

08-15-2002



Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002)

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

102191147

Tab settings

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

1. Name of conveying party(ies):

Cielo Communications Inc
325 Interlocken Parkway
Broomfield, CO 80021

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

8.13.02

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

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

Name: Theron Capital Company LLC

Internal Address:

Street Address: 81 Wyman Street

City: Waltham State: MA Zip: 02454

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

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:

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

A. Trademark Application No.(s)

75633843

B. Trademark Registration No.(s)

2460792

Additional number(s) attached Yes No

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

Name: Suzanne Bird

Internal Address: Thermo Capital Co

Street Address: 81 Wyman St

City: Waltham State: MA Zip: 02454

6. Total number of applications and registrations involved:

2

7. Total fee (37 CFR 3.41) \$

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

(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.

Suzanne Bird Name of Person Signing

Suzanne Bird Signature

8/5/02 Date

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

08/14/2002 DBYRNE 00000211 75633843 01 FC:481 40.00 DP

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

TRADEMARK REEL: 2563 FRAME: 0101

CIELO COMMUNICATIONS, INC.

SECURITY AGREEMENT

This Security Agreement (the "Agreement") is made as of July 10, 2002 by and between Cielo Communications, Inc., a Delaware corporation (the "Debtor"), in favor of Thermo Capital Company LLC (the "Secured Party").

RECITALS

The Debtor and the Secured Party are parties to a Lease Agreement dated December 19, 2001, as amended and supplemented (the "Lease Agreement") pursuant to which Secured Party provided financing to Debtor. Pursuant to the Addendum number 000346 to the Lease Agreement dated July 10, 2002 (the "Addendum"), Secured Party has agreed to restructure the obligations under the Lease Agreement in the manner set forth in the Addendum. The parties intend that the Debtor's obligations to repay the amounts due, as restructured and set forth on the Addendum, pursuant to the Lease Agreement be secured by certain assets of the Debtor.

AGREEMENT

In consideration of the Recitals above and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Debtor hereby agrees with the Secured Party as follows:

1. **Grant of Security Interest.**

(a) To secure the Debtor's full and timely performance of the Obligations and subject to the completion of the Joinder Steps and the entrance by Secured Party into the Intercreditor Agreement, the Debtor hereby grants to the Secured Party a continuing Lien on and security interest (the "Security Interest") in, all of the Debtor's right, title and interest in and to all of its personal property and assets (both tangible and intangible), including, without limitation, the following, whether now owned or hereafter acquired and wherever located: (a) all Receivables; (b) all Equipment; (c) all Fixtures; (d) all General Intangibles; (e) all Inventory; (f) all Investment Property; (g) all Deposit Accounts; (h) all Cash; (i) all other Goods of the Debtor; (j) all Intellectual Property; and (k) all Proceeds of each of the foregoing and all accessions to, and replacements for, each of the foregoing (collectively, the "Collateral"). This Agreement and the Security Interest granted hereby shall be subject to the terms of the Intercreditor Agreement and shall be further subject to the Permitted Liens on the Collateral.

(b) The following terms shall have the following meanings for purposes of this Agreement:

"Account" means any "Account," as such term is defined in the UCC now owned or hereafter acquired by the Debtor or in which the Debtor now holds or hereafter acquires any interest and, in any event, shall include, without limitation, all accounts receivable, book debts,

rights to payment and other forms of obligations (other than forms of obligations evidenced by Chattel Paper, Documents or Instruments) now owned or hereafter received or acquired by or belonging or owing to the Debtor whether or not arising out of goods or software sold or services rendered by the Debtor or from any other transaction, whether or not the same involves the sale of goods or services by the Debtor and all of the Debtor's rights in, to and under all purchase orders or receipts now owned or hereafter acquired by it for goods or services, and all of the Debtor's rights to any goods represented by any of the foregoing, and all monies due or to become due to the Debtor under all purchase orders and contracts for the sale of goods or the performance of services or both by the Debtor or in connection with any other transaction (whether or not yet earned by performance on the part of the Debtor), now in existence or hereafter occurring, including, without limitation, the right to receive the proceeds of said purchase orders and contracts, and all collateral security and guarantees of any kind given by any Person with respect to any of the foregoing.

