of the foregoing registered trademarks, trademark applications, registered service marks and service mark applications, together with the items described in clauses (a)-(d) in this paragraph 2(i), being sometimes hereinafter individually and/or collectively referred to as the "Trademarks");
- (ii) the goodwill of Borrower's business connected with and symbolized by the Trademarks; and
- (iii) license agreements with any other party in connection with any Trademarks or such other party's trademarks, registered trademarks, trademark applications, trademark registrations, trade names, service marks, registered service marks, service mark applications and service mark registrations, whether Borrower is a licensor or licensee under any such license agreement, including, but not limited to, the license agreements listed on Schedule B, and the right upon the occurrence and during the continuance of an Event of Default to use the foregoing in connection with the enforcement of FINOVA's rights under the Loan Agreement (all of the foregoing being hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 2, the Licenses shall not include any license agreement which by its terms prohibits the grant of the security interest contemplated by this Agreement.

3. Restrictions on Future Agreements. Borrower will not, without FINOVA's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and Borrower further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would in any material respect affect the validity or enforcement of the rights transferred to FINOVA under this Agreement or the rights associated with those Trademarks which are necessary or desirable in the operation of Borrower's business.

4. New Trademarks and Licenses. Borrower represents and warrants that the Trademarks and Licenses listed on Schedule A and Schedule B, respectively, include all of the Trademarks and Licenses now owned or held by Borrower. If, prior to the termination of this Agreement, Borrower shall (i) obtain rights to any new Trademark or Licenses or (ii) becomes entitled to the benefit of any new or existing Trademark or License, the provisions of Section 2 shall automatically apply thereto and Borrower shall give to FINOVA prompt written notice thereof. Borrower hereby authorizes FINOVA to unilaterally modify this Agreement by (a) amending Schedule A or Schedule B, as the case may be, to include any Trademarks or Licenses which are described under Section 2, or under this Section 4, and (b) filing with the Patent and Trademark Office, in addition to and not in substitution for, this Agreement, a duplicate original of this Agreement containing on Schedule A or Schedule B thereto, as the case may be, the revised list of Trademarks and/or Licenses under Section 2 or this Section 4. Notwithstanding the foregoing, the Borrower hereby agrees that FINOVA's security interest shall extend to all of the collateral listed in Section 2 and this Section 4, regardless of whether FINOVA actually amends Schedule A and Schedule B.

5. Royalties. Borrower hereby agrees that the use by FINOVA of the Trademarks and Licenses as described in Section 2 and Section 4 and as authorized hereunder shall be, to the extent permitted by applicable law, co-extensive with Borrower's rights thereunder and with respect thereto and without any liability for royalties or other related charges from FINOVA to Borrower.

6. Nature and Continuation of FINOVA's Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks and Licenses and shall remain in full force and effect until the Obligations have been paid in full and the Loan Agreement terminated. At such time, the rights granted to FINOVA hereunder shall also terminate.

7. Right to Inspect; Further Assignments and Security Interests. FINOVA shall have the right, consistent with the Loan Agreement at any reasonable time and from time to time, to inspect Borrower's premises and to examine Borrower's books, records, and operations relating to the Trademarks and the Licenses, including, without limitation, Borrower's quality control processes; provided, that in conducting such inspections and examinations, FINOVA shall use reasonable efforts not to disturb unnecessarily the conduct of Borrower's ordinary business operations. From and after the occurrence of an Event of Default, and subject to the terms of

the Loan Agreement, Borrower agrees that FINOVA or a conservator appointed by FINOVA, shall have the right to establish such reasonable additional product quality controls as FINOVA or such conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by Borrower under the Trademarks or the Licenses. Borrower agrees (i) not to sell or assign its respective interests in, or grant any license under, the Trademarks or the Licenses without the prior written consent of FINOVA, (ii) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof, and (iii) not to change the quality of such products in any material respect without the prior written consent of FINOVA.

8. Duties of Borrower. Borrower shall have the duty, to the extent desirable in the normal conduct of Borrower's business and consistent with Borrower's current business practices: (i) to prosecute diligently any trademark applications or registrations or service mark applications or registrations that are part of the Trademarks pending as of the date hereof or thereafter until the termination of this Agreement, (ii) to make applications for trademarks and service marks as Borrower deems appropriate, and (iii) to take reasonable steps to preserve and maintain all of Borrower's rights in the trademark and service mark applications and trademark and service mark registrations that are part of the Trademarks. Any expenses incurred in connection with the foregoing shall be borne by Borrower. Borrower shall not abandon any material trademark or service mark which is the subject of a registered trademark, service mark or application therefor and which is or shall be necessary or economically desirable in the operation of the Borrower's business. Borrower agrees to retain an experienced trademark attorney reasonably acceptable to FINOVA for the filing and prosecution of all such applications and other proceedings. FINOVA shall not have any duty with respect to the Trademarks or Licenses. Without limiting the generality of the foregoing, FINOVA shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks and Licenses against any other parties, but may do so at its option during the continuance of an Event of Default, and all expenses incurred in connection therewith shall be for the sole account of Borrower and added to the Obligations secured hereby.

