

08-06-2002



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

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

102180079

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

1. Name of conveying party(ies):

Comerica Bank - Texas

7-31-02

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

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

2. Name and address of receiving party(ies)

Name: Eos SBIC II, L.P.

Internal Address:

Street Address: 320 Park Avenue

City: New York State: NY Zip: 10022

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

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 Loan Sale Agreement - See Atch 2

Execution Date: July 18, 2002

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

A. Trademark Application No.(s)

76132942

B. Trademark Registration No.(s)

2108742, 2122482, 2126379, 2141621, 2158146

Additional number(s) attached Yes No

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

Name: John Scott, Esq.

Internal Address: O'Sullivan LLP

Street Address: 30 Rockefeller Plaza

City: New York State: NY Zip: 10112

6. Total number of applications and registrations involved:

6

7. Total fee (37 CFR 3.41): \$ 165.00

- 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.

Sunitha Ramaiah, Esq.

Name of Person Signing

Signature

July 24, 2002

Date

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

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

08/05/2002 TDIAZ1 00000084 76132942

01 FC:441 40.00 OP 02 FC:442 125.00 OP

TRADEMARK REEL: 002555 FRAME: 0251

TRADEMARK SECURITY AGREEMENT**(TRADEMARKS, TRADEMARK REGISTRATIONS, TRADEMARK APPLICATIONS AND TRADEMARK LICENSES)**

WHEREAS, SYMTX, INC., a Delaware corporation (herein called "Grantor") owns certain "Trademarks" (as defined below) and is a party to certain "Trademark Licenses" (as defined below); and

WHEREAS, Grantor and Comerica Bank-Texas (herein, together with its successors and assigns, called "Grantee") are parties to a Business Credit Agreement dated as of June 22, 2001 (herein, as from time to time amended, supplemented, or restated, called the "Credit Agreement"); and

WHEREAS, pursuant to the terms of the Security Agreement (All Assets) dated as of June 22, 2001 between Grantor and Grantee (herein, as from time to time amended, supplemented, or restated, called the "Security Agreement"), Grantor has granted to Grantee for the benefit of Grantee a continuing security interest in various assets of Grantor, including all right, title and interest of Grantor in, to and under the Trademark Collateral (as defined herein) whether now owned or existing or hereafter acquired or arising, to secure the "Indebtedness" (as defined in the Security Agreement);

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to additionally secure such Indebtedness, Grantor does hereby grant to Grantee a continuing security interest in all of Grantor's right, title and interest in, to and under the following (all of the following items or types of property being herein collectively referred to as the "Trademark Collateral"), whether now owned or existing or hereafter acquired or arising:

(a) each Trademark in which Grantor has any interest, and all of the goodwill of the business connected with the use of, or symbolized by, each such Trademark;

(b) each Trademark License, and all of the goodwill of the business connected with the use of, or symbolized by, each Trademark licensed pursuant thereto; and

(c) all proceeds of and revenues from the foregoing, including without limitation all proceeds of and revenues from any claim by Grantor against third parties for past, present or future unfair competition with, or violation of intellectual property rights in connection with or injury to, or infringement or dilution of, any Trademark, and all rights and benefits of Grantor under any Trademark License, or for injury to the goodwill associated with any of the foregoing.

As used herein:

"Trademark License" means any license or agreement, whether now or hereafter in existence, under which is granted or authorized any right to use any Trademark, including without limitation the agreements identified on Schedule 1 hereto.

"Trademarks" means all of the following: (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, brand names, trade dress, prints and labels on which any of the foregoing have appeared or appear, package and other designs, and any other source or business identifiers, and general intangibles of like nature, and the rights in any of the foregoing which arise under applicable law, (b) the goodwill of the business symbolized thereby or associated with each of them, (c) all registrations and applications in connection therewith, including registrations and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or other country, or any political subdivision thereof, including those described in Schedule 1 hereto, (d) all reissues, extensions and renewals thereof, (e) all claims for, and rights to sue for, past or future infringements of any of the foregoing, and (f) all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing, including damages and payments for past or future infringements thereof.

Grantor hereby irrevocably constitutes and appoints Grantee and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full power and authority in the name of Grantor or in its name, from time to time, in Grantee's discretion, so long as any "Default" or "Event of Default" (as defined in the Credit Agreement) has occurred and is continuing, to take with respect to the Trademark Collateral any and all appropriate action which Grantor might take with respect to the Trademark Collateral and to execute any and all documents and instruments which may be necessary or desirable to carry out the terms of this Trademark Security Agreement and to accomplish the purposes hereof.

Except to the extent expressly allowed in the Security Agreement, Grantor agrees not to sell, license, exchange, assign or otherwise transfer or dispose of, or grant any rights with respect to, or mortgage or otherwise encumber, any of the foregoing Trademark Collateral.

This security interest is granted in conjunction with the security interests granted to Grantee pursuant to the Security Agreement. Grantor does hereby further acknowledge and affirm that the rights and remedies of Grantee with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

IN WITNESS WHEREOF, Grantor has caused this Trademark Security Agreement to be duly executed by its officer thereunto duly authorized as of the 14 day of December, 2001.

SYMTX, INC.

By: Paul K. Hall

Name:

Title:

Acknowledged:

COMERICA BANK-TEXAS

By: Julie A. Smith
Julie A. Smith
Vice President

Schedule 1
to Trademark
Security Agreement

U.S. TRADEMARKS, TRADEMARK REGISTRATIONS
AND TRADEMARK APPLICATIONS

A. U.S. Trademarks and Trademark Registrations

<u>Trademark</u>	<u>Registration No.</u>	<u>Registration Date</u>
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None

B. U.S. Trademark Applications

<u>Trademark</u>	<u>Application No.</u>	<u>Filing Date</u>
Symyx Custom Test Solutions	76-132,942	

EXCLUSIVE TRADEMARK LICENSES

<u>Name of Agreement</u>	<u>Parties Licensor/Licensee</u>	<u>Date of Agreement</u>	<u>Subject Matter</u>
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None

THIS LOAN SALE AGREEMENT (this "Agreement") is entered into by and between COMERICA BANK - TEXAS ("Seller") and the party whose name is set forth on the signature page hereof ("Purchaser") for purposes of setting forth the terms and conditions upon which Seller agrees to sell and Purchaser agrees to purchase the loan described on Attachment 1 hereto.

1. **Definitions.** The following terms shall be defined as set forth herein:

- 1.1 "**Affiliate**" means "affiliate" as defined in either (a) the Bankruptcy Code or (b) Rule 144 of the Securities Act of 1933, 15 U.S.C. §§ 77a et seq., as amended, and the rules and regulations promulgated under it.
- 1.2 "**Agreement**", "**Seller**", and "**Purchaser**" have the meanings set forth in the introductory paragraph and this Section 1.
- 1.3 "**Assignment**" means the Assignment of Assigned Documents to be delivered by Seller to Purchaser at Closing in the form of Attachment 2 to this Agreement with all blanks appropriately completed.
- 1.4 "**Bankruptcy Code**" means the Bankruptcy Reform Act of 1978, 11 U.S.C. §§ 101 et seq., as amended.
- 1.5 "**Closing**" means the simultaneous performance by Seller and Purchaser of the acts herein provided to be performed at the Closing for purposes of selling the Loan to Purchaser.
- 1.6 "**Closing Date**" means **July 18, 2002**, or such other date for the Closing as may hereafter be otherwise specified by Seller and Purchaser in writing.
- 1.7 "**Collateral**" means any property, whether real or personal, tangible or intangible, of whatever kind and wherever located, whether now owned or hereafter acquired or created, in or over which an Encumbrance has been, or is purported to have been, granted to or for the benefit of Seller under the Credit Documents.
- 1.8 "**Collateral Documents**" means the "collateral documents" identified as such on Attachment 1 hereto.
- 1.9 "**Credit Agreement**" means the agreement described on Attachment 1 hereto.
- 1.10 "**Credit Documents**" means the Collateral Documents, the Credit Agreement and the other documents described on Attachment 1 hereto.
- 1.11
- 1.12 "**Debtor**" means SYMTX, Inc.
- 1.13 "**Encumbrance**" means any (a) mortgage, pledge, lien, security interest, charge, hypothecation, or other encumbrance, security agreement, security arrangement or adverse claim against title of any kind; (b) purchase or option agreement or put arrangement; (c) subordination agreement or arrangement other than as specified in the Credit Documents; or (d) agreement to create or effect any of the foregoing.
- 1.14 "**Entity**" includes any individual, partnership, corporation, limited liability company, association, estate, trust, business trust, and Governmental Authority.
- 1.15 "**Governmental Authority**" means any federal, state, or other governmental department, agency, institution, authority, regulatory body, court or tribunal, foreign or domestic, and includes arbitration bodies, whether governmental, private or otherwise.
- 1.16 "**Hazardous Substance Laws**" and "**Hazardous Substances**" shall have the respective meanings set forth in Section 18 hereof.
- 1.17 "**Loan**" means the obligations evidenced by the promissory note and credit agreement described on Attachment 1 hereto.
- 1.18 "**Purchase Price**" means the purchase price for the Loan which shall be an amount equal to the principal balance of the Loan plus accrued and unpaid interest, as determined on the Closing Date in accordance with the books and records of the Seller.
- 1.19 "**Transferred Rights**" means any and all of Seller's right, title and interest in, to and under the Loan and to the extent related thereto, the following:
 - (a) All other amounts funded by or payable to Seller under the Credit Documents, and all obligations owed to Seller in connection with the Loan;
 - (b) The Credit Documents;
 - (c) All claims (including "claims" as defined in Bankruptcy Code §101(5)), suits, causes of action, and any other right of Seller, whether known or unknown, against Borrower, or any of its Affiliates, agents, representatives, contractors, advisors, or any other Entity that in any way is based upon, arises out of or is related to any of the foregoing, including, to the extent permitted to be assigned under applicable law, all claims (including contract claims, tort claims, malpractice claims, and claims under any law governing the purchase and sale of, or indentures for, securities), suits, causes of action, any other right of Seller against any attorney, accountant, financial advisor, or other Entity arising under or in connection with the Credit Documents;
 - (d) All guarantees and all Collateral and security of any kind for or in respect of the foregoing;
 - (e) All cash, securities, or other property, and all setoffs and recoupments, received, applied, or effected by or for the account of Seller under the Loan, and other extensions of credit under the Credit Documents (whether for principal, interest, fees, reimbursement obligations or otherwise) after the Closing Date, including all distributions obtained by or through redemption, consummation of a plan of reorganization, restructuring, liquidation, or otherwise of Debtor, or the Credit Documents, and all cash, securities, interest, dividends, and other property that may be exchanged for, or distributed or collected with respect to, any of the foregoing; and
 - (f) All proceeds of the foregoing.