"Cash" means all cash, money, currency, and liquid funds, wherever held, in which the Debtor now or hereafter acquires any right, title, or interest.

"Chattel Paper" means any "Chattel paper," as such term is defined in the UCC, now owned or hereafter acquired by the Debtor or in which the Debtor now holds or hereafter acquires any interest.

"Deposit Accounts" means any "Deposit accounts," as such term is defined in the UCC, and includes any checking account, savings account, or certificate of deposit, now owned or hereafter acquired by the Debtor or in which the Debtor now holds or hereafter acquires any interest.

"Documents" means any "Documents," as such term is defined in the UCC, now owned or hereafter acquired by the Debtor or in which the Debtor now holds or hereafter acquires any interest.

"Equipment" means any "Equipment," as such term is defined in the UCC, now owned or hereafter acquired by the Debtor or in which the Debtor now holds or hereafter acquires any interest and any and all additions, upgrades, substitutions and replacements of any of the foregoing, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto, now owned or hereafter acquired by the Debtor or in which the Debtor now holds or hereafter acquires interest.

"Fixtures" means any "Fixtures," as such term is defined in the UCC, together with all right, title and interest of the Debtor in and to all extensions, improvements, betterments, accessions, renewals, substitutes, and replacements of, and all additions and appurtenances to any of the foregoing property, and all conversions of the security constituted thereby, immediately upon any acquisition or release thereof or any such conversion, as the case may be, now owned or hereafter acquired by the Debtor or in which the Debtor now holds or hereafter acquires any interest.

“General Intangible” means any “General intangible,” as such term is defined in the UCC, now owned or hereafter acquired by the Debtor or in which the Debtor now holds or hereafter acquires any interest and, in any event, shall include, without limitation, all right, title and interest that the Debtor may now or hereafter have in or under any contracts, rights to payment, payment intangibles, confidential information, interests in partnerships, limited liability companies, corporations, joint ventures and other business associations, permits, goodwill, claims in or under insurance policies, including unearned premiums and premium adjustments, uncertificated securities, deposit, checking and other bank accounts, but shall not include any Intellectual Property (including the right to receive all proceeds and damages therefrom), rights to receive tax refunds and other payments and rights of indemnification.

“Goods” means any “Goods,” as such term is defined in the UCC, now owned or hereafter acquired by the Debtor or in which the Debtor now holds or hereafter acquires any interest.

“Instruments” means any “Instrument,” as such term is defined in the UCC, now owned or hereafter acquired by the Debtor or in which the Debtor now holds or hereafter acquires any interest.

“Intellectual Property” means, collectively, all rights, priorities and privileges of the Debtor relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, inventions, patents, patent licenses, trademarks, trademark licenses and trade secrets (including customer lists), domain names, Web sites and know-how.

“Intercreditor Agreement” means that certain agreement by and among Comdisco, Silicon Valley Bank, GATX Ventures (the “Other Lenders”) entered into May 1, 2002, which provides that Secured Party may be added to such agreement upon completion of the Joinder Steps.

“Inventory” means any “Inventory,” as such term is defined in the UCC, now owned or hereafter acquired by the Debtor or in which the Debtor now holds or hereafter acquires any interest, and, in any event, shall include, without limitation, all inventory, goods and other personal property that are held by or on behalf of the Debtor for sale or lease or are furnished or are to be furnished under a contract of service or that constitute raw materials, work in process or materials used or consumed or to be used or consumed in the Debtor’s business, or the processing, packaging, promotion, delivery or shipping of the same, and all finished goods, whether or not the same is in transit or in the constructive, actual or exclusive possession of the Debtor or is held by others for the Debtor’s account, including, without limitation, all goods covered by purchase orders and contracts with suppliers and all goods billed and held by suppliers and all such property that may be in the possession or custody of any carriers, forwarding agents, truckers, warehousemen, vendors, selling agents or other Persons.