9. FINOVA's Right to Sue. From and after the occurrence and during the continuance of an Event of Default, and subject to the terms of the Loan Agreement, FINOVA shall have the right, but shall not be obligated, to bring suit to enforce the Trademarks and the Licenses and, if FINOVA shall commence any such suit, Borrower shall, at the request of FINOVA, do any and all lawful acts and execute any and all proper documents required by FINOVA in aid of such enforcement. Borrower shall, upon demand, promptly reimburse and indemnify FINOVA for all costs and reasonable expenses incurred by FINOVA in the exercise of its rights under this Section 9 (including, without limitation, all attorneys' and paralegals' fees). If, for any reason whatsoever, FINOVA is not reimbursed with respect to the costs and expenses referred to in the preceding sentence, such costs and expenses shall be added to the Obligations secured hereby.

10. Waivers. No course of dealing between Borrower and FINOVA, and no failure to exercise or delay in exercising on the part of FINOVA any right, power or privilege hereunder

or under the Loan Agreement shall operate as a waiver of any of FINOVA's rights, powers or privileges. No single or partial exercise of any right, power or privilege hereunder or under the Loan Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11. FINOVA's Exercise of Rights and Remedies Upon Default. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence and during the continuance of an Event of Default, FINOVA may exercise any of the rights and remedies provided in this Agreement, the Loan Agreement, or any other agreement executed in connection therewith. Without limiting the generality of the foregoing, Borrower acknowledges and agrees that (i) the Trademarks and the Licenses comprise a portion of the Collateral and FINOVA shall have the right to exercise its rights under the Loan Agreement with respect to the Trademarks and the Licenses to the same extent as with respect to all other items of Collateral described therein, and (ii) from and after the occurrence and during the continuance of an Event of Default, FINOVA or its nominee may use the Trademarks and Licenses to complete the manufacture of, assemble, package, distribute, prepare for sale and sell the Inventory, or for any other purpose in connection with the conduct of Borrower's business.

12. Spring Air License Agreement. Borrower has entered into that certain Spring Air Products Related Companies Agreement, dated of even date herewith (the "Spring Air License"), with The Spring Air Company, an Illinois corporation ("Spring Air") which agreement has been assigned to FINOVA pursuant to that certain Collateral Assignment of Trademark License Agreement, dated of even date herewith, by and between FINOVA and Borrower (and accepted by Spring Air).

13. Intent-to-Use Applications. Notwithstanding any provision of this Agreement, the applicable Uniform Commercial Code or any other agreement or law, in no event shall any party be required or permitted to assign, convey or transfer any trademark or service mark that is the subject of an application for registration under Section 1(b) of the Lanham Act (15 U.S.C. § 1051(b)), as amended, prior to the filing of the verified statement of use under Section 1(d) of the Lanham Act (15 U.S.C. § 1051(d)), as amended.

14. Severability. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or 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.

15. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 2 and Section 4 hereof or by a writing signed by the parties hereto.

16. Cumulative Remedies; Power of Attorney. All of FINOVA's rights and remedies with respect to the Trademarks and the Licenses, whether established hereby, by any other

agreements or by law, shall be cumulative and may be exercised singularly or concurrently. Borrower hereby irrevocably appoints FINOVA as Borrower's attorney-in-fact, with full authority in the place and stead of Borrower and in the name of Borrower or otherwise to carry out the acts described below. Subject to the terms of the Loan Agreement, upon the occurrence and during the continuance of an Event of Default Borrower hereby authorizes FINOVA to, in its sole discretion, (i) endorse Borrower's name on all applications, documents, papers and instruments necessary or desirable for FINOVA in the use of the Trademarks and the Licenses, (ii) take any other actions with respect to the Trademarks and the Licenses as FINOVA deems are in its best interest, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks to anyone on commercially reasonable terms, and (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone on commercially reasonable terms. FINOVA shall take no action pursuant to subsection (i), (ii), (iii) or (iv) of this Section 16 without taking like action with respect to the entire goodwill of Borrower's business connected with the use of, and symbolized by, such Trademarks. Borrower hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement shall have been terminated pursuant to Section 6 hereof. Borrower acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of FINOVA under the Loan Agreement, but rather is intended to facilitate the exercise of such rights and remedies. FINOVA shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which, respectively, either (y) the Trademarks may be located or deemed located, or (z) the Licenses were granted.