2. **Terms and Conditions of Sale.** Subject to the terms and conditions of this Agreement, Seller agrees to sell, assign, transfer, and convey to Purchaser, and Purchaser agrees to purchase and accept the assignment, transfer and conveyance of all of Seller's rights, title, and interest, as of the time of Closing, in and to the Transferred Rights.
3. **Purchaser's Obligations.**
- 3.1 Purchaser shall pay to Seller at Closing, by wire transfer, the Purchase Price. All payments from Debtor relating to the Loan, including principal and interest, made prior to the Closing Date shall belong to Seller.
- 3.2 Purchaser shall be responsible and assume liability for the payment of taxes (other than federal income taxes of Seller), if any, arising out of the sale contemplated hereby.
4. **Assignment of Note and Collateral Documents.**
- 4.1 At Closing: (a) Seller shall execute and deliver the Assignment to Purchaser; (b) Purchaser shall, at Purchaser's sole cost and expense, prepare and submit to Seller such other assignment(s), including UCC-3 assignment forms, necessary to record or file in the UCC records of each jurisdiction where the collateral included in the Loan is located in form and substance reasonably satisfactory to Seller, and Seller shall execute and deliver the same to Purchaser (Purchaser shall be exclusively responsible for the preparation, filing and recording of all documents and for all recording and filing fees, transfer taxes and expenses incident thereto); (c) Seller shall deliver to Purchaser the original Collateral Documents; (d) Seller shall deliver to Purchaser the original promissory note evidencing the Loan duly endorsed (by allonge or otherwise) by Seller to Purchaser without recourse, representation or warranty except as specifically provided in **Section 6** of this Agreement; and (e) Purchaser and Debtor shall each deliver to Seller a certificate containing the names and signatures of the officers of Purchaser and Debtor authorized to execute this Agreement on behalf of such Entity. **THE DELIVERY OF ANY COLLATERAL DOCUMENT SHALL IN NO WAY CONSTITUTE A REPRESENTATION BY SELLER AS TO ITS ACCURACY, COMPLETENESS, ENFORCEABILITY, VALIDITY, PRIORITY, PERFECTION OR THE LIKE.**
5. **Place of Closing.** Closing shall occur on the Closing Date by facsimile with originals by overnight mail.
6. **Representations and Warranties of Seller.** Seller hereby represents and warrants to Purchaser as of the date hereof and as of the Closing that:
- 6.1 The interests to be assigned by Seller pursuant to this Agreement are not subject to any prior assignment by Seller, in whole or in part.
- 6.2 Seller has all requisite power and authority to execute and deliver and to perform all of its obligations under this Agreement and all instruments and other documents executed and delivered by Seller in connection herewith.
- 6.3 The execution, delivery and performance of this Agreement by Seller have been duly authorized by all necessary corporate action on the part of Seller and do not and will not require any consent or approval of any other Entity that has not been obtained or violate any provision of Seller's charter or bylaws.
- 6.4 This Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting enforcement and general equitable principles which may limit the availability of equitable remedies, including without limitation, the remedy of specific performance.
- 6.5 Seller is the sole legal and beneficial owner of and has good title to the Transferred Rights, free and clear of any Encumbrance, and the Transferred Rights are not subject to any prior sale, transfer, assignment or participation by Seller or any agreement to assign, convey, transfer or participate, in whole or in part. The principal amount of the Loan outstanding, and any accrued and unpaid interest and fees, as of July 18, 2002, are accurately stated on Attachment 1 hereto; provided, however, that Seller does not represent or warrant that defenses, counterclaims, rights of set off and other remedies do not exist which could have the effect of reducing the amount collectable with respect to the Loan. Seller has not received any payment (whether from the Borrower, by setoff or otherwise) with respect to the Transferred Rights, since July 17, 2002. A complete list of all Credit Documents is set forth on Attachment I. True, correct and complete copies of all Credit Documents were delivered by Seller to Purchaser prior to the execution and delivery hereof.
- 6.6 Either (a) Seller has not engaged any broker or finder or incurred or become obligated to pay any broker's commission or finder's fee, or (b) if Seller has engaged any broker or finder with respect to this transaction, Seller shall be exclusively responsible for the payment of any broker's commission or finder's fee and hereby agrees to indemnify and hold Purchaser harmless from and against any claim or liability of any kind whatsoever for payment of any broker's commission or finder's fee payable to any such broker or finder in connection with the transactions contemplated by this Agreement.
7. **Representations and Warranties of Purchaser.** Purchaser hereby represents and warrants to Seller as of the date hereof and as of the Closing that:
- 7.1 Purchaser has all requisite power and authority to execute and deliver and to perform all of its obligations under this Agreement and all instruments and other documents executed and delivered by Purchaser in connection herewith.
- 7.2 The execution, delivery and performance of this Agreement by Purchaser have been duly authorized by all necessary action on the part of Purchaser and do not and will not require any consent or approval of any other person that has not been obtained or violate any provision of Purchaser's charter, bylaws or other governance documents.
- 7.3 This Agreement constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting enforcement and general equitable principals which may limit the availability of equitable remedies, including without limitation, the remedy of specific performance.
- 7.4 Purchaser is acquiring the Loan for its own account and not for the benefit or account of any other person or entity, or with a view toward making any public sale or distribution thereof, and Purchaser does not intend to sell, offer for sale or syndicate securities or fractional interests in Purchaser in connection with the purchase of the Loan.
- 7.5 Purchaser qualifies either as (a) an "accredited investor," as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended (17 C.F.R. §§230.501(e)(1)), or (b) a person or

entity who or which possesses the knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of the prospective acquisition and ownership of the Loan has such knowledge and experience.

- 7.6 Purchaser acknowledges that the Loan will have limited liquidity, and Purchaser represents to Seller that Purchaser has the financial capacity to hold the Loan for an indefinite period of time and to bear the economic risk of an outright purchase of the Loan.
- 7.7 Purchaser has made such examination, review and investigation of the facts and circumstances necessary to evaluate the Loan as it has deemed necessary or appropriate to form a basis for its evaluation of a purchase of the Loan. Purchaser is assuming all risk with respect to the completeness, accuracy or sufficiency of the Collateral Documents. Purchaser further acknowledges that in acquiring the Loan, Purchaser is assuming the risk of full or partial loss which is inherent with the credit, collateral and collectability risks associated with the Loan.
- 7.8 Purchaser has agreed to the Purchase Price on the basis of its own independent investigation and credit evaluation of the Loan and has not sought or relied upon any representations, information, covenants or Agreements of Seller (other than as expressly set forth in this Agreement). Purchaser acknowledges that the amount ultimately received by it in respect of the Loan may be less than the Purchase Price, and Purchaser shall have no recourse to Seller for any such deficiency.
- 7.9 Purchaser hereby agrees to indemnify and hold Seller harmless from and against any claim or liability of any kind whatsoever for payment of any broker's commission or finder's fee payable to any broker or finder in connection with the transactions contemplated by this Agreement.

