

M/M

12-18-2001

FORM PTO-1594 (modified) 08/21/92 RI

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office



101918867

To the Honorable Assistant Secretary, original document(s) or copy(ies) the

Trademarks: Please record the attached

1. Name of conveying party(ies):  
Romika USA, Inc.

Individual(s)       Association

General Partnership       Limited Partnership (Florida)

Corporation-State/Florida

Other

Additional name(s) of conveying party(ies) attached?

Yes or  No?

2. Name and address of receiving party(ies):  
 Name: Capital Tempfunds, Inc.  
 Street Address One Brixham Green, John J. Delaney Drive, Suite 300  
Charlotte, N.C. 28277-2843

Individual(s) citizenship

Association

General Partnership

Limited Partnership (Florida)

Corporation (North Carolina)

Other

If assignee is not domiciled in the United States, a domestic Representative designation is attached:  Yes or  No? (Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached?  Yes or  No?

3. Nature of conveyance:

Assignment of Interest       Merger

Security Agreement       Change of Name

Other

Execution Date: October 16, 2001 & November 12, 2001

4. Application number(s) or registration number(s): Attorney Docket No.: 29241.011500

A. Trademark Application No.(s): 76/219,687

B. Trademark Registration No.(s) 1,795,065; 2,121,729; 1,991,745 and 2,250,528

Additional numbers attached?  Yes or  No?

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

Name: \_\_\_\_\_

Internal Address: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_, State: \_\_\_\_\_ ZIP: \_\_\_\_\_

6. Total number of applications and registrations involved: 5

7. Total fee (37 C.F.R. § 3.41).....\$140.00

Enclosed

Authorized any deficiency to be charged to deposit account

8. Deposit account Number: 50-1792

(Attach duplicate copy of this page if paying by deposit account)

12/18/2001 TBIAZ1 00000022 76219687

01 FC:481 40.00 00

02 FC:482 100.00 00

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.

Manuel R. Valcarcel, Esq.      December 4, 2001  
 Name of Person Signing      Signature      Date

Total number of pages including cover sheet(s): 8

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

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

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the date needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C.

**TRADEMARK**  
**REEL: 002408 FRAME: 0976**

# TRADEMARK AND LETTERS PATENT SECURITY AGREEMENT

## **THIS TRADEMARK AND LETTERS PATENT SECURITY AGREEMENT**

(this "Agreement") is made as of the 13th day of November, 2001, by and between **ROMIKA USA, INC.**, a Florida corporation with its chief executive office and principal place of business at 8730 N.W. 36<sup>th</sup> Avenue, Miami, FL 33147 (the "Borrower"), and **CAPITAL TEMPFUNDS, INC.**, a North Carolina corporation with an office at One Brixham Green, 15800 John J. Delaney Drive, Suite 300, Charlotte, NC 28277-2843 (the "Secured Party").

### RECITALS

**WHEREAS**, the Borrower has entered into a Loan and Security Agreement of even date herewith (the "Loan Agreement") with the Secured Party, pursuant to which the Secured Party has extended a revolving loan to the Borrower under the terms and condition set forth in said Loan Agreement;

**WHEREAS**, it is a condition precedent to the making of advances by the Secured Party under the Loan Agreement that the Borrower shall have granted the security interest contemplated by this Agreement; and

**WHEREAS**, unless otherwise defined or the context otherwise requires, the defined terms used herein shall have the same meanings assigned to them in the Loan Agreement;

**NOW, THEREFORE**, in consideration of the foregoing and in order to induce the Secured Party to lend funds as contemplated by the Loan Agreement, the Borrower hereby agrees with the Secured Party as follows:

1. **Grant of Security Interest.** In order to secure (i) the payment of all principal of and interest on the Loan Agreement as and when the same becomes due and payable (whether by lapse of time, acceleration or otherwise), (ii) the payment of all interest, fees and charges payable by the Borrower under the terms of the Loan Agreement, (iii) the payment of all other present and future indebtedness, obligations and liabilities arising under, and the observance and performance of all present and future covenants and agreements contained in the Loan Agreement, and (iv) the payment in full of all reasonable out-of-pocket expenses and charges, legal or otherwise including reasonable attorney's fees, suffered or incurred by the Secured Party in collecting or enforcing payment of the obligations outstanding under the Loan Agreement or any or all of the other foregoing indebtedness or in realizing upon, protecting or preserving any collateral security for the Loan Agreement or such other indebtedness (all of such indebtedness, obligations and liabilities referred to in the immediately foregoing clauses (i) through (iv) being defined by reference in the Loan Agreement as, and being hereinafter collectively referred to as, the "Obligations"), Borrower does hereby grant to Secured Party a security interest in, all of Borrower's right, title and interest, whether now owned or existing or hereafter acquired or arising, in and to its (a) trademarks and service marks, including registrations and applications therefore and trade names, together with (i) all renewals thereof, (ii) all present and

future rights of Borrower under all present and future license agreements relating thereto, whether Borrower is licensee or licensor thereunder, (iii) all income, royalties, damages and payments now or hereafter due and/or payable to Borrower thereunder or with respect thereto, including, without limitation, damages and payments for past, present and future infringement thereof, (iv) all of Borrower's present and future claims, causes of action and rights to sue for past, present or future infringements thereof, (v) the business and goodwill to which all of such trademarks and service marks including registrations and applications therefor, and trade names are appurtenant, (vi) all rights corresponding thereto throughout the world, and (vii) proceeds of all of the foregoing (all of the foregoing collectively, the "Trademarks"); and

(b) its patents and patent applications, inventions and improvements described and claimed therein, together with (i) all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (ii) present and future rights of Borrower under all present and future license agreements relating thereto, whether Borrower is licensee or licensor thereunder, (iii) all income, royalties, damages and payments now or hereafter due and/or payable to Borrower thereunder or with respect thereto, including, without limitation, damages and payments for past, present and future infringement thereof, (v) all of Borrower's present and future claims, causes of action and rights to sue for past, present or future infringements thereof, (vi) all rights corresponding thereto throughout the world, and (vii) proceeds of all of the foregoing (all of the foregoing collectively, the "Letters Patents")

2. **Covenants, Warranties and Representations.** The Borrower covenants, warrants and represents that:

(a) To the best of Borrower's knowledge, the Trademarks and Letters Patent listed on Schedule A constitute all of the Trademarks and Letters Patents now owned by Borrower. If, before the Obligations shall have been satisfied in full, Borrower shall (i) obtain or discover rights to any new or existing Trademarks and Letters Patent, or (ii) become entitled to the benefit of any Trademarks and Letters Patent, the security interest of Secured Party granted hereunder shall automatically attach thereto and Borrower shall give to Secured Party prompt written notice thereof.

(b) Borrower agrees not to sell or assign its interest in the Trademarks or Letters Patent, without the prior written consent of Secured Party.

(c) Until the Obligations shall have been satisfied in full, Borrower will not, without Secured Party's prior written consent, knowingly take any action, or knowingly permit any action to be taken by others subject to its control, including licensees, or knowingly fail to take any action, which would materially adversely affect the validity of the rights of Secured Party and under this Loan Agreement.

(d) Until the Obligations shall have been satisfied in full, except as otherwise agreed by Secured Party in writing, Borrower will maintain, preserve and protect the Trademarks and Letters Patent free of any material conflict with the rights of any other person. Without limitation of

