

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	RELEASE BY SECURED PARTY
CONVEYING PARTY DATA	
Name	Execution Date
Dominion Venture Finance L.L.C.	05/31/2002
RECEIVING PARTY DATA	
Name:	Sky Desk, Inc.
Street Address:	12348 High Bluff Drive
City:	San Diego
State/Country:	CALIFORNIA
Postal Code:	92130
PROPERTY NUMBERS Total: 1	
Property Type	Number
Patent Number:	6014676
CORRESPONDENCE DATA	
Fax Number:	
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	(650) 433-5800
Email:	mbegay@lowenstein.com
Correspondent Name:	Lowenstein Sandler
Address Line 1:	65 Livingston Avenue
Address Line 4:	Roseland, NEW JERSEY 07068
ATTORNEY DOCKET NUMBER:	06224.428 (G0010)
NAME OF SUBMITTER:	Marina Portnova
Total Attachments: 40 source=DominionRelease_5_31_02#page1.tif source=DominionRelease_5_31_02#page2.tif source=DominionRelease_5_31_02#page3.tif source=DominionRelease_5_31_02#page4.tif source=DominionRelease_5_31_02#page5.tif	

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DOMINION VENTURE FINANCE, L.L.C.
DOMINION CAPITAL MANAGEMENT
1656 N. California Blvd., #300
Walnut Creek, CA 94596-4164
Phone: (925) 280-6309
Fax: (925) 280-6337

May 31, 2002

SwapDrive, Inc.
1313 F Street, NW
Washington, DC 20004

SkyDesk, Inc.
12348 High Bluff Drive, Suite 200
San Diego, CA 92130

Re: Acquisition of the Assets of SkyDesk, Inc. by SwapDrive, Inc.

Ladies and Gentlemen:

The undersigned, Dominion Venture Finance L.L.C. and Dominion Capital Management (collectively, with all of their respective affiliates and assigns, "*Lender*"), has been advised by SkyDesk, Inc. ("*Seller*") that Seller intends to sell and assign to SwapDrive, Inc. ("*Purchaser*"), pursuant to that certain Asset Purchase Agreement, of even date herewith, by and between Seller and Purchaser (the "*Purchase Agreement*"), the Assets identified in the Purchase Agreement (such transaction, the "*Asset Sale*"). Lender has been granted any and all liens and security interests in the Assets pursuant to the loan and security agreements and related documents identified on *Exhibit A* hereto (collectively, the "*Loan Documents*"). Capitalized terms used but not defined herein had the meanings ascribed thereto in the Purchase Agreement.

In consideration of the foregoing and for good and valuable consideration had and received, Lender irrevocably commits (effective automatically at and upon the closing of the Asset Sale pursuant to the Purchase Agreement (the "*Closing*") and Lender's receipt of the payment pursuant to that certain Fund Transfer Agreement (such payment under the Fund Transfer Agreement, together with the payment of an additional \$150,000 from Purchaser to Lender to cover certain obligations of Seller or Lender to Arc (defined below), the "*Payment*"), of even date herewith, between Lender and Seller (whether indirectly from Seller or directly from Purchaser, as permitted by the Purchase Agreement), to release all liens, security interests, pledges, assignments and other encumbrances and interests of Lender in all the Assets being sold to Purchaser pursuant to the Purchase Agreement (the "*Released Assets*") at the Closing.

Lender has concurrently with the execution hereof delivered to Latham & Watkins, counsel to Seller, UCC-3 Termination Statements (the "*Termination Statements*") executed by Lender releasing all security interests in the Released Assets, with the understanding that Latham & Watkins will not deliver the Termination Statements to Purchaser until the Closing.

Effective automatically at and upon the Closing: (a) the Termination Statements will be released by Latham & Watkins to Seller, (b) Purchaser will be entitled to file this letter with the United States Patent and Trademark Office (the "*PTO*") to obtain the release of any security interests over property of Seller on record at the PTO, and (c) Lender hereby authorizes Purchaser and/or Seller to file the Termination Statements in order to terminate all UCC-1 Financing Statements naming Seller, as debtor, and Lender, as secured party.

