

04-19-2001

FORM PTO-1618A  
Expires 06/30/99  
OMB 0651-0027



04-04-2001

U.S. Patent & TMOfr/TM Mail Ropt Dt. #34



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### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

#### Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID # \_\_\_\_\_
- Correction of PTO Error  
Reel # \_\_\_\_\_ Frame # \_\_\_\_\_
- Corrective Document  
Reel # \_\_\_\_\_ Frame # \_\_\_\_\_

#### Conveyance Type

- Assignment  License
  - Security Agreement  Nunc Pro Tunc Assignment
  - Merger  Change of Name
  - Other \_\_\_\_\_
- Effective Date  
Month Day Year  
03182001

#### Conveying Party

Mark if additional names of conveying parties attached

Name Cool Partners, Inc. Execution Date 03182001  
Month Day Year

Formerly \_\_\_\_\_

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

Citizenship/State of Incorporation/Organization Texas

#### Receiving Party

Mark if additional names of receiving parties attached

Name LJH Partners LP

DBA/AKA/TA \_\_\_\_\_

Composed of \_\_\_\_\_

Address (line 1) 235 Montgomery Road, Suite 420

Address (line 2) \_\_\_\_\_

Address (line 3) San Francisco CA, U.S.A. 94104  
City State/Country Zip Code

- Individual  General Partnership  Limited Partnership  Corporation  Association

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Other Delaware Limited Partnership

Citizenship/State of Incorporation/Organization \_\_\_\_\_

FOR OFFICE USE ONLY

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Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK  
REEL: 002273 FRAME: 0934

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

#

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

**Trademark Application Number(s)**

**Registration Number(s)**

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**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

**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. Charges to deposit account are authorized, as indicated herein.

Alan Goldman

*Alan S. Goldman*

*Apr. 2, 200*

Name of Person Signing

Signature

Date Signed

**RECORDATION FORM COVER SHEET  
CONTINUATION  
TRADEMARKS ONLY**

FORM PTO-1618C  
Expires 06/30/99  
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U.S. Department of Commerce  
Patent and Trademark Office  
**TRADEMARK**

**Conveying Party**

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Formerly

Individual     General Partnership     Limited Partnership     Corporation     Association

Other

Citizenship State of Incorporation/Organization

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Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

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Corporation     Association

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## SECURITY AGREEMENT

This Security Agreement (Intellectual Property) (this "Agreement") is made as of the \_\_\_ day of March, 2001, by and between Cool Partners, Inc., a Texas corporation ("Grantor"), and the investors listed on the signature pages hereof (each an "Investor" and collectively, the "Investors").

### RECITALS

Concurrently with the execution and delivery of this Agreement, the Investors have loaned to Grantor the aggregate principal amount of Five Hundred Thousand Dollars (\$500,000) (the "Loan") as evidenced by Convertible Secured Promissory Notes dated the date hereof and made by Grantor in favor of each Investor (as further amended, modified or supplemented from time to time, the "Notes"). As a material inducement and a condition precedent to the Investors in making the Loan, Grantor hereby grants to the Investors a security interest in certain property of Grantor in accordance with this Agreement.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of the Obligations (as defined below), Grantor hereby grants a first priority security interest to the Investors, for their benefit, as security, in and to Grantor's entire right, title and interest in, to and under all United States or other registered and unregistered patents, all licenses thereto, and all applications therefor, and all other property described herein, including but not limited to the following (all of which shall collectively be called the "Collateral"):

(a) All patents and patent applications owned by Grantor and any patents, divisions, continuations, renewals, reissues, extensions and continuations-in-part resulting therefrom (collectively, the "Patent Rights"), and any and all royalties, payments, and other amounts payable to Grantor in connection with the Patent Rights, together with all renewals and extensions of the Patent Rights, the right to recover for all past, present, and future infringements of the Patent Rights;

(b) All United States or other registered and unregistered trademarks, service marks, trade names, logos, slogans, and tag lines; copyrights, registered copyrighted works and commercially significant unregistered copyrightable works (including any proprietary software and all books, written materials, prerecorded videotapes, and other copyrightable works included in the products; technology know-how and inventions, and licenses to use technology, processes, know-how or inventions; computer software and documentation; trade secrets; franchises; and other intellectual property rights owned or used by or licensed to Grantor, including all titles, registration numbers, application numbers, dates of registration and applications, inventors, licensors and licensees, as applicable; and

(c) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the

foregoing.

This Agreement secures the payment of all obligations of the Investors now or hereafter existing under the Notes and all obligations, indebtedness and liabilities of Grantor under this Agreement (all such obligations of Grantor being the "Obligations").