“Investment Property” means any “Investment property,” as such term is defined in the UCC, and includes certificated securities, uncertificated securities, money market

funds and U.S. Treasury bills or notes, now owned or hereafter acquired by the Debtor or in which the Debtor now holds or hereafter acquires any interest.

“Joinder Steps” means (a) Secured Party’s completion of the steps necessary to create and perfect a security interest in the Collateral, (b) Secured Party’s execution such Intercreditor Agreement, (c) the agreement of the Other Lenders as to the amount of the Obligations, (d) the execution of the side letter by Secured Party and the Other Lenders substantially in the form attached hereto as Exhibit A to the Intercreditor Agreement.

“Letter of Credit Right” means any “Letter of credit right,” as such term is defined in the UCC, now owned or hereafter acquired by the Debtor or in which the Debtor now holds or hereafter acquires any interest, including any right to payment or performance under any letter of credit.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, levy, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, against any property, any conditional sale or other title retention agreement, any lease in the nature of a security interest, and the filing of any financing statement (other than a precautionary financing statement with respect to a lease that is not in the nature of a security interest) under the UCC or comparable law of any jurisdiction.

“Obligations” shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Debtor to the Secured Party of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising pursuant to the terms of the Lease Agreement (as modified by the Addendum), including without limitation all interest, fees, charges, expenses, attorneys’ fees and accountants’ fees chargeable to the Debtor or payable by the Debtor thereunder.

“Permitted Liens” shall mean (a) Liens for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or being contested in good faith, provided that adequate reserves for the payment thereof have been established in accordance with generally accepted accounting principals, (b) Liens of carriers, warehousemen, mechanics, materialmen, vendors, and landlords and other similar Liens imposed by law incurred in the ordinary course of business for sums not overdue more than 45 days or being contested in good faith, provided that adequate reserves for the payment thereof have been established in accordance with generally accepted accounting principals, (c) deposits under workers’ compensation, unemployment insurance and social security laws or to secure the performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or to secure statutory obligations of surety or appeal bonds or to secure indemnity, performance or other similar bonds in the ordinary course of business, (d) zoning restrictions, easements, rights-of-way, title irregularities and other similar encumbrances, which alone or in the aggregate are not substantial in amount and do not materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Debtor, (e) banker’s Liens and similar Liens (including set-off rights) in respect of bank deposits, (f) Liens in favor of customs

and revenue authorities arising as a matter of law to secure payment of customs duties and in connection with the importation of goods in the ordinary course of the Debtor's business, (g) Liens on the property or assets of any subsidiary of the Debtor in favor of the Debtor, (h) purchase money Liens that will be discharged upon the Debtor's payment of the purchase price for the applicable property, to the extent such Liens relate solely to the property so purchased (i) Liens upon any equipment or other personal property acquired by Debtor to secure (A) the purchase price of such equipment or other personal property, or (B) lease obligations or indebtedness incurred solely for the purpose of financing the acquisition of such equipment or other personal property; provided that such Liens are confined solely to the equipment or other personal property so acquired and the amount secured does not exceed the acquisition price thereof; (j) Liens in favor of Comdisco, Inc. Silicon Valley Bank and GATX Ventures, Inc. to secure liabilities owed to them under leases entered into prior to the date hereof; and (k) the Lien in favor of Newport Corporation on a Laser weld system, Model LW4500 system, laser weld series, bearing Serial number 01010-536 and all additions and accessions thereto or therefrom and any proceeds thereof or therefrom.

"Person" means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, other entity or government (whether federal, state, county, city, municipal, local, foreign, or otherwise, including any instrumentality, division, agency, body or department thereof).

