

12-14-1999

Docket No.:

08499/002001



101221533

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To the Honorable Commissioner of Patents

ched original documents or copy thereof.

1. Name of conveying party(ies):

The Gibson-Homans Company

- Individual(s)
- General Partnership
- Corporation-State Ohio
- Other \_\_\_\_\_

Additional names(s) of conveying party(ies)  Yes  No

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

Name: Sealant Technology, Inc.

Internal Address: 12611 Pleasant Grove

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

City: Cypress State: TX ZIP: 77429

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State Texas
- Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic designation is  Yes  N  
(Designations must be a separate document from  
Additional name(s) & address(es)  Yes  N

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other Notice of Default Pursuant to Security Agreement
- Merger
- Change of Name

Execution Date: October 16, 1996

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

A. Trademark Application No.(s)

74/639,220; 75/051,603; 74/595,680;  
74/639,219; 74/717,146; 75/062,574;  
75/039,073; 74/682,924; 75/147,047;  
75/147,049; 75/147,045; 75/147,046

Additional numbers

B. Trademark Registration No.(s)

1,821,339; 2,004,663; 1,981,598  
1,981,599; 1,887,909;  
1,971,859; 1,997,620;

Yes  No

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

Name: Richard A. Fagin

Internal Address: ROSENTHAL & OSHA L.L.P.

Street Address: Suite 4550, 700 Louisiana Street

City: Houston State: TX ZIP: 77002

6. Total number of applications and registrations involved:.....

19

7. Total fee (37 CFR 3.41):.....\$ 490.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

50-0591

12/13/1999 TTON11 00000114 1821339

DO NOT USE THIS SPACE

01 FC:481  
02 FC:482

140.00 OP  
150.00 OP

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.

Richard A. Fagin

Name of Person Signing

*Richard A Fagin*

Signature

11/23/1999

Date

Total number of pages including cover sheet, attachments, and

38

TRADEMARK

REEL: 001998 FRAME: 0498

**SECURITY AGREEMENT AND CONDITIONAL ASSIGNMENT**

The undersigned, The **Gibson-Homans Company**, an Ohio corporation having a principal place of business at 1755 Enterprise Parkway, Twinsburg, Ohio 44087 ("Debtor"), hereby grants to **Sealant Technology, Inc.**, a Texas corporation located at 12611 Pleasant Grove, Cypress, Texas 77429 ("Secured Party"), a security interest in, and agrees and acknowledges that Secured Party has and will continue to have a security interest in, for the benefit of Secured Party, the following described property:

all rights, title, and interest of Debtor in and to

- (1) the Intellectual Property itemized in Schedule 3.9 (Exhibit A attached) of the Asset Purchase Agreement dated October 18, 1996 by and between Secured Party and Debtor (the "Purchase Agreement") and all proceeds thereof;
- (2) all tradenames or trademarks or applications therefor, now or hereafter acquired by Debtor, whether registered or unregistered, which incorporate the same names or marks set forth in Exhibit A with different classifications of products than those used in connection with the trademarks and tradenames set forth in Exhibit A, as well as any and all proceeds thereof; and
- (3) any derivations, modifications or alterations of the trade secret formulations set forth in Schedule 3.9 (Exhibit A attached).

All hereinafter sometimes collectively referred to as "Collateral."

This security interest will secure the payment and performance of any and all indebtedness, liability or obligation whatsoever of Debtor to Secured Party now or hereafter existing:

- (1) under or in connection with that certain Promissory Note ("the Note", Exhibit B attached) in the principal amount of \$1,355,475.<sup>00</sup> (in its original tenor and as same may be modified); and
- (2) under this Security Agreement.

The aforesaid indebtedness and liabilities are referred to herein as the "Obligations". Capitalized terms used herein and not expressly defined herein shall have the same respective meanings assigned thereto in the Note.

I. WARRANTIES AND COVENANTS

Debtor hereby warrants, covenants, and agrees that:

A. Title. Except for the security interest granted hereby, and subject to any limitations of title in the earlier conveyance of the Collateral by Secured Party to Debtor, (a) Debtor has full title to the Collateral, free and clear from any adverse lien, security interest, claim, or encumbrance, (b) Debtor, at its cost and expense, will defend the Collateral against the claims and demands of all persons at any time claiming the same or any interest therein, (c) Debtor has not and will not grant any security interest in the Collateral or any part thereof to any person other than Secured Party, and (d) Debtor has not and will not execute any security agreement or financing statement covering the Collateral or any part thereof except to Secured Party. Debtor further represents and warrants that no financing statement covering the Collateral or any part thereof or any proceeds thereof filed against Debtor is on file in any public office. Debtor further represents and warrants that its rights under the Collateral are assignable to Secured Party.

B. Financing Statements. Debtor, at Secured Party's request, will join with Secured Party in executing one or more (i) financing statements, and any necessary continuations thereof and amendments thereto, pursuant to the Uniform Commercial Code, and (ii) other documents reasonably necessary or advisable to perfect the security interest evidenced hereby, all in form reasonably satisfactory to Secured Party, including, without limitation, the execution and filing of this Security Agreement with the United States Patent and Trademark Office, and Debtor will pay the cost of filing or recording this Security Agreement in all public offices wherever filing or recording is deemed by Secured Party to be reasonably necessary or desirable. Debtor will further execute all other instruments deemed necessary by Secured Party in connection with this Security Agreement and pay the cost of filing the same.

C. Notification by Debtor. Debtor agrees to notify Secured Party in writing within two (2) business days (a) of any change of Debtor's principal place of business, or (b) of any change in Debtor's corporate name after any such change is effected, and Debtor will join with Secured Party in executing such amendments to UCC financing statements or filings with the United States Patent and Trademark Office as may be required to be filed in connection with such a name change or principal place of business or location of records change. Debtor further agrees to notify Secured Party

in writing within five (5) business days, as described and required in the Note, of any Events of Default as described herein or in the Note. Debtor shall notify Secured Party promptly and in writing if Debtor knows, or has reason to know, that any application or registration relating to any Collateral may hereafter become abandoned, or of any material adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office or any court) regarding Debtor's ownership of or Secured Party's interest in, any Collateral, Debtor's right to register the same, or Debtor's right to keep and maintain the same.