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Lender further agrees to deliver to Purchaser such other termination statements, collateral releases, assignment releases and other agreements, in form and substance satisfactory to Purchaser, as Purchaser may reasonably require in connection with Lender's above-described release of the security interests, liens, pledges, and assignments granted in or on the Released Assets, if any. Lender and Seller are parties to a side letter, dated as of May 29, 2002 (the "*Side Letter*"), with ARC International Corporation ("*Arc*"), relating to the "*Agreement*" that is referenced in the Side Letter. Lender irrevocably covenants and agrees in favor of Purchaser that if Lender has received the Payment, then Lender will indemnify and hold harmless Purchaser and Purchaser's affiliates, successors, owners, agents, related companies and assignees from and against any and all claims, causes of action, demands or compensation sought by Arc or pursued by or on behalf of any person or party claiming by or through Arc; *provided, however*, that Lender's maximum indemnification liability to Purchaser as set forth above shall not exceed \$150,000 in the aggregate.


Lender hereby consents (in any and all capacities, including, without limitation, as the senior secured creditor of Seller) to and authorizes the execution, delivery and performance in all respects by Seller and Purchaser of the Purchase Agreement in substantially the form attached hereto as *Exhibit B*, and hereby acknowledges and agrees that the execution and delivery of said Purchase Agreement shall not be deemed by Lender to constitute a default event under the Loan Documents or any agreement related to the Loan Documents. Lender agrees that it will not challenge or contest the execution, delivery or performance of the Purchase Agreement and acknowledges that it is the intent of Seller, Purchaser and Lender that Purchaser obtain free, unrestricted, and unencumbered title to the Assets, and that the purchase price and consideration being paid by Purchaser for the Assets was negotiated at arms'-length by Seller and Purchaser (in consultation with Lender), and, in light of (among other things) such negotiations and the prior efforts by Seller and its agents and representatives to secure a buyer for the Assets, represents a full and fair price therefor.

Subject to required disclosure to governmental agencies or applicable law and except as otherwise contemplated by this letter and the Purchase Agreement, Lender agrees to maintain the confidentiality of this letter and all information and data relating to the Asset Sale. At all times prior to and after the closing of the Asset Sale pursuant to the Purchase Agreement, Lender shall keep the terms of this letter, the Purchase Agreement, and any related documents strictly confidential, *provided however*, that Lender may discuss with or disclose such information to its attorneys, advisors, and investors, so long as each such person is ethically or contractually bound to keep such information confidential. At all times after the closing of the Asset Sale pursuant to the Purchase Agreement, Lender shall keep strictly confidential, and neither Lender nor any of its representatives or affiliates shall use or disclose, any non-public document or other information that relates directly or indirectly to the Asset Sale, Purchaser, or any affiliate of Purchaser. Notwithstanding the foregoing, Lender may use or disclose any document or other information to comply with any applicable Order or Legal Requirement.

Neither this letter nor any term or provision hereof may be modified, amended, waived, rescinded, or revoked without the express, prior written consent of Purchaser. This letter and the terms and provisions hereof shall survive the Closing; *provided, however*, that notwithstanding anything herein to the contrary, if the Closing does not occur prior to June 6, 2002, then this letter shall expire. This letter shall be binding upon the undersigned and their respective successors, assigns and affiliates and inure to the benefit of Seller, Purchaser and Seller's and Purchaser's respective successors, assigns and affiliates

Very truly yours,

DOMINION VENTURE FINANCE, L.L.C.
DOMINION CAPITAL MANAGEMENT L.L.C.

