

09-12-2005

REC



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To the Director of the U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450

Enter the old address(es) and the new address(es) below.

1. Name of conveying party(ies)

ThinOptX, Inc.
15856 Porterfield Highway
Abingdon, VA 24212

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

3. Nature of conveyance/Execution Date(s):

Execution Date(s) September 1, 2005

- ☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name
☐ Joint Research Agreement
☐ Government Interest Assignment
☐ Executive Order 9424, Confirmatory License
☐ Other _____

2. Name and address of receiving party(ies)

Name: Mountaineer Capital, LP

Internal Address: 107 Capitol Street, Suite 300

Street Address: _____

City: Charleston

State: West Virginia

Country: United States Zip: 25301

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

4. Application or patent number(s):

☐ This document is being filed together with a new application.

A. Patent Application No.(s)

10/263,359; 10/195,953; 10/196,085

B. Patent No.(s)

6,083,261; 6,224,628; 6,096,077; 6,488,707; 6,517,577;
6,666,887; 6,622,855

Additional numbers attached? ☐ Yes ☒ No

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

Name: Amy Tawney

Internal Address: PO Box 1386

Street Address: 600 Quarrier Street

City: Charleston

State: West Virginia Zip: 25325-1386

Phone Number: (304) 347-1100

Fax Number: (304) 347-1754

Email Address: atawney@bowlesrice.com

6. Total number of applications and patents involved: 10

7. Total fee (37 CFR 1.21(h) & 3.41) \$400.00

- ☐ Authorized to be charged by credit card
☒ Authorized to be charged to deposit account
☐ Enclosed
☐ None required (government interest not affecting title)

8. Payment Information

a. Credit Card Last 4 Numbers _____

Expiration Date _____

b. Deposit Account Number 023292

Authorized User Name Anthony P. Tokarz

9. Signature:

John J. Giblin
Signature
John J. Giblin
Name of Person Signing

September 6, 2005
Date

Total number of pages including cover sheet, attachments, and documents: 15

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, V.A. 22313-1450

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PATENT
REEL: 016958 FRAME: 0007

SECURITY AND ASSIGNMENT AGREEMENT

THIS SECURITY AND ASSIGNMENT AGREEMENT (this "Agreement"), is made and entered into this 1st day of September 2005, by and between, MOUNTAINEER CAPITAL, LP, a West Virginia limited partnership ("Secured Party") and THINOPTX, INC. a Virginia corporation ("Debtor").

WITNESSETH:

WHEREAS, Secured Party has made a loan to Debtor the aggregate principal sum of \$196,822.22, as evidenced by that certain Term Note in the amount of \$196,822.22 (the "Term Note") dated as of even date herewith; and

WHEREAS, as security for the prompt and complete payment of all indebtedness evidenced by the Term Note, Debtor has agreed to grant to Secured Party a security interest in the property hereinafter described.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements hereinafter contained, the parties hereto hereby agree as follows:

1. Grant of Security Interest. As security for the timely payment and performance of the Obligations (as hereinafter defined) and the performance of the obligations under the this Agreement and the Term Note, Debtor does hereby sell, assign, transfer and set over unto the Secured Party and grant to the Secured Party a security interest in and lien on the Collateral (as hereinafter defined) and agrees that the Secured Party shall have the rights stated in this Agreement and the Term Note with respect to the Collateral, in addition to the other rights which the Secured Party may have by law.

2. Collateral. The word "Collateral" means all of Debtor's right, title and interest in, to and under the following property, whether now owned or hereafter existing or arising or in which Debtor now have or hereafter own, acquire or develop an interest and wherever located: (i) all patents and patent applications, domestic or foreign, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including but not limited to such patents and patent applications described in Exhibit A), all rights to sue for past, present or future infringement thereof, all rights arising therefrom and pertaining thereto and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; (ii) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source of business identifiers used in any country in the world, whether registered or unregistered, and the goodwill associated therewith, now existing or hereafter acquired and material to the businesses of Debtor, all registrations, recordings and renewals thereof, and all applications in connection therewith, issued by or filed with a national, state or local governmental authority of any country, including, without limitation, all such trademarks and trademark applications described in Exhibit A; and (iii) all general intangibles and all intangible intellectual or other similar property of Debtor of any kind or nature, associated with or arising out of any of the aforementioned properties and assets and not otherwise described above.