D. Notification by Secured Party. Secured Party agrees to give Debtor written notice of Default as provided in the Note.

E. Sale or Encumbrance of the Collateral. Debtor will keep the Collateral free from any adverse lien, security interest or encumbrance. Except as provided in subparagraph V A(1)(b) of this Security Agreement, Debtor will not, without the prior written consent of an officer of Secured Party, sell, contract to sell, encumber, or otherwise dispose of the Collateral or any part thereof or any interest therein until this Security Agreement and all debts secured thereby have been fully satisfied.

## II. ADDITIONAL RIGHTS OF THE PARTIES

A. Reimbursement of Expenses. To the extent unpaid by Debtor, Secured Party may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral. Debtor agrees to reimburse Secured Party on demand for any payment made, or any expense incurred by Secured Party pursuant to the foregoing authorization, and in any event all such payments and expenses shall constitute one of the Obligations hereunder.

B. Possession. Until an Event of Default (see Section III below), Debtor may have possession of the Collateral and use it in any lawful manner not inconsistent with this Security Agreement.

C. Attorney-in-Fact. Debtor irrevocably appoints Secured Party and any officer or agent thereof, with the full power of substitution, as its true and lawful attorney-in-fact, to execute any and all documents and instruments which Secured Party may deem necessary or desirable to accomplish the purposes of this Security Agreement, to record in the name of Debtor all financing statements, continuation statements, lien applications and other documents deemed by Secured Party to be necessary or advisable to perfect or better perfect, or to continue this perfection of the security interests granted hereunder; and to demand, collect, recover, and give receipts with respect to any sums or proceeds due under any of the Collateral; and to receive, endorse, and collect

any drafts, and upon the exercise by Secured Party of the remedies described in paragraph V (A), instruments or documents of title relating to pending or registered trademarks and tradenames with respect to the Collateral, except that during an Event of Default and prior to the expiration of any applicable cure period described herein or in the Note, Secured Party shall have power of attorney to execute documents relating to any intent to use application for registration of a mark that is then in use for which a statement of use under Section 1 of the Trademark Act has not been filed. In connection therewith, Secured Party is authorized to show a copy of this Security Agreement as evidence of Debtor's appointment of Secured Party as Debtor's agent and lawful attorney-in-fact, provided, however, that Secured Party will not exercise such rights under this Power of Attorney except upon the occurrence and during the continuation of an Event of Default. This power of attorney is a power coupled with an interest and shall be irrevocable. Debtor also agrees to do, execute, acknowledge, and deliver all such further acts and instruments as Secured Party may reasonably request for assuring or confirming the rights granted or intended to be granted to Secured Party by this Security Agreement. Nothing herein shall be construed to obligate Secured Party to take action under such power of attorney or to relieve Debtor from any of its Obligations.

D. What Will Suffice as a Financing Statement. To the extent permitted by applicable law, a carbon, photographic, or other reproduction of a security agreement or a financing statement is sufficient as a financing statement.

E. Security Interest in Proceeds and Accessions. Debtor hereby grants to Secured Party a security interest in and to all proceeds, increases, substitutions, replacements, additions, and accessions to the Collateral. This provision shall not be construed to mean that Debtor is authorized to sell or otherwise dispose of the Collateral or any part thereof or any interest therein without the express prior written consent of Secured Party.

F. Decrease in Value of Collateral. As used herein, a "Decrease" or "Reduction in Value of the Collateral" shall be defined as any of the following:

- (i) any failure to maintain existing registrations or future registrations issued on applications pending as of the date of this Security Agreement thereby causing the registration to lapse, as evidenced by the following:
  - (1) failure to renew existing or future registrations;
  - (2) failure to timely file a statement of use required by Section 1 of the Trademark Act (15 U.S.C. § 1051);
  - (3) failure to file the affidavit of continued use required by Section 8 of the Trademark Act (15 U.S.C. § 1058);

- (4) failure to timely file an affidavit under Section 15 of the Trademark Act (15 U.S.C. § 1065 Affidavit of Incontestability); or
- (5) failure to pay the fee required by the United States Patent and Trademark Office for each of the above items (1) - (4);
- (ii) any failure to reasonably and diligently prosecute all pending trademark applications except as to Section G below (it being understood that diligent prosecution may or may not result in registrations being issued);
- (iii) any failure to use or to continue to use any of the Collateral for 180 consecutive days;
- (iv) any failure to maintain trademark registrations issued on applications filed with the United States Patent and Trademark Office with respect to the Collateral after the date of this Security Agreement thereby causing the registration to lapse, as evidenced by the following:
  - (1) failure to renew existing or future registrations;
  - (2) failure to timely file a statement of use required by Section 1 of the Trademark Act (15 U.S.C. § 1051);
  - (3) failure to file the affidavit of continued use required by Section 8 of the Trademark Act (15 U.S.C. § 1058);
  - (4) failure to timely file an affidavit under Section 15 of the Trademark Act (15 U.S.C. § 1065 Affidavit of Incontestability); or
  - (5) failure to pay the fee required by the United States Patent and Trademark Office for each of the above items (1) - (4);
- (v) failure to act to abate acts of infringement of the Collateral in a commercially reasonable manner after Debtor becomes aware of such infringement; and
- (vi) any disclosure of trade secret formulations listed on Exhibit A.

G. Exceptions. A "Decrease" or "Reduction in Value of the Collateral" as defined in Section F above shall not occur if each of the four prerequisites set forth below are met by Debtor:

- (1) Debtor desires not to continue to maintain a registered mark or continue prosecution of a pending application for registration of a mark which (a) is in use and (b) is associated with a dedicated labelled product manufactured only for one specific customer, if such customer has not purchased any caulk or sealant products from Debtor for a period of 180 consecutive days; and
- (2) Debtor provides two months prior written notice to Secured Party that it intends to cease to maintain a registered mark or continue prosecution of a trademark application falling within clause (1) above; and

- (3) Debtor, if applicable, files a statement of use under Section 1 of the Trademark Act on the trademark being used; and
- (4) Debtor assigns, to Secured Party, all rights, title and interest in the United States, in and to the registered and/or the unregistered mark, together with the goodwill of the business symbolized by the mark.