the foregoing, Borrower shall have the duty to the extent reasonable, appropriate and consistent with acceptable business practices (i) to pay all taxes, fees or other amounts necessary to maintain in full force and effect all of the Trademarks, (ii) to prosecute diligently any trademark and patent applications relating to the Trademarks and the Letters Patent pending as of the date hereof or thereafter until this Agreement is no longer in effect, (iii) to make application on trademarks which have not been registered but which may be registered in the United States, as appropriate and consistent with past practices, and (iv) to preserve and maintain all rights in trademark applications, trademarks and trademark registrations of the Trademarks, and in all patent applications of the Letters Patent. Borrower will take all steps as reasonably required by Secured Party to perfect any security interest acquired by Secured Party pursuant to this Agreement, including, without limitation, filing and recording such new security agreements or financing statements as may be reasonably required by Secured Party. Any reasonable expenses incurred in connection with such applications shall be borne by Borrower, and Secured Party shall have no obligations or liability to pay any taxes or fees, nor shall Secured Party have any duties in connection with application or maintenance of rights in the Trademarks and Letters Patent.

(e) The registered Trademarks set forth on Schedule A are subsisting and have not been adjudged invalid or unenforceable in whole or in part, and each of the Trademarks is valid and enforceable; there are no claims known to the Borrower currently asserted that the use of any of the registered Trademarks violates or may violate the rights of any third person; no claims are currently asserted directly against Borrower or to the best of Borrower's knowledge its predecessors that the use of any of the registered Trademarks violates or may violate the rights of any third person; the Borrower is the sole and exclusive owner of the entire right, title, and interest in and to each of the registered Trademarks, other than the rights of licensees or licensors, as applicable, in connection with the goods or services for which they are used; and the Borrower has the unqualified right to enter into this Agreement and to perform its terms.

3. **Rights and Remedies.** Every Event of Default (as defined in the Loan Agreement) shall constitute an "Event of Default" hereunder. Upon the occurrence of any Event of Default, Secured Party may, upon reasonable written notice, exercise any or all of the following rights and remedies, all of which are cumulative and enforceable alternatively, successively or concurrently:

(a) Sell, assign or grant any license under the Trademarks and/or the Letters Patent upon such terms and under such conditions as Secured Party, in its sole discretion, may determine.

(b) Sue for, collect and receive all income, royalties, damages and payments at any time due and/or payable under the Trademarks and/or the Letters Patent and any licenses thereunder.

(c) Sue in its own name to enforce the Trademarks and/or the Letters Patent and any licenses thereunder. If Secured Party shall commence any such suit, Borrower shall, at the

request of Secured Party, do any and all lawful acts and execute any and all proper documents reasonably required by Secured Party in aid of such enforcement.

4. **Power of Attorney.** Borrower hereby designates and appoints Secured Party and its designees as attorney-in-fact of Borrower, irrevocably and with power of substitution, with authority effective upon the occurrence of any Event of Default, to endorse Borrower's name on all applications, documents, papers and instruments necessary or desirable for Secured Party in the use of the Trademarks and/or Letters Patent, to take any other actions with respect to the Trademarks and/or Letters Patent, as Secured Party deems in the best interest of Secured Party; to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks and/or Letters Patent to any person; and to perform all other acts necessary and advisable, in Secured Party's sole discretion, to carry out and enforce this Agreement and the Loan Agreement. All acts of said attorney or designee are hereby ratified and approved by Borrower. This power of attorney is coupled with an interest and is irrevocable so long as any of the Obligations remain unpaid.

5. **Termination.** The security interest granted herein shall terminate upon the indefeasible satisfaction in full of the Obligations.

6. **Notices.** Notices that are required or permitted to be delivered hereunder shall be sufficient if in writing and sent to the addresses set forth in the Loan Agreement, in the manner and within the time specified in the Loan Agreement.

7. **Further Assurances.** Borrower shall execute any further or additional documents reasonably required by the Secured Party to effectuate the purposes and intent of this Agreement.

8. **Choice of Law.** This Agreement shall be construed according to the laws of the State of North Carolina.

9. **Severability.** If any of the provisions of this Agreement are judicially determined to be in conflict with any law of the State of North Carolina, or otherwise judicially determined to be unenforceable for any reason whatsoever, such provision shall be deemed null and void to the extent of such unenforceability but shall be deemed separable from and shall not invalidate any other provisions of this Agreement.