To the extent not included in the terms of Collateral as set forth above, the term "Collateral" shall also include:

(a) All attachments, Accessions, as such term is defined in the UCC, accessories, tools, parts, supplies, increases, and additions to and all replacements of and substitutions for any property described in this Collateral section.

(b) All Products and Proceeds, as such terms are defined in the UCC, of any of the property described in this Collateral section including license royalties, rights to payment, Accounts and proceeds of infringement suits, and to the extent not otherwise included, all payments under insurance (whether or not Secured Party is the loss payee thereof) or any indemnity, warranty, guaranty payable by reason of loss or damage to or otherwise with respect to the Collateral.

(c) All Accounts, as such term is defined in the UCC, contract rights, General Intangibles, Instruments, as such terms are defined in the UCC, rents, monies, payments, and all other rights, arising out of a sale, lease, or other disposition of any of the property described in this Collateral section.

(d) All cash and non-cash Proceeds, as such terms are defined in the UCC, (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section.

(e) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of the Debtor' right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

(f) All guaranties, claims, rights, remedies and privileges relating to any of the property described in this Collateral section.

Provided, however, "Collateral" shall exclude, and nothing in the aforementioned definition shall be deemed to include, the trade secrets, manufacturing processes, methods and know-how of Debtor.

3. Obligations Secured. The "Obligations" secured hereby include:

(i) All sums and other performance due and owing under the Term Note;
and

(ii) All costs and expenses of the Secured Party in the collection of the Collateral, including but not limited to reasonable attorneys' fees and expenses; and

(iii) All costs and expenses of the Secured Party incurred in the protection and preservation of its rights hereunder and in the protection, preservation and sale of the Collateral including, but not limited to, the payment of any taxes, levies, assessments, premiums of insurance on, repairs to, or maintenance or storage of the Collateral and any and all other out-of-pocket expenses of the Secured Party in connection with this Agreement, the Term Note, or the Collateral.

4. Representations and Warranties. Debtor further represents, warrants to and agrees with the Secured Party as follows:

(i) Status of Debtor. Debtor is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia. Debtor is duly qualified or licensed to conduct business in each jurisdiction in which the nature of its business or assets requires

such qualification or licensing under applicable law. Debtor has the requisite power and authority to own and operate its assets and business, and to transact the business in which it is presently engaged and in which it proposes to engage and to grant to Secured Party the security interests in the Collateral as herein provided.

(ii) Binding Agreement. This Agreement has been duly authorized and constitutes the legal, valid and binding obligation of Debtor and is enforceable against Debtor in accordance with its terms.

(iii) No Default or Required Consent. Except as disclosed in the Schedules to the Loan Agreement, neither the execution and delivery of this Agreement by Debtor nor the effectuation by Secured Party of any of its rights and remedies hereunder, whether upon default or otherwise, will result in a breach of, or constitute a default under, the articles of incorporation or the bylaws of Debtor (collectively, the "Organizational Documents") or any other agreement or instrument to which Debtor is a party or by which any of the Collateral is bound, nor violate any law or any rule or regulation of any administrative agency, or any order, writ, injunction or decree of any court or administrative agency, nor does any of the foregoing require the consent of any person, entity or governmental agency or any notice or filing with any governmental or regulatory body.

(iv) Collateral. Except for the security interest granted herein, Debtor has, and will at all times during the term hereof have, good and marketable title to all and every part of the Collateral, free and clear of any mortgage, pledge, Lien, security interest, encumbrance, adverse claim, conditional sales contract, lease or other title retention agreement except the previous lien of Secured Party. No account debtor or other persons obligated on any of the Collateral is a governmental authority covered by the Federal Assignment of Claims Act or like federal, state or local statute or rule in respect of such Collateral, and the Debtor holds no Commercial Tort Claims (as such term is defined in the UCC). Exhibit A contains a true and correct list of all the existing Collateral consisting of U.S. patents, trademarks, and patent and trademark applications or registrations owned by Debtor.