H. Payment. Debtor will pay the Note secured by this Security Agreement and any renewal or extension thereof and any other indebtedness hereby secured in accordance with the terms and provisions thereof, and will repay immediately all sums expended by Secured Party in accordance with the terms and provisions of this Security Agreement.

I. Performance. In performing any act under this Security Agreement and the Note secured thereby, time shall be of the essence. Secured Party's acceptance of partial or delinquent payments, or the failure of Secured Party to exercise any right or remedy to which it might otherwise be entitled, shall not constitute or imply a waiver of (a) any obligation of Debtor, (b) any right or remedy of Secured Party, or (c) any other similar default subsequently occurring.

J. Right to Inspect. Secured Party shall have the right, at any reasonable time during business hours, upon ten (10) business days' prior written notice, to inspect Debtor's premises and to examine Debtor's books, records and operations relating to the Collateral; provided however, that in conducting such inspections and examinations, Secured Party shall keep all information relating to any Collateral gleaned in any such inspection or examination confidential and shall not divulge any such information to any person other than Secured Party or their officers, directors, employees, professional consultants and other designated agents. The obligation of Secured Party to keep such information confidential as provided herein shall survive the termination of this Security Agreement but shall in no manner be construed so as to impair or prevent the Secured Party from taking any and all action it deems necessary to preserve the Collateral in the Event or Events of Default by the Debtor.

### III. DEFAULT

A. Event or Events of Default. This Agreement is the Security Agreement referred to in, and is entitled to the benefit of, the Note, which Note (among other things) contains provisions for the acceleration of the maturity of the Note secured hereby upon the happening of certain therein defined events which constitute a default of the Maker (hereinafter referred to as an "Event of Default", or collectively as "Events of Default") which Events of Default are by this reference fully incorporated herein

and shall be deemed a default by Debtor under this Security Agreement.

B. In Default. Debtor shall be in default under this Security Agreement on the happening of any of the following events or conditions, after the expiration of any applicable cure period described herein or in the Note, each of which may be referred to hereinafter as an Event of Default, or collectively as Events of Default:

- (1) any default or breach by Debtor in the payment or performance of any obligation, covenant, or liability contained or referred to in the above described Note or in any other note secured by this Security Agreement;
- (2) any warranty, representation, or statement made or furnished to Secured Party herein by or on behalf of Debtor proves to have been false in any material respect when made or furnished;
- (3) any material Decrease or Reduction in Value of the Collateral;
- (4) any failure to timely file a statement of use under Section 1 of the Trademark Act in accordance with Section II, paragraph G above, if applicable; and
- (5) any failure to assign all rights, title and interest in the United States, together with the goodwill of the business symbolized by the mark, in accordance with Section II, paragraph G above.

#### IV. CONDITIONAL ASSIGNMENT

Debtor hereby does conditionally assign to Secured Party all rights, title, and interest in the United States, in and to the registered and unregistered marks listed in Exhibit A and other Collateral, together with the goodwill of the business symbolized by such marks. With respect to any intent to use application for registration of a mark that is then in use, Debtor shall have filed a timely statement of use under Section 1 of the Trademark Act prior to this assignment becoming effective with respect to such application or any registration issuing from such application. This conditional assignment shall become effective automatically upon an Event or Events of Default, after notice by Secured Party to Debtor of such Event or Events of Default has been given, if required herein or in the Note, and after any applicable cure periods have expired as described herein or in the Note.



V. REMEDIES AND DEBTOR'S OBLIGATIONS UPON DEFAULT

- A. If an Event or Events of Default occurs, then after notice by Secured Party to Debtor of any Event of Default, if required herein or in the Note, and after any applicable cure periods have expired as described herein or in the Note:
- (1) Debtor shall:
    - (a) immediately cease using all of the Intellectual Property listed in Schedule 3.9 to the Asset Purchase Agreement (Exhibit A attached), except as provided in subparagraph V A(1)(b) below;
    - (b) immediately transfer title and deliver to Secured Party, at Debtor's expense, (i) any documents, materials, or records concerning or related to the Collateral, and (ii) any materials or products bearing any of the trademarks or tradenames listed on Exhibit A, excluding inventory, and (iii) any materials or products which incorporate any packaging or other materials which bear any of the trademarks or tradenames listed on Exhibit A, excluding inventory, and (iv) any materials or products which are manufactured using any of the trade secrets listed on Exhibit A, excluding inventory, and (v) any license fees, royalties or contract rights concerning the Collateral, and (vi) other proceeds or products of the Collateral, other than inventory. Secured Party agrees to grant to Debtor an exclusive license permitting Debtor to sell, in an orderly fashion, for a period of not greater than three (3) months following the expiration of all applicable cure periods described herein or in the Note, all inventory of Debtor at the time of such Event of Default which bears any of the trademarks or tradenames listed on Exhibit A, for which Debtor hereby agrees to pay to Secured Party at the time of such sale a royalty equal to five percent (5%) of the gross sale proceeds; and
    - (c) not make any disclosure to any third party of any of the trade secrets listed in Schedule 3.9 to the Asset Purchase Agreement (Exhibit A attached) or otherwise compromise the confidentiality thereof;