8. **Purchaser's Duties Regarding Litigation.**

- 8.1 Purchaser shall not litigate or prosecute any claim, regarding the Loan or otherwise with respect to the Loan, in the name of Seller, and Purchaser shall not intentionally or unintentionally, through misdisclosure or nondisclosure, mislead or conceal its identity or its ownership of the Loan.
- 8.2 Seller in its sole discretion may terminate this Agreement if, following the date hereof but prior to Closing, the Loan becomes the subject of litigation between any Debtor and Seller. In the event of such termination, this Agreement shall be of no further force and effect. Nothing contained herein shall be construed to obligate Seller to repurchase the Loan in the event any litigation is commenced with respect to the Loan after the Closing.

9. **Purchaser's Duties Regarding Insured Collateral.** Purchaser is exclusively responsible for having itself substituted as loss payee, insured mortgagee or assignee on all hazard insurance or other insurance in which Seller is currently listed as a loss payee, insured mortgagee or assignee. Any suffered loss after Closing due to Seller's cancellation of such insurance or any failure to identify Purchaser as loss payee, insured mortgagee or assignee is the sole responsibility of Purchaser.

10. **Notices.** All notices or deliveries required or permitted hereunder shall be in writing and may be given either by personal delivery, by facsimile transmission or by depositing same enclosed in a sealed wrapper in the United States Mail, with sufficient postage prepaid and sent by registered or certified mail, return receipt requested, addressed to the party set forth below, or such other address or facsimile number as either party may hereafter designate by notice to the other party. Notice given by personal delivery in accordance herewith shall be effective upon delivery at the address of the addressee. Notice given by registered or certified mail in accordance herewith shall be effective on the date of the first attempted delivery of the registered or certified item. Notice by facsimile transmission shall be deemed given upon delivery and verification of communication between transmitting facilities.

PURCHASER:

EOS Partners SBIC II, L.P.
j EOS Partners, L.P.
320 Park Avenue
New York, New York 10022
Facsimile: 212-832-5815

with a copy to:

O'Sullivan LLP
30 Rockefeller Plaza
New York, New York 10112
Attention: John Scott
Facsimile: 212-728-5950

SELLER:

COMERICA BANK - TEXAS
8911 Capital of Texas Highway, Suite 2310
Austin, Texas 78759
Attention: Julie A. Smith
Telephone Number: (512) 349-8979
Fax Number: (512) 349-2888

11. **Use of Seller's Name.** Purchaser shall not use or permit the use by its agents, successors or assigns, of any name which is similar to the name of Seller. Purchaser will not represent or imply that it is affiliated with, authorized by, or in any way related to Seller.
12. **Severability.** Each part of this Agreement is intended to be several. If any term, covenant, condition or provision hereof is unlawful, invalid, or unenforceable for any reason whatsoever, such illegality, invalidity, or unenforceability shall not affect the legality, validity or enforceability of the remaining parts of this Agreement, and all such remaining parts hereof shall be valid and enforceable and have full force and effect as if the invalid or unenforceable part had not been included.
13. **Construction.** Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to include the plural and vice versa, and impersonal pronouns shall be deemed to include the personal pronoun of the appropriate gender. All Attachments hereto are incorporated herein by reference for all purposes.
14. **Assignment.** This Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights and benefits hereof, including the Attachments hereto, shall be binding upon, and shall inure to the benefit of, the undersigned parties and their respective heirs, executors, administrators, representatives, successors, and assigns.

15. **Survival.** Each and every covenant, term, representation, warranty and agreement made by Purchaser or Seller under this Agreement shall survive the Closing and shall not merge into the closing documents but, instead, shall be independently enforceable.
16. **Choice of Law.** TO THE EXTENT NOT CONTROLLED BY FEDERAL LAW, THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS. THIS AGREEMENT IS PERFORMABLE IN DALLAS COUNTY, TEXAS, AND ALL DISPUTES AND MATTERS WHATSOEVER ARISING HEREUNDER IN CONNECTION WITH OR INCIDENT TO THIS AGREEMENT SHALL BE LITIGATED, IF AT ALL, IN AND BEFORE A COURT LOCATED IN DALLAS COUNTY, TEXAS, TO THE EXCLUSION OF THE COURTS OF ANY OTHER STATE OR COUNTRY.
17. **Loan Sale Without Recourse and No Warranties or Representations by Seller.** THE SALE OF THE LOAN SHALL BE WITHOUT RECOURSE, REPRESENTATION OR WARRANTY OTHER THAN AS SPECIFICALLY PROVIDED IN **SECTION 6** OF THIS AGREEMENT AND PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS, AND PURCHASER IS NOT RELYING ON SELLER WITH RESPECT TO, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO: (a) THE MARKETABILITY, VALUE, QUALITY OR CONDITION OF THE LOAN; (b) THE VALIDITY, ENFORCEABILITY, OR COLLECTABILITY OF THE PROMISSORY NOTES OR LOAN AGREEMENTS EVIDENCING THE LOAN OR ANY OF THE COLLATERAL DOCUMENTS; (c) THE VALIDITY, PRIORITY, OR PERFECTION OF THE SECURITY INTERESTS OR OTHER LIENS CREATED BY THE COLLATERAL DOCUMENTS; (d) THE STATE OF TITLE TO ANY COLLATERAL FOR THE LOAN, (e) THE PRIORITY OF SECURITY INTERESTS OR OTHER LIENS PURPORTING TO SECURE THE LOAN, (f) THE COMPLIANCE OF THE LOAN WITH ANY STATE OR FEDERAL USURY LAWS OR REGULATIONS, (g) THE ACCURACY OR COMPLETENESS OF ANY INFORMATION, DATA, STATEMENTS, AMOUNTS OR SOURCES OF INFORMATION CONTAINED IN THE COLLATERAL DOCUMENTS OR LOAN, OR (h) EXCEPT AS SPECIFICALLY PROVIDED IN **SECTION 6** OF THIS AGREEMENT, ANY OTHER MATTERS PERTAINING TO THE LOAN OR THE PROPERTIES WHICH ARE COLLATERAL (OR PURPORT TO BE COLLATERAL) FOR THE LOAN. IN ADDITION, SELLER EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITHOUT LIMITING THE FOREGOING, SELLER DOES NOT MAKE AND HAS NOT MADE ANY REPRESENTATION OR WARRANTY REGARDING THE PRESENCE OR ABSENCE OF ANY HAZARDOUS SUBSTANCES ON, UNDER OR ABOUT THE PROPERTIES SECURING THE LOAN OR THE COMPLIANCE OR NONCOMPLIANCE OF SUCH PROPERTIES WITH THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, THE SUPERFUND AMENDMENT AND REAUTHORIZATION ACT, THE RESOURCE CONSERVATION RECOVERY ACT, THE FEDERAL WATER POLLUTION CONTROL ACT, THE FEDERAL ENVIRONMENTAL PESTICIDES ACT, THE CLEAN WATER ACT, THE CLEAN AIR ACT, THE TEXAS NATURAL RESOURCES CODE, THE TEXAS WATER CODE, THE TEXAS SOLID WASTE DISPOSAL ACT, THE TEXAS HAZARDOUS SUBSTANCES SPILL PREVENTION AND CONTROL ACT, ANY SO CALLED FEDERAL, STATE OR LOCAL "SUPERFUND" OR "SUPERLIEN" STATUTE, OR ANY OTHER STATUTE, LAW, ORDINANCE, CODE, RULE, REGULATION, ORDER OR DECREE REGULATING, RELATING TO OR IMPOSING LIABILITY (INCLUDING STRICT LIABILITY) OR STANDARDS OF CONDUCT CONCERNING ANY HAZARDOUS SUBSTANCES OR THE HEALTH OR SAFETY OF ANY PERSON OR PROPERTY OR THE ENVIRONMENT (collectively, "**Hazardous Substance Laws**"). For purposes of this Agreement, the term "**Hazardous Substances**" shall mean and include those elements or compounds which are contained on the list of hazardous substances adopted by the United States Environmental Protection Agency and the list of toxic pollutants designated by Congress or the Environmental Protection Agency or under any Hazardous Substance Laws. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT PURCHASER HAS BEEN GIVEN THE OPPORTUNITY TO INSPECT THE LOAN, AND THEREFORE, PURCHASER WILL BE PURCHASING THE LOAN PURSUANT TO ITS INDEPENDENT EXAMINATION, STUDY, INSPECTION AND KNOWLEDGE OF THE LOAN. PURCHASER IS RELYING UPON ITS OWN DETERMINATION OF THE QUALITY, VALUE AND CONDITION OF THE LOAN AND THE PROPERTY SECURING PAYMENT OF THE LOAN, AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE LOAN WAS OR WILL BE OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE AND WILL NOT BE OBLIGATED TO MAKE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND SELLER MAKES NO REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. The Closing shall constitute an acknowledgment by Purchaser that the Loan was accepted without representation or warranty, express or implied and otherwise in an "AS IS," "WHERE IS" and "WITH ALL FAULTS" condition based solely on Purchaser's own inspection except as provided in **Section 6** of this Agreement. No event or condition shall entitle Purchaser to have the Loan repurchased by Seller.
18. **OTPA Waiver.** Purchaser has knowledge and experience in financial and business matters that enable Purchaser to evaluate the merits and risks of the transactions contemplated hereby. Purchaser is not in a disparate bargaining position vis-a-vis Seller, and Purchaser hereby waives, to the maximum extent permitted by law, any and all rights, benefits and remedies under the Texas Deceptive Trade Practices - Consumer Protection Act set forth in Subchapter E of Chapter 17 of the Texas Business and Commerce Code (other than Section 17.555 thereof) with respect to any matters pertaining to this Agreement or the transaction contemplated hereby.
19. **Jury Trial.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, PURCHASER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN RESPECT OF ANY CONTROVERSY CONCERNING THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
20. **No Oral Agreements.** THIS DOCUMENT AND ALL OTHER DOCUMENTS RELATING TO THIS LOAN SALE CONSTITUTE A WRITTEN LOAN SALE AGREEMENT WHICH REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.
21. **Intentionally Deleted**
22. **Further Assurances.** Seller and Purchaser each agrees (i) to execute and deliver, or to cause to be executed and delivered, all such instruments and (ii) to take all such actions as the other party hereto may reasonably request to effectuate the intent and purposes, and to carry out the terms, of this Agreement, including transfer of collateral and the creation of blocked account agreements.
23. **Time of Essence.** Time is of the essence of each and every term of this Agreement.
24. **Consent by Debtor.** Debtor hereby consents to the assignment of the Transferred Rights to Purchaser.
25. **Release of Claims.** IN ADDITION, EACH OF PURCHASER AND DEBTOR FOR THEMSELVES AND THEIR RESPECTIVE SUCCESSORS, AGENTS, ASSIGNS, TRANSFEREES, OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, ATTORNEYS AND AGENTS HEREBY RELEASES PURCHASER, ALL OF ITS PARENT COMPANIES, SUBSIDIARIES AND OTHER AFFILIATES AND THEIR RESPECTIVE AGENTS, EMPLOYEES,