(v) Priority. Upon the execution and delivery of this Agreement by Debtor and the filing of appropriate financing statements with the proper governmental agencies, or, if applicable, upon Secured Party's taking possession of the Collateral, Secured Party shall have a valid, enforceable and binding second priority lien on and security interest in the Collateral subject only to the first and second priority liens of Secured Party securing earlier loans in the principal amount of \$350,000 and \$100,000.

(vi) No Litigation. There is no action, legal, administrative or other proceeding pending or to Debtor's knowledge threatened against Debtor's respective title to the Collateral or against Debtor's grant of a security interest therein hereunder, nor does Debtor know of any basis for the assertion of any such claim.

(vii) Location of Debtor's Records. The chief executive office of Debtor and Debtor's Organizational Documents are and will remain at 15856 Porterfield Highway, Abingdon, Virginia 24212-0784, or such other address as Debtor may designate in writing to Secured Party as set forth in the last sentence of this subsection (vii). Debtor represents that it has no other place of business or locations where Collateral may be located. If the Debtor desires to remove Collateral from its existing locations, establish a new location at which Collateral may be located, establish a new name in which it may do business, invoice account debtor or maintain records concerning the Collateral, change its current chief executive office or change its location from Virginia to another state, Debtor or such Debtor, as the case may be, shall first: (a) give the Secured Party at least thirty (30) days prior written notice of its intention to do so and provide the Secured Party with such information in connection therewith as the

Secured Party may reasonably request; and (b) take such action, satisfactory to the Secured Party, as may be necessary to maintain at all times the perfection and priority of the security interests in the Collateral granted to the Secured Party hereunder.

(viii) Credit Information. Any and all credit or other information previously furnished to Secured Party by Debtor in connection with the Obligations, the financial condition, assets, liabilities, business or prospects of Debtor, or the value or condition of the Collateral is true and correct in all material respects, and all such information hereafter furnished to Secured Party by Debtor will be true and correct when furnished.

5. Affirmative Covenants. Debtor covenants and agrees with the Secured Party as follows:

(i) Preservation of Collateral and Security Interest. Debtor will use the Collateral with reasonable care and caution, will not part with ownership thereof nor lease or hire out same to other third party without the written consent of the Secured Party, other than licenses of Debtor's intellectual property in the ordinary course of Debtor's business, and will exhibit the same to the Secured Party upon demand. Debtor will not use, or permit the Collateral to be used, in violation of any federal, state, county or municipal law or regulation or for any unlawful purpose whatsoever. Debtor represents and warrants that it has made no prior sale, pledge, encumbrance, assignment or other disposition of any of the Collateral owned by such Debtor and the same are free from all liens, security interests, encumbrances and rights of set off and recoupment of any kind. Except as herein provided, Secured Party does not authorize Debtor and Debtor will not hereafter (without the prior written consent of the Secured Party) sell, pledge, lease, encumber, assign or otherwise dispose of any of the Collateral or any rights thereunder, or permit any right of set off, lien or security interest to exist thereon except to the Secured Party and except for licenses of Debtor's intellectual property in the ordinary course of Debtor's business. Debtor will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.

(ii) Maintenance of Licenses. Debtor shall do or cause to be done all things necessary to preserve in full force and effect its existence, properties, rights, trademarks, service marks, licenses and qualifications to carry on business in all applicable jurisdictions, except where not doing so would not be reasonably expected to have a material adverse effect.

(iii) Conduct of Business. Debtor shall: (i) comply with all laws, statutes and regulations pertaining to its use and ownership of its properties and its conduct of its business; (ii) care for and maintain all of its properties in good condition, free of misuse, abuse, waste and deterioration, reasonable wear and tear caused by normal use excepted; (iii) observe and perform promptly all contracts or agreements to which it is a party or by which any of its properties is bound; and (iv) carry on its business in the ordinary course.

(iv) Covenant to Comply with Terms of Agreement and Note. Debtor will keep, observe and perform all of the terms, provisions, covenants and agreements of this Agreement and the Note, to the extent applicable to Debtor.