By: 
Printed Name: JAMES KIRWAN
Title: CEO DCM

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EXHIBIT A
LOAN AGREEMENTS

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EXHIBIT B
PURCHASE AGREEMENT

(See the attachment)

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EXECUTION COPY

ASSET PURCHASE AGREEMENT

between

SWAPDRIVE, INC.,
a Delaware corporation;

and

SKYDESK, INC.,
a Delaware corporation;

Dated as of May 31, 2002

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, dated as of May 31, 2002 (this "Agreement"), is made by and among SWAPDRIVE, INC., a Delaware corporation (the "Purchaser"); and SKYDESK, INC., a Delaware corporation (the "Seller"). Certain capitalized terms used in this Agreement are defined in Annex A.

RECITALS

The parties wish to provide for the sale of certain assets of the Seller to the Purchaser on the terms set forth in this Agreement.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement, intending to be legally bound, agree as follows:

1. SALE OF ASSETS; RELATED TRANSACTIONS.

1.1 **Sale of Assets.** At the Closing (as defined in Section 1.3 below) the Seller shall cause to be sold, assigned, transferred, conveyed and delivered to the Purchaser good and valid title to the Assets (as defined below), free and clear of any Encumbrances, on the terms and subject to the conditions set forth in this Agreement. For purposes of this Agreement, "Assets" shall mean: (i) all revenue stream deriving from the Seller's existing customer base, (ii) all of Seller's accounts receivable and customer pipeline, including without limitation, all sales leads, contacts, and contracts, whether completed or in process, (iii) the Acquired Proprietary Assets (as defined in Section 2.6 below), and (iv) all of Seller's other assets and property, except certain assets leased from EMC and Cisco, used in or necessary to operate the Seller's back-up services business as presently operated (the "Business"). Accordingly, the Assets shall include and only include:

- (a) certain assets listed on *Exhibit 1.1* hereto;
- (b) all Acquired Proprietary Assets and goodwill of the Seller (including, without limitation, the right to use the names "SkyDesk," "@Backup," and "SmartClone") and the other trade names and trademarks used by the Seller in the Business;
- (c) all rights of the Seller under the Seller Contracts (as defined below);
- (d) all Governmental Authorizations (as defined below) held by the Seller that are necessary for the operation or use of the Assets;
- (e) all claims (including, without limitation, claims for past infringement of Acquired Proprietary Assets) and causes of action of the Seller against other Persons in respect of or relating to the Assets (regardless of whether or not such claims and causes of action have been asserted by the Seller), and all rights of indemnity, warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery possessed by the Seller (regardless of whether such rights are currently exercisable);
- (f) all inventories and Works-in-Progress owned by the Seller related to the Assets;

and

(g) all books, records, files and data (whether in tangible, electronic or other form) of the Seller relating to the Assets.

Notwithstanding anything to the contrary herein, the Assets shall not include any of cash, deposits, or prepayments of the Seller on the Closing Date and the Seller may collect on such cash, deposits and prepayments in accordance with the Seller's past collection practices, except, however, that the Purchaser may keep the deposit associated with certain card service agreements listed as items 7 and 8 on Exhibit 2.8 attached hereto.

Notwithstanding anything to the contrary herein, the Seller does not guarantee assignability of the Seller Contracts or the Asset listed on Exhibit 2.5 attached hereto (the "Bailey Patent"), however, the Seller shall use its best efforts to take such actions as reasonably requested by the Purchaser to facilitate the assignment of the Seller Contracts and the Bailey Patent.

1.2 Purchase Price.

1.3 Closing.

2. REPRESENTATIONS AND WARRANTIES OF THE SELLER.

2.6 Proprietary Assets.

2.7 [RESERVED].

2.8 Contracts.

2.9 Liabilities; Accounts Receivable.

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2.10 [RESERVED].

2.11 Related Party Transactions.

2.12 Non-Contravention; Consents.

2.13 Compliance with Legal Requirements.

2.14 Governmental Authorizations.

2.15 Tax Matters.

2.16 Proceedings; Orders.

2.17 Authority; Binding Nature of Agreements.

2.18 No Other Agreements to Sell.

2.19 Brokers.

2.20 Full Disclosure.

3. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER.