17. Binding Effect; Benefits. This Agreement shall be binding upon Borrower and its successors and assigns, and shall inure to the benefit of FINOVA and its nominees, successors and assigns. Borrower's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for Borrower; provided, however that Borrower shall not voluntarily assign its obligations hereunder without the prior written consent of FINOVA.

18. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws (as distinguished from the conflicts of law provisions) and decisions of the State of Arizona governing contracts to be performed entirely within such state. Borrower hereby consents to the exclusive jurisdiction of any state or federal court located within the County of Maricopa in the State of Arizona or, at the sole option of FINOVA, in any other court in which FINOVA shall initiate legal or equitable proceedings and which has subject matter jurisdiction over the matter in controversy. Borrower further waives personal service of any and all process upon it, and consents that all such service of process be made in the manner set forth in the Loan Agreement. Borrower further waives any right it may otherwise have to collaterally attack any judgment entered against it.

19. Jury Trial. FINOVA and Borrower each hereby waive the right to trial by jury in any action or proceeding based upon, arising out of, or in any way relating to: (i) this Agreement; (ii) any other present or future instrument or agreement between FINOVA and Borrower; or (iii) any conduct, acts or omissions of FINOVA or Borrower or any of their

partners, directors, officers, employees, agents, attorneys or any other persons affiliated with FINOVA or Borrower, in each of the foregoing cases, whether sounding in contract or tort or otherwise.

20. Notices. All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Loan Agreement.

21. Section Headings. The section headings herein are for convenience of reference only and shall not affect in any way the interpretation of any of the provisions hereof.

22. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

23. Right of Recordal of Security Interest. FINOVA shall have the right, but not the obligation, at the expense of Borrower, to record this Agreement in the United States Patent and Trademark Office and with such other recording authorities deemed reasonable and proper by FINOVA, and FINOVA shall advise Borrower of such recordals. Upon satisfaction in full of the Obligations and termination of the Loan Agreement, Borrower shall have the right to effect recordal of such satisfaction or termination at the expense of Borrower in the United States Patent and Trademark Office and with such other recording authorities deemed reasonable and proper by Borrower. FINOVA and Borrower shall cooperate to effect all such recordals hereunder.

[SIGNATURE PAGE FOLLOWS]

Trademark and License Security Agreement Signature Page

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement on the day and year first above written.

Spring Air Partners - North America, Inc.,

a New Jersey corporation;

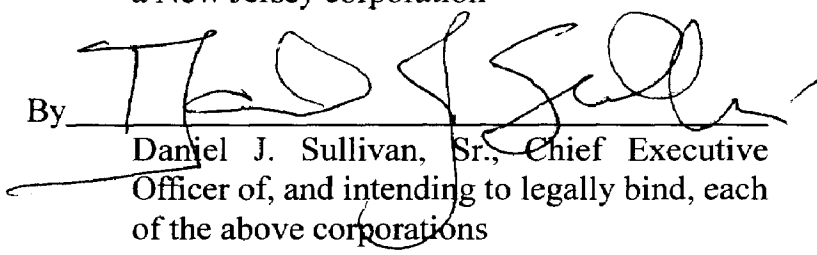
Spring Air Partners - New Jersey, Inc.,

a New Jersey corporation; and

Spring Air Partners - Pennsylvania, Inc.,

a New Jersey corporation

By

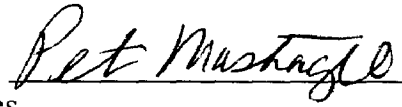

Daniel J. Sullivan, Sr., Chief Executive
Officer of, and intending to legally bind, each
of the above corporations

STATE OF ~~ILLINOIS~~ ^{New Jersey})
) SS
COUNTY OF Bergen)

The foregoing Trademark and License Security Agreement was executed and acknowledged before me this 17 day of February, 1999, by Daniel J. Sullivan, Sr., personally known to me to be the Chief Executive Officer of **Spring Air Partners - North America, Inc.**, a New Jersey corporation, **Spring Air Partners - New Jersey, Inc.**, a New Jersey corporation and **Spring Air Partners - Pennsylvania, Inc.**, a New Jersey corporation, on behalf of each such entity.

(SEAL)

Notary Public
My commission expires _____



PETER MASTRANGELO
Notary Public of New Jersey
My Comm. Expires Oct. 3, 2000