"Proceeds" means "Proceeds," as such term is defined in the UCC and, in any event, shall include, without limitation, (a) any and all Accounts, Chattel Paper, Instruments, cash or other forms of money or currency or other proceeds payable to the Debtor from time to time in respect of the Collateral, (b) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Debtor from time to time with respect to any of the Collateral, (c) any and all payments (in any form whatsoever) made or due and payable to the Debtor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental authority (or any Person acting under color of governmental authority), (d) the proceeds, damages, or recovery based on any claim of the Debtor against third parties (i) for past, present or future infringement of any copyright, patent or patent license or (ii) for past, present or future infringement or dilution of any trademark or trademark license or for injury to the goodwill associated with any trademark, trademark registration or trademark licensed under any trademark license and (e) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Receivables" means all of the Debtor's Accounts, Instruments, Documents, Chattel Paper, Supporting Obligations, and letters of credit and Letter of Credit Rights.

"Supporting Obligation" means any "Supporting obligation," as such term is defined in the UCC, now owned or hereafter acquired by the Debtor or in which the Debtor now holds or hereafter acquires any interest.

“UCC” means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of Colorado; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, Secured Party’s Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of Colorado, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect, from time to time, in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

Unless otherwise defined herein, all capitalized terms used herein and defined in the Lease Agreement shall have the respective meaning given to those terms in the Lease Agreement, and terms that are defined in the UCC and used herein shall have the meanings given to them in the UCC.

2. **Representations and Warranties.** The Debtor hereby represents and warrants to the Secured Party that:

(a) **Ownership of Collateral.** The Debtor is the legal and beneficial owner of the Collateral (or, in the case of after-acquired Collateral, at the time the Debtor acquires rights in the Collateral, will be the legal and beneficial owner thereof).

(b) **Valid Security Interest.** The Security Interest granted pursuant to this Agreement will constitute a valid and continuing security interest (subject to Permitted Liens and the terms of the Intercreditor Agreement) in favor of the Secured Party in the Collateral for which perfection is governed by the UCC or filing with the United States Copyright Office or United States Patent and Trademark Office.

(c) **Organization and Good Standing.** The Debtor has been duly incorporated, and is validly existing and in good standing, under the laws of the State of Delaware and has a Delaware organizational identification number of 2858038.

(d) **Location, State of Organization and Name of the Debtor.** The Debtor’s state of organization is Delaware and the Debtor’s exact legal name as it appears in the official filings in the State of Delaware is as set forth in the first paragraph of this Agreement. The Debtor has only one jurisdiction of organization.

3. **Covenants.** The Debtor covenants and agrees with the Secured Party that, from and after the date of this Agreement until the Obligations are paid in full:

(a) **Other Liens.** Except for the Security Interest and Permitted Liens, the Debtor has rights in or the power to transfer the Collateral and its title and will be able to do so hereafter free from any adverse Lien, security interest or encumbrance.

(b) **Further Documentation.** At any time and from time to time, upon the written request of the Secured Party, and at the sole expense of the Debtor, the Debtor will promptly and duly authenticate and deliver such further instruments and documents and take

such further action as the Secured Party may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted including, without limitation, executing such financing or continuation statements under the UCC in effect with respect to the Liens created hereby as the Secured Party may reasonably request in order to perfect and preserve the security interests granted or purported to be granted hereby (provided that it is expressly understood that Secured Party assumes all responsibility to prepare such documents and to make any filings and take such other actions that may be required to perfect and preserve such security interests). The Debtor also hereby authorizes the Secured Party to file any such financing, amendment or continuation statement without the authentication of the Debtor to the extent permitted by applicable law. A reproduction of this Agreement shall be sufficient as a financing statement (or as an exhibit to a financing statement on form UCC-1) for filing in any jurisdiction.

(c) **Maintenance of Records.** The Debtor will keep and maintain at its own expense complete and satisfactory, in all material respects, records of the Collateral.

(d) **Inspection Rights.** The Secured Party shall have full access during normal business hours, and upon reasonable prior notice, to all the books, correspondence and other records of the Debtor relating to the Collateral. The Secured Party or its representatives may examine such records and make photocopies or otherwise take extracts from such records.