(v) Payment of Filing Fees. Debtor will pay all filing fees for the filing of this instrument or of financing statements filed to perfect the security interest provided in this Agreement or in connection with this Agreement.

(vi) Inspection. Debtor shall give Secured Party such information as may be requested concerning the Collateral and upon reasonable prior notice permit Secured Party and its agents

and representatives to enter upon any premises upon which Debtor's records concerning the Collateral are located for the purpose of inspecting and auditing the same.

(vii) Other Documents. Debtor shall promptly deliver to Secured Party such documents and information pertaining to the status or condition of the Collateral and Secured Party's security interests therein as Secured Party may request from time to time.

(viii) Defense of Collateral. Debtor shall, at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with the Collateral or the obligations, duties or liabilities of Debtor thereunder and hereunder, and shall pay on demand all costs and expenses, including, without limitation, reasonable attorneys' fees, which Secured Party may incur in connection with Secured Party's appearance, voluntary or otherwise, in any such action or proceeding.

(ix) Payment or Performance by the Secured Party. At its option, Secured Party may, but shall not be obligated to: (a) discharge taxes, Liens, security interests or such other encumbrances as may attach to the Collateral; and (b) otherwise perform, keep, observe and render true and correct Debtor's covenants, agreements, representations and warranties hereunder and under any other documents evidencing or securing the Obligations, in each case as determined by the Secured Party to be necessary. Debtor will reimburse the Secured Party on demand for any payment so made or any expense incurred by the Secured Party pursuant to the foregoing authorization, and the Collateral also will secure any advances or payments so made or expenses so incurred by the Secured Party.

(x) Secured Party's Obligations and Duties. Anything herein to the contrary notwithstanding, Debtor shall remain obligated and liable under each contract or agreement relating to the Collateral to be observed or performed by Debtor thereunder. Secured Party shall not have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by the Secured Party of any payment relating to any of the Collateral, nor shall the Secured Party be obligated in any manner to perform any of the obligations of the Debtor under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by the Secured Party in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Secured Party or to which the Secured Party may be entitled at any time or times. Secured Party's sole duty with respect to the custody, safe keeping and physical preservation of the Collateral in its possession, under W. Va. Code § 46-9-207 of the UCC, shall be to deal with such Collateral in the same manner as the Secured Party deals with similar property for its own account.

(xi) Information and Actions Regarding Collateral. Debtor will furnish to the Secured Party from time to time if and as requested current lists of the Collateral; will continue to mark on the books of the Debtor appropriate entries evidencing the assignment of book accounts to the Secured Party; and, if and when requested by the Secured Party from time to time, will furnish to it copies of all correspondence and other instruments or writings in any way evidencing or relating to the Collateral or the proceeds thereof.

(xii) Possessory Collateral. Upon request, Debtor will turn over physical possession to the Secured Party of all Collateral which requires the Secured Party to have possession thereof in order to perfect the Secured Party's security interest therein, all as the Secured Party may deem necessary or advisable from time to time in order to perfect and continue perfected said security interests as first priority security interests.

(xiii) Notification of Account Debtor. At any time after the occurrence of an Event of Default and without notice to Debtor, or as otherwise agreed to in writing by the Debtor and the Secured Party, the Secured Party may notify any persons who are indebted to the Debtor on any Collateral consisting of Accounts or General Intangibles of the assignment thereof to the Secured Party and may direct such account debtor to make payment directly to the Secured Party of the amounts due. At the request of the Secured Party after the occurrence and during the continuation of an Event of Default, or as otherwise agreed to in writing by the Debtor and the Secured Party, the Debtor will direct any persons who are indebted to the Debtor on any Collateral consisting of Accounts or General Intangibles to make payment directly to the Secured Party. Secured Party is authorized to give receipts to such account debtor for any such payments and the account debtor will be protected in making such payments to the Secured Party.

(xiv) Authorization to File Financing Statements. Debtor hereby irrevocably authorizes the Secured Party at any time and from time to time to file in any filing office in any UCC jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral; and (b) provide any other information required by the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including whether the Debtor is an organization, the type of organization and any organization identification number issued to such Debtor. Debtor agrees to furnish any such information to the Secured Party promptly upon the Secured Party's request.