The Purchaser represents and warrants, to and for the benefit of the Seller, as follows:

3.1 Due Organization.

3.2 Authority; Binding Nature of Agreements.

4. ADDITIONAL AGREEMENTS.

4.1 Further Actions.

4.2 Publicity.

4.3 Change Of Name.

4.4 Sales Taxes.

4.5 Bulk Transfers.

5. MISCELLANEOUS PROVISIONS.

5.1 Further Assurances.

5.2 Fees and Expenses.

5.3 Attorneys' Fees.

5.4 Notices.

5.5 Time of the Essence.

5.6 Headings.

5.7 Counterparts.

5.8 Governing Law; Venue; Waiver of Jury Trial.

5.9 Successors and Assigns; Parties in Interest.

5.10 Remedies Cumulative; Specific Performance.

5.11 Waiver.

5.12 Amendments.

5.13 Severability.

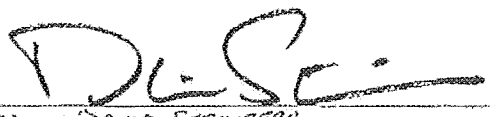
5.14 Entire Agreement.

5.15 Construction.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be executed and delivered as of the date first written above.

SWAPDRIVE, INC.

By: 
Name: DAVID STEINBERG
Title: CEO

SKYDESK, INC.

By: _____
Name:
Title:

FROM LATHAM & WATKINS LA 213-891-8763 #4
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(FRI) 5. 31' 02 20:02/ST. 20:01/NO. 4800000404 P 2
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IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be executed and delivered as of the date first written above.

SWAPDRIVE, INC.

By: _____
Name:
Title:

SKYDESK, INC.

By: _____
Name: JAMES C. KEALLY
Title: CEO/PRES.

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ANNEX A
CERTAIN DEFINITIONS

A-1

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A-3

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EXHIBIT I.I
DESCRIPTION OF ASSETS

I.I-1

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EXHIBIT 1.2

1.2-1

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EXHIBIT 2.3

2.3-1

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Ex. 2.3

FROM LATHAM & WATKINS

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EXHIBIT 2.5

ASSETS LEASED OR LICENSED TO SELLER

1. U.S. Patent No. 5,659,614 licensed to the Seller pursuant to the Patent License Agreement between Fairbanks Systems Group, Inc., predecessor-in-interest to the Seller, and John Edison Bailey III.

EXHIBIT 2.6

SELLER PROPRIETARY ASSETS

LETTERS PATENT

U.S. Patent No.	Issue Date	Title and Inventor(s) or Applicant(s)
5,794,254	08/11/98	SYSTEM AND METHOD FOR BACKING UP COMPUTER FILES OVER A WIDE AREA COMPUTER NETWORK Inventor(s): Fred W. McClain
6,049,874	04/11/00	SYSTEM AND METHOD FOR BACKING UP COMPUTER FILES OVER A WIDE AREA COMPUTER NETWORK Inventor(s): McClain, Bolt
6,014,676	01/11/00	SYSTEM AND METHOD FOR BACKING UP COMPUTER FILES OVER A WIDE AREA COMPUTER NETWORK Inventor(s): McClain
6,038,665	03/14/00	SYSTEM AND METHOD FOR BACKING UP COMPUTER FILES OVER A WIDE AREA COMPUTER NETWORK Inventor(s): Bolt, McClain
6,263,363	07/17/01	SYSTEM AND METHOD FOR CREATING AN INTERNET-ACCESSIBLE WORKING REPLICA OF A HOME COMPUTER ON A HOST SERVER CONTROLLABLE BY A USER OPERATING A REMOTE ACCESS CLIENT COMPUTER Inventor(s): Rosenblatt