2. Further Assurances; Attorney in Fact.

(a) Grantor will, make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, and in any of the fifty states, all such instruments, including, appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademarks Office, and take all such action as may reasonably be deemed necessary or advisable, or as requested by the Investors, to perfect the Investors' security interest in all Patent Rights and otherwise to carry out the intent and purposes of this Agreement, or for assuring and confirming to the Investors the grant or perfection of a security interest in all Collateral.

(b) Grantor hereby irrevocably appoints the Investors and each of them as Grantor's attorney-in-fact, with full power and authority in the place and stead of Grantor and in the name of Grantor, from time to time in the Investors' reasonable discretion, to execute or deliver any document or instrument necessary to carry out and effectuate the purposes of this Agreement and during the continuation of any Event of Default (as defined in Section 3 below) to endorse Grantor's name on any checks, notes, acceptances, money orders, drafts or other forms of payment or security that may come into the Investors' possession, on notices of assignment, on public records, on verifications of accounts, and to do all things necessary or desirable in order fully to exercise its rights and remedies under this Agreement; provided, the Investors shall promptly notify Grantor of all such activities and actions. Grantor ratifies and approves all acts of any such attorney and agrees that neither the Investors nor any such attorney shall be liable for any acts or omissions nor for any error of judgment or mistake of fact or law other than as a result of such person's gross negligence or willful misconduct. The foregoing power of attorney, being coupled with an interest, is irrevocable until the all of the Obligations have been fully satisfied.

3. Events of Default. The occurrence of any of the following shall constitute an Event of Default under the Agreement:

(a) An Event of Default occurs under any Note; or

(b) Grantor breaches or fails to perform or observe any of its representations, warranties or agreements made in this Agreement.

4. Remedies.

(a) Generally. Upon the occurrence of an Event of Default, the Investors shall have all the options, powers, privileges, rights and remedies (i) of a secured party under the UCC or other applicable Uniform Commercial Code, (ii) granted to the Investors under any other

applicable statute, law, rule, or regulation, and (iii) granted to the Investors under this Agreement, the Note or any other agreement between Grantor and the Investors.

(b) Power of Sale and Related Rights.

(1) Upon the occurrence and during the continuance of an Event of Default, the Investors may, subject to any applicable provisions of law, without demand or Grantor's assent, and without advertisement, all of which Grantor hereby waives, at any time or times upon prior notice to Grantor, enter any premises, with or without the assistance of other persons or legal process, require Grantor to account for (including accounting for any products and proceeds of any Collateral), segregate, assemble, make available and deliver to the Investors, its agents or representatives, take possession of, operate, collect, transfer and receive, recover, appropriate, foreclose, extend payment of, adjust, compromise, settle, release any claims included in, and do all other acts or things necessary or, in the Investors' judgment appropriate, to protect, maintain, preserve and realize upon, the Collateral and any products and proceeds thereof, in whole or in part, exercise all rights, powers and interests with respect to any and all Collateral, and sell, assign, lease, license, pledge, transfer, negotiate (including endorse checks, drafts, orders, or instruments), deliver or otherwise dispose (by contract, option(s) or otherwise) of the Collateral or any part thereof. Any such disposition may be in one or more public or private sales, at or upon an exchange, board or system or in the county, state in which the Collateral is then located, or elsewhere, at such price, for cash or credit (or for future delivery without credit risk) and upon such other terms and conditions as it deems appropriate, with the right of the Investors to the extent permitted by law upon any such sale or sales, public or private, to purchase the whole or any part of said Collateral, free of any right, claim or equity of redemption of or in Grantor (such rights, claims and equity of redemption, if any, hereby being expressly waived). Notwithstanding that the Investors, whether in its own behalf and/or on behalf of another or others, may continue to hold the Collateral and regardless of the value thereof, or any delay or failure to dispose thereof, unless and then only to the extent that the Investors proposes to retain the Collateral in satisfaction of the Obligations by written notice in accordance with the UCC, Grantor shall be and remain liable for the payment in full of any balance of the Obligations and expenses at any time unpaid.

(2) In addition to all other sums due the Investors under this Agreement, Grantor shall pay the Investors all reasonable costs and expenses incurred by the Investors, including attorneys' fees and court costs, to obtain, liquidate or enforce payment of the Collateral or Obligations or in the prosecution or defense of any action or proceeding by or against the Investors or Grantor concerning any matter arising out of or connected with the Note, this Agreement, the Collateral or the Obligations, including (without limitation) any of the foregoing arising under or related to any proceeding under the United States Bankruptcy Code, as amended, or any successor statute(s) thereto.

