

11/30/2004  
700134798

RECORDATION FORM COVER SHEET

TRADEMARKS ONLY

THE-MISC

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of Conveying party(ies):

Thermospas, Inc.

- Individual(s)
- General Partnership
- Corporation - CT
- Association
- Limited Partnership
- Other

2. Name and address of receiving party(ies):

Banknorth, N.A.

2461 Main Street  
Glastonbury, CT 06033

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other:
- Merger
- Change of Name

- Individual(s) citizenship \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Corporation - \_\_\_\_\_
- Association \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Other national banking association

Additional name(s) & address(es) attached?  Yes  No  
Designation of Domestic Rep. attached?  Yes  No

Execution Date: 4/16/2004

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

A. Trademark Application No.(s)

76/155,713 76/499,367 and 76/524,649

B. Trademark Registration No.(s)

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

Gordon & Jacobson, P.C.  
65 Woods End Road  
Stamford, CT 06906

6. Total number of applications and registrations involved: 3

7. Total fee (37 CFR 3.41).....\$ 90.00

Enclosed

Authorized to charge deposit account

8. Deposit account number: 07-1732  
(attach duplicate page if paying by deposit account)

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.

David S. Jacobson

Name of Person Signing



Signature

11/30/04

Date

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

8

## TRADEMARK SECURITY AGREEMENT

TRADEMARK SECURITY AGREEMENT, dated as of April 16, 2004, between THERMOSPAS, INC., a Connecticut corporation (the "Debtor"), and BANKNORTH, N.A., a national banking association, (the "Secured Party").

Debtor and Secured Party hereby agree as follows:

### SECTION 1. Definitions; Interpretation.

(a) Terms Defined in Credit Agreement. All capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

(b) Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Collateral" has the meaning set forth in Section 2.

"Credit Agreement" means that certain Credit Agreement, dated as of the date hereof, among Debtor, ICR Associates, Inc., a Connecticut corporation, and Secured Party.

"PTO" means the United States Patent and Trademark Office.

"Security Agreement" means that certain Security Agreement, dated as of the date hereof, between Secured Party and Debtor.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of Connecticut.

(c) Terms Defined in UCC. Where applicable in the context of this Agreement and except as otherwise defined herein, terms used in this Agreement shall have the meanings assigned to them in the UCC.

(d) Construction. In this Agreement, the following rules of construction and interpretation shall be applicable: (i) no reference to "proceeds" in this Agreement authorizes any sale, transfer, or other disposition of any Collateral by Debtor; (ii) "includes" and "including" are not limiting; (iii) "or" is not exclusive; and (iv) "all" includes "any" and "any" includes "all." To the extent not inconsistent with the foregoing, the rules of construction and interpretation applicable to the Credit Agreement shall also be applicable to this Agreement and are incorporated herein by this reference.

### SECTION 2. Security Interest.

(a) Grant of Security Interest. As security for the payment and performance of the Obligations, Debtor hereby assigns, transfers and conveys to Secured Party, and grants to Secured Party a security interest in and mortgage to, all of Debtor's right, title and interest in, to

and under the following property, in each case whether now or hereafter existing or arising or in which Debtor now has or hereafter owns, acquires or develops an interest and wherever located (collectively, the "Collateral"):

(i) all state (including common law), federal and foreign trademarks, service marks and trade names, and applications for registration of such trademarks, service marks and trade names (but excluding any application to register any trademark, service mark or other mark prior to the filing under applicable law of a verified statement of use (or the equivalent) for such trademark, service mark or other mark to the extent the creation of a security interest therein or the grant of a mortgage thereon would void or invalidate such trademark, service mark or other mark), all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including such marks, names and applications as described in Schedule A), whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented use thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof;

(ii) the entire goodwill of or associated with the businesses now or hereafter conducted by Debtor connected with and symbolized by any of the aforementioned properties and assets;

(iii) all general intangibles and all intangible intellectual or other similar property of Debtor of any kind or nature, associated with or arising out of any of the aforementioned properties and assets and not otherwise described above; and

(iv) all proceeds of any and all of the foregoing Collateral (including license royalties, rights to payment, accounts and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance (whether or not Secured Party is the loss payee thereof) or any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to the foregoing Collateral.