(e) **Compliance with Laws, etc.** The Debtor (i) will comply with all laws, rules, regulations and orders of any governmental authority applicable to any material portion of the Collateral or to the operation of the Debtor's business, the failure of which to comply with will have a material adverse effect on the Debtor, and (ii) shall not use or permit any Collateral to be used in violation of any provision of the Lease Agreement, any law, rule or obligation or order of any governmental authority, or any policy of insurance covering any material portion of the Collateral; provided, however, that in each case, the Debtor may contest any such law, rule, regulation or order; in any reasonable manner which does not, in the reasonable opinion of the Debtor, adversely affect in any material manner the Secured Party's rights or the priority of its Liens on the Collateral.

(f) **Payment of Obligations.** The Debtor will pay promptly when due all taxes, assessments and governmental charges or levies imposed upon the Collateral or with respect to any its income or profits derived from the Collateral, as well as all claims of any kind (including, without limitation, claims for labor, materials and supplies) against or with respect to the Collateral, except that no such charge need be paid if (i) the validity of such charge is being contested in good faith by appropriate proceedings, (ii) such proceedings do not involve any material danger of the sale, forfeiture or loss of any of the Collateral or any interest in the Collateral and (iii) such charge is adequately reserved against on the Debtor's books in accordance with generally accepted accounting principles.

(g) **Limitation on Liens on Collateral.** The Debtor will not create, incur or permit to exist, will defend the Collateral against, and will, upon the request of Secured Party,

take such other action as is reasonably necessary to remove, any Lien or claim on or to the Collateral, other than the Security Interest and Permitted Liens.

(j) **Further Identification of Collateral.** The Debtor will furnish to the Secured Party from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Secured Party may reasonably request.

(k) **Insurance.** The Debtor shall (i) maintain and keep in force insurance of the types and in amounts customarily carried from time to time during the term of this Agreement in its lines of business, including fire, public liability, property damage and worker's compensation, such insurance to be carried with companies and in amounts satisfactory to the Secured Party, (ii) deliver to the Secured Party from time to time, as the Secured Party may request, schedules setting forth all insurance then in effect, and (iii) deliver to the Secured Party copies of each policy of insurance which replaces, or evidences the renewal of, each existing policy of insurance at least 15 days prior to the expiration of such policy.

4. **Event of Default.** For purposes of this Agreement, the occurrence of any one of the following events (each, an "Event of Default") shall constitute a default hereunder and under the Lease Agreement:

(a) The Debtor's failure to pay or discharge the Obligations in full in accordance with the terms of the Lease Agreement, as amended by the Addendum, within 10 days of its due date;

(b) The Debtor's failure to observe or perform any other covenant, obligation, condition or agreement contained in this Agreement or the Lease Agreement and such failure shall continue for 15 business days after the earlier of (i) the Debtor's written acknowledgment of such failure and (ii) written notice by the Secured Party to the Debtor of such failure.

(c) The insolvency of the Debtor, the commission of any act of bankruptcy by the Debtor, the execution by the Debtor of a general assignment for the benefit of creditors, the filing by or against the Debtor of a petition in bankruptcy or any petition for relief under the federal bankruptcy act or the continuation of such petition without dismissal for a period of 90 days or more, or the appointment of a receiver or trustee to take possession of the property or assets of the Debtor.

(d) A Default shall occur under the Lease Agreement.