- (d) immediately cease using any tradenames, or trademarks, or applications thereto acquired by Debtor, whether registered or unregistered, which utilize the same names or marks set forth in Exhibit A with different classifications of products than those used in connection with the trademarks and tradenames set forth in Exhibit A, except as provided in subparagraph V A(1)(b) above; and
- (e) immediately cease using any derivations, modifications or alterations of the trade secret formulations set forth in Schedule 3.9 (Exhibit A attached), except as provided in subparagraph V A(1)(b) above.
- (2) The conditional assignment described in Section IV above shall become unconditional and effective automatically without any further action on the part of the Debtor, except as expressly provided with respect to intent to use applications for registration described in Section IV above.
- (3) In accordance with the Note by and between Gibson-Homans Company ("Maker-Debtor") and Sealant Technology, Inc. ("Holder-Secured Party"), Secured Party shall give Debtor and National City Bank, Attention: Metro/Ohio Division, 1900 East Ninth Street, Cleveland, Ohio 44114-3484, written notice of default, if required herein or in the Note. All default notices shall be in writing and shall be deemed to have been given if given in accordance with the notice provisions of the Purchase Agreement. Except as otherwise provided in the Note, the Maker-Debtor shall have thirty (30) days following the Holder-Secured Party giving notice of default to fully remedy an Event of Default. Other than in the event of the Maker-Debtor's failure to timely pay any installment of principal or interest under the Note, the requirement that the Holder-Secured Party give notice in the Event of Default and the availability to Maker-Debtor of any cure period after default shall be expressly contingent on Maker-Debtor giving written notice in writing to Holder-Secured Party of the occurrence of an Event of Default hereunder, within five (5) business days of the date of Maker discovering the occurrence of an Event of Default or of the date Maker-Debtor should have discovered the occurrence of an Event of Default, through exercise of reasonable care and diligence. If the Event of Default is not fully remedied within the applicable cure period, if any, at the option of the Holder-Secured Party of this Note, the entire principal balance and accrued interest

owing thereon shall at once become due and payable without further notice or demand.

- (4) Secured Party may declare the Obligations secured hereby to be immediately due and payable in full without presentment, demand, protest, notice of dishonor, diligence in collecting, grace, notice of intent to accelerate, notice of acceleration, or other notice of any kind, all of which are hereby expressly waived.
- (5) Secured Party may exercise and shall have any and all rights and remedies accorded it by the applicable Uniform Commercial Code, as well as other rights and remedies either at law or in equity possessed by Secured Party. Secured Party may require Debtor to assemble the Collateral and make it available to Secured Party at a place to be designated by Secured Party which is reasonably convenient to both parties. The requirement of reasonable notice shall be met, if notice is mailed, postage prepaid, to Debtor or other person entitled thereto at least ten (10) business days before the time of sale or disposition of the Collateral. Debtor shall pay to Secured Party on demand any and all expenses, including reasonable legal expenses and reasonable attorney's fees, incurred or paid by Secured Party in protecting or enforcing any right of Secured Party hereunder, including its right to take possession of the Collateral, storing and disposing of the same or in collecting the proceeds thereof. In the event Secured Party takes possession of the Collateral and thereafter receives any remuneration (whether by sale, license or otherwise) for its interest in the Collateral, such remuneration shall be applied towards the payment of the Obligations.

B. Waiver. No delay in accelerating the maturity of any of the Obligations as aforesaid or in taking any other action with respect to any Event of Default or in exercising any rights with respect to the Collateral shall affect the rights of Secured Party later to take such action with respect thereto, and no waiver as to one Event of Default shall affect rights as to any other Event of Default. Except as otherwise provided in this Security Agreement, Debtor waives, to the extent permitted by applicable law, notice or judicial hearing in connection with Secured Party's taking possession or disposition of any of the Collateral after the occurrence and during the continuation of an Event of Default hereunder, including without limitation any and all prior notice and hearing for any prejudgment remedy or remedies and any such right which Debtor would otherwise have under any applicable law. Debtor hereby further waives (to the extent permitted by law):

- (a) all damages occasioned by such lawful taking of possession except any damages which are the direct result of Secured Party's gross negligence or willful misconduct;
- (b) all other requirements as to the time, place, and terms of sale or other requirements with respect to the enforcement of Secured Party's rights hereunder; and
- (c) all rights of redemption, extension, or moratorium now or hereafter in force under any applicable law in order to prevent or delay the enforcement of this Security Agreement or the absolute sale of the Collateral or any portion thereof, and Debtor, for himself and all who may claim under him, insofar as he or they now or hereafter lawfully may, hereby waives the benefit of all such laws.

C. Additional Remedies. Nothing herein shall be construed to limit Secured Party from pursuing such other remedies as may be available to Secured Party under the Obligations, it being the intent of the parties that the options granted hereunder are cumulative to those provided in the Obligations or by law.

## VI. MISCELLANEOUS

A. Upon Repayment. Upon repayment in full of the Note and any sums due by the terms of this Security Agreement, this Security Agreement and the security interests granted hereby shall cease. The estate, right, title and interest of Secured Party therein shall cease and become null and void, and thereupon, on the demand and at the cost and expense of Debtor, Secured Party shall execute proper instruments, acknowledging satisfaction of and discharging of this Security Agreement and the Note, and shall redeliver to Debtor the Collateral then in its possession. Notwithstanding the foregoing, this Security Agreement and the security interests granted hereby shall be reinstated if at any time payment of the Note, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount or must be restored or returned by Secured Party, whether as a "voidable preference" or otherwise, all as though such payment had been made.

B. Indemnification. In accordance with the Purchase Agreement, Debtor agrees to indemnify Secured Party from and against any and all claims, losses, and liabilities growing out of or resulting from enforcement of this Security Agreement.

C. Interest. Debtor agrees to pay interest on any costs, expenses, or other sums due hereunder that are not paid when due at a rate per annum equal to the rate specified in the Note for past

due installments of interest and principal. Accrual of such interest shall commence five (5) days after receipt by Debtor of demand.

D. Waiver of Marshalling. All rights of marshalling of assets of the Guarantor, including any such right with respect to the Collateral, are hereby waived by Debtor.

E. Attorney-in-Fact. Upon payment of all Obligations, Secured Party irrevocably appoints Debtor, and any officer or agent thereof, with the full power of substitution, as its true and lawful attorney-in-fact, to take any and all appropriate and lawful action in Debtor's discretion and to execute any and all lawful documents and instruments which Debtor may deem necessary or desirable to acknowledge the satisfaction of and discharging of the Obligations including, without limitation, to record in the name of Secured Party all termination statements and filings previously made with the United States Patent and Trademark Office evidencing the termination of any security interest filed thereto. In connection therewith, Debtor is authorized to show a copy of this Security Agreement as evidence of Secured Party's appointment of Debtor as Secured Party's agent and lawful attorney-in-fact, provided, however, that Debtor will not exercise such rights under this Power of Attorney, unless and until all Obligations have been paid. This power of attorney is a power coupled with an interest and shall be irrevocable. Nothing herein shall be construed to obligate Debtor to take action under such power of attorney or to relieve Secured Party from any of its obligations.