(xv) Further Acts. On a continuing basis, Debtor shall make, execute, acknowledge and deliver, and file and record in the proper filing and recording places, all such instruments and documents, and take all such action as may be necessary or advisable or may be requested by Secured Party to carry out the intent and purposes of this Agreement, or for assuring, confirming or protecting the grant or perfection of the security interest granted or purported to be granted hereby, to ensure Debtor's compliance with this Agreement or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to the Collateral, including any documents for filing with the United States Patent and Trademark Office ("PTO") or any applicable state office. Secured Party may record this Agreement, an abstract thereof, or any other document describing Secured Party's interest in the Collateral with the PTO, at the expense of Debtor. In addition, Debtor authorizes Secured Party to file financing statements describing the Collateral in any UCC filing office deemed appropriate by Secured Party.

(xvi) Authorization to Supplement. If Debtor shall apply for or obtain rights to any new trademarks and/or patentable inventions or become entitled to the benefit of any new patent application or patent for any reissue, division or continuation, of any patent, the provisions of this Agreement shall automatically apply thereto. Debtor shall give prompt notice in writing to Secured Party with respect to any such new trademarks and/or patent rights, or renewal or extension of any trademark and/or patent registration. Without limiting Debtor's obligations under this Agreement, Debtor authorizes Secured Party to modify this Agreement by amending Exhibit A to include any such new patent rights and/or trademark rights. Notwithstanding the foregoing, no failure to so modify this Agreement or amend Exhibit A shall in any way affect, invalidate or detract from Secured Party's continuing security interest in all Collateral, whether or not listed on Exhibit A.

6. Negative Covenants. Debtor covenants that so long as any Obligation remains outstanding:

(i) Sale or Hypothecation of Collateral. Debtor shall not directly or indirectly, whether voluntarily or involuntarily, by operation of law or otherwise: (1) sell, assign, transfer, exchange, lease, sell and lease back, lend or dispose of any of the Collateral, or any of Debtor's respective rights therein, except for licenses of Debtor's intellectual property in the ordinary course of business; nor

(2) cause, suffer or permit any of the Collateral, or any of Debtor's respective rights therein, to be affected by any encumbrance, security interest, equity infusion or adverse claim of any kind or nature whatsoever, except:

(a) inchoate or statutory liens for taxes which have not been assessed and which are not delinquent or, if assessed, are being contested in good faith by appropriate proceedings and provided that, in any such case, the effect of such proceedings is to stay the enforcement of such liens; and

(b) other liens as may from time to time be expressly permitted in writing by Secured Party.

The inclusion of "proceeds" as a component of the Collateral shall not be deemed a consent by Secured Party to any sale or disposition of all or any part of the Collateral.

(ii) Reorganization or Disposition of Assets, Etc. The Debtor shall not become a party to any transaction whereby all or a substantial part of its properties, undertakings or assets would become the property of any other person or entity, whether by way of liquidation, dissolution, reorganization, merger, transfer, sale, lease, sale and leaseback or any other disposition; nor shall Debtor make any material change in the character of its businesses as conducted on the date hereof.

(iii) No Guaranties. Debtor shall not incur, assume or suffer to exist any guaranties or endorsements by Debtor except: (i) endorsements of notes, bills and checks presented to banks for collection or deposit in the ordinary course of business; and (ii) guaranties, indemnifications or bonds in favor of trade suppliers, lessors, public utilities, government authorities, or construction contractors where such guaranties, indemnifications or bonds are given in the ordinary course of business.

(iv) No Investments. Debtor shall not make any loan to, or any investment in any debt obligation or equity security of, any person or entity.

(v) Legal Status. Debtor shall not change its organizational identification number, type of organization, jurisdiction of organization or other legal structure. If the Debtor does not have an organizational identification number and later obtains one, Debtor shall forthwith notify the Secured Party of such organizational identification number.