OFFICERS, DIRECTORS, SHAREHOLDERS, REPRESENTATIVES, ATTORNEYS AND ACCOUNTANTS AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES") FROM ANY AND ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF WHATEVER KIND AND CHARACTER (WHETHER SUCH CLAIMS ARISE IN CONTRACT OR TORT, AND WHETHER SUCH CLAIMS ARE FOUNDED UPON STATUTORY OR COMMON LAW, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, NEGLIGENCE, BREACH OF ANY DUTY OF GOOD FAITH AND FAIR DEALING, CAUSES OF ACTION ARISING OUT OF OR CONSTRUED TO BE DECEPTIVE TRADE PRACTICES, USURY, UNFAIR CLAIM SETTLEMENT PRACTICES, BUSINESS TORTS, BREACH OF WARRANTY, OR ANY OTHER CAUSE OF ACTION WHATSOEVER) WHETHER SUCH CLAIMS ARE KNOWN OR UNKNOWN, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THE LOAN, WHICH PURCHASER AND DEBTOR MAY NOW HAVE AGAINST ANY RELEASED PARTY INCLUDING, WITHOUT LIMITATION, ANY SUCH CLAIMS DIRECTLY OR INDIRECTLY ARISING FROM OR IN CONNECTION WITH (A) ANY DOCUMENTS, INSTRUMENTS, AGREEMENTS OR OBLIGATIONS RELATED TO THE LOAN, OR (B) ANY OF THE TRANSACTIONS CONTEMPLATED BY THE AFORESAID DOCUMENTS OR THE PERFORMANCE OF THE AFORESAID OBLIGATIONS, (C) THE NEGOTIATION OF THE AFORESAID LOAN, OR (D) ANY ACT OR OMISSION OF ANY RELEASED PARTY RELATED TO THE AFORESAID LOAN; provided, however, that notwithstanding the generality of the foregoing, no Released Party is released from any claim, demand or cause of action arising solely from a breach by Seller of any representation or warranty set forth in Section 6 of this Agreement.

EXECUTED this 18th day of July, 2002.

PURCHASER:

EOS PARTNERS SBIC II, L.P.

By: EOS SBIC GENERAL II, L.P.,
its General Partner

By: EOS SBIC II, INC.,
its Managing General Partner

By: _____
Name: Steven Friedman
Title: _____

By: _____
Name: Brian Young
Title: Chairman

SELLER:

COMERICA BANK - TEXAS

By: _____
Name: _____
Title: _____

Debtor executes this Agreement as of the date above for purposes of Sections 24 and 25.

DEBTOR:

SYMTX, INC.

By: _____
Name: _____
Title: _____

EXECUTED this 18th day of July, 2002.

PURCHASER:

EOS PARTNERS SBIC II, L.P.

By: EOS SBIC GENERAL II, L.P.,
its General Partner

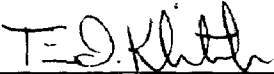
By: EOS SBIC II, INC.,
its Managing General Partner

By: _____
Name: Steven Friedman
Title:

By: _____
Name: Brian Young
Title:

SELLER:

COMERICA BANK - TEXAS

By: 
Name: Tim J. Klitch
Title: First Vice President

Debtor executes this Agreement as of the date above for purposes of Sections 24 and 25.

DEBTOR:

SYMTX, INC.

By: _____
Name:
Title:

EXECUTED this 18th day of July, 2002.

PURCHASER:

EOS PARTNERS SBIC II, L.P.

By: EOS SBIC GENERAL II, L.P.,
its General Partner

By: EOS SBIC II, INC.,
its Managing General Partner

By: _____
Name: Steven Friedman
Title:

By: _____
Name: Brian Young
Title:

SELLER:

COMERICA BANK - TEXAS

By: _____
Name: _____
Title: _____

Debtor executes this Agreement as of the date above for purposes of Sections 24 and 25.

DEBTOR:

SYMTX, INC.

By: *Paul Hiller*
Name: PAUL HILLER
Title: PRESIDENT

ATTACHMENT 1

SCHEDULE OF LOAN, COLLATERAL DOCUMENTS, AND OTHER DOCUMENTS

<u>Loan and Loan Number</u>	<u>Principal and Interest Balance as of July 17, 2002</u>	
1. \$2,500,000.00 – Loan Number 4753109025-59	Principal:	\$984,067.97
	Interest	423.69
	Total	\$984,491.66

The above-referenced Loan is evidenced by the following promissory note, secured by the Collateral Documents and accelerated by the letter dated July 16, 2002 more particularly described as follows:

Promissory Note and Credit Agreement

1. Master Revolving Note dated as of April 25, 2002, in the original principal amount of \$2,500,000, executed by SYMTX, Inc. and made payable to the order of Comerica Bank-Texas, which note was executed pursuant to the Business Credit Agreement dated June 22, 2001, as amended by First Amendment to Business Credit Agreement dated as of December 14, 2001 and by Second Amendment to Business Credit Agreement dated as of April 29, 2002. between Comerica Bank -Texas and SYMTX, Inc.

Collateral Documents

1. Security Agreement of SYMTX, Inc., in favor of Comerica Bank -Texas dated as of June 22, 2001
2. Trademark Security Agreement of SYMTX, Inc., in favor of Comerica Bank - Texas dated as of December 14, 2001.

Acceleration Notice

Notice of Acceleration dated July 16, 2002.

ATTACHMENT 2

ASSIGNMENT OF ASSIGNED DOCUMENTS

RECITALS

A. COMERICA BANK - TEXAS ("ASSIGNOR") whose address is 8911 Capital of Texas Highway, Suite 2310, Austin, Texas 78759, Attention: T. J. Klitch desires to assign the Assigned Documents (hereinafter defined) together with all right, title and interest it has in the Assigned Documents (hereinafter defined) to SOB PARTNERS, S.B.I.C., L.P. ("ASSIGNEE") whose address is _____.

B. The term "Assigned Documents", as used herein, shall mean the promissory note described on Exhibit "A" attached hereto and made a part hereof for all purposes, together with ASSIGNOR's right, title and interest in, to and under any and all documents described on such Exhibit "A".