F. Severability. The provisions contained herein are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part hereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Security Agreement in any jurisdiction.

G. Binding Effect. All rights of Secured Party hereunder shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Security Agreement. This Security Agreement is assignable by Secured Party to a third party without prior consent from Debtor. All Obligations of Debtor shall bind the successors and assigns of Debtor. Provided that nothing herein shall be construed to permit Debtor to assign its Obligations without prior written consent of Secured Party.

H. Texas Law. All the provisions of this Security Agreement shall be construed and administered in accordance with the laws of the State of Texas.

I. No Duty. The powers conferred on Secured Party hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. Secured Party shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees, or agents shall be responsible to Debtor for any act or failure to act, except for its own gross negligence or willful misconduct.

J. Prior Agreements Superseded. This Security Agreement and the Purchase Agreement and documents set forth as Exhibits thereto constitute the sole and only agreement of the parties with respect to the subject matter hereof, and supersedes any prior understandings or written or oral agreements between the parties respecting such subject matter.

K. UCC Terms. All terms herein which are defined in the Uniform Commercial Code of Texas shall have the same meaning herein as in the Code.


L. Effective Date. This Security Agreement shall become effective when it is signed by Debtor. Debtor acknowledges receipt of a copy of this Security Agreement.

M. Modification. This Security Agreement cannot be altered, amended or modified in any way, except by a writing signed by the parties hereto.

IN WITNESS WHEREOF, this instrument is executed by the parties hereto in the capacities and for the purposes stated herein.

Signed and sealed in duplicate and delivered this 18th day of October, 1996.

THE GIBSON-HOMANS COMPANY

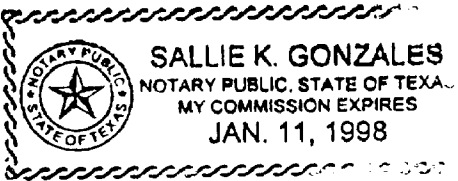
By: 

Name: Harry R. Nojak

Title: Sr. Vice Pres. & CFO

The foregoing Security Agreement was executed and acknowledged before me as of 1996 by Harry R. Novak personally known to me to be the Sr. Vice President & CFO of The Gibson-Horvath Co., on behalf of such corporation.

Sallie K. Gonzales  
Notary Public for the State of Texas  
My commission expires: Jan. 11, 1998



(NOTARIAL SEAL)

SEALANT TECHNOLOGY, INC.

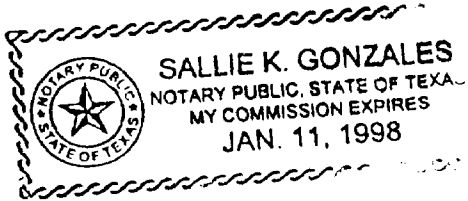
By: [Signature], President

Name: Mark Bee

Title: President

STATE OF Texas

The foregoing Security Agreement was executed and acknowledged before me as of 1996 by Mark Lee personally known to me to be the President of Salant Technology, Inc. on behalf of such corporation.



Sallie K. Gonzales  
Notary Public for the State of Texas  
My commission expires: Jan. 11, 1998

(NOTARIAL SEAL)  
42301.H11



**EXHIBIT A**

**SCHEDULE 3.9 OF THE ASSET PURCHASE AGREEMENT**

SCHEDULE 3.9 OF THE ASSET PURCHASE AGREEMENT

Art Work

Seller does not own any art work.

Confidential and Proprietary Information

Seller owns certain trade secrets in the nature of customer lists, sources of supply business methods, formulations, and manufacturing processes.

Copyrights

Seller does not own any registered copyrights.

Designs

Seller owns the following designs for which an application for registration has not been applied:

DYNAMITE & Design  
DYNAMITE PROFESSIONAL & Design  
DYNAMITE PROFESSIONAL SEALANTS & Design  
DYNAMITE TUB 'N TILE & Design  
SUREFIRE & Design  
QUICK AND EASY & Design  
FAST TRACK & Design  
ELASTOMERIC ONE & Design  
FIRST CHOICE & Design  
PRO STOCK & Design  
HOT SHOT & Design  
MARKSMAN & Design  
MARKSMAN 2 & Design  
SURE SHOT & Design  
FIREPOWER & Design  
ACRYLIC ONE & Design  
FLASHPOINT & Design  
QUICK DRAW & Design  
SHARP SHOOTER & Design  
PAINTER'S X-TRA & Design  
SEALANT TECHNOLOGY, INC. & Design

Designs-in-Progress

Seller does not have any designs-in-progress.

Trade Secrets

1. Formulations

Seller owns trade secret formulations for the following Products: QUICK AND EASY, SUREFIRE, FIREPOWER, DYNAMITE, DYNAMITE COLORS WHITE BASE, DYNAMITE COLORS TINT BASE, DYNAMITE SQUEEZE TUBE, FLASHPOINT, HOT SHOT, QUICK DRAW, MARKSMAN, SURE SHOT, FIRST CHOICE, ACRYLIC ONE, ELASTOMERIC ONE, and TNT (TUB N'TILE).

2. Suppliers, Materials and Customers

Seller owns trade secret information concerning the identities and requirements of its customers, the identities of its suppliers of materials and services, and the identity and properties of ingredients (including without limitation specific resins) used and suitable for use in its formulations.

3. Know-How

Seller has certain know-how in the formulation and suitable for production of adhesive sealants and caulking compounds. In addition, Seller has certain know-how in the business of developing, producing, packaging, marketing, and shipping its products.

4. Manufacturing Processes

Seller owns trade secret information concerning the manufacturing processes used to produce the Products identified under "Formulations" above.

Patents

Seller does not own any patents or patent applications.

Service Marks

Seller does not own any service marks.