7. Events of Default.

(i) No Event of Default. So long as no Event of Default (hereinafter defined) shall have occurred and be continuing, Debtor shall be entitled to use the Collateral in the ordinary course of business for any purpose not inconsistent with the terms of this Agreement and the Term Note; provided, however, that Debtor shall not exercise or refrain from exercising any such right if it would result in an Event of Default; and, provided further, that Debtor shall notify Secured Party in writing of any such proposed action at least ten (10) business days prior to taking the same.

(ii) Event of Default. The occurrence of any of the following shall constitute an event of default (each an "Event of Default") hereunder:

(1) The default in the prompt and complete payment and performance of the Term Note, any term, condition or covenant in favor of Secured Party contained in this Agreement or the Term Note, or the occurrence of any other event of default specified in this

Agreement or the Term Note, in each instance, subject to the applicable grace period, if any, contained therein;

(2) Demand by the Secured Party under any of the Obligations that have a demand feature;

(3) The transfer of property by Debtor under circumstances which would entitle a trustee in bankruptcy or similar fiduciary to avoid such transfer under the federal bankruptcy laws, as amended, or under any other laws, whether federal or state, for the relief of debtor or avoidance of transfers and/or conveyances, now or hereafter existing;

(4) If representation or warranty of Debtor contained in this Agreement or in any document, certificate or instrument delivered pursuant thereto or hereto should prove to be false or misleading in any material respect;

(5) Reserved.

(6) An uninsured material loss, theft, damage or destruction to any of the Collateral, or the entry of any judgment against the Debtor or any Lien against or the making of any levy, seizure or attachment of or on the Collateral;

(7) The failure of the Secured Party to have at any time a first priority perfected security interest in the Collateral;

(8) Any person or third party shall successfully contest or challenge the validity of the security interest and priority of the lien granted to the Secured Party pursuant to this Agreement.

(iii) Remedies. Upon the occurrence and during the continuation of an Event of Default, as permitted by the UCC, the Secured Party may:

(1) Declare any or all Obligations, or any part thereof, to be immediately due and payable without demand or notice of any kind and proceed to collect the same.

(2) Peaceably by its own means or with judicial assistance enter the Debtor's premises and take possession of the Collateral;

(3) Render the Collateral unusable;

(4) Use, operate, manage, control, maintain, repair, alter or dispose of the Collateral on the Debtor's premises;

(5) Reissue the Collateral in the Secured Party's name;

(6) Require the Debtor to assemble the Collateral and make it available to the Secured Party at a place designated by the Secured Party; and

(7) Notify the United States Postal Service to send Debtor's mail to the Secured Party.

Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Secured Party will give the Debtor

reasonable notice (within the time established by subsection (v) below) of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. Expenses of retaking, holding, preparing for sale, selling or the like shall include the Secured Party's reasonable attorney's fees and legal expenses, incurred or expended by the Secured Party to enforce any payment due it under this Agreement either as against the Debtor, or in the prosecution or defense of any action, or concerning any matter growing out of or connection with the subject matter of this Agreement and the Collateral pledged hereunder. Debtor hereby waives all claims for damages by reason of any seizure, repossession, retention, use or sale of the Collateral under the terms of this Agreement.

(iv) Application of Proceeds. The net proceeds arising from the disposition of the Collateral after deducting expenses incurred by the Secured Party will be applied to the Obligations in the order determined by the Secured Party. If any excess remains after the discharge of all of the Obligations, the same will be paid to the Debtor. If after exhausting all of the Collateral there should be a deficiency, the Debtor will be liable therefor to the Secured Party. Nothing contained herein will obligate the Secured Party to proceed against Debtor or any other party obligated under the Obligations or prior to proceeding against any other collateral for the Obligations prior to making a claim against the Collateral.

(v) Notice. Whenever notice is required by law to be sent by the Secured Party to the Debtor of any sale, lease or other disposition of the Collateral, ten (10) days' written notice sent to the Debtor's address set forth below will be reasonable:

To Debtor: ThinOptX, Inc.
Attn: Wayne B. Callahan
15856 Porterfield Highway
P.O. Box 784
Abingdon, VA 24212

with a copy to: Tracy Powell, Esq.
Sherrard & Roe, PLC
424 Church Street, Suite 2000
Nashville, TN 37219

To Secured Party: Mountaineer Capital, LP

Attn: Eric Nelson, Jr.
107 Capitol Street
Suite 300
Charleston, WV 25301

with a copy to: Marc A. Montelelone, Esq.
Bowles Rice McDavid Graff & Love PLLC
P.O. Box 1386
Charleston, WV 25325-1386

(vi) Sales on Credit. If Secured Party sells any of the Collateral upon credit, Debtor will be credited only with payments actually made by the purchaser, received by Secured Party and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Secured Party may resell the Collateral and Debtor shall be credited with the proceeds of the sale.