ASSIGNMENT

ASSIGNOR, for good and valuable consideration received from ASSIGNEE, the receipt and sufficiency of which are hereby acknowledged, has, subject as hereinafter provided, TRANSFERRED, ASSIGNED, GRANTED and CONVEYED and by those presents does TRANSFER, ASSIGN, GRANT AND CONVEY unto ASSIGNEE, its successors and assigns, all of ASSIGNOR's rights, title and interest in and to the Assigned Documents and all rights, powers, custodians, security interests and other liens arising under any Assigned Document. It is agreed that this Assignment does not convey to Assignee (and Assignee has not paid Assignor for) any rights to collect from Assignor accrued and paid or unpaid interest on the unpaid principal balance of any of the promissory note described in Exhibit "A" hereto for any period(s) up to and preceding the date of this Assignment (such amount being the "Prior Accrued Interest"), and Assignee has no claim against Assignor, and will not seek to assert any claim against Assignor, for such Prior Accrued Interest. Also, Assignor has no claim against Assignee, and will not seek to assert any claim against Assignee, for such Prior Accrued Interest.

THE ASSIGNMENT MADE HEREBY IS WITHOUT RECOURSE, REPRESENTATION OR WARRANTY (EXCEPT TO THE EXTENT STATED IN SECTION 6 OF THAT CERTAIN LOAN SALE AGREEMENT (THE "AGREEMENT") DATED AS OF JULY 17, 2002, BETWEEN ASSIGNOR AND ASSIGNEE) AND IS SUBJECT TO THE TERMS AND CONDITIONS OF SUCH AGREEMENT. SAID AGREEMENT IS INCORPORATED HEREIN BY REFERENCE FOR ALL PURPOSES.

EXECUTED this 19 day of JULY, 2002.

ASSIGNOR:

COMERICA BANK - TEXAS.

By: T. J. Klitch
Name: T. J. KLITCH
Title: First Vice President

ACCEPTED BY ASSIGNEE:

By: [Signature]
Name: _____
Title: _____
Est. Partners, S.B.I.C., L.P.
by Est. S.B.I.C. General L.P., its General Partner
by Est. S.B.I.C. L.P., its Managing General Partner
by Brian D. Young, Chairman

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EXHIBIT A

Promissory Note and Credit Agreement

1. Master Revolving Note dated as of April 25, 2002, in the original principal amount of \$2,500,000, executed by SYMTX, Inc. and made payable to the order of Comerica Bank-Texas, which note was executed pursuant to the Business Credit Agreement dated June 22, 2001, as heretofore amended on December 14, 2001 and April 25, 2002, between Comerica Bank -Texas and SYMTX, Inc.

Collateral Documents

1. Security Agreement of SYMTX, Inc., in favor of Comerica Bank -Texas dated as of June 22, 2001.
2. Trademark Security Agreement of SYMTX, Inc. in favor of Comerica Bank-Texas dated as of December 14, 2001.

Financing Statements

1. UCC Financing Statement #10627013 filed July 17, 2001 in Delaware. Secured Party - Comerica Bank - Texas. Debtor - SYMTX, Inc.
2. UCC Financing Statement 01-00125597 filed June 29, 2001 in Texas. Secured Party - Comerica Bank - Texas. Debtor - SYMTX, Inc.
3. UCC Financing Statement Book 0031, Page 1190, filed June 29, 2001 in Broome County, New York. Secured Party - Comerica Bank-Texas. Debtor - SYMTX, Inc.
4. UCC Financing Statement 128419 filed June 19, 2001 in New York. Secured Party - Comerica Bank-Texas. Debtor - SYMTX, Inc.



Security Agreement (All Assets)

As of June 22, 2001, for value received, SYMTX, INC., a Delaware corporation ("Debtor") pledges, assigns and grants to Comerica Bank-Texas, a Texas banking association ("Bank"), whose address is 804 Congress Avenue, Suite 320, Austin, Texas 78701, Attention: Julie Smith, a continuing security interest and lien (any pledge, assignment, security interest or other lien arising hereunder is sometimes referred to herein as a "security interest") in the Collateral (as defined below) to secure payment when due, whether by stated maturity, demand, acceleration or otherwise, of all existing and future indebtedness ("Indebtedness") to Bank of Debtor. Indebtedness includes without limit any and all obligations or liabilities of Debtor to the Bank, whether absolute or contingent, direct or indirect, voluntary or involuntary, liquidated or unliquidated, joint or several, known or unknown, originally payable to the Bank or to a third party and subsequently acquired by the Bank including, without limitation, any late charges, loan fees or charges, and overdraft indebtedness, any and all obligations or liabilities for which Debtor would otherwise be liable to the Bank were it not for the invalidity or unenforceability of them by reason of any bankruptcy, insolvency or other law, or for any other reason; any and all amendments, modifications, renewals and/or extensions of any of the above; all costs incurred by Bank in establishing, determining, continuing, or defending the validity or priority of any security interest, or in pursuing its rights and remedies under this Agreement or under any other agreement between Bank and Debtor or in connection with any proceeding involving Bank as a result of any financial accommodation to Debtor; and all other costs of collecting Indebtedness, including without limit attorneys' fees. Debtor agrees to pay Bank all such costs incurred by the Bank, immediately upon demand, and until paid all costs shall bear interest at the highest per annum rate applicable to any of the Indebtedness, but not in excess of the maximum rate permitted by law. Any reference in this Agreement to attorneys' fees shall be deemed a reference to reasonable fees, costs, and expenses of both in-house and outside counsel and paralegals, whether inside or outside counsel is used, whether or not a suit or action is instituted, and to court costs if a suit or action is instituted, and whether attorneys' fees or court costs are incurred at the trial court level, on appeal, in a bankruptcy, administrative or probate proceeding or otherwise.

1. **Collateral** shall mean all of the following property Debtor now or later owns or has an interest in, wherever located:

- (a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held, including without limitation those set forth on Exhibit A attached hereto (collectively, the "Copyrights");
- (b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products nor or hereafter existing, created, acquired or held;
- (c) Any and all design rights which may be available to Debtor now or hereafter existing, created, acquired or held;
- (d) All patents, patent applications and like protections including, without limitation, improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including without limitation the patents and patent applications set forth on Exhibit B attached hereto (collectively, the "Patents")
- (e) Any trademark or servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Debtor connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit C attached hereto (collectively, the "Trademarks");
- (f) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;
- (g) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights;
- (h) All amendments, extensions, renewals and extensions of any of the Copyrights, Trademarks or Patents;
- (i) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing;
- (j) All Accounts Receivable (for purposes of this Agreement, "Accounts Receivable" consists of all accounts, general intangibles, chattel paper, contract rights, deposit accounts, documents and instruments),
- (k) All Inventory,
- (l) All Equipment,
- (m) All goods, instruments, documents, policies and certificates of insurance, deposits, money, investment property or other property (except real property which is not a fixture), and
- (n) All additions, attachments, accessions, parts, replacements, substitutions, renewals, interest, dividends, distributions, rights of any kind (including but not limited to stock splits, stock rights, voting and preferential rights), products, and proceeds of or pertaining to the above including, without limit, cash or other property which were proceeds and are recovered by a bankruptcy trustee or otherwise as a preferential transfer by Debtor.

2. **Warranties, Covenants and Agreements.** Debtor warrants, covenants and agrees as follows:

- 2.1 Debtor shall (i) furnish to Bank, in form and at intervals as Bank may request, any information Bank may reasonably request, (ii) allow Bank to examine, inspect, and copy any of Debtor's books and records, and (iii) allow Bank to visit and inspect any of Debtor's plants or facilities that manufacture, install or store products (or that have done so during the 6 month period immediately preceding the date hereof) and to

inspect the products and quality control records relating thereto. After the occurrence of an Event of Default, Debtor shall, at the request of Bank, mark its records and the Collateral to clearly indicate the security interest of Bank under this Agreement.