Trade Dress

Seller owns the unregistered trade dress for the packaging of its Products. The trade dress includes the overall look and feel of the packaging for each of Seller's Products identified in "Formulations" above.

Trademarks

Seller owns the following federal trademarks, some of which are federally registered or have pending applications for federal registration:

**Mark: ACRYLIC ONE**

Registration No.: Pending  
Registered: Pending  
Serial No: 74/639,220  
Date Filed: February 27, 1995 (Intent To Use;  
Trademark in Use)  
Intern'l Class: 17  
Goods: adhesive sealants and caulking compounds

**Mark: DYNAMITE**

Registration No.: 1,821,339  
Registered: February 15, 1994  
Serial No: 74/380,350  
Date Filed: April 19, 1993  
Intern'l Class: 17  
Goods: adhesive sealants for general use

**Mark: ELASTOMERIC ONE**  
Registration No.: Pending  
Registered: Pending  
Serial No: 74/639,219  
Date Filed: February 27, 1995 (Intent to Use;  
Trademark in Use)  
Intern'l Class: 17  
Goods: adhesive sealants and caulking compounds

**Mark: FIREPOWER**  
Registration No.: 1,981,599  
Registered: June 18, 1996  
Serial No: 74/549,856  
Date Filed: July 15, 1994  
Intern'l Class: 17  
Goods: adhesive sealants and caulking compounds

**Mark: FIRST CHOICE**  
Registration No.: Pending  
Registered: Pending  
Serial No: 75/039,073  
Date Filed: January 2, 1996  
Intern'l Class: 17  
Goods: adhesive sealants and caulking compounds

**Mark: FIRST COLORS**  
Registration No.: Pending  
Registered: Pending  
Serial No: 75/051,603  
Date Filed: December 14, 1995 (Intent to Use;  
Trademark Not in Use)  
Intern'l Class: 17  
Goods: adhesive sealants and caulking compounds

**Mark: FLASHPOINT**  
Registration No.: 1,971,859  
Registered: April 30, 1996  
Serial No: 74/549,853  
Date Filed: July 15, 1994  
Intern'l Class: 17  
Goods: adhesive sealants and caulking compounds

**Mark: HOT SHOT**  
Registration No.: 2,004,663  
Registered: January 23, 1996  
Serial No: 74/474,981  
Date Filed: December 29, 1993  
Intern'l Class: 17  
Goods: adhesive sealants and caulking compounds

**Mark: MARKSMAN**  
 Registration No.: 1,887,909  
 Registered: April 4, 1995  
 Serial No: 74/382,101  
 Date Filed: April 26, 1993  
 Intern'l Class: 17  
 Goods: elastomeric sealant with silicone, acrylic caulk, and like compounds

**Mark: PAINTER'S X-TRA**  
 Registration No.: 1,997,620  
 Registered: August 27, 1996  
 Serial No: 74/628,526  
 Date Filed: February 1, 1995 (Intent to Use; Statement of Use Filed)  
 Intern'l Class: 17  
 Goods: adhesive sealants and caulking compounds

**Mark: PROFUSION**  
 Registration No.: Pending  
 Registered: Pending  
 Serial No: 74/717,146  
 Date Filed: August 17, 1995 (Intent to Use; Trademark Not in Use)  
 Intern'l Class: 17  
 Goods: adhesive sealants and caulking compounds

**Mark: PRO STOCK**  
 Registration No.: Pending  
 Registered: Pending  
 Serial No: 74/682,924  
 Date Filed: June 1, 1995 (Intent to Use; Statement of Use Filed)  
 Intern'l Class: 17  
 Goods: adhesive sealants and caulking compounds

**Mark: QUICK DRAW**  
 Registration No.: Pending  
 Registered: Pending  
 Serial No: 74/595,680  
 Date Filed: November 7, 1994 (Intent to Use; Statement of Use Filed)  
 Intern'l Class: 17  
 Goods: adhesive sealants and caulking compounds

**Mark: SHARP SHOOTER**  
 Registration No.: Pending  
 Registered: Pending  
 Serial No: 75/062,574  
 Date Filed: February 26, 1996 (Intent to Use; Trademark in Use)  
 Intern'l Class: 17

Goods: adhesive sealants and caulking compounds

**Mark: SURE SHOT**

Registration No.: 1,981,598  
Registered: June 18, 1996  
Serial No: 74/549,855  
Date Filed: July 15, 1994  
Intern'l Class: 17  
Goods: adhesive sealants and caulking compounds

**Mark: FIRST LINE**

Registration No.: Pending  
Registered: Pending  
Serial No: 75/147,047  
Date Filed: August 8, 1996 (Intent to Use; Trademark Not in Use)  
Intern'l Class: 17  
Goods: adhesive sealants and caulking compounds

**Mark: FIRST PAINTER'S**

Registration No.: Pending  
Registered: Pending  
Serial No: 75/147,049  
Date Filed: August 8, 1996 (Intent to Use; Trademark Not in Use)  
Intern'l Class: 17  
Goods: adhesive sealants and caulking compounds

**Mark: FIRST ACRYLIC**

Registration No.: Pending  
Registered: Pending  
Serial No: 75/147,045  
Date Filed: August 8, 1996 (Intent to Use; Trademark Not in Use)  
Intern'l Class: 17  
Goods: adhesive sealants and caulking compounds

**Mark: FIRST ELASTOMERIC**

Registration No.: Pending  
Registered: Pending  
Serial No: 75/147,046  
Date Filed: August 8, 1996 (Intent to Use; Trademark Not in Use)  
Intern'l Class: 17  
Goods: adhesive sealants and caulking compounds