(vii) Marshalling. Secured Party has no obligation and shall not be required to marshal any assets (including without limitation, the Collateral) in favor of Debtor, or against or in payment of the Obligations or any other indebtedness owed to Secured Party by Debtor or any other Person or entity. To the extent that it lawfully may, Debtor hereby agrees that will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of Secured Party's rights and remedies under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, the Debtor hereby irrevocably waives the benefits of all such laws.

(viii) Warranties. Secured Party may sell the Collateral without giving any warranties as to the Collateral. In accordance with the applicable provisions of the UCC, Secured Party may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

8. General Provisions.

(i) Rights and Remedies Cumulative. All rights and remedies granted the Secured Party hereunder and under any agreement referred to herein or otherwise available at law or in equity, shall be deemed concurrent and cumulative, and not alternative remedies, and the Secured Party may proceed with any number of remedies at the same time until the Obligations are satisfied in full.

(ii) Power of Attorney. Debtor hereby irrevocably constitutes and appoints the Secured Party and any officer thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Debtor or in its name, from time to time in the Secured Party's discretion for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement. The appointment of Secured Party as Debtor's attorney-in-fact is coupled with an interest and is therefore irrevocable.

(iii) No liability. Nothing in this Agreement shall be deemed to constitute as assumption by Secured Party of any liability or obligation of Debtor with respect to any of the Collateral.

(iv) Further Assurances. At any time and from time to time, upon demand of the Secured Party and at the Debtor's expense, Debtor will give, execute, file and record any notice, financing statement, continuation statement, amendment statement, instrument, document or agreement that the Secured Party may consider necessary or desirable to create, preserve, continue, perfect or validate any security interest granted hereunder or to enable the Secured Party to exercise or enforce its rights hereunder with respect to such security interest. Debtor hereby authorize the Secured Party to file financing statements, continuation statements, amendments and other documents under the UCC relating to the Collateral without the signature of the Debtor, naming the Debtor, as debtor and the Secured Party as secured party.

(v) Notices. Notice or demand, if required to be given hereunder, shall be given in accordance with the provisions set forth in Section 7(v) hereof.

(vi) Waiver. No delay or omission on the part of the Secured Party to exercise any right or power arising from any Event of Default will impair any such right or power or be considered a waiver of any such right or power or a waiver of any such Event of Default or an acquiescence therein, nor will the action or non-action of the Secured Party in case of any Event of

Default impair any right or power arising as a result thereof. Debtor waives any right it may have to require Secured Party to pursue any third person for any of the Obligations.

(vii) Illegality. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

(viii) Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Debtor and the Secured Party and their respective representatives, successors and assigns and will bind all persons who become bound as a debtor to this Agreement; provided, that the Debtor may not assign this Agreement in whole or in part without the prior written consent of the Secured Party and the Secured Party at any time may assign this Agreement in whole or in part.

(ix) Changes in Writing. No modification, amendment or waiver of any provision of this Agreement nor consent to any departure by the Debtor therefrom, will in any event be effective unless the same is in writing and signed by the Secured Party, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Debtor in any case will entitle the Debtor to any other or further notice or demand in the same, similar or other circumstance.

(x) Entire Agreement. This Agreement (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

(xi) Governing Law; Severability. This Agreement, all amendments hereto, all supplements hereof, and all acts, transactions, agreements, certificates, assignments and transfers thereunder, and all rights of the parties hereto, shall be governed as to their validity, enforcement, construction and effect, and in all other respects by West Virginia law, except to the extent that the UCC provides for the application of the laws of another state. The provisions hereof are severable, and the invalidity or unenforceability of any provision shall not affect or impair the remaining provisions which shall continue in full force and effect.