(b) Continuing Security Interest. Debtor agrees that this Agreement shall create a continuing security interest in the Collateral which shall remain in effect until terminated in accordance with Section 11.

### **SECTION 3. Supplement to Security Agreement.**

This Agreement has been entered into in conjunction with the security interests granted to Secured Party under the Security Agreement or other security documents referred to therein. The rights and remedies of Secured Party with respect to the security interests granted herein are without prejudice to, and are in addition to those set forth in the Credit Agreement, the Security Agreement and the other Loan Documents, all terms and provisions of which are incorporated herein by reference.

### **SECTION 4. Representations and Warranties.**

Debtor represents and warrants to Secured Party that a true and correct list of all of the existing Collateral consisting of U.S. trademarks, trademark registrations or

applications owned by Debtor, in whole or in part, is set forth in Schedule A attached hereto and made a part hereof.

#### **SECTION 5. Further Acts.**

On a continuing basis, Debtor shall make, execute, acknowledge and deliver, and file and record in the proper filing and recording places, all such instruments and documents, and take all such action as may be necessary or advisable or may be requested by Secured Party to carry out the intent and purposes of this Agreement, or for assuring, confirming or protecting the grant or perfection of the security interest granted or purported to be granted hereby, to ensure Debtor's compliance with this Agreement or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to the Collateral, including any documents for filing with the PTO or any applicable state office. Secured Party may record this Agreement, an abstract thereof, or any other document describing Secured Party's interest in the Collateral with the PTO, at the expense of Debtor. In addition, Debtor authorizes Secured Party to file financing statements describing the Collateral in any UCC filing office deemed appropriate by Secured Party. If the Debtor shall at any time hold or acquire a commercial tort claim arising with respect to the Collateral, the Debtor shall immediately notify Secured Party in a writing signed by the Debtor of the brief details thereof and grant to the Secured Party in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Secured Party.

#### **SECTION 6. Authorization to Supplement.**

If Debtor shall obtain rights to any new trademarks, the provisions of this Agreement shall automatically apply thereto. Debtor shall give prompt notice in writing to Secured Party with respect to any such new trademarks or renewal or extension of any trademark registration. Without limiting Debtor's obligations under this Section 6, Debtor authorizes Secured Party unilaterally to modify this Agreement by amending Schedule A to include any such new patent or trademark rights. Notwithstanding the foregoing, no failure to so modify this Agreement or amend Schedule A shall in any way affect, invalidate or detract from Secured Party's continuing security interest in all Collateral, whether or not listed on Schedule A.

#### **SECTION 7. Binding Effect.**

This Agreement shall be binding upon, inure to the benefit of and be enforceable by Debtor, Secured Party and their respective successors and assigns. Debtor may not assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder.

#### **SECTION 8. Governing Law.**

This Agreement shall be governed by, and construed in accordance with, the law of the State of Connecticut, except as required by mandatory provisions of law or to the extent the validity, perfection or priority of the security interests hereunder, or the remedies hereunder, in respect of any Collateral are governed by the law of a jurisdiction other than Connecticut.

**SECTION 9. Entire Agreement; Amendment.**

This Agreement, the Security Agreement and the Credit Agreement, together with the Schedules hereto and thereto, contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior drafts and communications relating to such subject matter. Neither this Agreement nor any provision hereof may be modified, amended or waived except by the written agreement of the parties, as provided in the Credit Agreement. Notwithstanding the foregoing, Secured Party unilaterally may re-execute this Agreement or modify, amend or supplement the Schedule hereto as provided in Section 6 hereof. To the extent that any provision of this Agreement conflicts with any provision of the Security Agreement, the provision giving Secured Party greater rights or remedies shall govern, it being understood that the purpose of this Agreement is to add to, and not detract from, the rights granted to Secured Party under the Security Agreement.