**Mark: THE WINNING FORMULA FOR THE PROFESSIONAL**

Unregistered  
Goods: adhesive sealants and caulking compounds

**Mark: ON TARGET FOR PROFESSIONAL RESULTS**  
 Unregistered  
 Goods: adhesive sealants and caulking compounds

**Mark: DYNAMITE & Design**  
 Unregistered  
 Goods: adhesive sealants and caulking compounds

**Mark: DYNAMITE PROFESSIONAL & Design**  
 Unregistered  
 Goods: adhesive sealants and caulking compounds

**Mark: DYNAMITE PROFESSIONAL SEALANTS & Design**  
 Unregistered  
 Goods: adhesive sealants and caulking compounds

**Mark: DYNAMITE TUB 'N TILE & Design**  
 Unregistered  
 Goods: adhesive sealants and caulking compounds

**Mark: SUREFIRE**  
 Unregistered  
 Goods: adhesive sealants and caulking compounds

**Mark: SUREFIRE & Design**  
 Unregistered  
 Goods: adhesive sealants and caulking compounds

**Mark: QUICK AND EASY**  
 Unregistered  
 Goods: adhesive sealants and caulking compounds

**Mark: QUICK AND EASY & Design**  
 Unregistered  
 Goods: adhesive sealants and caulking compounds

**Mark: FAST TRACK**  
 Unregistered  
 Goods: adhesive sealants and caulking compounds

**Mark: FAST TRACK & Design**  
 Unregistered  
 Goods: adhesive sealants and caulking compounds

**Mark: PRO STOCK & Design**  
 Unregistered  
 Goods: adhesive sealants and caulking compounds

**Mark: HOT SHOT & Design**  
 Unregistered  
 Goods: adhesive sealants and caulking compounds

**Mark: PAINTER'S X-TRA & Design**  
Unregistered  
Goods: adhesive sealants and caulking compounds

**Mark: SURE SHOT & Design**  
Unregistered  
Goods: adhesive sealants and caulking compounds

**Mark: MARKSMAN & Design**  
Unregistered  
Goods: adhesive sealants and caulking compounds

**Mark: MARKSMAN 2 & Design**  
Unregistered  
Goods: adhesive sealants and caulking compounds

**Mark: FIREPOWER & Design**  
Unregistered  
Goods: adhesive sealants and caulking compounds

**Mark: ACRYLIC ONE & Design**  
Unregistered  
Goods: adhesive sealants and caulking compounds

**Mark: FLASHPOINT & Design**  
Unregistered  
Goods: adhesive sealants and caulking compounds

**Mark: QUICK DRAW & Design**  
Unregistered  
Goods: adhesive sealants and caulking compounds

**Mark: SHARPSHOOTER & Design**  
Unregistered  
Goods: adhesive sealants and caulking compounds

**Mark: ELASTOMERIC ONE & Design**  
Unregistered  
Goods: adhesive sealants and caulking compounds

**Mark: FIRST CHOICE & Design**  
Unregistered  
Goods: adhesive sealants and caulking compounds

**Mark: SEALANT TECHNOLOGY, INC. & Design**  
Unregistered  
Goods: adhesive sealants and caulking compounds



The attached APPENDIX A illustrates each of the design marks.

Trade Styles (Stylized Trademarks and Tradenames)

Seller uses a uniform script and style for each of its trademarks and its trade names and owns the stylized versions of each of the trademarks and trade names.

Trade Names

Seller owns and uses the following trade names:

Sealant Technology, Inc.; and  
Sealant Technology.

Seller does not use any unregistered trademarks or trade dress except as identified under the "Trademarks", "Trade Dress", and "Trade Styles (Stylized Trademarks)" sections herein.

42704.H11

APPENDIX A

ILLUSTRATIONS OF DESIGN MARKS

42704.H11 PTO/UCC

PROMISSORY NOTE

Houston, Texas, October 18, 1996

FOR VALUE RECEIVED, the undersigned, THE GIBSON-HOMANS COMPANY, an Ohio corporation, and hereinafter called "Maker", does promise to pay to the order of SEALANT TECHNOLOGY, INC., a Texas corporation, hereinafter referred to as "Holder", or its successors or assigns, the sum of one million three hundred fifty five thousand four hundred seventy five (\$ 1,355,475.00), plus interest on the unpaid and unmatured balance thereof from the date hereof at the rate of eight percent (8%) per annum as provided hereinbelow. All sums hereunder are payable at 12611 Pleasant GROVE, Cypress, TX 77429, Harris County, Texas, or such other place as the Holder hereof may designate in writing, in lawful money of the United States of America which shall be legal tender in payment of all debts and dues, public and private, at the time of payment.

Principal is due and payable in three annual installments, with the first installment of two hundred seventy one thousand ninety five (\$ 271,095.00) being due and payable on or before October 18, 1997, the second installment of two hundred seventy one thousand ninety five (\$ 271,095.00) being due and payable on or before October 18, 1998, and the entire remaining balance being due and payable on or before October 18, 1999. Interest on the unpaid principal balance is due and payable quarterly on the first day of January, April, July and October of each year commencing on January 1, 1997, and continuing thereafter through October 1, 1999, provided that any interest accruing thereafter shall be due and payable in full on October 18, 1999.

All past due installments of principal and, if permitted by applicable law, of interest, shall bear interest at the rate of fifteen percent (15%) per annum, or the maximum interest rate allowed by applicable law for this type indebtedness, whichever is less.

This Note is secured by a Security Agreement between the Holder and the Maker of even date herewith which grants to the Holder a first lien security interest as to each and every item comprising the Intellectual Property as that term is defined in the Security Agreement.

Maker shall have the right to set off against and deduct from any payments of principal and interest due hereunder the amount by which the Retention does not cover the deficiency created by the Net Working Capital being less than the Estimated Net Working Capital pursuant to Section 2.3(c) of the Asset Purchase Agreement dated October 18, 1996, by and between Holder, Maker, Chris Jamison, Mark Lee and Steve Ullery (the "Agreement"). No exercise by Maker of such right of set off shall constitute an event of default hereunder.