(3) Any requirement of reasonable notice shall be deemed satisfied if such notice is personally served on or mailed, postage prepaid, to Grantor in accordance with Section 9 at least ten (10) days before the time of sale or other event giving rise to the requirement of such notice; however, no notification need be given to Grantor if Grantor has signed, after an Event of Default has occurred, a statement renouncing any right to notification of sale or other intended disposition. The Investors shall not be obligated to make any sale or other disposition of the Collateral regardless of notice having been given. Subject to the provisions of



applicable law, the Investors may postpone or cause the postponement of the sale of all or any portion of the Collateral by announcement at the time and place of such sale, and such sale may, without further notice, be made at the time and place to which the sale has been postponed or the Investors may further postpone such sale by announcement made at such time and place.

(4) Without in any way limiting the foregoing, the Investors shall, following any Event of Default, have the right, in addition to all other rights provided herein or by law, to take physical possession of any and all of the Collateral and anything found therein, the right for such purpose to enter without legal process upon any premises where the Collateral may be found (provided that such entry be done lawfully), and the right to maintain such possession on Grantor's premises or to remove the Collateral or any part thereof to such other places as the Investors may desire. Whether or not the Investors exercises its right to take possession of the Collateral, Grantor shall, upon the Investors' demand, promptly assemble the Collateral and make it available to the Investors at such premises of Grantor as the Investors may designate. Whether or not the Investors exercises its right to take possession of the Collateral, Grantor shall also at their expense perform any and all other reasonable steps requested by the Investors to preserve, protect and further assure and perfect the security interest hereby granted in the Collateral.

(c) Application of Proceeds. The proceeds and avails of the Collateral at any time received by the Investors following an Event of Default shall, when received by the Investors in cash or its equivalent, be applied by the Investors as follows:

(i) first, to the payment and satisfaction of all sums paid and costs and expenses (including attorneys' fees and court costs) incurred by the Investors hereunder or otherwise in connection herewith, including such thereof paid or incurred in connection with protecting, preserving or realizing upon the Collateral or enforcing any of the terms hereof, to the extent that the Investors has not been reimbursed therefor by Grantor, together with interest thereon at the rate applicable to principal of the Note;

(ii) second, to the payment and satisfaction of the remaining Obligations, both for interest and principal, and, if such proceeds are insufficient to pay and satisfy all remaining Obligations in full, then to such Obligations in such order and priority as the Investors may, in its sole discretion, elect;

(iii) third, to the payment, satisfaction or discharge of any other indebtedness or obligation as required by any law, rule or regulation (including section 9-504(1)(c) of the UCC); and

(iv) lastly, any surplus remaining after the full payment and satisfaction of the Obligations shall be returned to Grantor or to whomsoever a court of competent jurisdiction shall determine to be entitled thereto.

(d) Remedies Cumulative. No single or partial exercise of any right or remedy by the Investors will preclude any other or further exercise thereof or the exercise of any other right or remedy. All options, powers, privileges, rights and remedies of the Investors, under this Agreement or any other document relating to the Loan, under the UCC or any other



All such communications, if personally delivered, will be conclusively deemed to have been received by a party hereto and to be effective when so delivered; if sent by overnight courier service, on the next Banking Day after deposit thereof with such service; if sent by certified or registered mail, when delivered or refused for delivery, or if sent by regular mail, on the third Banking Day after the day on which deposited in the mail.

10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

11. Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the United States of America and the State of Texas, without regard for choice of law provisions. Grantor and the Investors consent to the nonexclusive jurisdiction of any state or federal court located in the State of Texas.

12. **WAIVER OF RIGHT TO JURY TRIAL. THE INVESTORS AND GRANTOR 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: (a) THIS AGREEMENT; OR (b) ANY CONDUCT, ACTS OR OMISSIONS OF THE INVESTORS OR GRANTOR OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS OR ANY OTHER PERSONS AFFILIATED WITH THE INVESTORS OR GRANTOR BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS AGREEMENT; IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.**

13. Representations and Warranties of Grantor. The Grantor hereby represents and warrants that:

(a) Enforceability. This Agreement has been duly authorized, executed and delivered by all necessary corporate actions of the Grantor and constitutes a valid and legally binding agreement of the Grantor, enforceable against the Grantor in accordance with its terms.

(b) Title; No Other Liens. The Grantor has good indefeasible and marketable title to, and ownership of, all of the Collateral free and clear of any other lien, mortgage, security interest or other encumbrance. No security agreement, financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except such as may have been filed for the benefit of the Investors, pursuant to this Agreement.