5. **Remedies.** If an Event of Default has occurred and is continuing, the Secured Party may exercise, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement relating to the Obligations, all rights and remedies of a secured party under the UCC. Without limiting the foregoing, the Secured Party, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law) to or upon the Debtor or any other person (all of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances

collect, receive, appropriate and realize upon any or all of the Collateral, and/or may sell, lease, assign, give an option or options to purchase, or otherwise dispose of and deliver any or all of the Collateral (or contract to do any of the foregoing), in one or more parcels at a public or private sale or sales, at any exchange, broker's board or office of the Secured Party or elsewhere upon such terms and conditions as the Secured Party may deem advisable, for cash or on credit or for future delivery without assumption of any credit risk. The Secured Party shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase all or any part of the Collateral so sold, free of any right or equity of redemption in the Debtor, which right or equity is hereby waived or released. The Secured Party shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale, after deducting all reasonable expenses incurred therein or in connection with the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Secured Party under this Agreement (including, without limitation, reasonable attorneys' fees and expenses) to the payment in whole or in part of the Obligations, in such order as the Secured Party may elect, and only after such application and after the payment by the Secured Party of any other amount required by any provision of law, need the Secured Party account for the surplus, if any, to the Debtor. To the extent permitted by applicable law, the Debtor waives all claims, damages and demands it may acquire against the Secured Party arising out of the exercise by the Secured Party of any of its rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least ten days before such sale or other disposition. The Debtor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay the Obligations and the fees and disbursements of any attorneys employed by the Secured Party to collect such deficiency. The foregoing rights and remedies are, in all cases, subject to the terms of the Intercreditor Agreement.

6. **Limitation on Duties Regarding Preservation of Collateral.** The Secured Party's sole duty with respect to the custody, safekeeping and preservation of the Collateral, under Section 9207 of the UCC or otherwise, shall be to deal with it in the same manner as the Secured Party deals with similar property for its own account. Neither the Secured Party nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so other than as a result of the gross negligence or willful misconduct of the same or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of the Debtor or otherwise. Notwithstanding the foregoing, nothing in this Agreement shall require Debtor to prepare and file financing or continuation statements, or any other documents, in order to perfect, preserve and protect the security interest granted or purported to be granted hereby, and the Debtor shall have no responsibility to do such filing.

7. **Powers Coupled with an Interest.** All authorizations and agencies contained in this Agreement with respect to the Collateral are irrevocable and are powers coupled with an interest.

8. **No Waiver; Cumulative Remedies.** No failure to exercise, nor any delay in exercising, on the part of the Secured Party, any right, power or privilege hereunder shall operate

as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Secured Party of any right or remedy under this Agreement on any one occasion shall not be construed as a bar to any right or remedy which the Secured Party would otherwise have on any subsequent occasion. The rights and remedies provided in this Agreement are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

9. **Termination of Security Interest.** Upon satisfaction of the Debtor's obligations pursuant to Lease Agreement, as amended and supplemented by the Addendum, the security interest granted herein shall terminate and all rights to the Collateral shall revert to the Debtor. Upon any such termination, the Secured Party shall authenticate and deliver to the Debtor such documents as the Debtor may reasonably request to evidence such termination.

10. **Miscellaneous.**

(a) **Amendments and Waivers.** Any term of this Agreement may be amended with the written consent of the parties or their respective successors and assigns. Any amendment or waiver effected in accordance with this Section 10(a) shall be binding upon the parties and their respective successors and assigns.

(b) **Transfer; Successors and Assigns.** The terms and conditions of this Agreement shall be binding upon the Debtor and its successors and assigns, as well as all persons who become bound as a debtor to this Agreement and inure to the benefit of the Secured Party and its successors and assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(c) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

(d) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(e) **Titles and Subtitles.** The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

(f) **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, if such notice is addressed to the party

to be notified at such party's address or facsimile number as set forth below or as subsequently modified by written notice.

(g) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

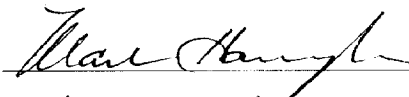
(h) **Entire Agreement.** This Agreement, and the documents referred to herein constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and any and all other written or oral agreements existing between the parties hereto concerning such subject matter are expressly canceled.

[Signature Page Follows]

The Debtor and the Secured Party have caused this Agreement to be duly executed and delivered as of the date first above written.

DEBTOR:

CIELO COMMUNICATIONS, INC.