(xii) Interpretation. Whenever used herein, the singular number will include the plural, the plural the singular and the use of the masculine, feminine or neuter gender will include all genders. If more than one party signs below as the Debtor, such parties shall be jointly and severally liable hereunder. The section headings of this Agreement are for convenience only, and will not limit or otherwise affect any of the terms hereof.

(xiii) Consent to Jurisdiction. Debtor hereby agrees to the jurisdiction of any state or federal court located in the Washington County, Virginia, and consents that all service of process may (in addition to other lawful methods) be sent by nationally recognized overnight courier service directed to the Debtor at the Debtor's address set forth in Section 7(v) hereof, and service so made will be deemed to be completed on the business day after deposit with such courier; provided, that nothing contained herein will prevent the Secured Party from bringing any action or exercising any rights against the Debtor individually, or against any property of the Debtor within any other state or nation to enforce any award or judgment obtained in the venue specified above. Debtor waives any objection to venue and any objection based on a more convenient forum in any action instituted hereunder.

(xiv) Waiver of Jury Trial. THE DEBTOR WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN

CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OR ENFORCEMENT OF ANY SUCH RIGHTS OR OBLIGATIONS. Except as prohibited by law, the Debtor waives any right which it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Debtor (i) certifies that neither the Secured Party nor any representative, agent or attorney of the Secured Party has represented, expressly or otherwise, that the Secured Party would not, in the event of litigation, seek to enforce the foregoing waivers or other waivers contained in this Agreement, and (ii) acknowledges that, in entering into this Agreement and the Term Note, the Secured Party is relying upon, among other things, the waivers and certifications contained in this subsection XIV of Article 8.

WITNESS the due execution and sealing hereof with the intent to be legally bound, this 1st day of September, 2005.

DEBTOR:

THINOPTX, a Virginia corporation

By: [Signature]
Its: President

COMMONWEALTH OF VIRGINIA)

COUNTY OF Washington

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared Wayne B. Callahan, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of ThinOptX, Inc., the within named assignor, a corporation, and that he as such President, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such President.

WITNESS my hand, at office in Washington ^{COUNTY} Virginia, this 31st day of August 2005.

[Signature]
Notary Public

My Comm. Expires: November 30, 2006

1435452.1

EXHIBIT A**ThinOptX, Inc.'s U.S. Registered Trademarks**

Mark	Country	AppSerNo	Issue No	Filing Date	Issue Date
ThinOptX	U.S.	76/401,939	2,795,766	4/30/02	12/16/03

ThinOptX, Inc.'s Pending U.S. Trademarks

Mark	AppSerNo	Issue No	Filing Date	Issue Date
Rollable	76/423,360		6/20/02	
Ultra/Thinoptx	76/490,499		2/19/03	

ThinOptX, Inc.'s U.S. Patents

Description	App Ser No	Issue No	Filing Date	Issue Date
Crossed Haptics for Intraocular Lenses	09/084,989	6,083,261	5/28/98	7/4/00
Haptics for an Intraocular Lens	09/296,810	6,224,628 B1	4/23/99	5/1/01
Deformable Intraocular Corrective Lens	08/914,767	6,096,077	8/20/97	8/1/00
Method of Implanting a Deformable Intraocular Corrective Lens	09/441,425	6,488,707 B1	11/16/99	12/3/02
Crossed Haptics for Intraocular Lenses	09/568,019	6,517,577 B1	5/10/00	2/11/03
Deformable Intraocular Multi-Focal Lens	10/058,978	6,666,887	10/22/01	12/23/03
Intraocular Lens Case	10/066,296	6,622,855	1/30/02	9/23/03

ThinOptX, Inc.'s Pending U.S. Patents

IP Type	Description	App Ser No	Issue No	Filing Date	Issue Date
Utility Patent	Deformable Intraocular Corrective Lens (continuation)	10/263,359		10/1/02	
Utility Patent	Small Incision Lens	10/195,953		7/16/02	
Utility Patent	Method of Using a Small Incision Lens	10/196,085		7/16/02	