10. **Successors and Assigns.** The terms, covenants, and conditions contained in this Agreement shall inure to the benefit of Borrower and its successors and assigns and shall be binding upon the Secured Party and its successors and assigns.

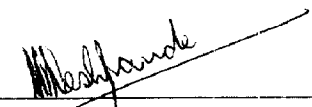
IN WITNESS WHEREOF, the parties have caused this Trademark and Letters Patent Security Agreement to be duly executed under seal, intending it to be a sealed instrument, as of the day and year first above written.

[SEAL]

ATTEST or WITNESS:

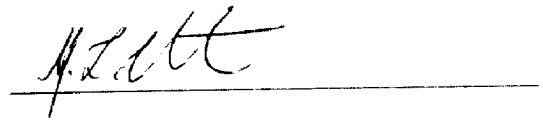


ROMIKA USA, INC., a Florida corporation

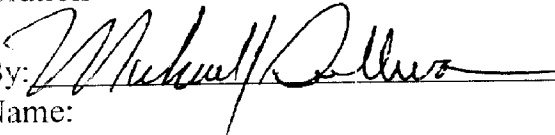
By:   
Name: (D.P. DESHPANDE)  
Title: PRESIDENT/CEO  
Date: 16 OCT 2001

[SEAL]

ATTEST or WITNESS:



CAPITAL TEMPFUNDS, INC., a North Carolina corporation

By:   
Name: \_\_\_\_\_  
Title: Sr. Vice President  
Date: 11-12-01

STATE OF FLORIDA

)  
) SS:

COUNTY OF MIAMI DADÉ

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of October 2001 by DP Deshpande as President of ROMIKA USA, INC., a Florida corporation, on behalf of the corporation. He/She [] is personally known to me or [] has produced \_\_\_\_\_, as identification.

*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public,

My Commission Expires:

Print Name:

Commission Number:



**Gustavo L. Pita**  
Commission # **GC 890252**  
Expires **Dec. 6, 2003**  
Bonded Thru  
**Atlantic Bonding Co., Inc.**

[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

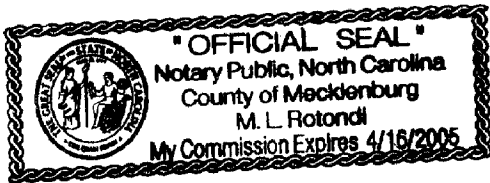
The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of November 2001 by Michael J. Sullivan, a Senior Vice President of CAPITAL TEMPFUNDS, INC, a North Carolina corporation, on behalf of the corporation. He [] is personally known to me or [] has produced \_\_\_\_\_, as identification.

*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public, State of

My Commission Expires: 4-16-05

Print Name: M. L. ROTONDI

Commission Number: \_\_\_\_\_



[NOTARIAL SEAL]

**SCHEDULE A  
TO  
TRADEMARK AND LETTERS PATENT SECURITY AGREEMENT**

**List of Trademarks and Letters Patent**

<u>Trademark</u>	<u>Registration No.</u>	<u>Date of Issuance</u>
------------------	-------------------------	-------------------------

BACKSTREETS	R1795065	9/28/93
-------------	----------	---------

“Wave” LOGO	R2121729	12/16/97
-------------	----------	----------

<del>BMX TURBO</del>	<del>R1613955</del>	<del>9/18/90</del>
----------------------	---------------------	--------------------

YIN YANG	R1991745	8/6/96
----------	----------	--------

“C” DESIGN	R2250528	6/1/99
------------	----------	--------

<u>Trademark Application</u>	<u>Application No.</u>	<u>Date of Application</u>
----------------------------------	------------------------	----------------------------

SLOX	76-219687	3/5/01
------	-----------	--------

<u>Patent</u>	<u>Registration No.</u>	<u>Date of Issuance</u>
---------------	-------------------------	-------------------------

APPARATUS FOR PRECISION MANUFACTURE	5480297	1/2/96
--	---------	--------