- 2.2 At the time any Collateral becomes subject to a security interest in favor of Bank, Debtor shall be deemed to have warranted that (a) Debtor is the lawful owner of the Collateral and has the right and authority to subject it to a security interest granted to Bank; (b) none of the Collateral is subject to any security interest other than that in favor of Bank and other than Permitted Encumbrances (as defined in the Credit Agreement) and there are no financing statements on file, other than in favor of Bank or with respect to the Permitted Encumbrances; and (c) Debtor acquired its rights in the Collateral in the ordinary course of its business.
- 2.3 Debtor will keep the Collateral free at all times from all claims, liens, security interests and encumbrances other than those in favor of Bank and other than Permitted Encumbrances. Debtor will not, without the prior written consent of Bank, sell, transfer or lease, or permit to be sold, transferred or leased, any or all of the Collateral, except for (i) Inventory sold, transferred or leased in the ordinary course of its business and (ii) licenses granted by Debtor in the ordinary course of business. Bank or its representatives may at all reasonable times inspect the Collateral and may enter upon all premises where the Collateral is kept or might be located.
- 2.4 Debtor will do all acts and will execute or cause to be executed all writings requested by Bank to establish, maintain and continue a perfected and first security interest of Bank in the Collateral. Debtor agrees that Bank has no obligation to acquire or perfect any lien on or security interest in any asset(s) of Debtor, whether realty or personalty, to secure payment of the Indebtedness, and Debtor is not relying upon assets in which the Bank may have a lien or security interest for payment of the Indebtedness.
- 2.5 If Debtor fails to pay in accordance with the terms of the Credit Agreement (as defined below) any taxes, assessments, or other charges which at any time are or may become a lien, charge or encumbrance upon any Collateral, Bank has the option (but not the obligation) to do so, and Debtor agrees to repay all amounts so expended by Bank immediately upon demand, together with interest at the highest lawful default rate which could be charged by Bank on any Indebtedness.
- 2.6 Debtor will keep the Collateral in good condition and protect it from loss or damage, reasonable wear and tear excepted. Debtor has and will maintain at all times insurance in accordance with the requirements set forth in the Credit Agreement. If Debtor fails to maintain such insurance, Bank has the option (but not the obligation) to do so and Debtor agrees to repay all amounts so expended by Bank immediately upon demand, together with interest at the highest lawful default rate which could be charged by Bank on any Indebtedness.
- 2.7 On each occasion on which Debtor evidences to Bank the account balances on and the nature and extent of the Accounts Receivable, Debtor shall be deemed to have warranted that except as otherwise indicated (a) each of those Accounts Receivable is valid and enforceable without performance by Debtor of any act; (b) each of those account balances are in fact owing, (c) there are no setoffs, recoupments, credits, contra accounts, counterclaims or defenses against any of those Accounts Receivable except for those that arise in Debtor's ordinary course of business, (d) as to any Accounts Receivable represented by a note, trade acceptance, draft or other instrument or by any chattel paper or document, the same have been endorsed and/or delivered by Debtor to Bank, and (e) Debtor has not received with respect to any Account Receivable, any notice of the death of the related account debtor, or of the dissolution, liquidation, termination of existence, insolvency, business failure, appointment of a receiver for, assignment for the benefit of creditors by, or filing of a petition in bankruptcy by or against, the account debtor. Debtor will do all acts and will execute all writings requested by Bank to perform, enforce performance of, and collect all Accounts Receivable. Debtor shall neither make nor permit any modification, compromise or substitution for any Account Receivable except for those made in Debtor's ordinary course of business, without the prior written consent of Bank. Debtor shall, at Bank's request, arrange for verification of Accounts Receivable directly with account debtors or by other methods acceptable to Bank.
- 2.8 If the Collateral has been delivered to Bank, if Bank, acting in its sole discretion, redelivers Collateral to Debtor or Debtor's designee for the purpose of (a) the ultimate sale or exchange thereof; or (b) presentation, collection, renewal, or registration of transfer thereof; or (c) loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with it preliminary to sale or exchange; such redelivery shall be in trust for the benefit of Bank and shall not constitute a release of Bank's security interest in it or in the proceeds or products of it unless Bank specifically so agrees in writing. If Debtor requests any such redelivery, Debtor will deliver with such request a duly executed financing statement in form and substance satisfactory to Bank. Any proceeds of Collateral coming into Debtor's possession as a result of any such redelivery shall be held in trust for Bank and immediately delivered to Bank for application on the Indebtedness. Bank may (in its sole discretion) deliver any or all of the Collateral to Debtor, and such delivery by Bank shall discharge Bank from all liability or responsibility for such Collateral. Bank, at its option after the occurrence of an Event of Default, may require delivery of Collateral to Bank with such endorsement or assignment as Bank may request.
- 2.9 At any time and without notice, Bank may (a) after the occurrence of an Event of Default, cause any or all of the Collateral to be transferred to its name or to the name of its nominees; (b) after the occurrence of an Event of Default, receive or collect by legal proceedings or otherwise all dividends, interest, principal payments and other sums and all other distributions at any time payable or receivable on account of the Collateral, and hold the same as Collateral, or apply the same to the Indebtedness, the manner and distribution of the application to be in the sole discretion of Bank; (c) enter into any extension, subordination, reorganization, deposit, merger or consolidation agreement or any other agreement relating to or affecting Bank's interests in and to the Collateral, and deposit or surrender control of Bank's interests in and to the Collateral, and accept other property in exchange for Bank's interests in and to the Collateral and hold or apply the property or money so received pursuant to this Agreement.
- 2.10 Bank may assign any of the Indebtedness and deliver any or all of the Collateral to its assignee, who then shall have with respect to Collateral so delivered all the rights and powers of Bank under this Agreement, and after that Bank shall be fully discharged from all liability and responsibility with respect to Collateral so delivered.
- 2.11 Intentionally Omitted.
- 2.12 Debtor shall defend, indemnify and hold harmless Bank, its employees, agents, shareholders, affiliates, officers, and directors from and against any and all claims, damages, fines, expenses, liabilities or causes of action of whatever kind, including without limitation consultant fees, legal expenses, and attorneys' fees, suffered by any of them as a direct or indirect result of any actual or asserted violation of any law, including, without limit, Environmental Laws, or of any remediation relating to any property required by any law, including without limit Environmental Laws, **INCLUDING ANY CLAIMS, DAMAGES, FINES, EXPENSES, LIABILITIES OR CAUSES OF ACTION OF WHATEVER KIND ARISING OUT OF ANY CLAIM OR THEORY OF STRICT LIABILITY OR RESULTING FROM BANK'S OWN NEGLIGENCE**, except and to the extent (but only to the extent) caused by Bank's gross negligence or wilful misconduct.

- 2.13 Debtor is now the sole owner of the Collateral, except for licenses granted by Debtor to its customers in the ordinary course of business.
- 2.14 Performance of this Agreement does not conflict with or result in a breach of any agreement to which Debtor is party or by which Debtor is bound, except to the extent that certain intellectual property agreements prohibit the assignment of the rights thereunder to a third party without the licensor's or other party's consent and this Agreement constitutes an assignment.
- 2.15 To the best of Debtor's knowledge, each of the Patents is valid and enforceable, and no part of the Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Collateral violates the rights of any third party.
- 2.16 Debtor shall (i) use reasonable efforts to protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights, (ii) use reasonable efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Bank in writing of material infringements detected and (iii) use reasonable efforts to not allow any Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Bank, which shall not be unreasonably withheld, unless Debtor determines that reasonable business practices suggest that abandonment is appropriate.
- 2.17 Debtor shall register or cause to be registered (to the extent not already registered) with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, those intellectual property rights listed on Exhibits A, B and C hereto within thirty (30) days of the date of this Security Agreement. To the extent that Debtor deems such to be in Debtor's best interest and commercially reasonable, Debtor shall register or cause to be registered with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, those additional intellectual property rights developed or acquired by Debtor from time to time in connection with any product prior to the sale or licensing of such product to any third party (including without limitation revisions or additions to the intellectual property rights listed on such Exhibits A, B and C). Debtor shall, from time to time, execute and file such other instruments, and take such further actions as Bank may reasonably request from time to time to perfect or continue the perfection of Bank's interest in the Collateral.
- 2.18 This Agreement creates, and in the case of after-acquired Collateral, this Security Agreement will create at the time Debtor first has rights in such after-acquired Collateral, in favor of Bank a valid and perfected first priority security interest in the Collateral in the United States securing the payment and performance of the Indebtedness upon making the filings referred to below.
- 2.19 Except for, and upon, the filing with the United States Patent and Trademark office with respect to the Patents and Trademarks and the Register of Copyrights with respect to the Copyrights and any state motor vehicle registration or other titled assets necessary to perfect the security interests created hereunder, and except as has been already made or obtained, no authorization, approval or other action by, and no notice to or filing with, any U.S. governmental authority or U.S. regulatory body is required either (a) for the grant by Debtor of the security interest granted hereby or for the execution, delivery or performance of this Agreement by Debtor in the U.S. or (b) for the perfection in the United States or the exercise by Bank of its rights and remedies hereunder, in each case with respect to Collateral existing on the date hereof.
- 2.20 All information heretofore, herein or hereafter supplied to Bank by or on behalf of Debtor with respect to the Collateral is accurate and complete in all material respects as of the date such information was submitted to Bank by Debtor.
- 2.21 Debtor shall not enter into any agreement that would materially impair or conflict with Debtor's obligations hereunder without Bank's prior written consent. Debtor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Debtor's rights and interests in any property included within the definition of the Collateral acquired under such contracts, except that certain contracts may contain anti-assignment provisions that could in effect prohibit the creation of a security interest in such contracts if Debtor is required, in its commercially reasonable judgment to accept such provisions.
- 2.22 Upon any executive officer of Debtor obtaining knowledge thereof, Debtor will promptly notify Bank in writing of any event that materially adversely affects the value of any of the Collateral, the ability of Debtor to dispose of any Collateral or the rights and remedies of Bank in relation thereto, including the levy of any legal process against any of the Collateral.
3. **Collection of Proceeds.** Upon the request of Bank after an Event of Default or if Bank reasonably deems insecure with respect to the Collateral:
- 3.1 Debtor agrees to collect and enforce payment of all Collateral until Bank shall direct Debtor to the contrary. Immediately upon notice to Debtor by Bank and at all times after that, Debtor agrees to fully and promptly cooperate and assist Bank in the collection and enforcement of all Collateral and to hold in trust for Bank all payments received in connection with Collateral and from the sale, lease or other disposition of any Collateral, all rights by way of suretyship or guaranty and all rights in the nature of a lien or security interest which Debtor now or later has regarding Collateral. Immediately upon and after such notice, Debtor agrees to (a) endorse to Bank and immediately deliver to Bank all payments received on Collateral or from the sale, lease or other disposition of any Collateral or arising from any other rights or interests of Debtor in the Collateral, in the form received by Debtor without commingling with any other funds, and (b) immediately deliver to Bank all property in Debtor's possession or later coming into Debtor's possession through enforcement of Debtor's rights or interests in the Collateral. Debtor irrevocably authorizes Bank or any Bank employee or agent to endorse the name of Debtor upon any checks or other items which are received in payment for any Collateral, and to do any and all things necessary in order to reduce these items to money. Bank shall have no duty as to the collection or protection of Collateral or the proceeds thereof, or as to the preservation of any related rights, beyond the use of reasonable care in the custody and preservation of Collateral in the possession of Bank. Debtor agrees to take steps necessary to preserve rights against prior parties with respect to the Collateral. Nothing in this Section 3.1 shall be deemed a consent by Bank to any sale, lease or other disposition of any Collateral.
- 3.2 Debtor agrees that immediately upon Bank's request the Indebtedness shall be on a "remittance basis" as follows: Debtor shall at its sole expense establish and maintain (and Bank, at Bank's option may establish and maintain at Debtor's expense): (a) an United States Post Office lock box (the "Lock Box"), to which Bank shall have exclusive access and control. Debtor expressly authorizes Bank, from time to time, to remove contents from the Lock Box, for disposition in accordance with this Agreement. Debtor agrees to notify all account debtors and other parties obligated to Debtor that all payments made to Debtor (other than payments by electronic funds transfer) shall be remitted, for the credit of Debtor, to the Lock Box, and Debtor shall include a like statement on all invoices; and (b) a non-interest bearing deposit account with Bank which shall be titled as designated by Bank (the "Cash Collateral Account") to which Bank shall exclusive access and control. Debtor agrees to notify all account debtors and other parties obligated to Debtor that all payments made to Debtor by electronic funds transfer shall be remitted to the Cash Collateral Account, and Debtor, at Bank's request, shall include a like statement on all invoices.