The Holder shall give Maker and National City Bank, Attention - Metro/Ohio Division, 1900 East Ninth Street, Cleveland, Ohio, 44114-3484 written notice of default. All notices shall be in writing and shall be deemed to have been given if given in accordance with the notice provisions of the Agreement. The Maker shall have thirty (30) days following the Holder giving notice of default, to fully remedy such default. Except, that in the circumstances of an event described in paragraph (c) hereof the Maker shall have forty-five (45) days from the Holder giving notice of default, to remedy such default, and in circumstances described in paragraph (g) the Maker shall have ninety (90) days, from the Holder giving notice of default, to remedy such default. Other than in the event of the Maker's failure to timely pay any installment of principal or interest hereunder, the requirement that the Holder give notice in the event of default and the availability to Maker of any cure period after default shall be expressly contingent on Maker giving written notice in writing to Holder of the occurrence of an event of default hereunder, within five (5) business days of the date of Maker discovering the occurrence of an event of default or of the date Maker should have discovered the occurrence of an event of default, through exercise of reasonable care and diligence. In the event the default is not fully remedied within the applicable cure period, if any, at the option of the Holder of this Note, the entire principal balance and accrued interest owing thereon shall at once become due and payable without further notice or demand.

The Maker shall be in default upon the occurrence at any time of any of the following events:

(a) The failure of Maker to pay Holder as provided herein, part or all of any installment of principal or interest due hereunder or the failure of Maker to perform any of its obligations, pursuant to the terms of the Agreement or any Deed of Trust, Mortgage, Security Agreement, Assignment, Loan Agreement, or other agreement securing this Note.

(b) The liquidation, termination, dissolution, or cessation of (1) the operation of the Maker, or (2) the liquidation, termination, dissolution or cessation of operation of the Business at a location in Houston, Texas as a going concern

utilizing the Assets, or (3) the material reduction in operation as a going concern of the Business utilizing the Assets at a location in Houston, Texas, as compared with operation of the Business and Assets existing on the Closing Date.

(c) The bankruptcy or insolvency of, the assignment for the benefit of creditors by, or the appointment of a receiver for any of the property of, any party liable for the payment of this Note, whether as maker, endorser, guarantor, surety or otherwise, including, but not limited to, commencement by Maker of any "Insolvency Action" (as defined below) of any kind or the admission by Maker (by answer, default or otherwise) to material allegations of, or consent by Maker to any relief requested in, any Insolvency Action of any kind commenced against Maker by its creditors or any thereof, or the commencement by any creditor or creditors against Maker of any Insolvency Action of any kind. "Insolvency Action" is defined herein as either (i) a pleading of any kind filed by the Maker to seek relief from the Maker's creditors, or filed by the Maker's creditors or any thereof to seek relief of any kind against Maker, in any court or other tribunal pursuant to any law (whether federal, state or other) relating generally to the rights of creditors or the relief of debtors or both, or (ii) any other action of any kind commenced by Maker or Maker's creditors or any thereof for the purpose of marshaling Maker's assets and liabilities for the benefit of Maker's creditors; and "Insolvency Action" includes (without limitation) a petition commencing a case pursuant to any chapter of the federal bankruptcy code, any application for the appointment of a receiver, trustee, liquidator or custodian for Maker or any substantial part of Maker's assets, and any assignment by Maker for the general benefit of Maker's creditors.

(d) The sale or transfer in any manner of substantially all of the assets of the Maker (90% or more) and/or the sale or transfer in any manner of a majority of the capital stock of Maker (more than 50% of the outstanding and issued voting stock of the Maker). However, provided that such sale or transfer does not constitute an event of default under any of paragraphs (a), (b), (c), (e), (f), or (g) hereof or under the Security Agreement, the Holder shall not accelerate, if acceleration, in and of itself, would cause a default as to the indebtedness incurred by Maker with its then current lender in connection with the loan, for the purpose of purchasing the Assets.

(e) The sale or transfer in any manner of part or all of the Intellectual Property or the creation of any lien or encumbrance thereon other than the security interest created for the benefit of the Holder as to the Intellectual Property sold by Holder to the Maker pursuant to the terms of the Agreement.

(f) (1) The sale or transfer in any manner of any material part or all of the Assets, other than the Intellectual Property, sold by the Holder to the Maker pursuant to the Agreement, if such

sale or transfer is other than in the ordinary course of operation of the Business, (unless such sale or transfer of a material part or all of the Assets coincides with a replacement of such Assets with assets of equal or greater value which are used in operation of the Business) and/or (2) the creation of any lien or encumbrance thereon, other than any security interest in such Assets created in favor of Maker's then current lender in connection with the loan for the purpose of acquiring the Assets, and/or (3) any act or omission of Maker resulting in a material reduction in the total value of such Assets as valued in the Agreement.

(g) Default by the Maker as to its obligations in connection with any third party loan to acquire the Assets or secured by the Assets or the failure of the Maker to perform its obligations pursuant to any Deed of Trust, Mortgage, Security Agreement, Assignment, Loan Agreement, or other agreement securing such loan, which is not waived by the lender or cured within ninety (90) days.

With the exception of the written notice of default and respective cure periods provided for above, Maker, sureties, and endorsers of this Note, severally waive demand, presentment, notice or dishonor, diligence in collecting, grace and notice of protest, notice of intent to accelerate, notice of acceleration, and all other notices, and agree to all renewals, extensions, and partial payments before or after maturity without prejudice to the Holder.

If this Note is not paid at maturity and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy, a probate, or any other court, whether before or after maturity, then the holder shall be entitled to all costs of collection, including, but not limited to reasonable attorney's fees.

This Note may be prepaid in whole or in part at any time, without penalty.

This Note may be assigned by the Holder without written consent of the Maker.

This Note shall be governed by and is to be construed in all respects and enforced according to the laws of the State of Texas.

No delay or omission on the part of the Holder or any assignee of the Holder in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion.

Time is of the essence with respect to this Note and

all duties and obligations hereunder.

Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

All agreements between the Maker hereof and Holder hereof are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to the holder hereof for the use, forbearance, or detention of the money to be loaned hereunder exceed the maximum amount permissible under applicable law. If from any circumstances whatsoever, fulfillment of any provision hereof at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any circumstances the Holder hereof should ever receive as interest an amount that would exceed the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing hereunder and not to the payment of interest or shall be refunded to the Maker hereof.

IN WITNESS WHEREOF, the undersigned, a duly authorized officer on behalf of the Maker, has executed this Note as of the day and year first above written.

The Gibson-Homans Company

By: /s/ HARRY R. NOJAK  
Name: HARRY R. NOJAK  
Title: SR VICE PRES & CFO