(c) Perfected First Priority Lien. The lien granted pursuant to this Agreement constitutes a perfected first priority lien in the Collateral as collateral security for the Obligations, which lien is enforceable as such against all creditors of, and purchasers from, the Grantor upon all of the following events: (a) the Investors' proper and timely filing of all necessary documents to secure a perfected first priority lien in the Collateral with the State and/or County authorities of Texas in accordance with the applicable terms of the U.C.C.; (b) the Investors' payment of any required fees for such filing to the State and/or County authorities of Texas; (c) the Investors' proper and timely filing of all necessary documents to secure a

perfected first priority lien in the Collateral as required by the United States Patent and Trademark Office ("USPTO"); and (d) payment of any applicable fees required by the USPTO for such filing.

(d) Patent Rights. Any patents included in the Patent Rights has been validly issued to the Company and any patent application include in the Patent Rights has been prepared and submitted by the Company to the United States Patent and Trademark Office, in each case, in accordance with all applicable statutes, laws, rules and regulations pertaining thereto and there exist no facts or circumstances which would cause any such patent application to be denied. Grantor has all ownership and economic rights in the Patent Rights. Grantor has not sold, licensed, transferred or conveyed to any other party any of its right, title or interest in and to the Patent Rights.

14. Covenants. During the term of this Agreement and thereafter for as long as there are any Obligations outstanding, Grantor covenants that, unless otherwise consented to by the Investors, it shall (i) notify Grantor in writing of the occurrence of any event or the existence of any fact which renders any representation or warranty in this Agreement inaccurate, incomplete or misleading in any material respect or which constitutes an Event of Default under the this Agreement or the Note and; (ii) not create or permit to be created or maintained any other lien, mortgage, security interest or encumbrance on the Collateral; provided, however, that Grantor may, without the consent of the Investors, grant a security interest in the Collateral securing indebtedness in the aggregate principal amount of not more than \$5 million, so long as both such indebtedness and such security interest in the Collateral rank pari passou with the Obligations secured hereby and the security interest granted hereby.



**AMENDMENT TO SECURITY AGREEMENT**

This Amendment to Security Agreement (this "Amendment") is made this 7<sup>th</sup> day of April, 2001, by and between Cool Partners, Inc., a Texas corporation ("Grantor"), and the investors listed on the signature page(s) hereof (each an "Investor" and collectively, the "Investors").

**RECITALS**

WHEREAS, on or about March 8, 2001, the Investors loaned to the Grantor the aggregate principal amount of Five Hundred Thousand Dollars (\$500,000) (the "Loan"), as evidenced by Convertible Secured Promissory Notes dated on or about March 8, 2001 and made by Grantor in favor of each Investor (as further amended, modified or supplemented from time to time, the "Notes");

WHEREAS, as a material inducement and a condition precedent to the Investors in making the Loan, Grantor granted to the Investors a security interest in certain property of Grantor, pursuant to a Security Agreement dated March 9, 2001 (the "Security Agreement");

WHEREAS, on or about March 13, 2001, the Investors loaned to the Grantor an additional aggregate amount of Five Hundred Thousand Dollars (\$500,000) (the "Second Loan"), and a second set of Convertible Secured Promissory Notes was executed relating to the Second Loan;

WHEREAS, the Investors and other persons or entities may, in their discretion, choose to loan additional funds to the Grantor from time to time (the "Future Loans"); and

WHEREAS, Grantor and the Investors wish to amend the Security Agreement so that the proceeds of the Second Loan, as well as possible Future Loans, are secured by the property listed in Section 1 of the Security Agreement;

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

1. Definition of "Obligations". The last sentence of Section 1 of the Security Agreement is hereby amended to read as follows:

This Agreement secures the payment of (i) all obligations of the Investors now or hereafter existing under the Notes or under any additional promissory notes made by the Grantor in favor of the Investors or any other person or entity lending funds to the Company ("New Investors"), so long as such additional promissory notes expressly provide that the obligations evidenced thereby are secured pursuant to the terms of this Agreement; provided that the aggregate amount of indebtedness secured hereby may not exceed Five Million Dollars (\$5,000,000); and (ii) all obligations, indebtedness and liabilities of Grantor under this Agreement (all such obligations of Grantor being the "Obligations").

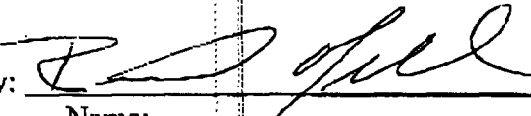
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2. References to "Loan" and to "Note" or "Notes". Any references in the Security Agreement to a "Note" or to the "Notes" shall also be taken to include those notes reflecting the Second Loan, as well as any notes reflecting any Future Loans. Any references in the Security Agreement to the "Loan" shall also be taken to include the Second Loan and any Future Loans.

3. No Other Changes. Except as expressly amended hereby, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Grantor has executed this Amendment as of the date first above written.

COOL PARTNERS, INC.

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_