Debtor shall execute all documents and authorizations as required by Bank to establish and maintain the Lock Box and the Cash Collateral Account.

- 3.3 All items or amounts which are remitted to the Lock Box, to the Cash Collateral Account, or otherwise delivered by or for the benefit of Debtor to Bank on account of partial or full payment of, or with respect to, any Collateral shall, at Bank's option, (i) be applied to the payment of the Indebtedness, whether then due or not, in such order or at such time of application as Bank may determine in its sole discretion, or, (ii) be deposited to the Cash Collateral Account. Debtor agrees that Bank shall not be liable for any loss or damage which Debtor may suffer as a result of Bank's processing of items or its exercise of any other rights or remedies under this Agreement, including without limitation indirect, special or consequential damages, loss of revenues or profits, or any claim, demand or action by any third party arising out of or in connection with the processing of items or the exercise of any other rights or remedies under this Agreement. Debtor agrees to indemnify and hold Bank harmless from and against all such third party claims, demands or actions, and all related expenses or liabilities, including, without limitation, attorneys' fees and **INCLUDING CLAIMS, DAMAGES, FINES, EXPENSES, LIABILITIES OR CAUSES OF ACTION OF WHATEVER KIND RESULTING FROM BANK'S OWN NEGLIGENCE OR ARISING OUT OF ANY CLAIM OR THEORY OF STRICT LIABILITY** except to the extent (but only to the extent) caused by Bank's gross negligence or willful misconduct.

4. Defaults, Enforcement and Application of Proceeds.

- 4.1 Upon the occurrence of any Event of Default, as defined in the Business Credit Agreement dated of even date herewith between Debtor and Bank (as from time to time amended, modified or restated, the "Credit Agreement"), Debtor shall be in default under this Agreement.
- 4.2 Upon the occurrence of any Event of Default, Bank may at its discretion and without prior notice to Debtor declare any or all of the Indebtedness to be immediately due and payable, and shall have and may exercise any right or remedy available to it including, without limitation, any one or more of the following rights and remedies:
- (a) Exercise all the rights and remedies upon default, in foreclosure and otherwise, available to secured parties under the provisions of the Uniform Commercial Code and other applicable law;
 - (b) Institute legal proceedings to foreclose upon the lien and security interest granted by this Agreement, to recover judgment for all amounts then due and owing as Indebtedness, and to collect the same out of any Collateral or the proceeds of any sale of it;
 - (c) Institute legal proceedings for the sale, under the judgment or decree of any court of competent jurisdiction, of any or all Collateral; and/or
 - (d) Personally or by agents, attorneys, or appointment of a receiver, enter upon any premises where Collateral may then be located, and take possession of all or any of it and/or render it unusable; and without being responsible for loss or damage to such Collateral, hold, operate, sell, lease, or dispose of all or any Collateral at one or more public or private sales, leaseings or other dispositions, at places and times and on terms and conditions as Bank may deem fit, without any previous demand or advertisement; and except as provided in this Agreement, all notice of sale, lease or other disposition, and advertisement, and other notice or demand, any right or equity of redemption, and any obligation of a prospective purchaser or lessee to inquire as to the power and authority of Bank to sell, lease, or otherwise dispose of the Collateral or as to the application by Bank of the proceeds of sale or otherwise, which would otherwise be required by, or available to Debtor under, applicable law are expressly waived by Debtor to the fullest extent permitted.

At any sale pursuant to this Section 4.2, whether under the power of sale, by virtue of judicial proceedings or otherwise, it shall not be necessary for Bank or a public officer under order of a court to have present physical or constructive possession of Collateral to be sold. The recitals contained in any conveyances and receipts made and given by Bank or the public officer to any purchaser at any sale made pursuant to this Agreement shall, to the extent permitted by applicable law, conclusively establish the truth and accuracy of the matters stated (including, without limit, as to the amounts of the principal of and interest on the Indebtedness, the accrual and nonpayment thereof and the advertisement and conduct of the sale); and all prerequisites to the sale shall be presumed to have been satisfied and performed. Upon any sale of any Collateral, the receipt of the purchase price by the officer making the sale under judicial proceedings or by Bank shall be sufficient discharge of the Collateral to the purchaser, and the purchaser shall not be obligated to see to the application of the money. Any sale of any Collateral under this Agreement shall be a perpetual bar against Debtor with respect to that Collateral.

- 4.3 Debtor shall at the request of Bank, notify the account debtors or obligors of Bank's security interest in the Collateral, and, after the occurrence of an Event of Default, direct payment of any Accounts Receivable to Bank. Bank may, itself, upon the occurrence of any Event of Default so notify and direct any account debtor or obligor.
- 4.4 The proceeds of any sale or other disposition of Collateral authorized by Section 4.2 of this Agreement shall be applied by Bank in such order as the Bank, in its discretion, deems appropriate including, without limitation, the following order: first upon all expenses authorized by the Uniform Commercial Code and all reasonable attorneys' fees and legal expenses incurred by Bank; the balance of the proceeds of the sale or other disposition shall be applied in the payment of the Indebtedness, first to interest, then to principal, then to remaining Indebtedness and the surplus, if any, shall be paid over to Debtor or to such other person(s) as may be entitled to it under applicable law. Debtor shall remain liable for any deficiency, which it shall pay to Bank immediately upon demand.
- 4.5 Nothing in this Agreement is intended, nor shall it be construed, to preclude Bank from pursuing any other remedy provided by law or in equity for the collection of the Indebtedness or for the recovery of any other sum to which Bank may be entitled for the breach of this Agreement by Debtor. Nothing in this Agreement shall reduce or release in any way any rights or security interests of Bank contained in any existing agreement between Debtor and Bank.
- 4.6 No waiver of default or consent to any act by Debtor shall be effective unless in writing and signed by an authorized officer of Bank. No waiver of any default or forbearance on the part of Bank in enforcing any of its rights under this Agreement shall operate as a waiver of any other default or of the same default on a future occasion or of any rights.
- 4.7 Debtor irrevocably appoints Bank or any agent of Bank (which appointment is coupled with an interest) the true and lawful attorney of Debtor (with full power of substitution) in the name, place and stead of, and at the expense of, Debtor:

- (a) after the occurrence of an Event of Default, to demand, receive, sue for, and give receipts or acquittances for any moneys due or to become due on any Collateral and to endorse any item representing any payment on or proceeds of the Collateral;
- (b) to execute and file in the name of and on behalf of Debtor all financing statements or other filings deemed necessary or desirable by Bank to evidence, perfect, or continue the security interests granted in this Agreement, and Debtor further authorizes and requests that the Register of Copyrights and the commissioner of Patents and Trademarks record this Agreement; and
- (c) after the occurrence of an Event of Default, to do and perform any act on behalf of Debtor permitted or required under this Agreement.