**SECTION 10. Counterparts.**

This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile shall be equally as effective as delivery of a manually executed counterpart. Any party hereto delivering a counterpart of this Agreement by facsimile shall also deliver a manually executed counterpart, but the failure to so deliver a manually executed counterpart shall not affect the validity, enforceability, or binding effect hereof.

**SECTION 11. Termination.**

Upon termination of the Revolving Commitment Loan and the indefeasible payment and performance in full of all Obligations, the security interests created by this Agreement shall terminate and Secured Party (at Debtor's expense) shall promptly execute and deliver to Debtor such documents and instruments reasonably requested by Debtor as shall be necessary to evidence termination of all such security interests given by Debtor to Secured Party hereunder, including cancellation of this Agreement by written notice from Secured Party to the PTO.

**SECTION 12. No Inconsistent Requirements.**

Debtor acknowledges that this Agreement and the other documents, agreements and instruments entered into or executed in connection herewith may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and Debtor agrees that all such covenants, terms and provisions are cumulative and all shall be performed and satisfied in accordance with their respective terms.

**SECTION 13. Severability.**

If one or more provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect in any jurisdiction or with respect to any party, such invalidity, illegality or unenforceability in such jurisdiction or with respect to such party shall, to the fullest extent permitted by applicable law, not invalidate or render illegal or unenforceable any such

provision in any other jurisdiction or with respect to any other party, or any other provisions of this Agreement.

**SECTION 14. Notices.**

All notices, demands, requests, and other communications given under this Agreement shall be given and shall be effective as provided in Section 10.2 of the Credit Agreement.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

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

WITNESSES:

THERMOSPAS, INC.

[Signature]

By: [Signature]  
Name: Andrew Tournas  
Title: President

[Signature]

BANKNORTH, N.A.

By: [Signature]  
Name: David S. Blitz  
Title: Senior Vice President

STATE OF CONNECTICUT )  
 ) ss.  
COUNTY OF HARTFORD )

On this 16th day of April, 2004, before me, the undersigned officer, personally appeared Andrew Tournas, President of ICR Associates, Inc., a Connecticut corporation, signer and sealer of the foregoing instrument and acknowledged the same to be his free act and deed and the free act and deed of said corporation.

[Signature]  
Commissioner of Superior Court  
Notary Public  
My Commission Expires: May 31, 2006

STATE OF CONNECTICUT )  
 ) ss.  
COUNTY OF HARTFORD )

**ALAINE DOOLAN**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES MAY 31, 2006

On this 16th day of April, 2004, before me, the undersigned officer, personally appeared David S. Blitz, Senior Vice President of Banknorth, N.A., a national banking association, signer and sealer of the foregoing instrument and acknowledged the same to be his free act and deed and the free act and deed of said corporation.

[Signature]  
Commissioner of Superior Court  
Notary Public  
My Commission Expires: May 31, 2006

**ALAINE DOOLAN**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES MAY 31, 2006

**SCHEDULE A**  
to the Trademark Security Agreement

Debtor: ThermoSpas, Inc.

Registered U.S. Trademarks of Debtor

None

Pending U.S. Trademark Applications of Debtor

Application No.	Filing Date	Mark
76/155,713	October 27, 2000	SPA EASE (and DESIGN)
76/499,367	March 13, 2003	THERMOEASE
76/524,649	June 23, 2003	THE HEALING SPA

Common Law Trademarks of Debtor (not Otherwise Listed)

THERMOSPAS	THERMOPAD	THE MANCHESTER
THERMOSPA	THERMOFILTER	THE PARK AVENUE
THERMOCLEAR	THERMOSCENTS	THE MADISON
THERMOGLOSS	THERMOGLOW	THE OLYMPIAN
THERMOBOARD	THERMOSOUND	AVALON
THERMOLIFT	WAVE LOUNGE	MANHATTAN
THERMOLIFT200	THERMOBOND	DUO
THERMOLIFT300	THERMOBLANKET	GEMINI
THERMOSTEP	THERMOFOIL	CHESAPEAKE
THERMOCOVER	THE TOWNHOUSE	PHOENIX
ONE STEP	THE LEXINGTON	THE CONCORD
WE TURN WATER INTO THERAPY		
		