PATENT APPLICATIONS

DOCKET No.	FILING DATE	SERIAL No.	TITLE AND INVENTOR(S) OR APPLICANT(S)
1083.CAN	06/02/99	2,273,920 (based on US97/22065)	SYSTEM AND METHOD FOR BACKING UP COMPUTER FILES OVER A WIDE AREA COMPUTER NETWORK Inventor(s): Fred W. McClain
1083.EUR		Euro no. 97949724.5 (based on US 97/22/06)	SYSTEM & METHOD FOR BACKING UP COMPUTER FILES OVER A WIDE AREA COMPUTER NETWORK Inventor(s): Fred W. McClain
1083.JPN	11/28/97	527752 (based on US 97/22065)	SYSTEM AND METHOD FOR BACKING UP COMPUTER FILES OVER A WIDE AREA COMPUTER NETWORK Inventor(s): Fred W. McClain
1083-1.CP3	01/28/99	US 09/239,475	SYSTEM AND METHOD FOR BACKING UP COMPUTER FILES OVER A WIDE AREA COMPUTER NETWORK Inventor(s): Mickelsen, Bolt, McClain
1083.005	08/16/99	US 09/374,940	SYSTEM AND METHOD FOR RESTORING COMPUTER FILES OVER A WIDE AREA COMPUTER NETWORK Inventor(s): Mickelsen
1083-5.EP	03/06/00	00200777.1	SYSTEM AND METHOD FOR RESTORING COMPUTER FILES OVER A WIDE ARE COMPUTER NETWORK Inventor(s): Mickelsen
1083.006A	04/03/00	US 09/542,020	SYSTEM AND METHOD FOR RECEIVING AND STORING COMPUTER FILES OVER A WIDE AREA COMPUTER NETWORK Inventor(s): Mickelsen, et al.

DOCKET NO.	FILING DATE	SERIAL NO.	TITLE AND INVENTOR(S) OR APPLICANT(S)
1083.009A (CIP of 1083.005)	04/03/00	US 09/541,287	SYSTEM AND METHOD FOR RESTORING COMPUTER FILES OVER A WIDE AREA COMPUTER NETWORK Inventor(s): Mickelsen, et al.
1083.010	07/13/00	US 09/615,576	SYSTEM AND METHOD FOR COMMUNICATION IN CONTEXT VIA A COMPUTER NETWORK Inventor(s): Kochevar, et al.
1083.012 (CIP of 1083.009)	10/20/00	US 09/693,363	SYSTEM AND METHOD FOR TRANSFERRING COMPUTER FILES OVER A WIDE AREA COMPUTER NETWORK Inventor(s): Mickelsen et al.
1083C3.EUR (based on PCT/US99/05248)			SYSTEM AND METHOD FOR BACKING UP COMPUTER FILES OVER A WIDE AREA COMPUTER NETWORK Inventor(s): Mickelsen, Bolt, McClain
1083C3.CAN	03/11/99	2,323,522	SYSTEM AND METHOD FOR BACKING UP COMPUTER FILES OVER A WIDE AREA COMPUTER NETWORK Inventor(s) Mickelsen, Bolt, McClain
1083C3.JPN (based on PCT/US99/05248)	03/11/99	2000-535980	SYSTEM AND METHOD FOR BACKING UP COMPUTER FILES OVER A WIDE AREA COMPUTER NETWORK Inventor(s): Mickelsen, Bolt, McClain
1083.013	12/15/00	US 09/738,043	SYSTEM AND METHOD FOR E-COMMERCE VERIFICATION Inventor(s): McClain

Any other Proprietary Asset owned by the Seller but not specifically listed above and which relates to any registered intellectual property, or pending application therefor, listed above in this Exhibit 2.6, including, without limitation, all trade secrets, know-how, knowledge, tools, documentation, and any other intangible intellectual property related to or connected with any of such registrations or applications.

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EXHIBIT 2.8

2.8-1

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