4.8 Upon the occurrence of an Event of Default, Debtor also agrees, upon request of Bank, to assemble the Collateral and make it available to Bank at any place designated by Bank which is reasonably convenient to Bank and Debtor.

5. Miscellaneous.

- 5.1 Until Bank is advised in writing by Debtor to the contrary, all notices, requests and demands required under this Agreement or by law shall be given to, or made upon, Debtor at the first address indicated in Section 5.14 below.
- 5.2 Debtor will give Bank not less than 90 days prior written notice of all contemplated changes in Debtor's name, chief executive office location, principal place of business location, and/or location of any Collateral, but the giving of this notice shall not cure any Event of Default caused by this change.
- 5.3 Bank assumes no duty of performance or other responsibility under any contracts contained within the Collateral.
- 5.4 Bank has the right to sell, assign, transfer, negotiate or grant participations or any interest in, any or all of the Indebtedness and any related obligations, including without limit this Agreement. In connection with the above, but without limiting its ability to make other disclosures to the full extent allowable, Bank may disclose all documents and information which Bank now or later has relating to Debtor, the Indebtedness or this Agreement, however obtained. Debtor further agrees that Bank may provide information relating to this Agreement or relating to Debtor or the Indebtedness to the Bank's parent, affiliates, subsidiaries, and service providers.
- 5.5 In addition to Bank's other rights, any indebtedness owing from Bank to Debtor can be set off and applied by Bank on any Indebtedness at any time(s) either before or after maturity or demand without notice to anyone. Any such action shall not constitute acceptance of collateral in discharge of any portion of the Indebtedness.
- 5.6 Debtor waives any right to require the Bank to: (a) proceed against any person or property; (b) give notice of the terms, time and place of any public or private sale of personal property security held from Debtor or any other person, or otherwise comply with the provisions of Section 9.504 of the Uniform Commercial Code; or (c) pursue any other remedy in the Bank's power. Debtor waives notice of acceptance of this Agreement and presentment, demand, protest, notice of protest, dishonor, notice of dishonor, notice of default, notice of intent to accelerate or demand payment or notice of acceleration of any Indebtedness, any and all other notices to which the undersigned might otherwise be entitled, and diligence in collecting any Indebtedness. Debtor unconditionally and irrevocably waives each and every defense and setoff of any nature which, under principles of guaranty or otherwise, would operate to impair or diminish in any way the obligation of Debtor under this Agreement, and acknowledges that such waiver is by this reference incorporated into each security agreement, collateral assignment, pledge and/or other document from Debtor now or later securing the Indebtedness, and acknowledges that as of the date of this Agreement no such defense or setoff exists.
- 5.7 Intentionally Omitted.
- 5.8 In the event that applicable law shall obligate Bank to give prior notice to Debtor of any action to be taken under this Agreement, Debtor agrees that a written notice given to Debtor at least five days before the date of the act shall be reasonable notice of the act and, specifically, reasonable notification of the time and place of any public sale or of the time after which any private sale, lease, or other disposition is to be made, unless a shorter notice period is reasonable under the circumstances. A notice shall be deemed to be given under this Agreement when delivered to Debtor or when placed in an envelope addressed to Debtor and deposited, with postage prepaid, in a post office or official depository under the exclusive care and custody of the United States Postal Service or delivered to an overnight courier. The mailing shall be by overnight courier, certified, or first class mail.
- 5.9 Notwithstanding any prior revocation, termination, surrender, or discharge of this Agreement in whole or in part, the effectiveness of this Agreement shall automatically continue or be reinstated in the event that any payment received or credit given by Bank in respect of the Indebtedness is returned, disgorged, or rescinded under any applicable law, including, without limitation, bankruptcy or insolvency laws, in which case this Agreement, shall be enforceable against Debtor as if the returned, disgorged, or rescinded payment or credit had not been received or given by Bank, and whether or not Bank relied upon this payment or credit or changed its position as a consequence of it. In the event of continuation or reinstatement of this Agreement, Debtor agrees upon demand by Bank to execute and deliver to Bank those documents which Bank determines are appropriate to further evidence (in the public records or otherwise) this continuation or reinstatement, although the failure of Debtor to do so shall not affect in any way the reinstatement or continuation.
- 5.10 This Agreement and all the rights and remedies of Bank under this Agreement shall inure to the benefit of Bank's successors and assigns and to any other holder who derives from Bank title to or an interest in the Indebtedness or any portion of it, and shall bind Debtor and the heirs, legal representatives, successors, and assigns of Debtor. Nothing in this Section 5.10 is deemed a consent by Bank to any assignment by Debtor.
- 5.11 Intentionally Omitted.
- 5.12 Except as otherwise provided in this Agreement, all terms in this Agreement have the meanings assigned to them in Article 9 (or, absent definition in Article 9, in any other Article) of the Uniform Commercial Code. "Uniform Commercial Code" means the Texas Business and Commerce Code as amended.
- 5.13 No single or partial exercise, or delay in the exercise, of any right or power under this Agreement, shall preclude other or further exercise of the rights and powers under this Agreement. The unenforceability of any provision of this Agreement shall not affect the enforceability of the remainder of this Agreement. This Agreement constitutes the entire agreement of Debtor and Bank with respect to the subject matter of this Agreement. No amendment or modification of this Agreement shall be effective unless the same shall be in writing and signed by

017104 000034 Dallas 1289553-4
479192.5

TX-02379 (5-99)

Debtor and an authorized officer of Bank. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

5.14 Debtor's chief executive office and its principal place of business is located and shall be maintained at

4401 Freidich Lane, Building 2, Suite 200
STREET ADDRESS

Austin	Texas	78744	Travis County
CITY	STATE	ZIP CODE	COUNTY

If Collateral is located at other than the address specified above, such Collateral is located and shall be maintained at

1239 Campbell Road, Route 17C, Town of Union

STREET ADDRESS

Endicott	New York	13760	
CITY	STATE	ZIP CODE	COUNTY

Collateral shall be maintained only at the locations identified in this Section 5.14.

5.15 A carbon, photographic or other reproduction of this Agreement shall be sufficient as a financing statement under the Uniform Commercial Code and may be filed by Bank in any filing office.

5.16 This Agreement shall be terminated only by the filing of a termination statement in accordance with the applicable provisions of the Uniform Commercial Code, but the obligations contained in Section 2.12 of this Agreement shall survive termination.

5.17 Debtor agrees to reimburse the Bank upon demand for any and all costs and expenses (including, without limit, court costs, legal expenses and reasonable attorneys' fees, whether inside or outside counsel is used, whether or not suit is instituted and, if suit is instituted, whether at the trial court level, appellate level, in a bankruptcy, probate or administrative proceeding or otherwise) incurred in enforcing or attempting to enforce this Agreement or in exercising or attempting to exercise any right or remedy under this Agreement or incurred in any other matter or proceeding relating to this Security Agreement.

6. **DEBTOR AND BANK ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT OR THE INDEBTEDNESS.**

7. **THIS WRITTEN LOAN AGREEMENT (AS DEFINED BY SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE) REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

8. Special Provisions Applicable to this Agreement. (*None, if left blank)

Debtor:

SYMTX, INC.

DEBTOR NAME TYPED/PRINTED

By: Paul K Hiller

SIGNATURE OF Paul Hiller

Its: President

TITLE (If applicable)

Bank:

Comerica Bank-Texas, a Texas banking association

By: Julie Smith

SIGNATURE OF Julie Smith

Its: VP

TITLE Vice President

Exhibit A

COPYRIGHTS

None.

Exhibit B

PATENTS AND PATENTS PENDING

None.

Exhibit C

TRADEMARKS AND TRADEMARK APPLICATIONS

None.

SERVICE MARKS

Service Mark	Trademark Reg. Number	Date Registered	Status
Miscellaneous Design (Diamond Design)	2,108,742	October 28, 1997	Not active
SYMTX	2,122,482	December 16, 1997	Active
SYMTX Domain Name	2,126,379	December 30, 1997	Active
SYMTX and Design	2,141,621	March 3, 1998	Active
FasTest	2,158,146	May 19, 1998	Not Active
SYMTX Logo		September 22, 2000	Not Active