By: 

Name: Marie Harrington

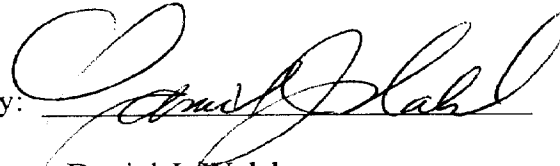
Title: CFO

Address: 325 Interlocken Parkway
Broomfield, Co 80021

Facsimile Number: 303-460-3820

SECURED PARTY:

THERMO CAPITAL COMPANY LLC

By: 

Name: Daniel J. Walsh

Title: President

Address: 81 Wyman Street
Waltham, MA 02454

Fac

8

Canada	Single Mode Vertical Cavity Surface Emitting Laser	6/2/2000	Exam. Request Deadline - 6/02/05; Annuity due 6/02/02 (check sent to CPH)	147
European	Single Mode Vertical Cavity Surface Emitting Laser	6/2/2000	Annuity due 6/30/02; revised claims filed (check sent to CPH)	147
PCT	Long Wavelength Vertical Cavity Surface Emitting Laser (Cielo has exclusive rights to this application vis-a-vis license with Sandia)	5/31/2001	Search report due	140
PCT	High Speed Optical Subassembly with Ceramic Carrier	10/1/2000	CH. II Demand not filed - consider EPO filing prior to 30 mos.	122
PCT	Apparatus and Methods for VCSEL Monitoring Using Scattering and Reflection of Emitted Light	9/29/2000	CH. II Demand not filed - consider EPO filing prior to 30 mos.	131
PCT	VCSEL Monitoring Using Reflected Ray Coupling	9/29/2000	CH. II Demand not filed - consider EPO filing prior to 30 mos.	132
PCT	Long Wavelength Vertical Cavity Surface Emitting Laser	4/11/2001		166
Japan	Sensor for Analyzing Molecular Species	7/17/1995	Instructed foreign associate to incur no additional fees	13
Japan	Multiple Beam Optical Memory System with Solid-State Lasers	2/17/1994	Awaiting JPO action; instructed CPH to incur no additional fees (5/2/02)	5
Japan	Multiple Beam Optical Memory System	2/17/1994	Awaiting JPO action; instructed CPH to incur no additional fees (5/2/02)	4
Japan	Passively Aligned Opto-Electronic Coupling Assembly	4/20/1999	Exam. Request Deadline - 4/20/06; instructed CPH to incur no additional fees (5/2/02)	71
Korea	Passively Aligned Opto-Electronic Coupling Assembly	4/20/1999	Exam. Request Deadline - 4/20/04; instructed CPH to incur no additional fees (5/2/02)	71
RECENTLY EXPIRED FOREIGN PATENT APPLICATIONS				
Canada	Passively Aligned Opto-Electronic Coupling Assembly	4/20/1999	Lapsed on 4/20/2002; can be revived until 4/20/2003	71
European	Passively Aligned Opto-Electronic Coupling Assembly	4/20/1999	Lapsed on 4/30/2002; may be possible to revive	71
Australia	Vertical Cavity Surface Emitting Lasers with Consistent Slope Efficiencies	11/12/1999	Lapsed on 2/28/02; may be possible to revive	101
PCT	Optical Device Using Chip-on-Board Technology	10/31/2000	Not entering national stage - expired 5/1/02	114/148

Company has not licensed any of its patents or pending applications.

II. TRADEMARKS

REGISTERED TRADEMARKS			
Name	Date Filed or Issued	Registration Number	Status
CIELO INTERCONNECTING THE WORLD AT GIGABIT SPEED	Issued June 19, 2001	2460792	Live

TRADEMARK APPLICATIONS			
Name	Date Filed	Serial Number	Status
CIELO	February 4, 1999	75633843	Published for opposition on May 5, 2002; has not been opposed to date.

Company has not licensed any of its trademark rights.

III. COPYRIGHTS

Company currently has no registered copyrights or pending copyright applications.